

SECTION 10
Rights Upon Arrest or Detention

Compilation of primary documents to assist in interpreting the original
public meaning of Section 10 of the *Constitution Act, 1982*

Third Edition

August, 2025



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The Constitution Act, 1982
Part I. Canadian Charter of Rights and Freedoms
Legal Rights

Arrest or detention

Section 10 *Everyone has the right on arrest or detention*

- (a) to be informed promptly of the reasons therefor;*
- (b) to retain and instruct counsel without delay and to be informed of that right; and*
- (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.*

PART 1:

Drafting History of the Charter of Rights and Freedoms Pertaining to Section 10's Public Meaning

Drafts of the Charter of Rights and Freedoms:

January 8, 1979: Canadian Charter of Rights & Freedoms, Federal Draft, tabled at Meeting of Officials on the Constitution, (January 11-12, 1979)

October 17, 1979: Rights and Freedoms within the Canadian Federation, Federal Draft, tabled at the Continuing Committee of Ministers on the Constitution (October 22-23, 1979)

November 5, 1979: Rights and Freedoms within the Canadian Federation, Federal Draft, tabled at the Meeting of Officials on the Constitution (November 15-16, 1979)

July 4, 1980: Continuing Committee of Ministers on the Constitution, Rights and Freedoms within the Canadian Federation, Discussion Draft (July 8-11, 1980)

July 4, 1980: Comité Permanent des Ministres sur la Constitution, Droits et Libertés à l'Interieur de la Fédération Canadienne, Document de Travail (July 8-11, 1980)

July 16, 1980: Revised Discussion Draft with Memo re Section 1 (July 18, 1980)

August 5, 1980: Revised Discussion Draft with Memo (August 5, 1980)

August 8, 1980: Formalities to Bill: Joint Resolution (August 8, 1980)

August 22, 1980: Discussion Draft (Federal) (August 26-29, 1980)

August 28, 1980: Provincial Proposal (In the event that there is going to be entrenchment) (August 26-29, 1980)

September 3, 1980: Revised Discussion Draft (September 8-12, 1980)

September 3, 1980 : Conference Fédérale-Provinciale des Premiers Ministres, Document de Travail, Charte Canadienne des Droits et Libertés (September 3, 1980)

September 24, 1980: Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada (September 24, 1980)

October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version1] (October 2, 1980)

October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version 2] (October 2, 1980)

October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

December 5, 1980: Addendum to Ministers dated November 25, 1980 from the Minister of Justice re: Possible Amendments to Proposed Resolution on Constitution of Canada (December 5, 1980)

December 8, 1980: Addendum to Memorandum to Ministers Dated November 25, 1980 from the Minister of Justice re: Possible Amendments to Proposed Resolution on Constitution of Canada (December 5, 1980)

December 12, 1980: Annexes to Memorandum to Ministers from Minister of Justice dated December 12, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada [Version 1] (December 12, 1980)

December 12, 1980: Annexes to Memorandum to Ministers from Minister of Justice dated December 12, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada [Version 2] (December 12, 1980)

December 12, 1980: Draft [No Title]

December 19, 1980: Consolidation of Proposed Amendments to the Proposed Resolution Respecting the Constitution of Canada (December 19, 1980)

December 30, 1980: Regroupement des Modifications Éventuelles à Apporter au Projet de Résolution concernant la Constitution du Canada, Version Provisoire (December 30, 1980)

January 9-12, 1981: Briefing Book for Clause by Clause Consideration of the Resolution (January 1981)

January 12, 1981: Version formally presented to Special Joint Committee by Jean Chretien (January 12, 1981)

Statutes and International Agreements:

1978: Bill C-60: An Act to amend the Constitution of Canada

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Drafts of the Charter of Rights and Freedoms

January 8, 1979: Canadian Charter of Rights & Freedoms, Federal Draft, tabled at Meeting of Officials on the Constitution, (January 11-12, 1979)

- (d) the right on arrest or detention
 - (i) to be informed promptly of the reason for the arrest or detention,
 - (ii) to be provided with the opportunity to retain and consult counsel without delay, and
 - (iii) to the remedy by way of habeas corpus for the determination of the validity of his or her detention and for release if the detention is not lawful;

(Source: Meeting of Officials on the Constitution, *Canadian Charter of Rights & Freedoms, Federal Draft*, [January 8, 1979] (Ottawa: 11-12 January, 1979). Click [HERE](#))

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October 17, 1979: Rights and Freedoms within the Canadian Federation, Federal Draft, tabled at the Continuing Committee of Ministers on the Constitution (October 22-23, 1979)

- (d) the right on arrest or detention
 - (i) to be informed promptly of the reason for the arrest or detention,
 - (ii) to be provided with the opportunity to retain and consult counsel without delay, and
 - (iii) to the remedy by way of habeas corpus for the determination of the validity of his or her detention and for release if the detention is not lawful;

(Source: Continuing Committee of Ministers on the Constitution, *Rights and Freedoms within the Canadian Federation Federal Draft*, [October 17, 1979] (Halifax: 22-23 October, 1979). Click [HERE](#))

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November 5, 1979: Rights and Freedoms within the Canadian Federation, Federal Draft, tabled at the Meeting of Officials on the Constitution (November 15-16, 1979)

- (d) the right on arrest or detention
 - (i) to be informed promptly of the reason for the arrest or detention,

- (ii) to be provided with the opportunity to retain and consult counsel without delay, and
- (iii) to the remedy by way of habeas corpus for the determination of the validity of his or her detention and for release if the detention is not lawful;

(Source: Meeting of Officials on the Constitution, Rights & Freedoms within Canadian Federation, *Federal Draft*, [November 5, 1979], Doc 840-177/005 (Toronto: 15-16 November, 1979). Click [HERE](#))

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July 4, 1980: Continuing Committee of Ministers on the Constitution, Rights and Freedoms within the Canadian Federation, Discussion Draft

- 6. (1) Everyone has the right to life, liberty and security of his or her person and the right not to be deprived thereof except by due process of law, which process encompasses the following:

[...]

d) the right on arrest or detention

(i) to be informed promptly of the reason for the arrest or detention,

(ii) to be provided with the opportunity to retain and consult counsel without delay, and

(iii) to the remedy by way of habeas corpus for the determination of the validity of his or her detention and for release if the detention is not lawful;

(Source: Meeting of the Continuing Committee of Ministers on the Constitution, *Rights and Freedoms within the Canadian Federation, Discussion Draft*. Tabled by the Delegation of the Government of Canada, 4 July 1980, Doc 830-81/027 (Montreal: 8-11 July 1980). Click [HERE](#).)

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July 16, 1980: Revised Discussion Draft with Memo re Section 1

- 6. (1) Everyone has the right to life, liberty and security of his or her person and the right not to be deprived thereof except by due process of law, which process encompasses the following:

[...]

d) the right on arrest or detention

(i) to be informed promptly of the reason for the arrest or detention,

(ii) to be provided with the opportunity to retain and consult counsel without delay, and

(iii) to the remedy by way of habeas corpus for the determination of the validity of his or her detention and for release if the detention is not lawful;

(Source: Memo from Fred Jordan to Roger Tassé re Charter of Rights – Possible Modifications [with Possible Alternatives to Section 1 of July 4, 1980 Draft & Revised Discussion Draft (16 July 1980)] (18 July 1980). This text is found on p. 2. Click [HERE](#).)

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August 5, 1980: Revised Discussion Draft with Memo

10. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons;
- (b) to retain and instruct counsel without delay; and
- (c) to the remedy by way of habeas corpus for the determination of the validity of the detention and for release if the detention is not lawful.

(Source: Memo from Deputy Minister of Justice to Prime Minister, Charter of Rights incl. Discussion Draft, The Canadian Charter of Rights and Freedoms (5 August 1980). Click [HERE](#).)

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August 8, 1980: Formalities to Bill: Joint Resolution

10. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons;
- (b) to retain and instruct counsel without delay; and
- (c) to the remedy by way of habeas corpus for the determination of the validity of the detention and for release if the detention is not lawful.

(Source: Canada, Formalities to Bill, Draft Joint Resolution, An Act to Amend the Constitution of Canada (8 August 1980). Click [HERE](#).)

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August 22, 1980: Discussion Draft (Federal)

10. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefor;

- (b) to retain and instruct counsel without delay; and
- (c) to the remedy by way of habeas corpus for the determination of the validity of the detention and for release if the detention is not lawful.

