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Speaker

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty - First Legislature

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WALDING, D. James	St. Vital	NDP
WESTBURY, June	Fort Rouge	Lib
WILSON, Robert G.	Wolseley	Ind

Time — 2:00 p.m.

CHAIRMAN — Mr. Warren Steen (Crescentwood).

CONSTITUTIONAL REFORM

MR. CHAIRMAN: Gentlemen, can we come to order.

Mr. Desjardins first.

MR. LAURENT L. DESJARDINS (St. Boniface): Mr. Chairman, if I may make a suggestion that I might then . . .

MR. CHAIRMAN: Mr. Walding.

MR. D. JAMES WALDING (St. Vital): Before we get to that, if I may, I would like to submit a resignation from Brian Corrin wishing to resign from this committee.

MR. CHAIRMAN: Agreed? (Accepted) Do you have a motion, Mr. Walding, for a replacement?

MR. WALDING: Mr. Chairman, I'd like to propose that the Member for Brandon East, Mr. Len Evans, be a member of this committee.

MR. CHAIRMAN: To the members of the committee, I spoke to Mr. Evans and I asked him if he . . . Order please, I asked Mr. Evans if he would ask only half as many questions as Mr. Walding does we'd be more than happy to have him on the committee. Is it agreed? (Accepted)

Mr. Desjardins again on another matter.

MR. DESJARDINS: I think that we've been quite fair, the committee has been quite fair, we've even given people a second chance so I think it would be wrong if we didn't try to finish, if we didn't finish today at least the delegation. I would like to suggest, I understand that there's three that will appear in front of us, that we limit it to a maximum to each of 3/4 of an hour. They would know ahead of time and that would give them plenty of time, I think, to make a brief. I think this would be reasonable. So I would like to make that motion.

MR. CHAIRMAN: In fairness I think to Professor Gallop, he said yesterday, I think to the Clerk, that he only needed about half an hour, so I'm sure he can live within those restraints. The gentleman in the blue, are you appearing as a delegate?

A GENTLEMAN: No, I am from the Free Press.

MR. CHAIRMAN: Okay. So the Professor appears at this time to be the only one present.

Mr. Kovnats.

MR. ABE KOVNATS (Radisson): Mr. Chairman, I would certainly support the Honourable Member for St. Boniface's motion. I think that if anybody making a presentation feels that 3/4 of an hour is not sufficient, that if it's just a matter of a couple of minutes after the 3/4 of an hour, I think on an appeal by the person making the presentation I would be happy to extend their time.

MR. CHAIRMAN: I will accept Mr. Desjardins' guidance on it. I don't think a motion is really necessary.

Mr. Uskiw.

MR. SAMUEL USKIW (Lac du Bonnet): Mr. Chairman, I notice only one person here that is going to present a brief to this committee, unless the others show up late, and if it's only the one then I don't believe we have a problem, and we should allow the full latitude to Professor Gallop.

MR. CHAIRMAN: Gentlemen of the committee, can we proceed with Mr. Gallop?

Mr. Gallop. I notice, Professor, before you start, that you have supplied the committee members with some papers so I would ask you the other standard question, and that is, are you representing yourself as a private citizen or are you representing a group?

PROFESSOR R. A. GALLOP: I'm representing myself, Mr. Chairman.

MR. CHAIRMAN: All right. Please carry on, sir.

MR. GALLOP: There are copies distributed for reference to members of the committee and I'll be referring, if anyone else wishes, to the blackboard, should they want a larger version. Unfortunately there wasn't projection equipment here so we couldn't cope with that.

Honourable Mr. Chairman and honourable members, guests, it's a great privilege for me to share some thoughts with you this afternoon about matters which I believe to be of very fundamental importance to the considerations of your committee and to the whole of the national considerations on this question of the constitutional changes. I don't use the word 'reform' myself because I believe most reformers are degrading what we already have rather than improving so I use the word, 'change'.

For many reasons Canada is at a fateful crossroads in our history. Our long tradition of refusing to face up to most of the realities of life has now flowered in a deep-rooted crop of major problems which defy ready improvement, let alone solution. Many of these are much greater than the issues of the constitutional questions, I believe. There's no point in a constitution if we don't have a viable economy for much longer. There's no point in a constitution if we don't have a viable population relationships for much longer. These two issues are far greater in importance, I suggest, Mr. Chairman, than those issues of constitutional change at this time in history, and so I would suggest that while we won't deal with that in any detail today, I ask you to consider those matters very seriously.

Canada is one of the countries of the western world which is following a tradition which has been

developed in recent decades of refusing to wish to perpetuate herself into history. All western countries now have a birthright which is less than the parental expected death rate to come and dropping birth rates and rising death rates. This is a completely new phenomenon in history. It's only been possible in the last 20 years to do this, and we have simultaneously elected to reduce births and reduce deaths at the greatest rates in history, and increasingly so, to a point now where we have a situation where our whole society is demographically unbalanced, in a situation where we are going into a very difficult flight into a very stormy future and we are destaffing as we take on passengers and baggage towards the end of our flight of our civilization.

This demographic transition has never been seen in history before except in rare instances in the case of small monastic groups, families that have allowed themselves to die out for one reason or another, royal families and so on in Europe. And of course in certain areas, such as in our zoos, we have it in the monkeys and the animals and our pets we have geriatricism. Nature had no place for it and nature has no cures for it. We have made it, we have to deal with it as best we can.

So I would suggest on a long term view, we have a very grim situation to cope with. Quebec, for instance, is demographically doomed. With a birth rate of 2/3 the parental expected death rate, and replacement rate, Quebec cannot be a viable civilization as it is for more than two generations. It will be simply a decrepit, bankrupt old folks home, as virtually every country in the western world will be.

Our pension plans, federal and so on, most of our insurance and so on, will be at or within bankruptcy within ten years due to the decline in numbers of people paying in versus the increasingly fast numbers of drawers out. This is happening to our whole society. We're drawing on the capital we had of every kind, human up to financial, and not replacing it. We're spending every asset we have as income without appropriate replacement to an adequate degree. So if you start getting too serious about long-term constitutional importance, I'd suggest you think about the possibility of a western style Canada for more than another 75 to 100 years.

Canada is, in many situations, facing a future which will be defenceless, predominately aged, sick and broke, next century, early next century. With virtually everything suffering the collapse that our school system is suffering now, like an orange that's gone overmature shrivels on the shelf irretrievably. There's no cure for that unless in the next decade somehow or other we can induce our wonderful ladies to change their minds and to have reasonable size families. So as a matter of urgency that is the first priority in this nation, to sustain the biological survival of Canada as we know it we must have increased birthrates. Overseas the situation is the reverse. By decreasing deaths like we have they have given themselves massive numbers of survivors without being able to cope with them. So now we have a world which is totally demographically upset that those who have more than 90 percent of the knowledge, skill, capital and other useful valuable resources to transmit into history are voluntarily bowing off the stage of history while those who lack all these things are coming to the dominant place. That is the greatest problem in history ever seen, the greatest scale and we are deeply in it, yet few of us realize it.

So we have many great problems but these all flower, as they must, like seeds that are planted, like weeds that are planted we see the consequences of our ideas and our decisions and our actions usually within 25 years of one generation. Civilizations as Totopovil said rise and fall within a generation. If we do not transmit to our young the culture which is so valuable the values of the western world, which is the greatest in history, the Grecian reason, the Roman law and technology, the Judaic wonderful virtues of persistence and heroism and patience and order and respect for law. And the Christian notion of the importance and the validity and the wonderfulness and the sacrality of man and of the great role he has to act as God's delegate in time, to explore and open up and to develop all the assets of the universe, to bring them to man's good as God wills. These are the key values which have made the western civilization the greatest in history and the greatest ever likely to be on the projections we now have.

Unless these values are deepened in our own people, all of us, and respected and applied every day, every minute from now on, there's no point in talking about long-term constitutional issues because we face the situation where we will have inevitable societal breakdown due to the demographic disaster which will not tolerate any gentle politics, which will not tolerate much respect for human rights. The situation which we saw in Germany between the two world wars leading to the voluntary election of a tyrant that raked havoc in history, left a trial of ruin behind him, all grew out of the same circumstances as we are now going into, and we may well have the same situation.

The maintenance of a democratic society cannot be for long if the whole structure breaks down financially, demographically, politically, socially, scientifically, educationally and so on as it's doing. Canada is deindustrializing. Last week I went to buy some tools to fix my furnace, I couldn't buy a Canadian tool where I wanted. There were Japanese, from Korea and from Spain and everywhere else but Canada. This is the kind of thing we see, shipping out our industries. We are proud to be industrialized. Look around you and see what is Canadian made. Even the simplest of things we're giving up, whereas I work in the 21st Century now with my science and technology and it's almost impossible to get anybody in this country to listen to any advanced technology. Professor McTaggart Cowan the ex-Chairman of the Science Council has reiterated this sort of thing too. Many still do today; the President of our United States today is pressing it upon us. We are not replacing your obsolete ideas, things, services and devices at the rate we must in order to stand still, let alone improve.

So the times require of us all for all these reasons, including the Constitutional questions, to raise their ideas, their ideals and their performance to record heights if this most blessed land and nation is to be able to overcome the awesome challenges which now lie ahead of us. Most of them are their own foolish making. Our external acts in the public

domain can only reflect the quality of the values which repose within our people, especially our leaders. We cannot give out what we do not possess. We show outside like a projector shows a slide, orders within the microcosms. In every aspect of life we must row against the currents of natural decay to stand still, let alone to progress.

So we must work very hard to stand still and work doubly hard to progress and the many dilemmas of modern man — I use the term "man" in the sense of the traditional ancient term which means all mankind — warn us that most of their deadlines set by nature have been passed for our duties to have been performed, for us to have learned how to manage ourselves properly and competently and then to express this capability throughout our public affairs with reasonable integrity and competence. Major urgent corrective measures are now essential. We have a massive preoccupation with the things that don't really matter, while we neglect the things that are gravely urgent.

The sad stark contrast between the symphonic harmony that is the norm in the preprogram, automation of nature outside, the beautiful sunrises this morning and the sunsets this evening, the bulbs all working under the gardens out here on schedule ready to make our lives enjoyable very shortly as we walk out for lunch. All these things are operating on schedule, on automation under preprogramming, beyond man's direction and you look at the ever increasing tragic chaos in human affairs almost everywhere, assures us that the problems and the causes of the problems are within us, not outside us.

The critical resources are the questions of human resourcefulness and human constructive action. These have to be based on deep intellectual convictions which then shower forth through the strength of a good moral power in effective, competent, appropriate, timely actions. All our problems are practically all of voluntary origin. The sociologists tend to blame environment too much. Most problems of man are man-made. They are voluntary. Most of our diseases in the social area are voluntary. Most of our problems in Main Street are voluntary but these show forth as you would do a projection onto the screen of history and it's nothing to be proud of. They can therefore mostly only be reduced or supplanted by the needed opposites in our people, that is, our people must understand first of all then they must decide to carry out the commitments of understanding which is to follow the truth which allow and can make us free.

During the past couple of centuries most of our people have been falsely led to believe that man is a demi-god, a strange, supposedly autonomous being, an accident of nature, who has unsupposedly unlimited personal rights — in hyphens — and who is therefore supposed to be free to do as he likes from a personal to a national, international organization level. Such ideas soon devastate a person, any society of persons once accepted and put into effect to a significant extent.

Insofar as Canadians continue to think such actions and ideas are adequate, then so will our chances of reducing or solving any of our major problems be limited. The quality of our ideas sets the limit of what we can do. We cannot express what we do not have. We usually betray our internal weaknesses and strengths through our policies and actions. We can assess the degrees to which the various protagonists in the current Constitution and related discussions are potentially capable of meeting the very high mental and moral standards required by such criteria. However, those involved must resolve the grave issues preferably in ways which are more satisfactory overall than has been possible to date since the founding of this nation. Unless they are found on a deep basis of solid truths, on the recognition in theory and practise by all that human affairs must be restored to their proper basis, namely, upon respect upon the laws of God, our Creator, as they have been expressed indirectly in the pre-human laws of nature governing our weather and so on outside, of which we are a part. The natural laws are like an electric fence in an agricultural field, to warn the inhabitants to play safe, to keep away from danger. If we touch them we get a shock to remind us to back off and be sensible. If we press too hard we get killed, destroy ourselves.

So we must live within our orbit the way a gene must, the way a cow must, the way a horse must and we have vast orbits, scope, orders and orders of scope far beyond any animal. And our whole world seen today, more than ever before, shows that nothing but tragic chaos and eventual disaster can come to the family of man unless we abandon, as a matter of the greatest urgency, the largely false ideas upon which we have tried interminably in vain to build our Utopias. Unless there's adequate consensus on a renewed understanding of the nature and destiny of man, on the deep spiritual, intellectual, moral, scientific and artistic values which are unique to our civilization founded by God himself in perfect human disguise, which time has shown, as reason has predicted, to be the only cement that can unite and hold together a decent, truly progressive human society, in awe and with great respect for the human freedom, with responsibility which is the sacred endowment of all, then the fatal tide of decay within and beyond our society cannot be stopped, let alone reversed. Man alone sets the tone of history by his or her choices and ideas, ideals, actions and timing. We alone, of all the temporal creatures, have been incredibly honoured with the awesome power to decide our own destinies, personally and collectively, with true knowledge and intent. We can raise ourselves up to the grandeur of saints or take ourselves down to the level of barbaric devils who now abound in our world to menace us all.

Hence it is vital for every reason that we Canadians must now urgently renew our knowledge of, and commitment to, the deep Greek or Roman Judeo-Christian values that underpin our society. Our noble tradition of limited responsible and responsive government arose only as an expression of those values.

When the people called a halt to the delusions of a monarch, much like our present Prime Minister, and forced him to sign the Magna Carta which began the unique, fine tradition of parliamentary government from which we have benefited so much since. Unless we all admit our limitations and humble total dependancy upon God with managerial discretion in the exercise of our assigned duties during time, then we can never bring ourselves to do what must be done by enough of us to put our ship of state back

together upon a noble, upright, farsighted, satisfying course in history. Today we have a Tower of Babel, where basic principles are largely defied, and you gentlemen I'm sure will confirm that after hearing so many of us.

As we each try to scramble for venal advantage as we head into the worst storms of history now enveloping us, with most of our leaders oblivious to the presence of immense, heroic demands upon us all. There must always be a time lag between any changes in people and in the public expression of those changes, often as long as a generation time of about 25 years. De-educate one generation and you have the barbaric society. We've done that to a large degree in recent decades and now we have all the intolerable social problems that we can't possibly cure or afford. Teach a child to be licentious and you ask for the destruction of your civilization very quickly.

One suspects that much of the haste and improvisation that can be seen in the attempts of the Prime Minister and a handful of his elected and non-elected colleagues to bulldoze their package of ideas over the rest of the nation, is more of a desperate attempt to try to save us from a spiritually, intellectually, morally and financially bankrupt federal party in government, beholden to the two declining provinces for their votes from electors who must be deterred from moving west, as many now should do for every good reason, than for any genuine interest in making a better Canada for us. It is obvious to all Canadians that those most keen on promoting major hasty, half-baked divisive arrogant changes in our constitutional matters, are the ones least qualified in ideas, ideals and past performance to be worthy of the necessary trust from us in changing anything for the better.

Because of the gravity of these issues upon which the survival of our nation under any constitutional arrangements depends, I thought that the best contribution I could offer today would be to review quickly for you, from the latest scientific massive evidence, the sources of human rights as dependencies of assigned personal responsibilities to each of us as the proxies of the creator during time on contingent appointments of unknown periods to then be subject to review for deserved promotion or demotion for all eternity.

So the origins of human responsibilities and rights during these presentations, we have heard the spectrum of possible views on these matters. The secular humanists say they come from us. A gentleman yesterday said that human rights come from the government. This is ridiculous because the governments did not come into time until long after human persons were about and human families were operating. So government cannot possibly be the source of human rights if the family preceeded them into time. The government is a supplement to the human person, it is not the master of the human person. The role of government in nature is to see that the person is protected and develops within the family so that they may then go out to be as leaders of their societies to carry the awesome responsibilities they all have with every possible encouragement, a minimal amount of deterrents.

