

The National Association of Women and the Law
L'Association Nationale de la Femme et le Droit

HIGHLIGHTS -- UPDATE FEBRUARY, 1981

1. A number of advantages flow from entrenchment of a Charter of Rights and Freedoms in the Constitution. However, we cannot endorse the entrenchment of a Charter as poorly articulated and substantively inadequate as this one.
2. Section 1 is a dangerously broad limitation clause. If it stays in the Charter, Canada may be in breach of her obligation to provide no less than the minimum standard in the International Covenant on Civil and Political Rights. It should be replaced by a clause which exactly specifies the permissible limitations on protected rights and freedoms and should never apply to the right to equality.

- GOVERNMENT CHANGE INADEQUATE

3. Although women make up one-half of the population, no rule, either legislative or procedural, has been developed to ensure that women are represented on our highest Court. The Constitution should guarantee a representative number of women on the Supreme Court of Canada.

- NO GOVERNMENT COMMITMENT

4. The Charter should begin with a "purpose clause" which would guarantee the equal right of men and women to the enjoyment of all the civil and political rights set forth in the Charter.

- NOT ADOPTED BY GOVERNMENT

5. The vague term "everyone"/ "chacun" should be replaced by "every person"/ "toute personne" in the Charter.

- NOT ADOPTED BY GOVERNMENT

6. Section 15 should require equality in the content of the law, as well as in court procedure. Laws which distribute "benefits" unequally must also be prohibited.

- ADOPTED BY GOVERNMENT

Section 15 should specifically provide that a compelling reason must be given for any distinction in law on the basis of sex, race, national or ethnic origin, colour or religion.

- NOT ADOPTED

So that new grounds may be recognised, now and in the future, either no list of grounds should be included in section 15(1) or such words as "on any ground including" should precede the list to clarify that it is not all-inclusive.

- ADOPTED BY GOVERNMENT

The affirmative action clause should be reworded to tie the purpose of affirmative action programs to the prohibited grounds of discrimination.

- GOVERNMENT CHANGE INADEQUATE

The National Association of Women and the Law
L'Association Nationale de la Femme et le Droit

7. To ensure that the rights of native women are protected, section 24 must be amended to provide that any special rights and freedoms of native peoples apply equally to native men and women.
- NOT ADOPTED BY GOVERNMENT
8. Section 26 sanctions laws of evidence which contravene all sections of the Charter including the right to equality. It must be removed.
- ADOPTED BY GOVERNMENT
9. Canadian governments do not need three years to amend discriminatory laws. The three-year delay in the implementation of the equality clause must be removed.
- NOT ADOPTED
10. The only legitimate way in which a new Constitution can be developed for all Canadians is through their own participation through a Constituent Assembly. The system must guarantee that a representative number of women are elected to this body.
- NOT ADOPTED
11. A POORLY DRAFTED NEW SECTION (INCLUDED IN THE JANUARY 12TH AMENDMENTS) MAY OVERRIDE SECTION 15 WHENEVER EQUALITY FOR WOMEN CONFLICTS WITH CULTURAL VALUES OF A PARTICULAR GROUP. THIS NEW SECTION 26 MUST BE AMENDED SO THAT IT CANNOT BE USED TO ABROGATE ANY OF THE CHARTER'S GUARANTEES, INCLUDING THE RIGHT TO EQUALITY.

WOMEN'S HUMAN RIGHT TO EQUALITY:

A PROMISE UNFULFILLED