(Source: Continuing Committee of Ministers on the Constitution, *The Canadian Charter of Rights and Freedoms, Discussion Draft [Federal]*, (August 22, 1980), Doc 830-84/004 (Ottawa: 26-29 August 1980). Click [HERE](#).)

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August 28, 1980: Provincial Proposal (In the event that there is going to be entrenchment)

- 10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay; and
 - (c) to the remedy by way of habeas corpus for the determination of the validity of the detention and for release if the detention is not lawful.

(Source: Continuing Committee of Ministers on the Constitution, *Provincial Proposal: The Canadian Charter of Rights and Freedoms* (August 28, 1980), Doc 830-84/031 (Ottawa: 26-29 August, 1980). Click [HERE](#).)

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September 3, 1980: Revised Discussion Draft

- 10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay; and
 - (c) to the remedy by way of habeas corpus for the determination of the validity of the detention and for release if the detention is not lawful.

(Source: Federal-Provincial First Ministers' Conference, *The Canadian Charter of Rights and Freedoms, Revised Discussion Draft, Federal*, [September 3, 1980] Doc 800-14/064 (Ottawa: 8-12 September 1980). Click [HERE](#).)

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September 24, 1980: Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada

- 10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay; and
 - (c) to the remedy by way of habeas corpus for the determination of the validity of the detention and for release if the detention is not lawful.

(Source: Canada, Parliament, DRAFT, “Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada” (24 September 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version1]

- 10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay; and
 - (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

(Source: Canada, Parliament, DRAFT, Proposed Resolution for Joint Address to Her Majesty the Queen Respecting the Constitution of Canada, Version 1 (2 October 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version 2]

- 10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay; and
 - (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

(Source: Canada, Parliament, DRAFT, Proposed Resolution for Joint Address to Her Majesty the Queen Respecting the Constitution of Canada, Version 2 with Handwritten Notes (2 October 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

- 10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay; and
 - (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

(Source: Canada, Parliament, "Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada" in *Sessional Papers* (1980). Click [HERE](#).)

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December 5, 1980: Addendum to Ministers dated November 25, 1980 from the Minister of Justice re: Possible Amendments to Proposed Resolution on Constitution of Canada:

- 10. Everyone has the right on arrest or detention
 - (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay and to be informed promptly of that right; and
 - (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

(Source: Memo from E.I. MacDonald, Addendum to Ministers dated November 25, 1980 from the Minister of Justice re: Possible Amendments to Proposed Resolution on Constitution of Canada (5 December 1980). Click [HERE](#).)

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December 8, 1980: Addendum to Memorandum to Ministers Dated November 25, 1980 from the Minister of Justice re: Possible Amendments to Proposed Resolution on Constitution of Canada:

10. Everyone has the right on arrest or detention
- (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay and to be informed promptly of this right;
 - (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

(Source: Memo from E.I. MacDonald, Addendum to Ministers dated November 25, 1980 from the Minister of Justice re: Possible Amendments to Proposed Resolution on Constitution of Canada (5 December 1980). Click [HERE](#).)

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December 12, 1980: Annexes to Memorandum to Ministers from Minister of Justice dated December 12, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada [Version 1]:

10. Everyone has the right on arrest or detention
- (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay and to be informed promptly of that right
 - (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

(Source: Annexes to Memorandum to Ministers from Minister of Justice dated December 12, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada [Version 1] (12 December 1980). Click [HERE](#).)

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December 12, 1980: Annexes to Memorandum to Ministers from Minister of Justice dated December 12, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada [Version 2]:

10. Everyone has the right on arrest or detention
- (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay and to be informed promptly of that right

(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

(Source: Annexes to Memorandum to Cabinet from Minister of Justice Dated December 12, 1980 Respecting Possible Amendments to Proposed Resolution on Constitution of Canada [Version 2] (12 December 1980). Click [HERE](#).)

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December 12, 1980: Draft [No Title]

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed promptly of that right

(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

(Source: [Department of Justice?], [DRAFT], Constitution Act, 1980. Click [HERE](#).)

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December 19, 1980: Consolidation of Proposed Amendments to the Proposed Resolution Respecting the Constitution of Canada

10. Everyone has the right on arrest or detention

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay and to be informed promptly of that right

(c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

(Source: Consolidation of Proposed Amendments to the Proposed Resolution Respecting the Constitution of Canada (19 December 1980). Click [HERE](#).)

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January 9-12, 1981: Briefing Book for Clause by Clause Consideration of the Resolution:

10. Everyone has the right on arrest or detention

- (a) to be informed promptly of the reasons therefor;
- (b) to retain and instruct counsel without delay and to be informed promptly of that right
- (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful.

(Source: Canada, *Briefing Book for Clause by Clause Consideration of the Resolution* (January 1981). Click [HERE](#).)

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January 12, 1981: Version formally presented to Special Joint Committee by Jean Chretien¹

- 10 Everyone has the right on arrest or detention
- (a) to be informed promptly of the reasons therefor;
 - (b) to retain and instruct counsel without delay and to be informed of that right; and
 - (c) to have the validity of the detention determined by way of *habeas corpus* and to be released if the detention is not lawful

(Source: Canada, Parliament, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, 32nd Parl, 1st Sess, No 36 (12 January 1981). Click [HERE](#).)

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¹ See also [January 9-12, 1981: Briefing Book for Clause by Clause Consideration of the Resolution](#).

French:

July 4, 1980: Comité Permanent des Ministres sur la Constitution, Droits et Libertés à l'Interieur de la Fédération Canadienne, Document de Travail

6. (1) Toute personne ad liberté et a la sécurité de sa personne et a le droit de n'en être privée que par l'application régulière de la loi qui comprend nécessairement :

[...]

(d) le droit, en cas d'arrestation ou de détention,

(i) d'être informé sans délai des motifs de son arrestation ou de sa détention,

(ii) de se faire offrir la possibilité de bénéficier sans délai des services d'un avocat, et

(iii) de faire contrôler, par habeas corpus, la légalité de sa détention et d'obtenir, le cas échéant, sa libération;

(Source: Comité Permanent des Ministres sur la Constitution, *Droits et Libertés à l'Interieur de la Fédération Canadienne, Document de Travail*, Doc: 830-81/027 (Montréal: 8-11 juillet 1980). Click [HERE](#).)

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September 3, 1980 : Conference Fédérale-Provinciale des Premiers Ministres, Document de Travail, Charte Canadienne des Droits et Libertés

9. Toute personne a le droit, en cas d'arrestation ou de détention

a) d'être informée sans délai des motifs de son arrestation ou de sa détention;

b) d'avoir sans délai l'assistance d'un avocat de son choix;

c) de faire contrôler, par habeas corpus, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

(Source: Conference Fédérale-Provinciale des Premiers Ministres, *Document de Travail, Charte Canadienne des Droits et Libertés* (3 septembre 1980). Click [HERE](#).)

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September 24, 1980: Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada

10. Chacun a droit, en cas d'arrestation ou de détention:

- a) d'être informé sans délai des motifs de son arrestation ou de détention;
- b) de bénéficier sans délai de l'assistance d'un avocat de son choix;
- c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

(Source: Canada, Parliament, DRAFT, "Resolution for joint address to Her Majesty the Queen respecting the constitution of Canada" (24 September 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version1]

- 10. Chacun a le droit, en cas d'arrestation ou de détention :
 - a) d'être informé dans les meilleurs délais des motifs de son arrestation ou de sa détention;
 - b) d'avoir recours sans délai à l'assistance d'un avocat;
 - c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

(Source: Canada, Parliament, DRAFT, Proposed Resolution for Joint Address to Her Majesty the Queen Respecting the Constitution of Canada, Version 1 (2 October 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada with Handwritten Notes [Draft, Version 2]

- 10. Chacun a le droit, en cas d'arrestation ou de détention :
 - a) d'être informé dans les meilleurs délais des motifs de son arrestation ou de sa détention;
 - b) d'avoir recours sans délai à l'assistance d'un avocat;
 - c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

(Source: Canada, Parliament, DRAFT, Proposed Resolution for Joint Address to Her Majesty the Queen Respecting the Constitution of Canada, Version 2 with Handwritten Notes (2 October 1980). Click [HERE](#).)

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October 2, 1980: Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada

10. Chacun a le droit, en cas d'arrestation ou de détention :
- a) d'être informé dans les meilleurs délais des motifs de son arrestation ou de sa détention;
 - b) d'avoir recours sans délai à l'assistance d'un avocat;
 - c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

(Source: Canada, Parliament, "Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada" in *Sessional Papers* (1980). Click [HERE](#).)