Both these views are absurd and they provide the excuse for personal and social totalitarianisms with each person or a self-appointed group of same, or an elected handful of same, planning unlimited rights to do as they please with themselves, anyone else, or anything else. Insane delusions of grandeur of supposed foresight, competence, virtue and historical destiny of proud supposed superiority over God and man, soon follow in practical ways to the detriment of us all and of the bountiful nature upon which we must temporarily and utterly depend. The whole environmental degradation story has grown out of an attitude in which man treats nature as a thing, treats nature as something to be abused when nature is man's home and man's storehouse and man's garden. Man totally depends upon it, like a tomato in a greenhouse and must respect it as a duty.

So when man deludes himself or herself that he or she is a self-consecrated mini-god, then there are no limits to the manias to be seen. History is the mostly sad record of the predominant expressions of such ideas, especially in our century, in our times and in our country now. The notion of any person that he is autonomous in nature and in time and is not accountable to anyone or anything, is the basis of all the forms of totalitarianism right up to the individual terrorist whom we've just seen enough of and we'll see a lot more of. The terrorist is the logical fruition of the doctrine toward our children that I am free to do as I like, I am free to do my own thing. Man did not invent that slogan, Lucifer did at the dawn of creation.

The materialist side that we humans are a mere accident of random nature with no transcendent personality, yet they admit and very effectively use ideas which are themselves immaterial beings that can only come from within beings with a spiritual, intellectual and moral nature. Specifically, God, angels and men only have thoughts. The horse, the cow and the piece of steel do not and cannot. The various species of materialist, particularly the Marxist and Communist form, thus use words, slogans and moral judgments profusely and too effectively, appealing to the personality of their victims while having no rational basis for admitting its existence, let alone for respecting it all. But in practice they despise and contempt man and regard him or her as mere a animal, a workhorse in their slave colonies around the globe.

The insane, massive, cruel attempts to apply their false ideas during this century have brought untold casualties and misery to mankind, at least 150 million people have died in that cause, to confirm that they were wrong a century or more ago in their ideas. We don't need any more of those experiments, gentleman and ladies. It's too late in history to make such terrible errors and mistakes and try them out on people, yet these people are determined to continue their insanities to impose them on all of us, to bring us all down to the . . . to the collapsing economies that they must now hold up only by transfusions from the west which they are sworn to destroy, that is the Soviet insanity. Great men such as Solzhenitsym know these terrible truths only too well but few of us heed them as they desperately warn us about these ideas and their consequences. Obviously the truth about man must lie elsewhere than in any of these possible explanations.

In recent times science has opened up vast wonderful treasure houses of magnificent detailed

information about our universe. We have doubled our structual knowledge of nature. In approximately five or six years, we have doubled it. Unbelievable things. Those of you who followed the Saturn space shots will have some appreciation of what we're doing.

No honest person can deny the incredibly complex, yet basically simple plan behind it all. The great idea which has been and is still being projected forth into time, similar to the way a slide projector shows the majesty of a beautiful western sunset. In the simplified diagrams I have supplied, these phenomenon are analysed from solid evidence under the light of a scientific method of assessing possible causes from observable effects using a system's analysis approach with appropriate attention to details where required.

If we play the record of time back the way we play a football tape back, we will see some very fascinating things. The universus on carbon dating is approximately 5 billion years old and definitely started with a big bang or some such event and is definitely declining. The sun is burning its heart out slowly but surely. If we go back approximately 3 millions years as the latest figure I can find, we find evidence for the creative activity of man and this indicates that humans were about approximately 3 millions years ago. But as we move back further we see the family, the family was about then. At this point we must realize the human person came into being here and the family, of course, was the means by which the human person is nurtured, reproduced, reared, educated and so on, and protected. It's the primary provider, the primary defender, the primary agent and rearing agency, the primary educator, the primary sponsor in every way of human goodness. So we can't very well justify the dominance of the state in matters of the person and matters of the family.

Obviously the person in the family must come ahead of the state. They are what the state is for, not to be bossed by the state, but to be helped and assisted by the state and to be moderated in their excesses by the state so they may be what they are supposed to be which was in history before the state. Nature intended this. We can see how far we have strayed from this idea by the state of the family in our society which is in rapid decay and dissolution and therefore the state, which is made up of the cells of the family, faces the same sort of future. Unless we rejuvenate the well-being of the family which is a direct indicator of the strength and weaknesses of the state, then the state has no real future.

So, one of the first things we must do in all our policies is to consider the well-being of the person and the well-being of the family in which the person is born and reared. This means that we must go back to largely the values upon which nature lay this down as indicating the will of the Creator; that is, the family was made the family by the Creator. It's not a human institution. It's not to be tampered with by humans any more than human personality is to be tampered with by humans. Man does not give ourselves these things and we cannot take them away. They are not ours to arbitrate. They are not ours to destroy. They are not ours to take away.

For instance, the argument that human people aren't vessels or chattels as the U.S. Supreme Court specializes in — the dread Scot case and the abortion case seven years ago, which has led to almost twice as many deaths of innocent people in America through abortion as the Nazis killed in the holocaust — 50,000 every two weeks die. The Vietnam casualties, and let's not regard this a serious issue, the greatest program in history. This is all permitted by a court which deludes itself it has the jurisdiction to arbitrate when a person is a person. It has no such rights beyond human jurisdiction. No group of men getting together can dare to suggest that they can arbitrate innocent human life and that's where human life begins, when the body of a person conceived from the 23 genes of the couple, mutually fused, is consecrated by the Creator with his own individual personality to match the bodily characteristics to make the persons that you and I are, with the destinies we have, with the functions we have, with the talents we have, with the timetables we have, and every little embryo may not look much but that's where the great men, women and saints and devils of history are and that's why human life must be sacred from that very moment.

It doesn't matter where the person is, or the size of it, or the stage or development or the age, at that moment when the Creator consecrates bodily biology of temporal life up to immortality, that is the point we must stand off with reverence. From then on, all policies must be to save and protect the innocent human life at all stages and all ages, otherwise none of us have any protection against anyone else who suggests that we are to be harmed. If we harm anyone else, then we are open to being harmed ourselves.

Society which has engendered abortion the way we have, Canada kills almost twice as many young people every year as we lost in five years of World War II, and we don't regard that as a problem? Manitoba loses almost 2,000 citizens a year, paid for on Medicare. It's 1,000 university students we won't have in 18 years to sustain our society with trained people. That is the most deadly form of war on society, made within itself, ever seen. That's what destroyed the Romans and the rest of them. So that's where human life must be respected.

As you go back through here you see — another three-and-a-half million years — you see the first cell. Well, that's interesting, that's the algae and from all these you see the preprogramming in evidence of all the series in biology, of the origin of the all the creatures up to man. Man is the only one with true knowledge and true power of decision. He is the only one with immortality. He is the only one with freedom. He is the only one with accountability. That's where human rights come from. They are not of human origin. They can never be voted upon by man. The endowed rights of man come from there.

We have a second type of rights which is the rights of the vocation. Whatever job we elect to take from God or from man, we have the privileges of the job which go with our acceptance of the responsibilities of the job. If I accept a job as a professor then I have a duty to live up as best I can, to the duties of that profession. In doing so I am granted certain privileges so I might better express my abilities. So are you, gentlemen, all of us. That is where the endowed rights, a primary always with us, vocational rights come from a choice of employment, a choice of destiny and they stay with us so long as we have

those responsibilities. When we retire, for instance, from an office and of course we usually lose the privileges of the office unless we become an emeritus. So this is where the two types of rights we're all discussing come from. Endowed rights are from God direct, from the moment of conception and stay with us till the moment of death and beyond. The vocational rights come to us from our choice of the tasks in life that we elect to do on behalf of God with the approval and help of man. That's where all our rights come from.

You go back here you see in history the building blocks of life which is the biochemistry which is about four billion years back. You go back here almost to the beginning of five billion years you see the chemicals all here, these are individuality first expressed in the dead world. You go back further and you see matter with mathematical order in it, size, shape, density — that's physics. You go back further and you see matter which still has within itself the order but doesn't have the external order like when you have a jelly it has no order until you pour it into a mould and form it to suit the mould, then it accepts the equation of the mould and becomes a definite shape. So a morphous matter hasn't got definite shape; physical matter with an equation limiting it has definite shape. They go back to matter and you see what's beyond that. What's in matter that's in nothing else, is mathematics.

So we go back to zero time in time we have the necessary admission that matter is the product of mathematics. Mathematics has no time, mathematics has no need for matter, mathematics only needs an intellect, only needs a spirit. And this, of course, is why we derive our notion of the divinity. The divinity is the perfect quantitative and qualitative immaterial being with the power of total mathematical exactness and exactingness, the power to be the perfect scientest, the perfect technologist, the perfect artist, the perfect poet and of course the perfect person; that's where we come from. And you can see the reinforcement, this is all done in stages like a . . . program, building a project, or the seven days of the genesis confirms what science now knows to be the only way in which creation could have occurred. That is the necessary process of creation. So you see an intellect adding, a being adding more of its mind and its will and its heart and its spirit each time you go down these orders till you get to man and that's where we come from and that's where all our rights are derived from. This is another expression of the same sort of thing in which you have the orders of nature which is material nature which is very plentiful, all the stuff we're made of. You have the power to nourish, grown and generate which is the vegetable life from the small unicellular organisms up to the big trees, then you have the animal life which is the power to not only do these, have all these powers, but also the power to have external senses of hearing and sight and so on, internal senses of memory and imagination and to move about.

The next one is the power of understanding and decision-making which is man, as well as all these; then you have the power of the angel which is created pure spirit which doesn't have a body and of course you have the divinity at the top which is the source of it all.

As you go up you see you go into independence, purely spiritual, eternality; as you go down you go to created dependency, solely material and temporal. This is the orders of being, orders of knowledges, natures. The orders of knowledges are similar. We have what we call the news explosion day, the information explosion, a mass of stuff. Sift it out and you get a little bit of order in it through your filing system. You take out what is common and file it. Then you take out the nature of life and study it; you take out the nature of the pseudo-life, you study it; you take out the nature of all the chemicals that make up all things; you take out the nature of the physical properties of all things; you take out the mathematic relationships of all things; you take out then the intellectual relationships of order, the principles of Aristotelian metaphysics, the laws of reason.

It's not a religion, it's a rational, scientific subject which has long been discarded to our great sorrow in our society. Above that you have the natural theology which is the nature which we can deduce of the Creator himself by thinking about and observing. Then we have revealed psychotheologies which is what he has told us about himself. Here you see the range going from singular, descriptive, tangible and optional up to universal, definitive, transcend and binding. We can take our pick about this, we can have optional choices down here, we have no optional choices up here. We have to do what is right or else we're in trouble. That is the way in which nature is made and that is the way in which we have to build our society.

So the Creator made us know that he knew that many of us wouldn't let him down because he knows what we can do and what we should do if we only try a little harder. Modern man has put himself in the situation of having to humbly ask "Lord save us, we perish". He alone can calm the storms which we have made within and beyond ourselves as a nation. Mere human means are certain to be futile unless we call on divine means to assist us. As Shakespeare says we need not the physician but the divine. Man's problems now are beyond human solution, most of them. They can only be mitigated as best we can, they cannot be solved unless we call in some extra help from outside and above us.

Our world is full of attractive fable constitutions, for instance, that are mocked by those who wrote them or by those who implement them against defenseless masses of good people. Most of the human race lives under wicked governments which are the greatest menace to man in all of history is wicked governnments. There's no real defense against abuse of man by man unless we fall back upon these deep values to say to anyone who dares to threaten our values, threaten our being, stand off, I am not your property, I am not to be used by you, I am not your chattel. Man is the sacred son and daughter of God, who must not be abused because everyone who does so has to face accountability. That's the only means in all of history which we've ever been able to develop to retain and retard the efforts of monarchs and governments to misuse their authority. If we do not use that means to call off those who would dare to deny man his basic opportunities to be what he's supposed to be or what he wishes to be within what he can be we can elect ourselves to be incredibly wonderful people right up the level of mighty saints if we want to be,

leaders of mankind, geniuses and all or else we can be barbarians of the greatest skill in history as we are now seeing in our day.

Neither the rights of man nor the bounteous gifts of man and nature, the resources which we are prepared to argue so much about came from us. Therefore major disputes about these betray the sad decadent state of so many of us, making supreme fools and knaves of ourselves before the bower of history and before God who is not amused by these disgusting spectacles on earth. We don't own the resources, we don't own the water, we don't own the oil, they are all bountiful gifts put in place, endowments, dowrys to man, for his wise, prudent, use when necessary.

For instance, in the fuel situation, there is no need for man to be drawing too much on many of his so-called fossil reserves. We are wasting tremendous amounts of fuel. Nature makes and destroys each year approximately eight times as much fuel in the surface of the earth as man can totally use through the biomass route in the forests and the waterways. Nature says to us we only take half percent of the sun's energy now to run the whole of the earth. If we want to take another half percent it's not going to worry the sun. It's a question of us using our sense and using our judgment, using our will, using our means to pick up a little more of what's there for virtually nothing.

The resources of nature are all infinitely greater than man will ever justifiably want. This world is made in such a way that we cannot be deficient in resources of any kind and you see why if we use our own resourcefulness and carry out the responsibilities of decent management. Every curve here on the left of every other one takes less time to get going and responds faster, therefore, these being the supplying, rejuvenating sciences can never be overstressed by the demanding sciences like biology or man.

For instance if a farmer has a cow and a reasonable little farm, looks after it, there's no way the cow is not going to have enough grass in a normal season. Nature will produce more food for the cow than the cow will normally want. We can grow more vegetables than we can eat in the home garden. The world food supply now is more than necessary to feed the whole human race at its maximum, approximately 12 billion maximum likely next century. There's more food in production now to make all those people obese if we want to distribute it to them but we lack the intellectual and moral will and conviction to do it.

There is not a food shortage, there is a moral shortage; there's not an energy shortage, there's a sanity shortage; there's an honesty shortage. All these . . . here rejuvenate nature faster than they can ever be downgraded. I can purify water thousands of times faster than they're being purified now in sewage works. I can purify water faster than you can ever make it dirty, and its lazy idle. We have to go overseas to get people to show any interest.

This kind of thing, all these sciences have to be higher at any point than the next science so these always have to be greater in amount than those that need them so the demanding sciences are always way behind the supplying sciences in nature and therefore no one can say there aren't enough resources. The only things we lack are human resourcefulness and human constructive, honest effort.

The principle of subsidiarity shows the correct way for all what we must do. This is the great principle which is enunciated all through nature which Aristotle and Thomas Aquinas understood very well but very few do today. This is the one which allocates the vocational responsibilities, the rights of the appropriate distribution of authority with accountability in human affairs and this is a terribly important issue. All this silly talk about rights with no talk of responsibility is insane and suicidal. Most of the rights people talk about today in the popular media are spurious, self-elected delusions. I pointed out one, there's no possible human right to murder children or anyone else. It's beyond human jurisdiction, that matter, as it is for me to change the nature of the sun. It's just beyond my jurisdiction. We must stand back and leave it alone. Subsidiarity means that the ultimate source of all authority, as I showed you here, is the infinite power, perfection of a spirit which is immortal and timeless, which showed his being by projecting himself into time and putting us on the deck on his behalf, made like him as his image, all of us individual, all of us different, all of us different responsibilities, to look after all of this properly during our period of assignment. That is a commission, a most noble commission, that is the source of the dignity and nobility of man which must be respected. If it's not respected for these reasons it won't be respected for any reason. Our society is now falling apart because we have gone from that understanding, we've gone to a point where we think that man elects rights, man limits rights, man states rights.

So we must have an accountability upwards, and we must delegation downwards so God delegates a package of authority to each of us at conception and a package of authority to all government, whatever its form, to look after the common good so that the individual and the person in the family may prosper as best they can.

Governments are morally accountable. Very serious matter, gentlemen. Anyone in public office today has to expect to be asked why he didn't do better when the time comes.