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December 8, 1980: Addendum to Memorandum to Ministers Dated November 25, 1980 from the Minister of Justice re: Possible Amendments to Proposed Resolution on Constitution of Canada:

10. Chacun a le droit, en cas d'arrestation ou de détention :
- a) d'être informé dans les meilleurs délais des motifs de son arrestation ou de sa détention;
 - b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit dans les meilleurs délais;
 - c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

(Source: Memo from E.I. MacDonald, Addendum to Ministers dated November 25, 1980 from the Minister of Justice re: Possible Amendments to Proposed Resolution on Constitution of Canada (5 December 1980). Click [HERE](#).)

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December 12, 1980: Annexes to Memorandum to Ministers from Minister of Justice dated December 12, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada [Version 1]

10. Chacun a le droit, en cas d'arrestation ou de détention :
- a) d'être informé dans les meilleurs délais des motifs de son arrestation ou de sa détention;

- b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit dans les meilleurs délais;
- c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

(Source: Annexes to Memorandum to Ministers from Minister of Justice dated December 12, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada [Version 1] (12 December 1980). Click [HERE](#).)

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December 12, 1980: Annexes to Memorandum to Ministers from Minister of Justice dated December 12, 1980 respecting Possible Amendments to Proposed Resolution on Constitution of Canada [Version 2]:

- 10. Chacun a le droit, en cas d'arrestation ou de détention :
 - a) d'être informé dans les meilleurs délais des motifs de son arrestation ou de sa détention;
 - b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit dans les meilleurs délais;
 - c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

(Source: Annexes to Memorandum to Cabinet from Minister of Justice Dated December 12, 1980 Respecting Possible Amendments to Proposed Resolution on Constitution of Canada [Version 2] (12 December 1980). Click [HERE](#).)

December 12, 1980: Draft [No Title]

- 10. Chacun a le droit, en cas d'arrestation ou de détention :
 - a) d'être informé dans les meilleurs délais des motifs de son arrestation ou de sa détention;
 - b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit dans les meilleurs délais;
 - c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

(Source: [Department of Justice?], [DRAFT], Constitution Act, 1980. Click [HERE](#).)

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December 30, 1980: Regroupement des Modifications Éventuelles à Apporter au Projet de Résolution concernant la Constitution du Canada, Version Provisoire

10. Chacun a le droit, en cas d'arrestation ou de détention :
- a) d'être informé dans les meilleurs délais des motifs de son arrestation ou de sa détention;
 - b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé ^[illegible] de ce droit dans les meilleurs délais;
 - c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

(Source: Regroupement des Modifications Éventuelles à Apporter au Projet de Résolution concernant la Constitution du Canada, Version Provisoire (30 décembre 1980). Click [HERE](#).)

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January 9-12, 1981: Briefing Book for Clause by Clause Consideration of the Resolution:

10. Chacun a le droit, en cas d'arrestation ou de détention :
- a) d'être informé dans les plus brefs délais des motifs de son arrestation ou de sa détention;
 - b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit.
 - c) de faire contrôler, par *habeas corpus*, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

(Source: Canada, *Briefing Book for Clause by Clause Consideration of the Resolution* (January 1981). Click [HERE](#).)

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January 12, 1981: Version formally presented to Special Joint Committee by Jean Chretien:

10. Chacun a le droit, en cas d'arrestation ou de détention;
- a) d'être informé dans les plus brefs délais des motifs de son arrestation ou de sa détention;
 - b) d'avoir recours sans délai à l'assistance d'un avocat et d'être informé de ce droit;

c) de faire contrôler, par habeas corpus, la légalité de sa détention et d'obtenir, le cas échéant, sa libération.

(Source: Canada, Parliament, *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada*, 32nd Parl, 1st Sess, No 36 (12 January 1981). Click [HERE](#).)

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Statutes and International Agreements

June 20, 1978: Bill C-60: An Act to amend the Constitution of Canada

- the right, as an individual who has been arrested or detained,
- (i) to be informed promptly of the reasons for his or her arrest or detention,
- (ii) to retain and instruct counsel without delay, and
- (iii) to the remedy by way of habeas corpus for the determination of the validity of his or her detention and for his or her release if the detention is not lawful;

(**Source:** Bill C-60, *An Act to amend the Constitution of Canada with respect to matters coming within the legislative authority of the Parliament of Canada, and to approve and authorize the taking of measures necessary for the amendment of the Constitution with respect to certain other matters*, 3rd Sess, 30th Parl, SC, 1978 (June 20, 1978). Click [HERE](#))

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PART 2:

The Primary Record (Debates, Papers, Committees...) Pertaining to Section 10's Public Meaning

February 10-12, 1969, Pierre Trudeau, *The Constitution and the People of Canada* presented to Federal-Provincial First Ministers' Conference (February 10-12, 1969) (click [HERE](#)), p. 52

May 29, 1972, Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, Final Report (click [HERE](#)), p. 20

August, 1978, Otto Lang, *Constitutional Reform: The Supreme Court of Canada*, presented at Federal-Provincial First Ministers' Conference (October 30-November 1, 1978)

February 5-6, 1979, Federal-Provincial Conference of First Ministers on the Constitution, Verbatim Transcript (click [HERE](#)), p. 520

February 5-6, 1979, Federal-Provincial Conference of First Ministers on the Constitution, Federal Draft Proposals Discussed by First Ministers (click [HERE](#))

July 5, 1980, Charter of Rights and Freedoms, Background Notes, Tabled at Continuing Committee of Ministers on the Constitution, (July 8-11, 1980) (click [HERE](#)), p. 2

October 6, 1980, Debate in the House of Commons (click [HERE](#)), p. 3285

October 14, 1980, Debate in the Senate (click [HERE](#)), p. 851

October 15, 1980, Debate in the House of Commons (click [HERE](#)), p. 3704

November 18, 1980, Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Issue 7 (click [HERE](#)), p. 90

December 8, 1980, Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Issue 21 (click [HERE](#)), p. 6

February 23, 1981, Debate in the House of Commons (click [HERE](#)), p. 7572

April 2, 1981, Debate in the House of Commons (click [HERE](#)), p. 8903

April 21, 1981, Debate in the House of Commons (click [HERE](#)), p. 9371

April 22, 1981, Debate in the House of Commons (click [HERE](#)), p. 9418

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***Note:** The following is a selection of excerpts, not intended to be an exhaustive summary. The reader is encouraged to view the document as a whole.*

1969: Pierre Trudeau, *The Constitution and the People of Canada* presented to Federal-Provincial First Ministers' Conference (February 10-12, 1969) (click [HERE](#)), p. 52

2. The Charter should also recognize and guarantee in Canada the following rights:

- (a) the right of the individual to be secure against unreasonable searches and seizures;
- (b) the right of a person who has been arrested or detained
 - (i) to be informed promptly of the reason for his arrest or detention
 - (ii) to retain and instruct counsel without delay, and
 - (iii) to the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful
- (c) the right of a person not to give evidence before any court, tribunal, commission, board or other authority if he is denied counsel, protection against self-crimination, or other constitutional safeguards;
- (d) the right of a person to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- (e) the right of a person charged with an offence to be presumed innocent until proved guilty according to law in a fair hearing by an independent and impartial tribunal, and the right not to be denied reasonable bail without just cause;

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[French translation of previous page]

[Page 54]

- (f) the right of a person to the assistance of an interpreter in any proceedings in which he is involved as a party or witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted;
- (g) the right of a person not to be held guilty of an offence on account of any act or omission which at the time of its commission or omission did not constitute an offence, and the right of a person on being found guilty of an offence not to be subjected to a penalty heavier than the one applicable at the time the offence was committed;
- (h) the right of a person not to be subjected to cruel and unusual treatment or punishment.

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May 29, 1972, Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, Final Report (click [HERE](#)), p. 20

We also strongly recommend the inclusion in a Bill of Rights of other basic legal rights such as those already contained in the Canadian Bill of Rights. We adopt the formulation of these rights in the Federal Government's constitutional proposals put forward in *The Constitution and the People of Canada* at page 52:

- (a) the right of the individual to be secure against unreasonable searches and seizures;
- (b) the right of a person who has been arrested or detained
 - (i) to be informed promptly of the reason for his arrest or detention
 - (ii) to retain and instruct counsel without delay, and
 - (iii) to the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful
- (c) the right of a person not to give evidence before any court, tribunal, commission, board or other authority if he is denied counsel, protection against self-crimination, or other constitutional safeguards;
- (d) the right of a person to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;
- (e) the right of a person charged with an offence to be presumed innocent until proved guilty according to law in a fair hearing by an independent and impartial tribunal, and the right not to be denied reasonable bail without just cause;
- (f) the right of a person to the assistance of an interpreter in any proceedings in which he is involved as a party or witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted;
- (g) the right of a person not to be held guilty of an offence on account of any act or omission which at the time of its commission or omission did not constitute an offence, and the right of a person on being found guilty of an offence not to be subjected to a penalty heavier than the one applicable at the time the offence was committed;
- (h) the right of a person not to be subjected to cruel and unusual treatment or punishment.

We believe that these traditional legal rights are sufficiently well accepted by our society not to require any special defence as human rights. We presume that the only question is whether they are better protected constitutionally or legislatively. We have already stated our general position that constitutional protection is necessary.

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August, 1978: Otto Lang, *Constitutional Reform: The Supreme Court of Canada*, presented at Federal-Provincial First Ministers' Conference (October 30-November 1, 1978)

Section 7 sets forth a number of specific individual legal rights many of which are in terms identical to those found in the provisions of section 2 of the Canadian Bill of Rights. However, unlike the introductory words of the latter, the opening words of section 7 contain no qualifications. Hence, it will not be possible under the Charter to declare in a statute that it shall override the provisions of the Charter. Nor are the courts simply invited to "construe" or "apply" a law in a manner which will not infringe the protected legal rights. Section 7 clearly declares that individuals shall enjoy and continue to enjoy the specified rights, and section 23 declares that no law shall apply so as to infringe these rights, a clear direction to the courts to strike down offending laws.

The following provisions of section 7 are identical to those found in the Canadian Bill of Rights:

- protection against arbitrary detention, imprisonment or exile
- rights of detained or arrested persons
- right to refuse to testify without legal safeguards
- right to assistance of an interpreter
- right to a fair hearing
- rights of an individual charged with an offence (with some additional protections noted below)
- protection against cruel and unusual punishment or treatment.

By and large these provisions are specific elements of the concepts of "due process of law" or "principles of fundamental justice." All of these rights find their counterparts in the several international instruments. In addition, most of them are reflected in the Quebec Human Rights Charter and a few are contained in the Saskatchewan Bill of Rights. However, although most of these rights were proposed by the federal government in 1969 for inclusion in an entrenched Charter, none of them was included in the Victoria Charter. The Special Joint Committee Report in 1972 recommended that all the legal rights contained in the federal government's proposals be included in an entrenched Bill of Rights.

One that was not contained among the federal government's proposals in 1969 was the protection against arbitrary detention, imprisonment or exile. This provision is, however, found in the Universal Declaration of Human Rights and it would thus seem appropriate to retain it in the Charter.

On a related question, the Special Joint Committee Report of 1972 remarked on the omission from the Victoria Charter of any protection against the loss of citizenship and recommended that citizenship, once legally acquired, should be made inalienable. Since there may be exceptional situations where a country could be justified in revoking a person's citizenship, it is perhaps preferable not to make the right inalienable. It may be noted, however, that the Universal Declaration provides that no one shall be arbitrarily deprived of his nationality, and the U.N. Covenant on Civil and Political Rights provides that no one shall be arbitrarily denied the right to enter his own country.

In its 1969 proposals the federal government recommended two additional legal rights for inclusion in the Charter of Human Rights and these are contained in the proposed new Charter.

The right to be secure against unreasonable searches and seizures is an important new right which would protect an individual against police carrying out searches or seizures against him or his

property in an unreasonable manner, even though the police have the necessary authorization to make a search or seizure. Thus, for example, a search of an individual's home at 4 a.m. could be held by the court to be unreasonable unless the police are able to demonstrate otherwise. Equally, the seizure of a person's property or goods in his possession could be held to be unreasonable unless the police can show the property to be essential evidence of a suspected offence. Therefore, a violation of this provision might result in the courts holding that evidence so obtained is inadmissible in any subsequent proceedings.

The Universal Declaration provides that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, and the U.N. Covenant re-affirms this protection. Under Quebec's Charter a person's home is declared inviolable.

This proposed addition to individual legal rights was endorsed by the Special Joint Committee Report.

Protection against ex post facto laws creating crimes and punishment retroactively is also an important addition to the Charter, giving recognition to basic principles of our criminal law. Under this provision no person could be tried for an act that was not a recognized offence at the time it was committed; nor could a convicted person be given a harsher penalty than that prescribed for an offence at the time of its commission.

These rights are expressly recognized in the Universal Declaration and the U.N. Covenant. The Quebec Charter precludes the retroactive application of penal laws.

This proposed addition to individual legal rights was endorsed by the Special Joint Committee Report.

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February 5-6, 1979, Federal-Provincial Conference of First Ministers on the Constitution, Verbatim Transcript (click [HERE](#)), p. 520

The Chairman²: [...]Now I know there has been some measure of agreement on I believe fundamental freedoms and democratic rights. By that I mean freedom of thought, conscience, religion, principles of universal suffrage, the right to vote and so on but I would make a plea that some of the other rights could be entrenched—the right against unreasonable searches and seizures—I am talking of legal rights now—the right against unreasonable interference with privacy, the right against detention or imprisonment except in accordance with prescribed laws and procedures, the rights on arrest or detention to be told promptly of reasons therefor, to remedy by habeas corpus, rights as a person charged with criminal or penal offences to be informed of the specific charges, to be tried in a reasonable time, the presumption of innocence, to a fair and public hearing, not to be denied bail unfairly, to protection against ex post facto offences and so on.

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² The Chairman is Prime Minister Pierre Trudeau.

February 5-6, 1979, Federal-Provincial Conference of First Ministers on the Constitution, Federal Draft Proposals³ Discussed by First Ministers (click [HERE](#))

NEW DRAFT PROPOSALS

[...]

C. Legal Rights

[...]

4. Rights on arrest or detention to be told promptly of reasons therefor, to retain and consult counsel promptly and to remedy by habeas corpus.

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July 5, 1980: Charter of Rights and Freedoms, Background Notes⁴, Tabled at Continuing Committee of Ministers on the Constitution, (July 8-11, 1980) (click [HERE](#)), p. 2

Among the many important rights provided for under the draft Charter, each Canadian would be guaranteed the right to life, liberty and security and the right not to be deprived of these “except by due process of law” the major elements of which are listed in the Charter. The proposed Charter enumerates the various considerations which would guide law enforcement agencies and courts when a person is arrested, detained, tried or punished, or otherwise involved in the legal process. Although many of the rights contained in this section are already available to most Canadians, they are not mandatory and could be changed as the result of the decision of Parliament or, in some cases, of a legislature.

The draft Charter places no limitations on these rights other than in time of “serious public emergency threatening the life of the country”. Even under those circumstances, the right to life, the right to be provided with opportunity to retain and consult a lawyer, freedom from cruel or unusual treatment or punishment and many other basic legal rights may not be infringed.

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October 6, 1980, Debate in the House of Commons (click [HERE](#)), p. 3285

Mr. Chrétien: [...] Beyond its symbolic and educational functions, a bill of rights can be an effective instrument of enforcement, particularly of fundamental political and legal rights. The courts can declare laws that violate constitutional rights invalid. In the absence of guaranteed

³ This is only a summary of the proposals. We hope to include the draft itself in future reports.

⁴ For the draft itself, please see Part 1 of this report. The draft was from July 4, 1980.

rights, a transient majority in Parliament or a legislature can do incalculable harm to a minority or an individual. Unlike existing human rights legislation, which can always be abrogated or modified by statute, it would constrain future legislatures and governments from acting in violation of human rights. This protection is all the more important in our modern administrative state where there is such a vast quantity of delegated legislation that is not subjected to the type of questioning involved in parliamentary debate.

It is true that there are now non-constitutional bills of rights at the federal and provincial levels. But these are mere legislative directions to the courts as to how legislation is to be interpreted. Constitutional entrenchment should encourage courts to take a stronger stand to protect fundamental rights.

The resolution before the House provides for a Canadian charter of rights and freedoms binding upon Parliament, all provincial legislatures and all governments. The rights and freedoms in the charter include: freedom of conscience and religion; freedom of thought, belief, opinion and expression, including freedom of the press and other media of information; freedom of peaceful assembly and of association; the right to vote and to stand for office, and the right to elections at least once every five years.

Sections 7 to 14 of the charter set out basic legal rights of Canadians. Some of these rights derive from the Canadian Bill of Rights and some are new. Of the latter, some derive from the International Covenant on Civil and Political Rights. I might remind the House that before adhering to the covenant, the federal government received the consent of all provinces. If provincial governments agreed to be bound by the International Covenant on Civil and Political Rights, they should not object to being bound by a Canadian charter of rights and freedoms.