So any acts of omission or commission within our jurisdictions we are accountable for. We get the benefits of doing our work and we get the disabilities of not doing it. We must understand that we must develop and retain an attitude of humble service to our creator and to our neighbours across this land and beyond, across the centuries which must be affected by whatever we choose to do or not to do, to do well or to do badly in our time. Such ways offer the only genuine means of protecting and enhancing human rights from the moment of conception when they begin to the moment when the life which God has given each of us is called back, or unfortunately sent back by evil people in this world.

We are going to see a flood tide of euthanasia in this country and in this city which is unparallelled in history before long. The cost-benefit relationship is already being done and it's going to become impossible to sustain a society which we have unless we have some very great sacrifices on behalf of all of us. The only alternative is going to be that if we keep

the values we have we'll repeat the Nazi experience and have a little bit better sanitation perhaps, but we'll have the most incredible slaughter houses in history soon.

All our human institutions, especially the legal professions have largely lost their appreciation of the complete dependence upon the principles, upon the natural laws as the basis of manmade laws. And you must remember, gentlemen and ladies, our laws that you make are only really in the form of regulations, based on the natural and the supernatural laws which you work under. Man does not set the limit of law, he offers regulations which tries to live within the laws which he inherits from above.

Solomon and St. Thomas Moore knew very well these matters but very few of our lawyers today, upon which many would suggest we put our destiny in the U.S. type Supreme Court system to govern this country, ultimately make the decisions by unelected people who are at the subrational, submoral level in most of what they do and who are beyond electoral recall by the public, who are beyond even the actions in the Magna Carta days by our people. This is something we certainly do not need.

In summary then, gentlemen and ladies, I urge you, in all your deliberations, to please take the serious deep issues very seriously. Otherwise, if we concentrate on the trivia and leave out the serious foundations we are living and building on quicksand. We have no future for the human person as we go into the darkest period and perhaps the most sustained dark age in all of history ahead of us with the Judeo-Christian values almost extinct in deep form and in propagation throughout our society. Most of us living on the battery packs of our past, what we inherited from our childhood and we're not transmitting it. We only have to look around us to know that.

If our society does not rebuild these deep foundations and refire these values up then there's no force under us that will make any constitution worth a damn. We will lose all. We will go into totalitarian Gulags of the most horrendous, most proficient, most barbarous kind in history very soon unless we do this.

So I beg you, while you concentrate on some of the detail perhaps, to please keep in mind that you must have sound foundations for any house or structure that you should build.

I thank you.

MR. CHAIRMAN: Thank you, Professor Gallop. To the members of the committee, are there any questions to the Professor? Seeing none, thank you very kindly, sir.

MR. GALLOP: Thank you.

MR. CHAIRMAN: Mr. Neily, you are present? I have three questions for you, Mr. Neily. Firstly, are you representing yourself or a group, and secondly, do you have copies of your brief, and thirdly, could you, for the benefit of the committee, give us some idea as to the length you will be?

MR. WAYNE NEILY: Yes, first I'm representing only myself. I regret to say I do not have copies of the brief, however you will be glad to hear that it is a brief brief, probably not much more than five minutes.

MR. CHAIRMAN: All right. Proceed, sir, thank you.

MR. NEILY: Mr. Chairman, committee members, thank you for providing me with this opportunity to speak to you. I'm not a lawyer or a political scientist, nor do I represent a political party or any other organization. I am, as the phrase goes, just a citizen, albeit a concerned one and probably as close to an average citizen as you'll get as long as hearings are held only during the hours when the unemployed, retired and certain professionals of the major groups are able to attend.

Like most members of the public I have been very interested in this document and concerned about the conflicts of opinion expressed concerning it, but have not had the time or money to thoroughly research it and prepare a neatly typed brief for you or for the federal government's review committee. Indeed, I found it difficult to even learn the essential contents of the document, a situation which results from the media coverage, which in my opinion ranged from poor to abysmal. Lest any media representatives overhearing this should think that a cheap shot, I should clarify that I think that they spent far too much time and print discussing who's for it and who's agin it and how they're fighting it and not nearly enough explaining its contents or the rationale for our position to it.

The reaction of the politicians of this country haven't been very helpful either. Since, although it's an issue important enough to this country that it should be above partisan politics, almost all Liberals have lined up as for it, almost all Conservatives as against it, and almost all NDP on the fence.

Their positions are even more confusing when compared with my perception of the traditional principles of the three parties, where the Conservatives seem to have considered individual rights and freedoms as a highest priority, the NDP have given first place to goals for society as a whole, and the Liberals have been a party of compromise. One can't help but admire Richard Hatfield, Claude Ryan and Allan Blakeney for going against the currents of their parties for what they consider to be best for Canada, even though one cannot agree with all of them.

Well, now that I have alienated practically everyone, perhaps I should give you my own views on the matter. Probably most of us would agree that it's desirable to patriate the constitution. Doing this to demonstrate our independence is not a high priority for me; doing what is necessary to develop a strong and united Canada is. It has been argued that our existing BNA Act has served us well and doesn't need changing. Keep everyone happy and bring it back as it is. Unfortunately this is only valid if you're an English speaking citizen who doesn't care whether or not Quebec remains a part of Canada. There was a great demonstration of good will toward the united bilingual Canada in 1967 and again last spring during the referendum debate but when the time comes to provide constitutional guarantees of such a nation, the foot-dragging begins.

Although, like most Canadians, I had great hopes for the constitutional review process during the summer, these hopes were dashed by the First

Ministers' Conference in September. This spectacle of eight premiers, including, I regret to say, our own, trying to get more powers from the federal government without giving up any, was very discouraging to me to say the least. I have been one who favoured the idea of requiring unanimous consent of the eleven governments for amendments but that episode convinced me of the impractability of that method. Surely it is time that all government representatives, federal or provincial, recall that they had been elected by and are being paid by the same people and it's basically a matter of administrative convenience who has what powers.

As far as the amendment process is concerned, I can understand the opposition to the Victoria formula, since it gives Ontario veto over amendments without giving the other primarily English-speaking provinces the same right. The formula proposed in The Constitution Act, 1980, contains some of the same disadvantages, since it bases the requirement for provincial consent heavily on population, the same factor on which the House of Commons' representation is based. I think that only one province should have a veto and that only in some circumstances.

Although many people still bristle at the idea of a special status for Quebec, the reality is that it is different from the other provinces in that it is the only one whose citizens are not mostly English speaking. They understandably have a fear of losing their language rights, most of which are protected only by a simple piece of legislation at the federal level. Naturally they are not willing to accept the idea that French is to be a second class language in Canada and if constitutional guarantees of Canada's bilingualism are not provided, I think that it will be only a matter of time until Quebec separates. Thus it is important that the language rights be included in the constitution and that Quebec have a veto with respect to any proposed reduction of these rights. This is, of course, the opposite position from that made to you by Mr. James Richardson and at least one other speaker. The positions of these persons are either made from a lack of understanding of the reality of the feelings of the people of Quebec or as a deliberate attempt to force the Quebecois to opt for independence to maintain their dignity. Whichever the motive, their attitude plays directly into the hands of the Parti Quebecois in their attempts to make Quebecers feel that the are not really Canadian.

Incidentally, I must question the credibility of Canadians for One Canada from my own experience since, when that group appeared, I wrote them requesting information and have ever since, despite my protests, been receiving mail as a member of that organization. I wonder how many more of their supporters are equally opposed to their ideas.

As for amendments on other topics, I think that a workable formula would be to have the support of the Parliament of Canada and a majority of the provinces, including at least one from each of four regions, or perhaps five when the northern Canada is removed from its colonial status. These four regions could be (1) Newfoundland, Nova Scotia and Prince Edward Island; (2) New Brunswick and Quebec; (3) Ontario and Manitoba; (4) Saskatchewan, Alberta and British Columbia, requiring two of three from the first and fourth regions might be more acceptable to the provinces concerned. This would provide protection for both federal and provincial powers and regional concerns without making changes nearly impossible because of the opposition of a single province, as has happened so often in the past.

Only in the case of a proposal to reduce language rights would there be the additional requirement that it be supported by a single province, namely Quebec. You may call this the Winnipeg formula if you wish.

These are the most important points to me and I would urge the government of Manitoba to withdraw from its total opposition to the proposal, instead to work for improvements to it.

Time does not permit detailed discussion of other points but I must say that I agree with the idea of having a Charter of Rights and Freedoms within the constitution. These would not be "written in stone" if a reasonable amending formula be adopted, but would be recognized as being more important than routine legislation such as The Highway Traffic Act and should have precedence over these.

As legislators, you should be more aware than anyone of the dangers of politics and ease with which influence can be attained or decisions made on the bases of effective speeches, emotion, or even misleading information. Some of you may recall how Germany elected a government in 1934 that soon dispensed with many basic freedoms. Putting these beyond the control of a single legislature, but not beyond the possibility of well justified change, seems to me to be a prudent measure. I suspect that this is one area where the majority of Manitoans disagrees with the majority of lawyers and perhaps of legislators. There is one right which I would like to see added as it seems to me as important as any of those mentioned in the document and that is the right to a healthy environment and this seems to have received very little consideration to date.

Although we may not be happy with all aspects of these proposed amendments or the way in which they are being implemented, I feel that they are very important to our country and that we should work to improve them rather than simply oppose them.

Thank you.

MR. CHAIRMAN: Mr. Neily, would you permit questions from members?

MR. NEILY: Yes.

MR. CHAIRMAN: Mr. Mercier.

HON. GERALD W. J. MERCIER (Osborne): Mr. Neily, during the course of your comments you, if not explicitly, implicitly suggested that the Premier of this province, at the September Constitutional Conference, tried to get more powers for the province. Could you tell me what power or powers you were referring to?

MR. NEILY: I was not referring to specific ones. I was stating that that was my impression. If that was an incorrect impression, I would naturally be glad to be corrected on that.

MR. MERCIER: Thank you. You indicated, or are you aware, sir, that the province of Manitoba has filed a brief with the Joint House of Commons Senate Committee recommending to them that the

federal constitutional proposal be withdrawn, that a Constitution be patriated and that the eleven governments return to the bargaining or negotiating table to discuss amendments that can be agreed upon?

MR. NEILY: I was not aware of that specific action. I was aware of the action that is being undertaken through the courts.

MR. MERCIER: Do you have any comment on the latter action?

MR. NEILY: Well, I think just what I said in my brief. I think that, although I certainly don't agree with all aspects of the proposed amendments, that on the whole they contain more good for the country than bad and I would like to see us get on with the process. Possibly there would be some improvement in another First Ministers' Conference, I don't know, but it didn't look very promising judging from the last one.

MR. MERCIER: You indicated, sir, I gather it's your impression, that a majority of Manitobans support an entrenched Charter of Rights. Is that correct?

MR. NEILY: I still can't see what I said here. I said I suspect this is one area where the majority of Manitobans disagrees with it, so I suppose you could say it is my impression, yes. I have no evidence to base that up.

MR. MERCIER: Do you think Manitobans have been fully informed as to the implications of the entrenchment of a Charter of Rights?

MR. NEILY: Well, certainly there has been a fair amount of discussion of it. I couldn't say that I'm fully informed anymore than I have about the rest of it, but I think probably the average Manitoban has less concern for legal precedence and tradition, conventions, and more concern for what will be effective.

MR. MERCIER: Do you think you're fully informed about the implications of entrenching legal rights?

MR. NEILY: I have indicated at the beginning that I don't consider myself to be an expert in this field. I was merely expressing my opinions. I certainly would welcome any additional information on the implications of this. I have seen the fact sheet issued from the office of the Conservative Party on this matter.

MR. MERCIER: This afternoon, sir, the Canadian Association of Chiefs of Police are issuing a press release because of their concerns over the amendments to the legal rights' section of the entrenched Charter of Rights. They indicate in a release, a concern that if the amendments are passed and the Canadian government blindly follow the American example and enact legislation so protective of civil rights that crime will flourish while law enforcement is repeatedly emasculated.

They say: ''We ask all Canadians to consider carefully the issues raised by the following case: A young couple sitting in an automobile were accosted by a man armed with a rifle. He ordered the male out of the car and shot him several times. He died immediately. The man then raped the female, shot her and left her for dead. As the result of police investigations, leads were obtained to the identity of the assailant.

Police officers visited his home, spoke to his mother who stated that her son had arrived home late on the night of the incident, was in an agitated state, had packed a bag and left, saying that his mother would never see him again. At the request of the police, the mother who owned the house gave explicit permission to the police officers to search her son's room. She was aware of the reason why the police wanted to search it. A rifle was found and a ballistic's check revealed that it was the murder weapon. The man was subsequently apprehended, charged, tried and found guilty on the murder and other charges. On appeal, the court held that the exclusionary rule applied in that the police should not have entered the room without the man's permission. The evidence was therefore tainted, the appeal was allowed and the murderer went free''.

The association cite this as an example, a real fact situation in the United States of a case that occurred under an interpretation of the U.S. Bill of Rights by the Supreme Court in the United States. Would you be upset by that kind of a ruling?

MR. NEILY: I suppose anyone would be concerned about seeing a situation that the person go free in a situation like that. That's certainly an extreme example. I assume you have selected it for that reason or they selected it that reason. I do think, however, that in order to ensure that there is confidence in our legal system that it's important that these rights exist and I think that in cases where the police fail to observe these rights that we have to have some protection against this. Now, in a very extreme case like that it may have negative implications. I think it's unfortunate that that particular case would go in that way, but there should be enough evidence obtained by legal methods to obtain prosecutions, if there is going to be a charge.

MR. MERCIER: I'll just read two other paragraphs from their release. They state: ''In our opinion, if significant changes are not made to those provisions of the recently proposed Charter of Rights and Freedoms we have referred to in this press release, Canadians will no longer be able to assume their streets will remain safe. Furthermore, we are certain that these proposals will result in dramatic increases in crime throughout the country since we sincerely and honestly believe that they can do nothing but assist criminals and organized crime across this nation''.

Does a statement by the Canadian Association of Chiefs of Police to that effect cause you any concern about the proposals?

MR. NEILY: I must say it is not a statement that I would find surprising coming from them, if characteristically taking a position, which shows more concern for security than it does for civil liberties. This is just a natural extension of that.

MR. MERCIER: Thank you.

MR. CHAIRMAN: Are there any other questions to Mr. Neily? Seeing and hearing none, thank you very kindly, sir.

Mr. Elias. Mr. Elias, before you begin, you appeared before this committee on January 19 and gave us a fairly extensive brief. I've been looking at the copy of what I would imagine you would refer to as an appendix to that brief?

MR. HENRY ELIAS: I have in fact an addendum and an appendix. There should be two more.

MR. CHAIRMAN: I see. The other question I have is that you spent a great deal of time at that January 19th meeting discussing fluoridation and some of your concerns about the rights of individuals and police and the fact that you mentioned the fundamental right that was denied to you once of being at your wife's bedside at the birth of one of your children. The reason I mention this to you is that I hope that you're not going to repeat yourself today.

MR. ELIAS: I have no intention of repeating myself and if my recollection is correct, I took about 15 minutes, at the very most 20 minutes, it wasn't longer than 20 minutes. It was four pages and I did not digress to any extent from my prepared copy.

MR. CHAIRMAN: So you have new material that you wish to present to this committee?

MR. ELIAS: I have new material, supporting material and new material. There should be two. You have received the two copies?

MR. CHAIRMAN: Yes, and in numbers of pages, sir, how many pages are they? Can you indicate to the committee?

MR. ELIAS: Four pages I would say, four typed pages. It's long and double-spaced.

MR. CHAIRMAN: All right. So you have new material and you will be approximately the same length as you were the last time.

MR. ELIAS: I would say half an hour.

MR. CHAIRMAN: Half an hour. All right, would you proceed then?

MR. ELIAS: Thank you. First of all I want to express my appreciation to you for allowing me to appear a second time and I can see from being here that you have a very difficult problem of deciding between all the different views. I'm reading now from Part 2 of my submission, of the Addendum that is.

As you know from my submission on January 19, 1981, my submission is mainly concerned with the Charter of Rights in the proposed resolution. The rights of persons who often cannot look out for themselves because they have been surreptitiously overtaken by some calamity whose origin and causes they are completely unaware of. Also they are usually in a very great minority and they are often only isolated single individuals, individuals who do not know what has come upon them — some chronic illness or even some serious disability — and they have no idea or knowledge of how to remedy their bad situation or how to keep it from getting worse, or they may have accidentally bumped into a stone wall of callousness by some persons in high places in our society who deprive them of their natural rights, if I may put it that way, in a matter that was of great importance to them as an individual as happened to me, and you know about that so I won't repeat that.