The legal rights include the rights to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice; the right to be secure against search or seizure except on grounds and in accordance with procedures established by law.

There is the right not to be arbitrarily detained or imprisoned except on grounds and in accordance with procedures established by law; the right on arrest or detention to be informed promptly of the reasons, to retain and instruct counsel without delay, the right to obtain the remedy of habeas corpus.

Section 11 provides certain fundamental protections to those charged with an offence.

The protections include the right to be informed promptly of the charge; to be tried within a reasonable time; to be presumed innocent until proven guilty in a fair and public trial, and to be granted bail where appropriate. The rights also include protection against being found guilty if an act wasn't an offence when it occurred and against being tried twice for the same offence. In addition, if punishment is changed between the time the act occurs and sentencing, only the lesser punishment may be imposed.

In addition, the charter enshrines the right not to be subjected to any cruel or unusual punishment, the right of witnesses to protection against self-incrimination, and the right to assistance of an interpreter in court proceedings.

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October 14, 1980, Debate in the Senate (click [HERE](#)), p. 851

Senator Perrault: [...] Then we come to the Canadian Charter of Rights and Freedoms. It protects seven categories of rights: fundamental freedoms, democratic rights, mobility rights, legal rights, non-discriminatory rights, language rights, and minority educational rights. The interesting thing is, of course, that these rights are based on a number of statutes now found at the federal level such as the Canadian Bill of Rights, the Canadian Human Rights Act, the Official Languages Act, the Criminal Code, as well as the International Covenant on Civil and Political Rights, the so-called "U.N. Charter" to which Canada, with the approval of all ten provinces, became a party in 1976. All of the rights proposed for entrenchment are rights which Canadians, through their experience of nationhood over 100 years, have come to accept as fair, decent and reasonable.

There really is no dispute about the desirability of ensuring these human rights. There is a difference of opinion, as honourable senators are aware, between those who believe that entrenchment may be necessary and those who believe that this matter of human rights can be left to provincial legislatures. That is another aspect of this question which is under debate.

Fully nine sections are derived in whole or in part from the Diefenbaker Bill of Rights, while six of the legal rights are derived from the U.N. covenant. Surely they are not bad precedents.

Senator Macquarrie: Smoke screen!

p. 852

Senator Perrault: Legal rights comprise the right of life, liberty and security of the person; protection against unlawful search or seizure and unlawful detention or imprisonment; the right upon arrest to be promptly informed of the reasons and to be able to retain counsel without delay; the right upon being charged with an offence to be informed promptly of the specific offence; to be charged within a reasonable time; to be presumed innocent until proven guilty; not to be denied reasonable bail without just cause; not to be found guilty on account of any act or omission that was not an offence when committed; not to be tried or punished more than once for an offence; not to be subject to cruel or unusual punishment; not to have evidence given used for self-incrimination in subsequent proceedings, and the right to the assistance of an interpreter.

I think if Mr. Diefenbaker were alive today he would say, "Hear, hear!" The surprising part about the situation is that some, but not all, of the opposition say, "No, no, we must not entrench these rights." I think that John Diefenbaker, when he made his great speech in connection with the Bill of Rights, foresaw that if Canadians one day could be inspired to see the entrenchment of human rights in the Constitution it would be an even greater day for Canada than in 1960. This is what the Right Honourable John Diefenbaker said at that time:

This measure that I introduce is the first step—

The first step.

—on the part of Canada to carry out the acceptance either of the International Declaration of Human Rights or of the principles that actuated those who produced that noble document.

Many Canadians believe that the new proposals mark a continuation of the work of John Diefenbaker. These are the second and third steps. [...]

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October 15, 1980, Debate in the House of Commons (click [HERE](#)), p. 3704

Hon. Yvon Pinard: [...] The legal guarantees, the right to life, the right to freedom and to security, the right to protection against abusive searches, against unjustified detention and imprisonment, the presumption of being non-guilty, the right to have the assistance of a lawyer and to be tried within a reasonable time are all basic rights which should be entrenched in the constitution we want to patriate.

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November 18, 1980: Max Cohen (Chairman, Select Committee on the Constitution of Canada of the Canadian Jewish Congress), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Issue 7 (click [HERE](#)), p. 90

Professor Cohen: [...] Section 10:

10. Everyone has the right on arrest or detention.

(a) to be informed promptly of the reasons therefor;

(b) to retain and instruct counsel without delay; and

(c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

Now, a number of problems here: in the first place, we think that in accordance with the international convention there should be a right to legal aid because, as matters now stand, that language will very easily succumb to the theory-well, of course, you are entitled to counsel, but if you cannot afford counsel, then so what, what is your recourse to it. It ought to be clear that now that Canadian society has almost established a rule from coast to coast in the assistance of legal aid in which no one is deprived of their due defence through the absence of counsel, somewhere that is worth stating in a charter of rights so fundamental as this. So, a legal aid system of some kind or the right to legal assistance of some kind is worthy of charter mention.

The next problem of course is to retain and instruct counsel without delay. Now, very important questions arise here. What if you do not have it? You all know of course the famous U.S./Supreme Court Judgement in the Moranda Case. In Moranda the Supreme Court and a whole series of cases thereafter made it clear that the failure to inform accused of his rights will poison the proceedings thereafter. The question is, what do we say about that kind of problem in a Canadian charter. We do not go that far. We do not say that the failure to inform will amount to an absolute exclusionary rule that you cannot have evidence therefore which can be adduced because you have not given the man a fair warning as you should have done. We think this should be left to the judge in a case by case process.

Now, we may not have gone far enough. I think Gordon Fairweather went farther than what we did on this matter. We had some pretty good criminal lawyers on the committee. Let me put it to you in broad, practical-philosophical terms. One should see articles of this kind and others like it. In terms of the modern problems of the administration of criminal justice, how do you draw a balance between the police and the prosecutor in a world in which urban crime is rampant. How do you tilt the balance one way or the other to meet the exigencies of the situation.

Well, the tilting process cannot be done every day by the legislature. Perhaps you ought to give discretion to the courts to work out the tilting process over time as they see the urgencies of the occasion day by day, case by case around them.

We thought that by not making a Miranda Rule, a fixed constitutional notion, you would give the courts a sense of the

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scope of which they can tilt as the exigencies of the criminal justice system might require at a given time.

Finally on that particular Article 10, the access to counsel. It is not so clear in the English version as it is the French version, that there is a right to counsel, that, you have the right to make the telephone call and that this is something you should be told about; whereas, the French version seems to us to be a little clearer and we recommend that the spirit of the French version be afforded to the English version in the notion of access too, which is clearer in the French than it is in the English.

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December 8, 1980: Norman Whalen (Vice-Chairman, Canadian Federation of Civil Liberties and Human Rights Associations), speaking in the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Issue 21 ([click HERE](#)), p. 6

Mr. Norman Whalen (Vice-Chairman, Canadian Federation of Civil Liberties and Human Rights Associations): [...] Mr. Chairman, the serious structural limitations which occur

repeatedly through this bill find first expression in Section 1 of the Charter. The limiting provision of this section is so general as to permit, if not cause, the certain failure of everything which the Charter sets out to achieve. If this is poor

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drafting, then it must be improved. If, however, it is the clear expression of the will of its creators, then they have a view of entrenchment which we will submit does not find reflection in the popular will of Canadians.

If the rights set out in the Charter are subject to the limits stipulated in Section 1 then Parliament acting alone will always have supremacy over the Charter, effectively denying what the Charter proposes to create—entrenchment.

Following Section 7 which appears to set a very high and noble tone, Sections 8, 9, 10(c) and 11(d) are drafted in such a way as to render them seriously inadequate.

Each is subject to parliamentary change. As an example, Section 8 provides that—and I quote:

8. Everyone has the right not to be subjected to search or seizure except on grounds, and in accordance with procedures, established by law.

Parliament, acting alone, can establish the procedure for search and seizure. The protection which entrenchment in a constitution should offer would thereby be denied. We have recommended, Mr. Chairman that in each of these sections the limiting words:

and in accordance with procedures, established by law.

should be replaced by the wording used in Section 7 of the Charter:

except in accordance with the principles of fundamental justice.

This would mean that, while Parliament could make the changes in each of these areas from time to time, these changes would always have to be in conformity with the principles of fundamental justice. The Supreme Court would set this standard, and each legislature and the Parliament of Canada would have to meet them.

Thus, only by amending the constitution would Parliament or a legislature be able to change the standard of protection which is provided in the Charter.

This, Mr. Chairman, is the type of entrenchment which, in our view, is essential, if the Charter of Rights is to have any meaning whatever.

Apart from these serious faults, the Charter has not moved forward in any positive way to establish new rights which one would have hoped for in a document of this nature.

We would have liked to see included under the heading legal rights, the right to remain silent, the right to retain and instruct counsel in private, the right to have counsel present during

questioning and the right to legal aid, as well as the right to be informed immediately upon arrest of each of the rights listed above.

Mr. Chairman, the protection ostensibly offered by Section 13 in relation to self-incrimination, falls far short of the

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standard accepted in the United States and will still permit the continuation of certain abuses in Canadian courts.

The haste with which this document appears to have been drafted is reflected in Section 10(c) and Section 11(c) of the Charter. Section 10(c) omits to relate to the normal release from detention by bail provisions which are used in the vast number of cases in Canada and refers only to habeas corpus which is rarely used. Section 11(c) provides for trial by an impartial tribunal, omitting reference to the jury system which is at the foundation of the criminal justice system in Canada.

Mr. Chairman, there are other areas which we believe are inadequate in the Charter of Rights relating to the criminal justice system. These are outlined in more detail in our written brief. We find in particular, Mr. Chairman, that the rights against discrimination as set out in Section 15(1) are seriously lacking in two respects.

First, the list enumerated is not exclusive. For this reason we recommend that no list be attached, thereby prohibiting discrimination on any basis.

Secondly, apart from the right to equality before the law, we would submit that everyone should have the right to equality of service as well as to equality before the law. We would suggest that the provision of equality of service would go a long way towards establishing the rights of the handicapped, minority groups and other disadvantaged groups or persons.

We have not found, Mr. Chairman, support in our organization for the limitations established in this bill in Sections 20 and 23 under language rights. We cannot accept that the right to bilingual services or bilingual education should only exist where numbers warrant. This limitation provides too easy an exception and would render the provision of both bilingual services and educational opportunities throughout Canada much more difficult to obtain than would otherwise be the case.

Mr. Chairman, as you are aware, there is particular concern in the Indian community throughout Canada today that this bill will seriously jeopardize their rights. This concern we believe is legitimate. We think that the Government of Canada should assure the native peoples that their rights will be protected and that nothing in this proposed constitution will abrogate these rights. We have, accordingly, recommended that Section 24 be redrafted to ensure that this protection is provided.

Apart from the native peoples and the bicultural nature of Canada, there are many other linguistic, ethnic and religious communities which make up the mosaic of this great nation. We believe that reference should be made to this fact in our constitution. We also believe that guarantees should be established to encourage and enhance the rights of these peoples to fully

determine their social and political status within Canada, and to fully pursue their economic, social and cultural development.

To confirm these rights at this time would be to confirm

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the strength of this nation which is nourished and sustained by its very diversity.

Now, Mr. Chairman, on this particular point, as Mr. Webking indicated, our organization is an umbrella group, and one of our member organizations, La Ligue, in the Province of Quebec, has asked that we express their disagreement with the inclusion of the words “within Canada” in that submission. While voicing that rider, we would still like to express that it is the view of the Federation of Civil Liberties that the expression of this diversity should be within Canada.

Mr. Chairman, there is a danger that this bill could be viewed as an expression by the Canadian government of its nonconfidence in the people of Canada, Canadians, we believe, will support a strong and clear statement in a constitution of rules to govern both the people and the government.

We have found, Mr. Chairman, that this bill is inadequate. Section 7 alone reveals a bold initiative. This one section may move us one small step forward in our search for rights and freedoms. We cannot accept, however, that this is the best that we as Canadians can do.

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February 23, 1981, Debate in the House of Commons (click [HERE](#)), p. 7572

Mr. Jim Peterson (Willowdale): [...] I wish to focus my comments on some of these legal rights, Mr. Speaker, and on why they must be entrenched.

I speak of security against unreasonable search and seizure; the right on being arrested to retain counsel and as well to be informed of the right to have counsel; the right to habeas corpus; to trial within a reasonable time; to reasonable bail; to trial by jury for serious offences; protection against cruel and unusual punishment and, most important, specific remedies are made available where any such legal rights or any of the rights or freedoms guaranteed in the charter have been infringed or denied.

If there were to be an improper search or seizure, for example, the official involved could be subject to a fine or perhaps even to suspension. If excessive force were used, the victim could be awarded damages by a court. If a municipality were to deny a religious group a licence for a gathering, a court could overrule that and order, by mandamus, that a permit be issued. It could award damages. If a school board

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were to deny second language education, it could be compelled to supply it if numbers warrant.

An important right and one which I think demonstrates the essence of what we are achieving in terms of human rights is provided in the case where evidence is obtained illegally. The constitutional resolution amends our present law. It states that where constitutional rights have been broken in gathering evidence, the court can grant a number of remedies, including such evidence being declared inadmissible. This will occur only in circumstances where the court can determine that its admission would bring the administration of justice into disrepute.

That is one way the charter could balance the protection of the individual against arbitrary or excessive use of government authority and the protection of society against crime. We have not adopted the American rule which prohibits the production of evidence, however relevant, as proof of guilt if such evidence is obtained illegally. If such a rule were implemented in Canada it would generate a feeling of frustration among law enforcement officers and also among citizens since the rule itself or a simple violation of the rules could lead automatically to acquittal.

The charter would seem to improve upon the existing legislation which, in most cases, allows the production of illegally obtained evidence. Therefore, this new provision strikes a balance between the individual's rights and the collective need for an effective enforcement of the law and for an equitable judicial system. Consequently, a piece of evidence which is considered relevant, even though it may have been obtained illegally, will be allowed unless its production might bring discredit upon the administration of justice.

Our courts, under the legal rights provision, will be able to decide, for example, whether a search was conducted in a reasonable manner. They will be able to determine whether it was reasonable that a 15-year-old girl who was arrested for jaywalking, or a pregnant woman who was arrested for not having paid a speeding ticket, should be subjected to the humiliation of a strip search. They will be able to determine whether, in the case of raids, the police have acted within reasonable strengths and within reasonable bounds or whether activities now under study by the McDonald Royal Commission were reasonable in the circumstances. If the court should determine that they were not, then the victims will have a remedy available to them.

The charter entrenches another most important right, namely, a person's right not only to obtain and instruct counsel but also to be informed of the right to have counsel. This is a progressive step which recognizes that rights should not only be available but they must be made known.

Another such right which I am proud to see in this constitution is that trials must be held within a reasonable time. Every individual who is accused and arrested should have the opportunity to have his or her guilt or innocence determined quickly. This is not only fair but, when you consider that it costs about \$30,000 a year to keep a person in detention, it also makes good economic sense.

Some have said that we need not entrench these and other basic legal rights in a constitution, that it is sufficient for us to leave them to our federal and provincial law makers and to the common law. Let us, therefore, examine this proposition together. First, we do have a Bill of Rights that mentions some, but not all, of the rights contained in the constitutional resolution. How strong are these rights and how good a job do they do? Look at the Lavell case. Mrs. Lavell, an Indian, married a non-Indian. Under the Indian Act, she lost her status rights even though the same

would not have happened had she been a man. At that time the Bill of Rights precluded discrimination based on sex. The Supreme Court held that it could not overrule the Indian Act; it was just another act along with the Bill of Rights. In similar circumstances, Sandra Lovelace had to appeal to the United Nations because no appeal was available in Canada. When freedom from discrimination based on sex, or on any other ground, is set down in our Constitution, it will take precedence over every other law, federal, provincial or municipal. That is why we need entrenchment.

Second, we need entrenchment because even the long and prestigious history of the common law of Great Britain has indicated that it may not, in itself, prove capable of protecting important freedoms. For example, last October 21,000 U.K. prison guards went on strike. They were not available to escort accused persons to court hearings under habeas corpus. The response of the Home Secretary was to introduce a bill in Parliament authorizing the suspension of habeas corpus. So much for rights which are not entrenched in a Constitution.

Third, it is true, as many members opposite have said, that Canada is enriched by its diversity. We respect that diversity. We respect the diversity of its peoples, its geography, its customs and its traditions. The fact that we respect this diversity and are enriched by it does not mean our basic minimum rights and freedoms should be diverse, different and disparate. On the contrary, is it not fair and just that Canadians from Newfoundland to Vancouver Island, from our southern border to our far north, should enjoy the same basic minimum human rights? There should be no second-class citizens. Provinces should not have the right, as hon. Members of the opposition advocate, to opt out of guaranteeing basic, minimum human rights.