As I have pointed out in my earlier submission, these persons often have no remedy available to them. They very often cannot obtain their rights because these powerful persons or interests usually "stick together" to their mutual advantage, thus the poor individual victim cannot obtain his rights because all the cards are stacked against him as it were.

They cannot get proper legal help or they cannot get proper diagnosis as to the real underlying causes of their chronic illness, particularly in cases of "subclinical" poisoning or of marginal nutritional deficiencies. Now from my own personal experience and from my subsequent investigation of many other cases as a result of my bad experience, from these I have found beyond reasonable doubt, that these conditions are almost never properly or correctly diagnosed or properly or correctly treated. I will repeat that the conditions I am referring to in general terms here are "subclinical" chronic poisoning and marginal nutritional deficiencies. These however can lead to a large number of acquired non-infectious so-called "incurable" illnesses such as arthritis, multiple sclerosis, mental illness, heart and blood vessel disease, and many other chronic illnesses including cancer. However, I will confine myself here only to chronic subclinical levels of poisonous substances which are invisible and unknown to the ordinary person and which are deliberately added to our food and beverages or which are "negligently" contaminating our foods and beverages.

Now it is important to realize that levels of poisonous substances, which do no noticeable harm to 99 out of 100 persons, may nevertheless "lay low" the other one person out of 100 persons because this person is much more susceptible to a certain poisonous substance and may eventually disable this person. This "individual greater susceptibility" is well known to exist and has been well demonstrated and documented experimentally, both in animals and humans.

However, what I am getting at is that this low level subclinical chronic poisoning is not sufficiently recognized or acknowledged by the "estblishment" in our society, particularly by the medical establishment but also by other powerful groups such as those who have some direct interest or some indirect connection in "pushing" such toxic substances on the public.

While I am very much in favour of a free society and individual and corporate enterprise with as little government regulation as possible, yet one of the disadvantages of this "freedom" is the lack of social responsibility by so many powerful individuals and groups in our society, often to the severe surreptitious injury of the "above average susceptible" person as already stated and these various powerful groups and individuals support each other in these irresponsible matters and usually also try to get the various levels of government "on their side", as it were. And this very susceptible one person in a hundred, or even only one person in a thousand (as occurs in multiple sclerosis) who become chronically ill, these persons have nowhere

to go or to turn to, not even the medical profession. This is because the medical profession has not yet accepted that such subclinical chronic poisoning exists and that some very susceptible persons are severely injured by it.

If it had not happened to me personally, I would probably not believe it either that such surreptitious chronic poisoning happens. But I have found that it does exist, not only in me but in many other persons. But these are only a very small percentage of the population for a specific chronic illness, but if all these "acquired, non-infectious" chronic illnesses are added together, then it amounts to a significant percentage. My estimate would be that it would amount to approximately 10 percent of the total population for all such chronic illnesses, non-infectious acquired chronic illnesses.

Now the quality of a society is said to be known by how it treats its minorities. It is very clear and beyond reasonable doubt that our society is not treating this helpless minority very well which I have described to you. Has any group the right to surreptitiously deprive any individual of his health by allowing such "invisible" unsuspected poisonous substances into our foods and public water supply? I say NO]

Now, there are many ways of misleading people and distorting the truth is one way, even the scientific truth and I will show you only one case of how it was recently done with the fluoridation cancer issue. This is illustrated in the following article prepared by Professor Aitchison and myself. Before I go to that article I should state that the very next page you can see an article entitled "The Last Word". When Is A Disease Not A Disease? Now that is an article by Professor Roger MacDougall who himself became ill with multiple sclerosis and who developed a therapy at age of 40-odd years and is now well at the age of 70. Now I want to go on to this case, how it is done, how people are misled. Now this supports my No. 1 in the brief which I presented last week and the title of this article is "Errors in Canadian Fluoridation and Cancer Study" by myself and by Professor P. W. Aitchison, of the Department of Applied Mathematics at the University of Manitoba here in Winnipeg, who discovered these errors. I'm going to omit the summary and just go to the main article. It starts with the second paragraph. I don't know if you have all this. You should have it, I brought it in yesterday. It's the appendix to the brief presented to the Manitoba Legislative Committee regarding the Constitution on January 19, 1981. You've got it? Okay.

Quoting from the second paragraph, leaving out the summary.

A Canadian report — and I should state here that these numbers, these are the references at the end of the article, the numbers in parenthesis — A Canadian report on fluoridation and cancer concludes from the data presented therein, that there is no increase in cancer deaths which can be attributed to artificial fluoridation of the public water supply in Canada. However, a critical examination of the most significant figures given in that report — these significant figures are in the Part 2 of the brief, that's the other one which you have there, Page 9, oh, the page isn't given there. Right the very next page after Professor MacDougall's article. However, a critical examination of the most significant figures given in the report show that there is an overall increase of ten percent, or an average increase of 12.9 cancer deaths per 100,000 population in age-adjusted cancer death rates in areas that have been fluoridated for 20 years as compared to the same areas before fluoridation. Now 20 years is generally considered to be the time required to induce cancer by the chronic intake of small amounts of carcinogenic substances.

For males — and the charts are in there two pages further down, there's Table No. 6 and Table No. 7, Table No. 6 is the table for males. I've made little arrows where these figures, you can look them up yourself. For males, these figures show an average increase of 9.4 cancer deaths per year per 100,000 population, from 161.1 in 1956 to 170.5 in 1971. In non-fluoridated areas this increase is only 2.5 cancer deaths per 100,000 population, from 177.0 in 1956 to 179.5 in 1971, an increase of 6.9 cancer deaths per year per 100,000 males after fluoridation.

For females, the figures for all ages of age-adjusted cancer deaths in areas fluoridated for 20 years show a large decrease of 28.0 cancer deaths per 100,000 population in non-fluoridated areas, down from 165.2 in 1956 to 137.2 in 1971, compared to a decrease of only 9.1 per 100,000 population in fluoridated areas, down from 146.0 in 1956 to 136.9 in 1971. This is therefore, 18.9 less cancer deaths per year per 100,000 population in non-fluoridated areas for females than in fluoridated areas.

Now, some of the data in the report is poorly presented. For example, the year headings under tables — and those are the tables I'm referring to, Tables 6 and 7 — Some of the data in the report is poorly presented. For example, the year headings on the tables 6 and 7 such as 1956 actually referred to the five-year period, 1954 to 1958. But in order to find this information you have to search through the whole report. The period in this report shown as 1956 to 1971 is actually the period 1954 to the end of 1973.

Another serious deficiency in the Canadian Fluoridation and Cancer Report is the complete lack of figures for, and consideration of, the natural fluoride content of the water used in non-fluoridated areas and in fluoridated areas before fluoridation was begun.

The combined male and female averaged increased cancer death rates due to fluoridation for 20 years from the very figures given in the Canadian Fluoridation and Cancer Report" — and I have the report right here — "the combined male and female averaged increased cancer death rates due to fluoridation for 20 years from the figures given in the Canadian Fluoridation and Cancer Report is therefore 12.9 per 100,000 population. The authors of this paper calculate a projected increase of approximately 3,100 cancer deaths per year due to fluoridation if all of Canada had been fluoridated for 20 years in 1971 — that is 20 years prior to the 1971 figure, the same as is given in the report — out of a total of 31,036 reported actual cancer deaths in Canada in 1971. This projected 3,100 increase in cancer deaths due to fluoridation would be approximately 10 percent. This is in fairly good agreement with that reported by Yiamouyiannis and

Burk — and the reference is down there in No. 6 for anyone who wants to look that up.

Now in support of my No. 2 in the brief, I've given you the title page, or the jacket page with the description of the authors of two books and I'm going to leave it at that at that point.

Now there is one other thing which I would like to draw to your attention and that is the very last page of the Part 2 Addenda, the very last page, I I have some transparencies and I took it right off the transparencies because I was rushed doing it.

And what is says there, now this is an analysis made by a person who works in the University of Manitoa. I'm not going to identify him, this person was married and they had a baby and the baby was breast fed and the baby became ill. So they started checking and checking and checking where this illness could come from. They could not find out so easily so they started doing hair analysis and all that kind of thing, examining the water, they sent the water out of their tap. Now this is overnight, out of the cold water tap, standing overnight in the pipes, and that's very important, and this is the analysis:

Lead was 380 parts per billion and the Canadian Water Standards maximum allowable content is 50 parts per billion, so this is 7.5 times as much lead in the water as is allowed by the Canadian Water Standards.

Arsenic, 300 parts per billion and only 50 are allowed, 50 parts per billion by the Canadian Water Standards, this is six times as much arsenic as is allowed.

Cadmium, 22 parts per billion and only 10 parts per billion are allowed by the Canadian Water Standards, so that's 2.2 times as much cadmium as is allowed by the Canadian Water Standards. I'd like to point out to you that cadmium is a very serious kidney poison, and when people's kidneys become damaged then they can no longer excrete the fluoride and then they become loaded with fluoride and that's how it goes. You see, one thing leads to another.

Selenium, and this puzzled me, Selenium, 260 parts per billion, and only ten parts per billion are allowed by the Canadian Water Standards, which means there was 26 times as much selenium in this water than is allowed by the Canadian Water Standards.

Cobalt, 45 parts per million. Well, there's no standard in Canada for cobalt. In the United States it's zero.

Fluoride, of course, was 1,000 parts per billion, but that they hadn't analyzed.

But this is what they had analyzed and when they started using distilled water the lead level and the other levels, the heavy metals went down, the lead level particularly went down in the hair, the baby became well, and this lead went through the mother, the baby was breast fed. So you can see how important it is.

There were a few points I'd like to make and then I'll be through. One other thing I would like to draw to your attention. You may think I'm a layman. I would like to quote you what Professor MacDougall says in the January 1981 issue of Let's Live. He was the person that was affected by multiple sclerosis, he was in a wheel chair for many years, and he worked it out himself. He went to many doctors. I couldn't say it better if I tried. So I'm going to quote him from Let's Live, the January 1981 issue by Professor Roger MacDougall. The title of the article is, "When is a Disease Not a Disease?" "Every so often," — and I'm starting, I don't know if your paragraphs, I drew lines around it, have your copies got lines around it? Oh, so it's Paragraph 7. I'll start at Paragraph 7, in the middle column.

"Every so often" — that's the middle column, the third paragraph — "Every so often during the course of this analysis I will have to stop in order to point out that I am referring only to one small area in the medical world, that area of so-called degenerative diseases. About all other areas I make no comment. Insofar as I have come in contact with them I have reason to be grateful to the doctors who have helped me. I make no criticism of medicine overall. I deprecate only one area where I had reason to look for help and none was forthcoming, the area of multiple sclerosis to be specific or, to be more general, the area of degenerative diseases. This, however, happens to be a rather important area because it embraces the area in which medicine has met with least success.

"Infectious disease, surgery, obstetrics, public health and a host of other branches of medicine are progressing with giant strides. Only the area of degenerative diseases is lagging behind.

MR. CHAIRMAN: Mr. Elias, may I stop you for a moment? I think you said you were only going to be about 15 minutes in length?

MR. ELIAS: I said half an hour.

MR. CHAIRMAN: Was it half an hour? And you're now reading from a magazine rather than from your prepared text.

MR. ELIAS: I'm quoting. No, it's in the text. There's the page.

MR. CHAIRMAN: I see. I thought maybe you were finished.

MR. ELIAS: I'll be about five minutes. And by the clock, if I see it right from here, I've got about that much left to go to half an hour.

MR. CHAIRMAN: How much time?

MR. ELIAS: About five minutes.

MR. CHAIRMAN: All right. Would you try and conclude in the next five minutes.

MR. ELIAS: I will desperately try to do so.

Quoting again, "Only the area of degenerative diseases is lagging behind. Where many of mankind's greatest enemies like the great plagues, tuberculosis, pneumonia and syphilis are virtually conquered, we are left with cancer and heart disease as the most dangerous of the remaining killers — our most urgent public enemies. It is because I think that I, as a layman, have a unique contribution to make in this area that I have the temerity to write. I think it is because I am not an expert that I should be listened to. It is my profound conviction that in that small area about which I am writing the experts are voicing opinions which are based on self-

perpetuating fallacy. I have hinted at it in my reference to the doctors to me unwarranted assumption that a degenerative disease is in fact a disease and not just an example of degeneration, comparable in many ways with the inevitable degeneration of aging. Disease is surely a word only applicable to conditions induced by the body by some outside influence. If the so-called degenerate diseases are in fact conditions caused by the autonomous breakdown of our bodily structure exactly as in the aging process, then the word "disease" is surely a misnomer.

Degenerative conditions might well be caused by deficiencies or allergies and not by germs or viruses. It is surely reasonable to suppose that cell tissue which requires a certain chemical for its manufacture will not in fact be made by our metabolic processes, unless through the mouth, then the digestive processes and through into the bloodstream via the intestinal linings, that chemical is made available where it is required.

It is an analogous way that the aging process is slowed by. By following this line of thought, I changed myself — and here is the important part — I changed myself from a wreck in a wheelchair in my 40s to a symptom-free 70-year-old. I learned to control my multiple sclerosis and return to complete normality. I find it difficult to treat with common politeness the obstructionist attitude of the orthodox medicine. It seems to me that they have made a mistake. That mistake is costing the world untold millions in completely pointless research and, more to the point, it is costing thousands of lives every year. Surely medicine can be proud enough of its record and confident enough of its place in society to admit to one error. Surely it can realize and admit that in accepting the unconfirmed concept of disease in cases of degeneration it has backed a loser. The analogy between infectious disease and degenerative disease is more apparent than real. There are no cures for degenerative diseases, only controls. There are no drugs which will eliminate the causes when in fact no vulnerable causes exist. Medicine has wasted its energies and marked time for more than 100 years in looking for things which do not exist".

Now I want to finish off by saying that I was very interested in what our former Premier, Mr. Campbell, had to say yesterday. I really liked what he said but I disagree with him on some points, although I admire him very much.

The rights in the Charter of Rights are there to protect the minority and even the individual and the onus should be on the government to prosecute those who violate those rights. The other poiint I want to make is there should be freedom of choice in such things as fluoridation. Now, if freedom means anything it should mean freedom of choice. So when the public water supply is fluoridated then most people have no freedom of choice in this matter for all practical purposes. That is the point I want to make.

Now I thank you very much for the time you have given me and I will end it there because I can see that you have had a lot of things that you've heard and you have a great deal to go through. I appreciate your job. I never appreciated it until I came to these committee meetings and I can see that you have a difficult job because there are so many points of view. To get the right one that is best for Manitoba and for Canada, I don't envy you your jobs, I can tell you that.

MR. CHAIRMAN: Thank you, sir.

MR. ELIAS: Thank you.

MR. CHAIRMAN: To the members of the committee, that concludes our hearings of public representation.

Committee rise.

WRITTEN BRIEFS PRESENTED BUT NOT READ

BRIEF PRESENTED BY RICHARD M. STONYK 15 Savoy Crescent, Winnipeg, Manitoba R3R 2R7

Gentlemen:

I believe it is possible for the Parliament of the United Kingdon to patriate the Canadian Constitution, or rather, the British North America Act by establishing a Canadian Constitutional Assembly whose members could be chosen by a variety of methods determined in Canada. This action would be followed by an act of the United Kingdom's Parliament turning over its jurisdiction over to the British North America Act. Failing the foregoing provisions, I believe that the federal government can only ask for simple patriation without further amendment or addition made by the Parliament of the United Kingdom.

I oppose the attempts of the federal government to force by deliberate design, or indirect means, the Parliament of the United Kingdom to patriate The British North America Act without a made-in Canada amending formula, and without establishing a Constituent Assembly in Canada whereby the citizens of Canada could have direct input into the framing of the Constitution.

The federal government's constitutional efforts over the last two years have been too expensive. Who will ever know the cost of federal advertisements in newspapers, billboard and television? We have yet to be told the true cost of Canada Geese advertising the need for a Canadian Constitution. These federal promotional efforts are too simplistic and thus misleading.