Some hon. Members: Hear, hear!

Mr. Peterson: Let me cite some facts which illustrate the nature of this problem. At present, we have 11 different bills of rights in Canada, one federal and ten provincial. Seven provinces provide no protection for the physically handicapped. No province protects the mentally disabled. Three provinces provide no or only limited rights for women. Five provinces do not protect the aged in their charters. Furthermore, it is desirable that basic legal rights, such as the right to a speedy

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trial and reasonable bail, should be available, not only for federal criminal offences but for the numerous provincial offences, such as highway traffic, liquor and environmental laws.

A major argument against entrenchment is that it will leave questions of interpretation, and thus the application of rights and freedoms in specific cases, to the determination of our courts. Some say this will deny the supremacy of Parliament. To this argument, our only response can be: "So be it." The courts now determine which of our powers are federal and which are provincial. Every day, the courts are called upon to dispense justice and to interpret the rights of individuals. It is merely a logical progression to give them additional authority to interpret our fundamental rights and freedoms as individuals.

I would rather see the courts charged with this responsibility than leave a free hand to legislators, legislators who have in the past shown themselves capable of enacting laws which

disenfranchised Chinese Canadians, which abolished the use of French in Manitoba, which denationalized the citizenship of Japanese Canadians, which suppressed freedom of religion and speech in provinces, which restrained public assemblies and which limited the use of English in the province of Quebec. Life has changed considerably since the nineteenth century when doctrines such as Parliamentary supremacy were adumbrated. We no longer fear the power of a monarch. What does concern us is the incredible multiplicity of regulations, rules, orders and directives that are not debated in Parliament and which can infringe basic rights. These regulations emanate from the numerous bureaucracies and regulatory agencies created at the federal level, the ten provincial levels and at thousands of municipal levels.

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April 2, 1981, Debate in the House of Commons (click [HERE](#)), p. 8903

Mr. Hal Herbert (Vaudreuil): [...] First, may I outline why I asked for these documents and why I believe that some documents must exist somewhere in the Department of Justice. It is true that when we are dealing with variations in the application of justice in the provinces we do have certain acts and bills in which regional variations are recorded. I will cite one or two examples. The first one concerns Section 150 of the Prisons and Reformatories Act. This is a federal act. Where a person under 22 has been convicted in British Columbia of an offence punishable by imprisonment for at least three months, that person may be sentenced to imprisonment for a term not less than three months; but he can be imprisoned for a period up to two years minus one day. Once sentenced under these circumstances, instead of going to jail the individuals are sent to certain correctional institutions.

In a proclamation under the Juvenile Delinquents Act, to give another example, a "child" means in the province of Alberta a girl under the age of 18 and a boy under the age of 16. Thus, there are provisions for treating people differently in different provinces. These variations have been ruled upon as not being discriminatory. One can then ask if the constitutional proposal, when adopted as the Constitution of our land, will have any effect on these

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laws. In the case of family law, many women have expressed strenuous objection to a proposed transfer which would see the federal government passing jurisdictional responsibility to the provinces. The federal government has indicated its willingness to hand over these powers, and at least the two provinces of Quebec and Ontario have indicated their desire to take over this responsibility.

As the law applies to divorce, this could create a wide variation in treatment from province to province. Even today, with only the one federal law, there is room for a great deal of variation. It is not clear just how much variation there has been because no attempt has been made to quantify cases on a provincial basis.

Although our judges are guided by a doctrine of precedents, consistency is generally maintained only within a given jurisdiction. No province is bound by the case law of another province.

The difference in the manner in which a province proceeds in certain cases can accentuate the difference in treatment between provinces of what are essentially similar cases. The interpretation of the Divorce Act is an example. First, there has to be a case in order to be able to proceed. The making of a case often requires the co-operation and assistance of provincial law enforcement authorities. The degree of willingness of the provincial police forces to allocate personnel will, therefore, be a factor in the ability of a person to establish a reasonable case in court.

At the present time discussions are continuing in an effort to regulate some disagreement in the various provinces which use the Royal Canadian Mounted Police as their police force. At least in those provinces, there is one police force which, presumably, acts in a reasonably consistent fashion. Of course, each of the two largest provinces of Ontario and Quebec, which contain two-thirds of the population of this country, has its own provincial police force. Each of those two police forces is under the control of the provincial authority in those respective provinces.

We must not forget that expenditure of money is almost always necessary in order to proceed by legal process. Once again, the willingness or unwillingness of the provincial authorities to allocate funds at the political level has a big influence on the ratio of successful cases, certainly for poorer persons. Apparently the differing attitudes of the provincial governments toward their responsibility for law enforcement will establish a variety of standards of enforcement, prosecution and sentencing from coast to coast in Canada.

Let me be clear. I am not arguing against variations of provincial treatment. Likewise, I am not arguing for regional variations. I am only pointing out this afternoon that they do exist, are not tabulated-at least according to the response I got to my motion-and most surely should be considered in the formulation of federal legislation.

This week, for example, proposed changes to the Narcotic Control Act have been reported in the press. Apparently introduction of an amending bill was delayed until after the March 19 Ontario provincial election because of fears the Conservative government might turn it into a campaign issue. The only strong opposition to reduction of penalties has come from the Ontario government.

Under the Narcotic Control Act a person can get a maximum seven-year sentence if possession is treated as an indictable offence. Most of the 27,000 individuals convicted of possession in 1979 were given absolute or conditional discharges or light fines. Jail sentences are still imposed occasionally. Note that in the case of marijuana, the intention will be to limit the penalty for possession.

The federal government recognizes its responsibilities and its powers to ensure that the punishment for a transgression can be limited. Whether one agrees or disagrees with the subject matter and its handling, there is an inherent feature of equalization in this measure in that it would establish a far more moderate maximum penalty. The argument cannot, however, be applied to the minimum penalty with the same assurance of equality of treatment.

If I can speak briefly on the abortion issue as an example of inequality of application of federal legislation, it is abundantly apparent that in the province of Quebec the attitude of the Quebec government towards abortion on demand can be cited as very liberal, many will say far too liberal.

One can argue that it is a problem caused by the refusal of hospitals to establish abortion committees. However, that does not, or at least theoretically should not, give provincial law enforcement authorities the permission or the right to shut their eyes to what many people believe to be widespread illegal activity.

Let me reiterate that the raising of this particular issue is not an attempt by me to argue in this debate the pros and cons of the abortion issue, but simply to point out that one piece of federal legislation is viewed and treated in a completely different fashion in two neighbouring provinces. Such variation in treatment was never envisaged in the original legislation.

It is also appropriate to cite as an example today the decision of the dissenting provinces to proceed first in the Manitoba court. This had nothing whatever to do with its central location. It was, however, believed to be the court most likely to produce a favourable decision for the provinces that were fighting the constitutional proposal.

Then the dissenting provinces chose to proceed in Newfoundland and achieved a result which they would readily admit, I am sure, might not apply in the other provincial courts. Once again, what is accented is regional disparity in the administration of justice. I should reiterate, and I think it is important to keep saying this, that I am not arguing for or against such regional disparity. I am only asking in this motion that these differences, which I am trying to illustrate do exist, should be quantified.

A provincial prosecutor has certain discretion to decide whether to charge, at what level to charge and, in the event of conviction, to suggest to the judge conditional release, a fine or

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imprisonment. Without identifying cases, which I believe would be an abuse of my privilege to speak freely in this House, the requested incarceration, in more than one example of what some refer to as a political crime, has been lenient to the point of being questionable. There is at least the suggestion of political manipulation.

Law reports are devoted to sentencing and judges meet to discuss these reports. In many cases, the judiciary may already find itself limited because of what has transpired in the decision on how and where to prosecute.

In England, a study has been completed on discretion in prosecution. I have been told that the Law Reform Commission is conducting a study. Possibly it deals with the problem under discussion. However, I find it hard to believe that the officials in the Ministry of Justice have not at any time discussed, studied or written any communication dealing with a comparison of the application by the various provincial courts of federal laws.

[...]

Mr. Ron Irwin (Parliamentary Secretary to Minister of Justice and Minister of State for Social Development): [...] I think the hon. member does understand, but I would remind him, that part

of the problem goes directly to the British North America Act and the division of powers. For instance, under Section 91(27) the federal government is responsible for criminal law. This reads:

The criminal law, except the constitution of courts of criminal jurisdiction, but including the procedure in criminal matters.

That jurisdiction belongs to the federal government

Penitentiaries, dealt with in the next part, fall within the scope and jurisdiction of the federal government. It states:

The establishment, maintenance and management of penitentiaries.

On the other hand, the provinces have the administration of justice under Section 92(14), which states:

The administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

As far as incarceration is concerned, under Section 92(6) the province is responsible for:

The Establishment, Maintenance and Management of Public and Reformatory Prisons in and for the Province.

What it means, and I do not know how this was developed historically, is for terms of imprisonment over two years the federal government is responsible, and for terms of imprisonment under two years the province is responsible.

While the historical documentation surrounding the development of the division of powers at the time of confederation is not clear, there is a general consensus to the effect that the fundamental distinction of constitutional jurisdiction in the field of criminal justice was aimed at developing, on the one hand, a consistent and nationally applicable set of laws and, on the other hand, allowing for the application of those laws in a way sensitive to the variation of conditions in the provinces and regions.

Besides this constitutional distinction there is a distinction periodically in substance and a distinction periodically in procedure. On substance, if I might through you, Mr. Speaker, give an example to the hon. member, in the criminal law on obscenity we refer to what is called the "community standard". Community standards vary from community to community across this country, and if not from community to community, certainly from region to region. Let me give an example in respect of procedure. The use of the grand jury varies from province to province.

As much as we want uniformity, for example, in sentencing, there is a wide discretion on the individual judge, and I suggest rightly so. What happens is that in most sections there is a maximum term in the Criminal Code and the sentencing judge has a discretion to look at the nature of the offence, whether there is a chance of rehabilitation and what should be the deterrent, and then decide whether there should be a conditional discharge, an absolute

discharge, a fine, incarceration or several other different types of sentences now under consideration and being actively pursued.

There are certain crimes which are more prevalent in one area than another. This is evident from the month-end reviews by provincial court judges in Ontario. Provincial court judges will indicate that in a particular area there have been so many thefts, so many impaired drivers, and the number varies from region to region. A judge may want to have a specific deterrent in a particular area, so there should be some flexibility.

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Some jurisdictions in the United States have tried this. They have imposed with some considerable success guidelines which restrict the police, the prosecution, the nature of the sentence and the nature of the correctional institutions. While there may be a great deal to be said about the need to subject the exercise of discretion to such guidelines—and I understand considerable attention is being paid to this in Canada now and has been in recent months and years—I am not certain we would wish to endorse without restraint this type of rigidity in criminal justice in Canada. This has not been the traditional stance of governments or of Canadians since 1867. I think we must respect growth in criminal justice because it was built on true trial and error.

On the other hand, if you look at the new Constitution and the consistency and uniformity of rights that will be applied, I think you will see that many of the things the hon. member for Vaudreuil has suggested will be incorporated. For instance, if this Constitution is passed there will be certain uniformity because no province or federal government can on its own take away certain basic rights. We are talking about legal rights specifically and most of them are in the proposed sections starting with Section 7.

I will briefly give some examples. In Section 7 there is a right to life, liberty and security of a person, and this right is to be applied uniformly across the country. By Section 8 there is a right of security against unreasonable search and seizure, and this is also applied uniformly across the country. Under Section 9 the legislatures are prohibited from passing laws that would provide for arbitrary detention or imprisonment. Under Section 10, on arrest or detention there is a right to be informed promptly, given the reason, the right to retain and instruct counsel, the right to be informed of that right, and the right of habeas corpus. Section 11 involves the uniform right across the country to be informed properly of an offence, the right not to self-incriminate and the right to be presumed innocent. Section 12 deals with cruel and unusual treatment or punishment, about which the hon. member is talking. Section 13 deals with self-incrimination and the protection of witnesses. Section 14 provides a uniform right across the country to assistance through interpreters. Section 15 basically is a leveller; it gives uniform rights across the country. It says in essence there cannot be a provincial or federal law that will discriminate because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disabilities.

Later on there is a right to have a jury. That is not to suggest that there is a provincial right or a federal right to a jury; rather, there is a Canadian right to a jury.

Mr. Irwin: [...] Finally, Mr. Speaker, on uniformity in the protection of rights, a very august board of lawyers, the Canadian Bar Association, came before the joint committee and asked for entrenchment of certain basic rights in a charter to protect Canadians and give them this uniformity. The Canadian Jewish Congress also appeared and said the same thing. Application of Federal Laws Numerous individuals from across Canada came before the committee and petitioned members to do specifically what the hon. member for Vaudreuil is complaining about today, namely, to give protection from demagogic governments, to give protection before the law which is not dependent on provincial or federal whim but applies equally to every Canadian citizen.

Mr. Jim Hawkes (Calgary West): [...] He then moves on to talk about the importance of the uniformity of rights. He is the great protector of rights. On two occasions in this House, and I have been trying for ten days to raise it again, I brought up the fact that secretaries who live in Ontario and Quebec are eligible to work in Canada's diplomatic missions but if they live in one of the eight other provinces or the territories, they are not. The second time I brought up that issue, Mr. Speaker, the Secretary of State for External Affairs (Mr. MacGuigan) sent me a letter saying that he is sorry that they have that policy but they will correct it in late summer or early fall, five to seven months from now. Then I come to this House this afternoon and listen to the Parliamentary Secretary to the Minister of Justice talking to us about the need for uniformity of rights and of the commitment of the members of the Liberal Party to rights. I remember very clearly our discussions about a mobility rights clause in the constitutional committee. That is a clause which purports to extend a uniform right to every Canadian to work anywhere in this country. I find that the government has a policy that deliberately says that unless you live in the province of Ontario or the province of Quebec you are not eligible to be a secretary in the Department of External Affairs. I ask myself whether we should accept the rhetoric of a belief in rights or whether we should look behind the rhetoric and into the actions of the ministers of this government. They tell us that the administration of justice is uniformly very important. But in the very next breath they tell us they have never had a meeting, they have no correspondence and no studies. There is a credibility gap related to justice and to what the parliamentary secretary would have us believe about the government's commitment to rights.

Let us examine the principle of uniformity of rights. To use an analogy, Mr. Speaker, it is easy for us all to have an equal

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amount of food when none of us have any. When none of us have any, we all have an equal amount. By the concept of uniformity, I am wondering if the Parliamentary Secretary to the Minister of Justice would have us all come to some common minimal definition of rights. Would he have us all believe that uniformity is more important than the maximization of rights?

I wonder if the parliamentary secretary has considered the reality of what the Supreme Court is and what it is all about. The Prime Minister (Mr. Trudeau) and the ministers of the government would have us ignore the Supreme Court of this country and attempt to have us deal in this legislature with something the court has ruled illegal. I think that shows their contempt for the legal rulings which exist in this country today, April 2, 1981. They want us to ignore that legal

ruling and continue to deal with an illegal act by this Parliament. They would then have us believe that they will give us this marvellous charter which they will then turn over to a body where five out of nine people will rule on it. The government must surely recognize that those nine people are real people. It must recognize that there are a limited number of hours in any given day that they have to devote to their function. It must surely realize that they can only deal with the principles in that new Constitution, in the broadest possible way, to provide us with a common denominator.

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April 21, 1981, Debate in the House of Commons (click [HERE](#)), p. 9371

Mr. Stollery: I presume hon. members opposite do not believe in these fundamental freedoms which are being guaranteed in the charter of rights. Certainly they think they are pretty funny; I guess they will vote against them. Canadians will have legal rights which include the right to life, liberty and security; the right to equality before the law; protection against unreasonable search or seizure, arbitrary detention and imprisonment; protection against denial of counsel, undue delay of trial and cruel or unusual treatment or punishment; protection against self-incrimination, and the right to the assistance of an interpreter.

Mr. Stevens: We have all those.

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April 22, 1981, Debate in the House of Commons (click [HERE](#)), p. 9418

Mr. Dubois: Mr. Speaker, can one be against those legal rights under which everyone has the right to life, liberty and security of the person? Can one be against those rights, Mr. Speaker? But those rights are granted in the proposed resolution, Mr. Speaker! Can one be against those rights and say: Everyone has the right not to be arbitrarily detained or imprisoned? Can one be against those rights, Mr. Speaker, and say: Everyone has the right on arrest or detention to be informed promptly of the reasons therefor?

As a lawyer, as a representative of my riding, when I see that very important provision for Canadians, I wonder who could be against those rights that will be entrenched in the Constitution of Canada. To retain and instruct counsel without delay and to be informed of that right! Can one oppose that? Such guarantees are to be found in the proposed resolution, Mr. Speaker. Has anyone the right to object to the provision under which everyone has the right not to be subjected to any cruel and unusual treatment or punishment?

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