Perhaps the most distressing aspect of the federal government's Constitution is it is a policy endorsed and enforced from the top. I see no real groundswell of support among ordinary Canadians for constitutional change. Could it be the constitutional tempest now raging is preferred by the federal government to having economic storms catch the public attention? Will patriation lower mortgage rates, halt inflation, or reduce the national debt? Political freedom must be balanced with economic security. The present federal government has failed in the economic sphere, I fear they will do no better in the sphere of political freedom.

A Constitution, if it is to be established or amended, must reflect the heartfelt aspirations of the citizens, rather than the philosophical and unbending desires of one man.

The voices of dissent raised against a Constitution patriated with an amending formula and Charter of Rights tacked on in Britain are many: Native peoples, provincial governments, those who feel well enough

protected by the English common-law tradition, and those regions who have suffered through the domination of Canada's economic and political life by the provinces of central Canada.

Provincial protests against the federal government's unilateral actions are nothing new. In fact, many amendments bearing on provincial spheres of influence have rarely been unanimously consented to in the past. In 1907 and 1915, British Columbia and Prince Edward Island protested against amendments made on those dates. The Quebec Legislature was critical of a 1943 British Amendment Act and so passed a resolution of protest. In 1949, provincial concerns were voiced due to the federal government's unilateral action when the powers of the Canadian Parliament were augmented.

I believe it would be incorrect to assume that there is a convention or understanding in Britain that the Parliament of the United Kingdom must, without question, act in reply to any Canadian federal government request for legislative action, even if such action is objected to by the provinces. It is true that on many past occasions the Parliament of the United Kingdom and British government did respond to a request from the Canadian Parliament and government. I have stated earlier that this does not establish forever an unalterable precedent.

Yes, I am aware that the British government has assented in recent decades to the legislative requests of the Canadian government and parliament. Please note that on these occasions, there were only one or two provinces offering objections. Surely, the present constitutional crisis in Canada with almost all the provinces and territories offering serious objections to the federal government's proposals is without precedent. I believe the British government is aware and embarrassed by the federal government's lack of compromise regarding constitutional matters.

No prior convention or precedent covers the unilateral patriation with Charter of Rights and amendments made in Britain by federal directive asked for by the Canadian government. This is no insignificant amendment concerning some minor matter objected to by only one province.

May I remind all concerned that Canada is not a unitary state. Divided powers are a hallmark of the Canadian political scene as it presently exists. This division of powers and responsibilities must be safeguarded by the Parliament of the United Kingdom as the provinces seek no change in the existing arrangement. I do not believe that the Statute of Westminster gives the Canadian Parliament the power to make unilateral amendments to The British North America Act itself, especially over the objections of a majority of the provinces.

In summation, a Canadian amending formula, constitutional changes or additions must be made first in Canada and receive the wide support and input of ordinary citizens and the provinces. This will necessitate the setting up of a Constitutional Assembly to determine the wants and desires of the citizens of Canada in all regions. I think that delegates to such a Constitutional Assembly should be directly elected. The Parliament of the United Kingdom is able, and I believe would be relieved to patriate The British North America Act without changing its essential nature and division of powers.

I thank you for the opportunity of presenting this brief for your consideration.
Richard M. Stonyk.

INDIVIDUAL PRESENTATION BY JANET PAXTON, Winnipeg, Man.

As this is an individual presentation, I shall try to be as brief as possible in deference to those who represent large numbers in their organization. However, I have been involved in many women's groups in the recent past, and I have spoken with people about my proposed resolutions and find they are much in agreement. Several widows expressed their hope that the first recommendation would be accepted.

Particularly with reference to Human Rights there is one clause which I feel should supersede all others. I have not heard during the Constitutional Hearings aired on TV any other such suggestion but I feel that there should be a basic starting-off point to every Canadian citizen's rights to equality. There can be no equality where there is poverty. The child with an empty stomach in the classroom cannot feel as "equal" to a classmate who has had a good breakfast. The senior citizen in the supermarket who cannot even afford the package of neck bones when they look at the price is not as equal as the working person who can afford a beef roast. Everyone has basic physical needs which must be met by having money. Nothing in today's society is free to those who must purchase food, clothing, shelter. These are the basic needs of all human beings on earth. Canada is a rich country and there is no need for anyone to go through life here without those basic needs being met. Therefore, I would like to see at the very top of the list of Human Rights the following guarantee from government legislators to the people of Canada

> THAT the Government of Canada guarantees to each and every citizen of Canada residing in Canada that from time of birth to time of death every Canadian shall have an income (whether from personal sources or government subsidy), which shall not fall below the poverty level; and,
> THAT the poverty level shall be realistically established to allow all Canadians to equally enjoy their span of life with adequate income and knowledge that they have financial security as Canadian citizens; and,
> THAT the poverty level shall be reviewed yearly and indexed to the yearly current cost of living.

Although this resolution may be asking a lot of government it should serve the purpose of controlling all future government legislation so that there will not be giveaways to the few at the expense of many. Land developers were allowed to become millionaires within a decade because the government gave them tax concessions, no profit-making controls. Now an average young couple knows they will both have to work endlessly, children or no, before they can ever hope to buy a home. There was no forethought as to the effect on all future Canadians.

Most Canadians are afraid, and I mean that literally, when they think of what heating costs will be or if there will be any heating supplies in a decade, we have seen what happened with land. Will government do the same with our oil? Right now oil companies are draining off previous Canadian oil at great profits and we hear 80 percent of the shareholders are Americans. Who ever allowed such a ridiculous state of affairs? Why has government loaned almost 13 billion to oil companies at no interest while at the same time a widow told me last week she lives on only 349 a month since her husband died last year. She is frantic and I am sure her life must be nothing but worry. Free enterprise is a good thing,

I agree, but there should not be such maldistribution of wealth. Canada is by no means a poor country and there should be no poor Canadian citizens if it is managed properly. A resolution guaranteeing an adequate income to each and every citizen (including children individually) will keep government mindful of its responsibility and will make Canadians secure and proud to be Canadians.

My second recommendation is one which all women may be in agreement with. Not being able to list all the government functions this resolution would cover I do not know the exact wording which should be used to accomplish the goal but the general idea is:

> THAT no government-funded body, whether a corporation, committee, contracting firm, judicial court, or the Supreme Court itself shall be considered a legally constituted decision-making group unless there is adequate female representation in that body, corporation, committee, contracting firm, court or Supreme Court.

That is a pretty wild wording but women realize now that unless they are to have their viewpoints represented from the grassroots upward in all decision-making nothing will change.

We read the statistics that 80 percent of women over age 65, living in Canada, are living below the poverty level. That is what has been granted to us under the old Constitution. There is absolutely nothing in the newly proposed Constitution which is different, in spite of the fact, that for these women life can be nothing but abject misery for all of them. That is why women are watching so carefully the wording proposed for the new Constitution and we see not one thing different in it which will correct what has happened. Unless that wording is definite, no pussy-footing around as to its intent that females shall no longer be the slave labour element of the workplace or the home, then there will be another generation of women knowing that their only hope to escape the indignity of living in abject poverty will be to die young.

Mr. Ray, the President of the Constitutional Hearings in Ottawa made a comment after the presentation of one of the large women's groups in Canada and his comments revealed with startling clarity the problem women encounter. He asked shy the "girls" hadn't asked for laws for women and babies since they planned to run off and work leaving the babies and children at home. I believe much has been said about this already, but what hope do women have with someone like this chairing that very important constitutional committee? With all due respect for this man he has come from a viewpoint of a man who, no doubt, married and perhaps raised children in an altogether different milieu than that which our young people encounter today. He does not understand that with the high cost of homes and their relation to the average workers' salaries, if the "girls" did not get out to work there would be no homes bought. Most of the women out working must work and they want to be paid fairly and have the same opportunities to excel at work as men do. Also, if all the women who were family heads were to stay home with their children and babies the country would, no doubt, go bankrupt within a month paying for the welfare costs. We can no longer be burdened with guilt because we are not staying at home, and we must ask that as one-half the population of Canada we are given equal rights in the new Constitution of Canada.

My third recommendation is based on the presentations I have heard about the French and English language problem. Most Manitobans I have spoken to were very dismayed at the thought that Quebec would ever break away from Canada and it is therefore very important to acknowledge their stong feelings on this subject.

However, I believe the speaker representing the Ukrainian Community Committee of Canada said it best. It is fine that they shall be granted the right to speak in their own language in Quebec, that is only logical, however, it is in a way telling other Canadians that, unless they are French or English, they are not quite as important as they thought they were in spite of their pride in their own ethnic background. Where is the "equality" for them in this Constitution which is now proposed? Their suggestion that we should perhaps look at an alternative ruling which would allow parents, where numbers were large enough to warrant, to send their children to schools where the second language would be that of their own ethnic origin. It seems to me that the Philippinos, Ukrainians, Vietnamese, native Indian communities all teach their children to speak in their own native tongue, then they will go to school where English will be taught and then they must also learn French. That is putting a child new to the country in a very difficult position. That is denying a child a pride in his own cultural background.

The most bothersome part of it to myself personally is that I have been born and lived in Winnipeg most of my life. I went through our school system and took four years of French. I loved it; it was a beautiful language and I learned it easy. However, the only time I have ever been able to make use of it is to read the French on the Corn Flakes box to my children to impress them with my great knowledge. Even in a community like St. Boniface, which is mainly French speaking, I have not been able to use it. It seems our education system is overburdened enough without forcing this on to the school system as a "must". I have great respect for the French but I cannot see why people across Canada must learn French when the odds are 70 percent of them will, like myself, never use it. People should be able to be proud of their own ethnic language, regardless what it is.

WRITTEN BRIEF BY ALICE RICHMOND

I would like to begin by asking a question. Would you rather be a first-class citizen in a federation of the four western provinces or a second-class citizen in Pierre Trudeau's conception of Canada? Personally I don't see any choice.

I have no intention of quoting a long list of facts and figures to try to prove to you how much better off financially we would be. This has all been done by people with far more know-how than me. I would like to point out some of the inequities westerners have suffered (mostly in silence until recently) because of the favouritism shown to Ontario and, to a further degree, to Quebec by the Liberal government.

First, let me get back to the second-class citizen bit. As I understand it if Trudeau is successful in bring back the Constitution with his amending formula either Ontario or Quebec, because they are the only provinces with 25 percent of the population today, will forever be able to veto any proposal suggested by any of the other

provinces. Now, we've all heard that 50 million Frenchmen can't be wrong, but surely when nine out of ten Premiers oppose one Frenchman they can't all be wrong either.

Secondly, in regard to the language entrenchment, in western Canada we have Ukrainian, Polish, German and many other ethnic groups that greatly outnumber the French. These kpeople who are mainly responsible for settling the west adopted English as their second language. Why then should they, along with those of us whose mother tongue is English, be forced to pay the millions of dollars that the federal government is spending to promote the French language? Why must we pay extra for everything from a box of Corn Flakes to an electric range to have the French language on it when the French people make up only 25 percent of the total population of Canada?

Please don't put me down as just another bigot if I say that any language and culture that can only be preserved by government legislation must be pretty flimsy. Consider the Jewish people. They have been shoved from pillar to post for over 2,000 years and have still managed to retain their culture without government assistance.

When I went to school, out in what was then called Brooklands, there were only two of us in the class whose mother tongue was English. My father wanted me to learn to do the highland fling. He didn't go to the principal and insist that the 37 other Ukrainian, Polish and German children learn it, too, he paid to send me to a special class and thus helped to preserve his culture without government help.

It would not surprise me if what would be saved by eliminating the two languages on everything we purchase would be enough to pay all Old Age Pensions in a western federation.

When the west was on the rocks we still paid tariffs to support the industries of Ontario and Quebec; they never thought of giving us a break. Now the shoe is on the other foot and we are supposed to be willing to share our gas, oil and electricity without a fair return. Alberta and B.C. are being called greedy because they don't want to give away their natural resources which belong to them under the present Constitution.

Right now we have 30-odd Liberals touring the west to listen to our complaints. If, when in the House of Commons, they had quit acting like little boys who owned all the marbles and paid attention to what the Conservatives and NDP were saying, there would be no need for them to be wasting more of our money trying to convince us that they really care.

Let me ask another question. If you knew a little, browbeaten woman — and I'm sure you all have at one time or another — who went to work every day, came home, cooked and cleaned, and then when her big bully of a husband arrived, fed him, turned over her pay cheque, was used by him and then was called an ungrateful wench because she protested, what would you advise her to do? Stay with him and take more abuse rather than break up the family. I think not, you would tell her to leave him, get a divorce. And that is just what I am suggesting the western provinces should do if Trudeau succeeds in his present aims.

While I, and many others I have spoken with, commend Mr. Lyon and his Cabinet on their stand we feel the cards will be stacked against them and urge them to consider separation as an alternative.

Presented by: "A.E. Richmond"

CANADIAN PARAPLEGIC ASSOCIATION
Manitoba Division
825 Sherbrook St., Winnipeg, Manitoba. R3A 1M5

NOVEMBER, 1980

The Canadian Paraplegic Association, Manitoba Division, has been an active advocate for the protection of human rights of physically disabled persons. Our association speaks directly for 600 paraplegics and quadriplegics in Manitoba and advocates, as well, for many thousands of other Manitobans with severe mobility impairments. The Canadian Paraplegic Association was a major promoter of an amendment to The Manitoba Human Rights Act to include the physically handicapped as a group specifically designated and protected from discrimination.

The board of this association has considered the Charter of Rights' proposal in the proposed new Canadian Constitution. Our position here is a simple one. The omission of "physical handicap" as a specific area designated for protection from discrimination within Section 15 of the proposed Constitution is our concern. We fear that if physical handicap is not included, while other characteristics such as race, and other groups such as the elderly are covered, the protection currently afforded handicapped persons under The Canadian Human Rights Act will be diluted. In this regard we note the interim recommendation of the Special Committee on the Disabled and the Handicapped has been to include specific protection for this group if a Charter of Rights is included in a new Canadian Constitution. We concur with this position.

We are similarily concerned that the exclusion of special protection for physically handicapped persons within the Constitution, when other minority groups are specifically designated, could lead to a dilution of the protection received by physically handicapped Manitobans under our provincial Act. We recognize that those enforcing The Manitoba Human Rights Act will have to set their priorities. We believe it only natural that pressures generated by appeals to the Supreme Court of Canada on the basis of human rights' protection within the Canadian Constitution will have an effect on these priorities. To this extent then, the wording of the federal Constitution may in practice, if not in law, have implications for the administration of human rights' protection for physically disabled persons in Manitoba.

In summary, the association is not expressing here any opinion on the merits of patriation of the Constitution or inclusion of a Charter of Rights per se. We are, however, quite clearly putting ourselves on record as stating that if the Canadian Constitution is to include a Charter of Rights and Liberties that physical handicap should be explicitly designated in Section 15 as a characteristic for protection.

BRIEF SUBMITTED BY EDWARD H. LIPSETT, B.A., LI.B. Rm.
23 - 1022 Pembina Highway, Winnipeg, Manitoba R3T 1Z7

November 20, 1980.

I wish to make several observations regarding the "Canadian Charter of Rights and Freedoms" which is contained in the "Proposed Resolution" regarding the

Constitution. I must first emphasize that I accept the principle that "entrenchment" of basic rights and liberties in the Constitution is proper and highly desirable. Though not necessarily agreeing with its methods or timing, I congratulate and support the government for initiating such measures. I especially commend the government for its courage and determination in proposing that this charter bind the provinces as well as the federal government.

Though the proposed charter provides a sound basis to work from, I respectfully suggest that it is seriously in need of amendment in several important areas before final enactment. In discussing some of these issues I do not claim that the ideas are necessarily original, or even my final or firm conclusions, I only wish to point out certain perceived shortcomings and at best raise general possibilities for solution. I regret that time does not permit me to give these vital matters more careful analysis, or to present a formal or well-documented submission.

Before dealing with the particulars of the charter I would respectfully recommend that the committee seek an extension of its deadline so as to be able to give the proposed resolution the careful consideration and detailed study and analysis that such a vital document merits. Travelling the country to hear as many groups and individuals as wish to be heard, receiving the opinions of as many expert witnesses as possible, and deliberate, thorough examination of the provisions without undue pressure or haste could only enhance the quality of the final document.

Without wishing to deal in depth with the "amending formula", I would add that I share the concerns of those who feel the provisions in Part V would make amendment too easy. Perhaps the resolution of both houses should be necessary; possibly even with a two-thirds majority in the House of Commons. A referendum might be an acceptable additional safeguard, but I suggest that these be in addition to, not in lieu of, the consent of the required provincial legislatures. It must be remembered that the greatest danger to the constitutional rights of minorities could well come in times of real or perceived emergency, and at such times it could well be too easy for a government to obtain a simple parliamentary majority and the required referendum results.

Failure to comment on a particular section does not necessarily indicate my agreement, but could result from the likelihood that other briefs would raise the issues, or lack of time to adequate study or consider the issues.

Re s. 1: The concerns leading to the inclusion of such a section may well be legitimate. One can see situations where an "absolute" application of certain rights could negate protection of other legitimate social values (e.g. certain U.S. Supreme Court justices have argued that "free speech" and "press" provisions of the 1st Amendment would nullify all defamation laws, though this view never gained majority acceptance on that Court). One can fear where an "absolute" interpretation of such concepts could interfere with legitimate national security needs in time of war or other emergency. (Here again, however, American experience has shown that Court's ability to "balance" fundamental individual rights with the needs of national security, at times perhaps too far in favour of "national security"). Looking southward again, it is impossible to forget the unfortunate tendency of the U.S. Supreme Court in the 1890s to 1930s to use the constitution to nullify much valuable "social" legislation including maximum hours and minimum wages legislation. (However, that Court has since thoroughly repudiated such abuses; and at any rate, the current wording of the proposed "Charter of Rights" leaves little danger of such interpretations).

However, though some "limiting formula" might well be necessary to prevent similar or other dangers from "absolutism" or judicial abuse, the proposed wording of s. 1 goes much further than necessary. Indeed, the danger here is that the Courts could (although it is by no means inevitable) use this provision to evade the terms of the Charter with relative ease, thus substantially weakening its protection. If a "limiting formula" is to be retained, it must be made clear that where a law would otherwise violate protected rights, the onus is on its proponents to demonstrate that such a law is necessary.

Perhaps an alternative limiting formula could read as follows (or could be more suitably worded but have a similar effect):

"1.(1) The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits as are clearly necessary in a democratic society or are clearly required by an emergency situation."

"(2) Where a law or measure otherwise in violation of the rights and freedoms set out in this Charter is defended as within the limits referred to in subs. (1), the onus shall be on its proponents to satisfy the Court

(a) of the necessity of such measure or of the existence of such emergency and requirement, and

(b) of the reasonableness of such limits.

"(3) Where the continuation of a law or measure upheld pursuant to subs. (2) is, after reasonable time, challenged on the ground of changed circumstances, its proponents must satisfy the Court that the circumstances originally justifying the law or measure still exist."

The danger remains that legitimate desirable legislation could be construed to violate particular Charter provisions, yet not be found to be so "clearly necessary" as to be saved by the stricter limiting formula which I suggest. Perhaps it might be desirable to include a "saving" or "exception" provision in a particular section where such problem is seen to be likely. Some sections already have such provisions, others might be necessary. For example, if s. 15 were to pass as currently worded, it might be necessary to specifically provide that reasonable restrictions on the capacity of minors, or old age pension schemes would not be nullified by the bar against "age" discrimination. The inclusion of such "exception provisions" must of course be done only carefully and sparingly, to avoid dilution of the Charter's protections.

Perhaps it might be advisable to include a formula clearly indicating to the Courts that they are not to lightly strike down "social legislation" or "economic regulations" and that their disagreement with legislative policy is irrelevant to a statute's validity. There must be no room for doubt that social and economic policy are within the legislative sphere and not the judicial sphere. However, where the legislature exceeds its legitimate sphere by infringing upon rights the Constitution deems "fundamental" the Courts' duty to act decisively must also be beyond doubt.

Re s. 2: I support s. 2 in principle, and welcome the attempt to expand the freedoms included. How-

ever, a few questions ought to be raised regarding the terminology. Perhaps (b) should be amended to read "freedom of thought, belief, opinion, speech and expression, including but not limited to freedom of the press and other media of information . . ." Though the additions are of course desirable, the expression "freedom of speech" should be specifically included. This legal concept has been highly developed in American constitutional jurisprudence. One would hope that Canadian courts would see fit to benefit from the vast and valuable American judicial experience in this area (without, of course, in any way feeling "bound" by American precedents). (The Supreme Court of Canada has been reluctant to apply American "Constitutional" jurisprudence in interpreting a merely "statutory" Canadian Bill of Rights. I trust however, that "entrenching" this Charter as part of the Constitution would enable that court to give greater weight to American constitutional precedents, especially where the Charter employs terminology or concepts similar to that found in American constitutional law. Undoubtedly, the Supreme Court would feel free to apply or reject such American cases as it saw fit, and develop its own jurisprudence to suit the Canadian situation.)

It must be questioned whether even this expanded section would give adequate protection to the right to hold peaceful demonstrations. Though the American Supreme Court has given peaceful demonstrations substantial "First Amendment" protection, the Supreme Court of Canada has recently gone in the contrary direction. In Attorney-General of Canada v. Dupond (1978), 84 D.L.R.(3d) 420, Beetz, J., (for the majority) has held inter alia "Demonstrations are not a form of speech but of collective action. They are of the nature of a display of force rather than of that of an appeal to reason; their inarticulateness prevents them from becoming part of language and reaching the level of discourse." (p. 439). Of course, once the Charter is enshrined into the Constitution, the Court could easily distinguish this judgment as an unsuccessful attempt to rely on the "Implied Bill of Rights Theory" (a theory which the Court all but repudiated). However, this judgment could also indicate a fairly narrow interpretation of the concepts of "freedom of speech, of assembly and association . . ." Whether the expanded wording of s. 2 is sufficient to overcome this problem merits serious consideration.

Perhaps the Committee ought to consider whether s. 2 should contain a "saving clause" to protect common law or statutory rights of actions for defamation or invasion of privacy. It must be noted that the U.S. Supreme Court has limited a "public official's" or "public figure's" right of action in defamation to cases where the plaintiff can prove the falseness of statements and the actual malice (i.e. "knowledge" of falsehood or "recklessness" regarding truth or falsehood) of the defendant. It is possible that Canadian courts would not accept this approach. Perhaps, if adopted, this approach would be welcome as providing additional protection for public discussion. I am not advocating inclusion of such "saving clauses" in the Charter, but I feel it is an issue which merits some discussion.

Re s. 7: - The omission of any reference to "property" rights in this section, as well as the omission in the new Charter of anything comparable to s. 2(e) of the old Canadian Bill of Rights ". . . no law shall be construed or applied so as to . . . (3) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations" are indeed dangerous shortcomings. These omissions could leave the individual without any constitutional protection of his procedural rights in almost all civil and administrative proceedings. Whether or not express reference to "property" rights, or reinstatement of the term "due process" are considered appropriate, it is essential to enshrine procedural rights in civil and administrative matters in the Constitution. Such fundamental rights are too important to be left solely to the common law concepts of "natural justice" and the "duty to act fairly" or to the mercy of Parliament or the provincial Legislatures. It is important that they be protected by the Constitution in the strongest terms. It is hoped that wording is employed which makes it clear to the courts that these protections should apply wherever an individual can be affected by an official decision. There should be no doubt that it is unacceptable to leave the person unprotected merely because his interest is a "privilege" rather than a "right" or because the decision is "administrative" rather thatn "judicial or quasi-judicial".

I can appreciate the hesitation to include the concepts of "property" and "due process" in light of the unfortunate use of the "substantive due process" concept by the American courts to nullify social legislation until the 1930s. However, this problem could probably be avoided by careful wording of appropriate provisions. At any rate, such judicial abuse of the "due process" clause has been thoroughly repudiated by the U.S. Supreme Court. One must not forget the highly creditable application by the U.S. judiciary of the prohibition against depriving "any person of life, liberty or property without due process of law" to protect the individual's interests in vital administrative matters such as professional or occupational licencing, education and public employment, among others.

Whatever terminology may be employed, the person's procedural rights in vital civil and administrative matters must not be left without strong constitutional protection.

Re s. 13: - This wording would likely give the individual less protection than s.2(d) of the old Canadian Bill of Rights, and that section had been interpreted too narrowly. This section should also protect the right of an accused not to become a witness, and the right of a suspect or an accused to "remain silent" at all times, including during police interrogation or while in custody.

Re s. 15: - This section is of course one of the most important in the entire Charter, and one most worthy of support in principle. However, I respectfully suggest certain important changes to it are needed.

I suggest that the provisions re "equality before the law" and "equal protection of the law" be contained in a separate subsection (or even section) from the provisions naming and prohibiting certain grounds of discrimination. This should make it clear that they are separate legal concepts operating independently of each other. It should clearly allow the Courts to examine any distinction, discrimination or unequal treatment that may be challenged irrespective of whether it is in a "prohibited" category. The United States Supreme Court, without the benefit of a list of prohibited categories, has used the "equal protection" provisions of the 14th Amendment to create several standards by which challenged "classifications" are tested. Classi-

fications which are clearly the most "invidious" such as for example race, are labelled "suspect classifications" and are subject to "strict judicial scrutiny". Such a classification would almost always be nullified; it could only be upheld if "necessary to the achievement of a compelling state interest". On the other extreme, most classifications will be upheld unless it can be shown that they lack "rational relationship" to a "legitimate state interest". The Court appears to have developed an intermediate standard for classifications based on sex. Such classifications will be nullified unless they "serve important government objectives" and are "substantially related to achievement of those objectives". The current wording of s.15(1) could be construed as limiting the Court's "equality" and "equal protection" review to cases where the prohibited grounds are involved. This would be unfortunate.

Placing the "prohibited grounds" in a separate section or subsection would also make it clear that discrimination on such basis is unconstitutional irrespective of any technical construction of "equality before the law" or "equal protection of law".

Perhaps the committee ought to consider whether the prohibited grounds of discrimination be limited to race, national or ethnic origin, colour and religion. Unlike these four grounds, which are inherently unfair basis of distinction virtually always incapable of justification, there may be rare cases where age or sex might well prove a legitimate basis for differentiation. It would still be open for the Courts to strike down discrimination on these grounds on basis of "equality before the law" or "equal protection" if the circumstances warranted it. In recent years, several statutes which involved sex discrimination were nullified by the U.S. Supreme Court on the basis of the "equal protection" provisions of the 14th Amendment (This was without the benefit of the E.R.A., which has not yet been ratified by the required number of states).

Placing age and sex discrimination within the same apparently "absolute" standard of prohibition as the other four categories might create serious risks. On the one hand, it could lead to inflexible or unrealistic decisions. On the other hand, it could weaken the entire section by leading to narrow interpretations which might be followed in cases involving the other four categories of discrimination as well.

If it were deemed advisable to keep "age" and "sex" as prohibited grounds of discrimination, perhaps a "saving clause" ought to be written in, allowing for such distinctions where "reasonable". (An "absolute" prohibition against age discrimination could be interpreted as nullifying restrictions on the capacity of minors, or as vitiating old-age pension schemes. Clearly this is not what is desired).

I respectfully suggest that the "affirmative action" exception is s.15(2) is dangerously wide and might render most laws or measures purporting to be encompassed by it almost beyond "equal protection" or "anti-discrimination" judicial review. If it is deemed necessary to allow remedial programs which utilize otherwise prohibited criteria as a basis for evaluating individuals, it should be made clear that this can only be done where there is no reasonable alternative. Racial and similar classifications are inherently dangerous whatever the motives may be. If and where these are permitted, even in an attempt to "remedy past wrongs", the most stringent safeguards are required.
(NOTE: For interesting discussion on the legal, social and philosophical issues involved in "reverse discrimination", see the following U.S. Supreme Court decisions: DeFunis v. Odegaard, 416 U.S. 312 (dissenting judgment of Douglas, J.); Regents of the University of California v. Bakke; 98 S.Ct. 2733 and Fullilove v. Klutznik 100S.Ct. 2758).

Re s. 23: I am inclined to agree that these rights should be extended to non-citizens and to persons irrespetive of their "first language".

I am concerned about the terminology which seems to give the "absolute" power of decision to the parents. Surely this is not meant to apply if the "child" had reached the age of majority. However, even when the child is still a minor, it might be wise to leave some room for account to be taken of the child's wishes or "best interests", especially at the "secondary" level.

Re s. 24: Why the use of the confusing expression "inoperative"? The Charter should be clearly stated to be jurisdictional, and any violation of it should render legislation ultra vires to the same extent that violations of s. 91 or 92 of the BNA Act would.

I wish to further suggest that the "Proposed Resolutions" be expanded to entrench the position of the Supreme Court and to add greater protection to its Justices' tenure. The added responsibility of the Supreme Court could increase the temptations of an unscrupulous government or Parliament to interfere with the Court's independence. This danger must be strictly guarded against.

Respectfully submitted,
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Rm. 23-1022 Pembina Highway
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THE POSITION OF THE MANITOBA METIS FEDERATION ON THE PROPOSED RESOLUTION RESPECTING THE CONSTITUTION OF CANADA

The Manitoba Metis Federation fears that the "Proposed Resolution on the Constitution of Canada" poses a serious danger to the rights we won in 1870. The danger is that the proposal as it is presently drafted provides amendment procedures which could lead to the complete loss of our rights whenever a majority of the Legislature of Manitoba and the Canadian Parliament decide to take them away from us. To those of you who argue that no combination of Canadian legislators would ever deal so harshly with a defenceless minority, let me answer with some history which refutes such naive optimism.

In the late 1860s, land hungry adventurers from Ontario entered the country of my ancestors and began to boast that soon all of the land would pass to them and their fellow Canadians. They bragged that there was no place for Half Breeds and Indians in the new regime. Sure enough, a bargain was struck between the Hudson's Bay Company and Canada and in all of it there was no mention of protection to the actual occupants of the land, no assurance that they would have any rights at all in the new colonialism. And so my ancestors resisted. Over the winter of 1869-70, they worked out a Bill of Rights for themselves which defined their terms for admission to the Canadian Federation as a Province, not a colony. (From: The development of the "List of Rights" is documented by the sev-

eral drafts reprinted in W.L. Morton (ed.), Manitoba: The Birth of a Province, pp. 242-250.) — Then John A. Macdonald went through the motions of conceding enough of these rights in Ottawa in the spring of 1870 that the delgates from our country returned home satisfied that their mission had been well accomplished.

In the meantime, the government contrived means to undo that which had been done. Macdonald dispatched troops to Manitoba and sent a proposal to London to amend The British North America Act of 1867. Macdonald's letter to the British asked them to amend the Constitution to empower the Canadians to create new provinces in the Territories and to write Constitutions for these new provinces at the same time that they were admitted to the Federation. Macdonald's proposal was intended to be retroactive justification for The Manitoba Act, but his draft of the amendment also left the Canadian Parliament completely free to amend this and other such statutes in the future in any respect whatsoever. (From: Letter from J. A. Macdonald to the Earl of Kimberley (Dec. 29, 1870), Department of Justice Letter Books, Public Archives of Canada, RG 13, A3, vol. 559, pp. 225-230.) — Thus, Macdonald and his colleagues hoped to create a class of provinces whose Constitutions would be vulnerable to perpetual meddling from Ottawa. He wanted colonies, not partners in Confederation. To a certain extent, the British spoiled his scheme by adding a sixth section to the amendment which Macdonald proposed; Section 6 of The British North America Act of 1871 declares that the Parliament of Canada is not competent to amend the Manitoba Act or any other such statutes creating new provinces. (From: 34 & 35 Vict. c. 28 (U.K.), found in R.S.C. 1970, Appendix II, no. 11, p. 289.) — In this way, the British entrenched these rights in Canada's Constitution for all time. Only the British were supposed to be able to add or detract from the rights in this fundamental law.

Canada was so determined to nullify the rights of the Manitoba Metis, however, especially their rights to land, that they defied this provision of the Constitution on numerous occasions between 1873 and 1885. Altogether, eight Canadian laws were passed which tended to rob important sections of the Manitoba Act of their original and intended meaning or to repeal important sections outright. (From D. N. Sprague, "Government Lawlessness in the Administration of Manitoba Land Claims, 1870-1887", Manitoba Law Journal, 10 (1980), pp. 415-441.) — As a result, most of the original population of the province in 1870 was first dispossessed and then dispersed from their homeland by 1885. The people then were both too poor and too uninformed of their legal rights to challenge these illegal amendments in court, but they did resist. A mass grave of my people killed at Batoche fighting to save Saskatchewan from the same fate as Manitoba is today the silent testimony to the depth of their frustration and distrust. Today, however, we are knowledgeable of the legal basis on which we might take action in court to recover that which was unjustly taken away from our grandparents and we are not unwilling to take this action.

Here enters the constitutional proposal now being advertised by the present Government of Canada. Assuming that the proposal is ratified by Great Britain, the interim amending procedure in Section 34 and the permanent procedure contained in Section 43 will empower the Canadian Senate, or the House of Commons, or the Legislative Assembly of the Province of Manitoba to initiate a resolution repealing Sections 31 and 32 of The Manitoba Act. The grounds of such a repeal could be the plausible but false assertion that all of the claims which possibly could be made under either of these sections were settled long ago to the satisfaction of the Minister of the Interior, therefore, all rights defined in these two sections are now superfluous. Having been ratified by Canada and Manitoba, such a resolution would effectively destroy all rights of the Metis people to the lands owing their ancestors.

If an individual Metis person protested subsequently on grounds that Section 24 of the Charter of Rights protects him or her from such arbitrary action, such a person would discover that Section 24 does not protect any person's rights from the amending formula, Section 24 simply asserts that nothing in the charter shall be construed as denying the existence of such rights. Even if Section 24 did apply to the amending formula, it would be far from certain that Metis rights under The Manitoba Act would qualify for the protection of Section 24. Moreover, the litigant would still discover that he or she would lose since Section 1 of the charter gives legislators scope to ignore all rights and do whatever is "generally accepted in a free and democratic society with a parliamentary system of government". The courts might well find it reasonable for the right in question to have been repealed since three legislative bodies would have endorsed the action.

For this reason, Mr. Chairman, I conclude that the proposed amending formula and Charter of Rights leave us with even less security than we have under the present arrangement. We do not oppose patriation on this account, but we do think that the Charter of Rights should be strengthened to give more rights to the people and the courts and less to their legislators, and the protection granted in Section 24 should be extended to apply to the amending formula as well as the charter itself. In this spirit of hopeful but guarded optimism we support those persons who have already suggested alternate wording for Section 1 and Section 24. Our main reason for appearing before this committee, however, is to go on record saying that we are now well informed of our rights under Sections 31 and 32 of The Manitoba Act and that we have every intention of seeing that these rights are at last enforced. This may lead to litigation. If the Government of Canada were to repeal Sections 31 and 32 of The Manitoba Act in the manner in which we have suggested (simply to ease the pressure of threatened legal action), we would consider such a maneuvre to be the greatest breach of faith ever perpetrated in the history of Canada because if the Government of Canada has made one point clear in these constitutional proceedings it is the idea that no change will or should occur which in any way puts in jeopardy the rights which any person or persons might now claim under the present Constitution.

Respectfully submitted,
John Morriseau
President
Manitoba Metis Federation Inc.

Excerpt from Opening Statement by Professor Irwin Cotler to Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada

"Any enquiry into the constitutional process in Canada since 1867 — and even into much of contemporary

constitutional discourse exposes a continuing preoccupation with the powers of government at the expense of the rights of peoples. More particularly, traditional constitutional analysis — and reform — has revolved around the division of powers between the federal and provincial governments, as distinct from concern with limitations on the exercise of power regardless of government. The result is that the powers of government have preceded, and otherwise obscured, the rights of people, when it is the rights of people that should precede the powers of government.

Accordingly, we welcome an entrenched Charter of Human Rights both as a symbolic and substantive affirmation of our rights, as well as an appropriate remedy to secure them.

At the same time we would be less than candid if we did not acknowledge our misgivings regarding certain disquieting features and provisions of the Charter features which, if left unaltered, might prejudice the very rights the Charter is designed to secure. In a word, , after 113 years a Charter of Human Rights should be a bold, unequivocal, heroic declaration of Human Rights and of the means to secure them. Yet some of the language and limitations in the Charter and the absence of certain other rights and remedies may undermine that objective."

Excerpt from Oral Testimony by Canadian Jewish Congress

SECTION FIFTEEN.ONE (Addendum)

The Committee recommends that Section 15.1 express a general proscription of discrimination and protection of equality before the law with no grounds listed.

Alternatively, if prohibited grounds of discrimination are to be included, we believe that the prohibited grounds set forth in Section 15.1 are incomplete. In particular we recommend that the rights of the disabled be entrenched in the constitution. We recently made that recommendation in a brief to the Parliamentary Committee on the Disabled and we reaffirm that recommendation today.

As well, we submit that the list of prohibited grounds of discrimination should be expressed by way of the ejusdem generis principle, so as not to unduly freeze the prohibited grounds only to those now listed in Section 15.1.

We recommend that the Charter contain express reference to the rights of women. We suggest that Section 15 include an unequivocal principle — that this Charter guarantees the equal rights of men and women to the enjoyment and protection of rights set forth herein.

SECTION FIFTEEN.TWO (Addendum)

We support the principle of affirmative action as set forth in Section 15.2 of this Charter and as earlier enacted in Section 15 of the Charter of Human Rights Act. The components of affirmative action can be discerned in the Affirmative Action Programme for francophones in the Public Service as enacted pursuant to the recommendations of the Royal Commission on Bilingualism and Biculturalism.

It should be noted that affirmative action has indeed been with us for some time. The roots of affirmative action can be traced to the B & B report and to programmes for francophones, women, and native persons in the Public Service which were in place even before passage of the Human Rights Act. Many Canadian universities have developed special admission programmes for native students with resulting increases in the rates of native enrolment. In a sense, Section 15 of the Human Rights Act has given legal expression to policies and practice already in place in Canada. In a word, we support the principle of affirmative action as set forth in the Section 15.2 of the Charter — with the caveat that we distinguish between "positive" affirmative action and "negative" affirmative action in the form of "quotes".

SECTION TWENTY (Addendum)

Our Committee recommends that Section 20 be amended to include the following:

1. Any individual has the right to use English and French in any of the debates or proceedings of the legislative assembly of any province.
   The entrenchment has been recommended by the Positive Action, by C.B.A., and is contained in the federal constitutional proposals to the provinces of August 22, 1980.
   The absence of such a right would effectively prejudice the rights of official language minorities in one of the most important public fora in this country — the parliaments of the various legislatures.
2. Section 133 of The B.N.A. Act — and its equivalent of the Manitoba Act — should be extended to New Brunswick and Ontario.
   Section 133 which the Courts have rightly called a fundament right of law enshrines French and English as the official language of the courts and legislatures of Quebec and Manitoba.
   The extension of S. 133 to Ontario and New Brunswick was recommended by Bill C-60, the C.B.A., the Beige Paper and the federal proposals of August 22nd we associate ourselves with that recommendation.
   We trust that in due course this right will be to all the provinces of Canada.
3. A person charged with a criminal offence has a right to be tried in English or French if that is his ordinary language, and every native person to be tried in his mother tongue.

SECTION TWENTY-THREE (Addendum)

It is felt that simple availability of education or of funds for education is not sufficient, but it is essential that the minority language group have control of the curriculum and the schools dispensing education in the minority language, and that the best means of effecting this would be to permit those groups to control their own school boards.

SECTION TWENTY-FOUR (Addendum)

We understand that the approach here is one of "negative" affirmation i.e., to entrench existing rights without prejudice to the inclusion of new ones, be they treaty rights, aboriginal rights, or otherwise; and we appreciate that the scope of such treaty rights or aboriginal rights remains to be defined in discussions with the native peoples themselves and by the native peoples themselves — and we would not wish to presume to speak for native peoples in that regard.

At the same time, we are somewhat concerned that the notion of parliamentary sovereignty has hitherto

authorized the abrogation or derogation of existing rights, and while the rights themselves may be said to continue to exist they exist in abrogated form.

Accordingly, we suggest that this committee consider protecting against the abrogation or derogation from the rights of native peoples as well as moving at a later stage protection for treaty rights, aboriginal rights and such other rights as may be appropriately agreed upon.

Professor Irwin Cotler
November 18, 1980

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November 13th, 1980

Select Committee on the Canadian Constitution: Prof. Maxwell Cohen, O.C., Q.C., Ottawa/Montreal, Chairman; Prof. Harry Arthurs, Toronto; Marvin Catzman, Q.C., Toronto; Prof. Irwin Cotler, Montreal; David Freeman, Q.C., Vancouver; Prof. Martin Friedland, Toronto; Prof. Gerald Gall, Edmonton; Prof. Julius Grey, Montreal; Robert Kanigsberg, Q.C., Halifax; John Laskin, Toronto; David Lewis, C.C., Q.C., Ottawa; David Matas, Winnipeg; Alan Rose, Montreal; Lionel Schipper, Q.C., Toronto; Frank Schlesinger, Montreal; Prof. Stephen Scott, Montreal; Morris Shumiatcher, Q.C., Regina; Prof. Janice Stein, Montreal/Toronto. B. G. Kayfetz, Secretary, 150 Beverley St. Toronto M5T 1Y6 (416) 977-3811. Prof. Joseph Magnet, Ottawa, Special Advisor.

The Hon. Senator Harry Hays and Mr. Serge Joyal, M.P. Co-Chairmen of the Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada, Houses of Parliament, Ottawa, Ontario.

My dear Co-Chairmen,

The Canadian Jewish Congress Select Committee on the Canadian Constitution has the honour to present the following Submission containing the views of the Committee on the Proposed Canadian Charter of Rights and Freedoms.

The Committee's membership, as listed on this letterhead, includes experienced lawyers and scholars of Canadian constitutional law, Canadian human rights law and other public law areas within the Canadian political system. Included also in the membership are all of the regions of Canada and varieties of political affiliation.

The Committee already had written on August 21, 1980 to the Prime Minister of Canada, and to the ten First Ministers of the Provinces, outlining its program of study of the various aspects of human rights in Canada. It requested the views of the First Ministers on this proposed program and expressed support for a system of constitutionally entrenched rights for Canada. (see attached)

The Committee is aware that there is an important debate underway on the need for such a Charter considering the long tradition of "Rights" and "Freedoms" within the Anglo-Canadian constitutional and political system, and stated with cogency by several provincial First Ministers. The Committee has considered carefully this position. However, it is also aware of the long-standing problems associated with the achievement of a program of nationally recognized language and education rights in Canada. Equally, there is the need for national rules to protect the interests of individuals or groups against direct or indirect forms of discrimination or inequality. There is also the potential for interference with "human rights" when these are not fully articulated or clarified. Finally, there is the impact of the modern, interventionist state upon individuals and groups through legislative or executive behaviour that may violate, even if unintentionally, certain well understood claims and rights. For all these reasons it seems to the Committee no longer desirable to leave basic rights and freedoms to the protection of statutes or of the common law alone.

In short, the Committee believes that Canada will be served best by adopting some high statement of fundamental rights and freedoms. For the very presence of such a statement helps to crystallize national values and to provide rules and procedures that will better guarantee such values, secured now by the supreme law of the land — the Constitution of Canada.

In pursuing this objective of values and rights enshrined in the Constitution the Committee also believes that Canada will be more fully in accord with its obligation under various international instruments dealing with Human Rights and Fundamental Freedoms and to which it is a party — including the United Nations Covenant on Civil and Political Rights.

The adoption of a Charter of Rights may seem to shift greater responsibilities to the Canadian Courts. But the Committee desires to point to a long Canadian tradition that already has imposed such constitutional duties on the Courts involving the interpretation of Sections 133 and 93 as well as other provisions of the Act. Similarly, there has been the quasi-constitutional character of issues involved in the interpretation of the Canadian Bill of Rights and of federal and provincial statutes creating federal and provincial Human Rights Commissions. Together with the application of criminal law and procedure as well as varieties of provincial and municipal legislation, and paralleled by the evolution of modern principles of administrative law, these experiences have given Canadian Courts broad opportunities to deal with many aspects of Human Rights and Fundamental Freedoms.

The Canadian political and legal system, therefore, will not come unprepared for this additional task that results from applying a constitutional entrenched system of Rights to the whole of the Canadian legal order.

The standpoint adopted by the Canadian Jewish Congress, through this Select Committee, should be regarded as expressing a general Canadian point of view that shares principles and values with many other Canadians whatever their community or religious affiliations may be. Naturally, there are some matters of particular concern to many members of the Jewish Community of Canada. These are, for example: the possibility of one or more of these constitutional provisions affecting the "status" of alleged "war criminals" now living in Canada; the need for assurances that the entrenched protection of free speech will not also protect dissemination of "hate propaganda" as defined in the Criminal Code, or more generally; and finally, "affirmative action" programs that may lead to quotas

in the name of program preferences — for historically quotas have been symbols of, and barriers to, equality of opportunity. Nevertheless, the primary thrust of the Select Committee's views is in the direction of a broad association with all Canadians concerned with the clear benefits of a Charter in any future Canadian constitutional system.

The propsed Charter does not seem to include any provisions that deal with "enforcement" as such. Of course, issues involving "rights" would arise often in proceedings before tribunals either in the course of civil litigation or criminal proceedings. Nevertheless, there seems to be an important gap in the "enforcement" process. The Committee, therefore, addresses itself to this matter at the conclusion of its analysis of the Charter.

Similarly the question of national emergencies also has been given some special attention in this Submission in view of the problems raised by Article 1 as well as in other Articles of the Charter purporting to deal with "emergency" situations.

The Select Committee is convinced that the best interests of Canada will be served by the entrenchment in the Constitution of Canada of the Proposed Canadian Charter of Rights and Freedoms subject, however, to the comments and suggested changes in the analysis that follows.

Respectfully submitted,

Maxwell Cohen
Chairman

Submission of the Select Committee on the Constitution of Canada Canadian Jewish Congress

November 1980

SECTION ONE

"The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government."

The Committee is of opinion that the section should be deleted.

Section One attempts to do two things:

(1) it purports to guarantee charter rights and freedoms subject to limitations;
(2) it provides justification for suspension of charter rights during an emergency.

In the committee's opinion the section accomplishes neither function satisfactorily.

Section 1 goes entirely too far in the signalling caution to the courts to interfere with the legislature. A broad qualifying clause, such as s.1, placed at the charter's head, upsets the necessary balance between the Court and the Legislature in a Charter based judicial review system. The reference to a parliamentary system of government opens the door to an unprofitable, but inevitable debate about the authority of parliament to determine for itself whether its legislation conforms to constitutional requirements.

In the committee's view, defining the amplitude of Charter rights is properly a judicial task. To place a wide limitation clause at the beginning of the Charter tilts the balance unduly in the legislature's favour. It is likely to produce an unproductive debate about parliamentary supremacy. It may weaken the charter system now to become the basis of Canadian constitutional law.

Furthermore, broad qualification at the beginning of the charter seriously weakens its educational impact. The committee prefers to state general constitutional rights in a terse, abstract way in order to maximize the impact of a sense of constitutional liberty on the Canadian consciousness. Statement of qualified rights diminishes this impression; parliamentary sovereignty introduces ambiguity.

The committee points out that as presently drafted section 1 is inconsistent with Canada's obligations under Article 5(1) of the International Covenant on Civil and Political Rights, 1966. Article 5(1) provides that no state may limit rights and freedoms "to a greater extent than is provided for in the present covenant". The covenant provides for no such broad limitation of rights.

Finally, the committee recommends that a separate clause providing for qualification of Charter rights during emergencies should be included at the end of the Charter. A model clause is attached as section 28A.

SECTION TWO

"Everyone has the following fundamental freedoms:
(a) freedom of conscience and religion;
(b) freedom of thought, belief, opinion and —expression, including freedom of the press —and other media of information; and
(c) freedom of peaceful assembly and of association."

The committee is concerned about the effect of Section 2(b) on Hate Propaganda legislation currently in place at secs. 281.1 and 281.2 of the Criminal Code. Under Article 20 of the International Covenant on Civil and Political Rights, 1966, Canada has the obligation to prohibit by law "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". By Article 19(3) of the covenant domestic legislation may subject the right to freedom of speech to restrictions necessary "for respect of the rights or reputations of others". Hate Propaganda legislation falls squarely within the internationally recognized exceptions to freedom of speech.

SECTION THREE

"Every citizen of Canada has, without unreasonable distinction or limitation, the right to vote in an election of members of the House of Commons or of a Legislative Assembly and to be qualified for membership therein."

The committee is of opinion that section 3 must be broadened. Section 3 entitles every citizen of Canada "to be qualified for membership" in the House of Commons and of a Legislative Assembly. However, the section does not include the right to take office if elected. The committee recommends that the section place a check on legislative power, by unreasonable subsidiary requirements, to exclude from office members duly qualified and elected.

SECTION FOUR

(1) No House of Commons and no Legislative Assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by parliament and a Legislative Assembly may be continued by the Legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House of Commons or the Legislative Assembly, as the case may be.

The Committee is of the view that the words "real or apprehended" should be deleted from subsection 2. The deletion would bring section 4(2) into line with the emergency theory suggested by the committee at section 28A. It would eliminate the present concerns about resort to emergency powers on the basis of "apprehensions".

SECTION SIX

(1) Every citizen of Canada has the right to enter, remain in and leave Canada.
(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right
  (a) to move to and take up residence in any province, and
  (b) to pursue the gaining of a livelihood in any province.
(3) The rights specified in subsection (2) are subject to
  (a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis or province of present or previous residence; and
  (b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.

In view of the committee's suggested elimination of section 1, section 6(1) should be amended. The committee sugggests the addition of the words "subject to application of the law of extradition and criminal law", after the last word of section 6(1).

The committee recommends broadening the protection of s.6(1) in the following ways. First, "permanent residents" of Canada, however judicially defined, as well as citizens, should have full protection of s.6(1). Secondly, in conformity with Article 12(2) of the International Covenant on Civil and Political Rights, 1966, the right to leave Canada should be accorded to everyone, subject to the suggested proviso respecting criminal and extradition laws. Finally, Canada is a signatory to the Convention Relating to the Status of Refugees, 1951. Regard must therefore be had to obligations incurred under Articles 31-33 of that Convention. These articles provide for protection from arbitrary expulsion and unreasonable restriction on movement.

In conformity with Article 12(1) of the International Covenant on Civil and Political Rights, 1966, the protection of section 6(2) should be broadened to include "everyone lawfully within Canada". Under Article 26 of the Convention Relating to the Status of Refugees, 1951, Canada has the further obligation to accord s.6(2) rights to refugees lawfully within Canadian territory.

SECTION SEVEN

"Everyone has the right 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 committee assumes that, consistent with its own views, the word "Everyone" in section 7 embraces persons in Canada illegally.

SECTION EIGHT

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

The committee observes that as presently drafted s.8 permits searches and seizures of any kind if supported by statute. Accordingly, the committee is of opinion that some limitation must be placed on powers of search and seizure in order to prevent arbitrary and unreasonable searches and seizures. Accordingly, the committee recommends that section 8 be redrafted as follows:

"8. Everyone has the right not to be subjected to arbitrary or unreasonable search or seizure".

SECTION NINE

"Everyone has the right not to be detained or imprisoned except on grounds, and in accordance with procedures, established by law".

Similarly, the committee observes that some limitation must be placed on powers of arrest in order to prevent arbitrary and unreasonable detentions. Accordingly, the committee recommends that section 9 be redrafted as follows:

"Everyone has the right not to be arbitrarily or unreasonably detained or imprisoned".

SECTION TEN

"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."

The committee recommends that, consistent with obligations under Article 14(3)(d) of the International Covenant on Civil and Political Rights, 1966, the protection of section 10 be broadened to include, on arrest, the right to legal aid. In the committee's opinion, it is intolerable to discriminate between rich and poor with respect to the right of an arrested person to retain and instruct counsel.

The committee observes that section 10(b) rights cannot be fully effective unless there is a corresponding duty upon public authorities to inform an arrested person of the right to retain and instruct counsel without delay. While endorsing the right to be told, the committee refrains from endorsing a corresponding exclusionary rule when the right to be told is infringed. In the committee's opinion, creation of appropriate remedies is properly a judicial task to be worked out on a case by case basis under the committee's proposed enforcement clause at s.25A. It would be for the courts to decide whether evidence taken in breach of s.10(b) should be excluded, whether denial of the s.10(b) right should be a factor in determining the voluntariness of

an accused's confession, or whether some other remedy would be expedient.

The Committee observes that s.10(b) in the present French version gives a clear right of access to counsel to a degree not so manifestly stated in the English text.

SECTION ELEVEN

"Anyone charged with an offence has the right
(a) to be informed promptly of the specific offence;
(b) to be tried within a reasonable time;
(c) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;
(d) not to be denied reasonable bail except on grounds, and in accordance with procedrues, established by law;
(e) not to be found guilty on account of any act or omission that at the time of the act or omission did not constitute an offence;
(f) not to be tried or punished more than once for an offence of which he or she has been finally convicted or acquitted; and
(g) to the benefit of the lesser punishment where the punishment for an offence of which he or she has been convicted has been varied between the time of commission and the time of sentencing.

The committee has discussed the question whether constitutionalization of the presumption of innocence as s.11(c) will disturb the evolution of the defense of due diligence as articulated by the Supreme Court in R.v. Sault Ste. Marie, (1978) 2 S.C.R. 1299. In the committee's opinion, s.11(c) will not interfere with the shifting onus under the Sault Ste. Marie doctrine.

The committee observes that the drafting of s.11(d) is defective because it does not afford protection against unreasonable bail. As presently drafted, reasonable bail may be denied if in accordance with law and legal procedure. In the committee's opinion this makes s.11(d) superfluous. The committee recommends that s.11(d) be redrafted as follows;

"not to be arbitrarily or unreasonably denied bail".

The committee is seriously concerned about the effect of s.11(e) on successful prosecution of War Criminals. The concern arises because it is unclear whether the word "offense" in s.11(e) includes international war crimes. If it does, Canada would become a safe haven for Nazi War Criminals.

The committee observes that Article 15(1) of the International Covenant of Civil and Political Rights, 1966, provides for protection against retroactivity of criminal offences "under national or international law", but makes the protection subject to Article 15(2). Article 15(2) provides:

"nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principle of law recognized by the community of nations".

The committee observes that the Covenant similarily prevents a double jeopardy argument from benefiting a War Criminal who was tried in absentia is some other jurisdiction. The Covenant provides at Article 14(7) that a foreign conviction or acquittal has to be "in accordance with the law and penal procedure of each country". The committee is of opinion that it would be desirable to modify s.11(e) accordingly to meet the above difficulties.

The committee is of opinion that section 11(f) is far too narrow in that it offers no protection against double jeopardy for related offences, or offences substantially the same as the principle offence. Nor does the section prevent the Crown from unreasonably splitting a case. The committee accordingly recommends that the word "offence" in s.11(f) be replaced by the words "acts giving rise to an offence".

SECTION THIRTEEN

"A witness has the right when compelled to testify not to have any incriminating evidence so given used to incriminate him or her in any other proceedings, except a prosecution for perjury or for the giving of contradictory evidence".

The committee observes that s.13 is inconsistent with obligations arising under Article 14(3)(g) of the International Covenant on Civil and Political Rights, 1966. S.13 allows a witness in third party proceedings to be compelled to testify against himself but protects against use of evidence so given in subsequent proceedings. Article 14(3)(g) of the Covenant provides that "Everyone shall be entitled to the following minimum guarantees (g) not to be compelled to testify against himself or to confess guilt".

Under present law — see Tass v. King (1946), 87 C.C.C. 97 (S.C.C.) — a witness in third party proceedings must specifically request, under s.5 of the Canada Evidence Act, exclusion of self-incriminating evidence in former proceedings. If he fails to do so, his self-incriminating evidence may be used against him at a subsequent trial, notwithstanding that he did not know his rights at the time he was being asked to testify.

The committee recommends that section 13 be broadened in order to require that a witness in third party proceedings be told that, although compellable, no evidence which he gives may be used against him in subsequent proceedings.

SECTION FIFTEEN

"(1) Everyone has the right to equality before the law and to the equal protection of the law without discrimination because of race, national or ethnic origin, colour, religionh by regional affirmative action programs. Generally, the committee is not in favour of quota systems and regards these cases as exceptions.

SECTION SIXTEEN

"(1) English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.
(2) Nothing in this Charter limits the authority of Parliament or a legislature to extend the status or use of English and French or either of those languages.

The committee observes that the word "extend" in s.16(2) is imperfectly reflected by the French equivalent "d'ameliorer". The two concepts should be brought

into line. The committee observes that this could be done by changing the English word "extend" to "improve".

SECTIONS NINETEEN AND TWENTY

"Either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament."

"Any member of the public in Canada has the right to communicate with, and to receive available services from any head or central office of an institution of the Parliament or government of Canada in English or French, as he or she may choose, and has the same right with respect to any other office of any such institution where that office is located within an area of Canada in which it is determined, in such manner as may be prescribed or authorized by Parliament, that a substantial number of persons within the population use that language."

Similarly, the committee observes that the words "English or French" are imperfectly reflected in the French equivalent "la langue officielle". Furthermore, there is a conceptual difference. The committee recommends that these two concepts be brought into line.

SECTION TWENTY THREE

(1) Citizens of Canada whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside have the right to have their children receive their primary and secondary school instruction in that minority language if they reside in an area of the province in which the number of children of such citizens is sufficient to warrant the provision out of public funds of minority language educational facilities in that area.

(2) Where a citizen of Canada changes residence from one province to another and, prior to the change, any child of that citizen has been receiving his or her primary or secondary school instruction in either English or French, that citizen has the right to have any or all of his or her children receive their primary and secondary school instruction in that same language if the number of children of citizens resident in the area of the province to which the citizen has moved, who have a right recognized by this section, is sufficient to warrant the provision out of public funds of minority language educational facilities in that area.

The Committee is concerned about several aspects of s.23(1). First, the Committee is of opinion that everyone should be able to claim protection of this section. The Committee is unconvinced that the section should be limited to "Citizens of Canada". Secondly, the Committee strongly objects to the concept of "first language learned and still understood". This implies language testing, which the Committee believes to be highly improper. Finally, the Committee observes that the present wording implies that only publicly funded minority language education will be permitted. In the Committee's view, privately funded minority language education should be permitted as well.

Therefore, the Committee recommends that section 23(1) be redrafted as follows:

"Any person residing in Canada whose language of education at the primary or secondary level is that of the English or French linguistic minority population of the province in which he or she resides has the right to have his or her children receive their kindergarten, primary and secondary school instruction in that minority language".

"If he or she resides in an area of the province in which the number of children of such residents is sufficient, public funds shall be provided for such instruction".

The same reasoning applies to section 23(2). However, because the citizenship requirement has been deleted, some provision which prevents avoidance of the discipline of section 23(1) is tolerable. The spirit of section 23(2) protects a child who has commenced his education in the minority language in another province. In order that such child not be required to change in midstream, the following version is suggested.

"Where any resident of Canada changes residence from one province to another, and prior to the change, any child of that person has received at least three consecutive years of his or her kindergarten, primary or secondary instruction in either English or French, that person has the right to have any or all of his or her children receive their primary and secondary school instruction in that same language.

If the number of children of those persons resident in the area of the province to which that person has moved and who have a right recognized by this section is sufficient, public funds shall be provided for such instruction".

SECTION TWENTY FIVE

"Any law that is inconsistent with the provisions of this Charter is, to the extent of such inconsistency, inoperative and of no force or effect".

The Committee is of the opinion that it is desirable to prevent any unprofitable debate, such as that which has plagued the Diefenbaker Bill of Rights, about application of the Charter. Therefore, the Committee recommends that the words "enacted before or after the coming into the force of this Charter" be inserted after the word "law" in s.25.

SECTION TWENTY NINE

"(1) This Charter applies
(a) to the Parliament and Government of Canada and to all matters within the authority of parliament including all matters relating to the Yukon Territory and Northwest Territories; and
(b) to the legislature and government of each province and to all matters within the authority of the legislature of each province.
(2) Notwithstanding subsection (1), section 15 shall not have application until three years after this Act, except Part V, comes into force".

The Committee sees no reason why section 29(2) should provide for a general three-year delay for the coming into force of section 15. The Committee understands that inclusion of a prohibition on discrimination because of age creates difficulty in that policies respecting age and retirement might require adaptation.

Thus, the Committee recommends that the delay be restricted to the age provision of s.15(1), and not to s.15 as a whole.

GENERALLY

Enforcement

The Committee observes that the Charter is deficient in failing to include any provision relating to enforcement, other than the as yet unknown consequences of applying the Charter to civil and criminal cases as they arise before the courts. Even then, courts may be reluctant to give directions or orders. Therefore, some explicit statement of remedies and enforcement procedures is required.

Obligations incurred under the International Covenant on Civil and Political Rights, 1966, require Canada "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity . . .". Furthermore, Article 9(5) of the Covenant provides that "anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation".

In the Committee's opinion, an enforcement clause is mandatory. Therefore, the Committee recommends inclusion of the following section:

"25a. Everyone entitled in law to the performance by a public authority of an act or omission shall, in cases of actual or threatened default, be entitled to full and effectual relief, by mandatory or restraining order of a superior court, to compel the performance of the act or omission. Pecuniary compensation shall be awarded in appropriate cases".

Emergency

The Committee is of opinion that provision should be made for limiting Charter rights during emergencies. The Committee is concerned that such limitation not be more sweeping than necessary. It is equally concerned that circumstances giving rise to limitation of Charter rights not be unreasonably vague. Therefore, the Committee recommends inclusion of the following section:

"28a. In case of war, domestic insurrection, or natural calamity threatening the life or safety of the nation or any part thereof, the rights enumerated in this Charter may be subjected to such reasonable limits as are strictly required by the exigencies of the actual emergency. Any measures enacted under this clause which are inconsistent with the ordinary operation of this Charter shall lapse after 20 days, if not further extended by a two-thirds vote of the Parliament of Canada".

CANADIAN JEWISH CONGRESS
CONGRES JUIF CANADIEN

August 21, 1980.

The Rt. Hon. Pierre Elliott Trudeau, P.C., Q.C., M.P.
Prime Minister of Canada
House of Commons
Ottawa, Canada.

Dear Prime Minister:

The Canadian Jewish Congress at a recent meeting of National Officers established a Select Committee on the Canadian Constitution with myself as Chairman and including as members those listed on this letterhead. The Committee's composition reflects experience from the practising bar, the universities, and varying degrees of community activity and almost all regions of Canada are represented.

The Committee hopes to make a useful contribution to the deliberations of the First Ministers and their colleagues at this important and critical time when the basic character of the Canadian federal system is being fully examined and broad and significant changes are envisaged.

It is not the intent of the Committee to address itself to all of the many and complex questions that are now being examined by you and your colleagues. Rather, the Committee believes it can best contribute to the fund of ideas, the approaches possible to implement them, if it confines itself to those areas of particular concern to the Canadian Jewish Congress which has long interested itself in the human rights of all Canadians. To this end the Committee will concentrate on four main areas in the submissions it proposes to make to you and the other First Ministers.

1. Human Rights Generally.

The Committee believes it must adress its attention, first of all, to the general question of human rights in Canada and the extent to which a revised Canadian constitution should and can embrace this fundamental area of social and political concern. To that extent the Committee's work here will share common ground with many other organizations and individuals in Canada determined to see certain basic "values", "rights", and "procedures" enshrined or entrenched, wherever possible or desirable, in any redesigned Canadian federal system and its constitution.

2. Matters of Particular Concern to the Jewish Community and to Other Minorities.

Necessarily, the Committee will address itself to those issues of racial, religious and cultural freedom and opportunity that continue to concern many minorities in Canada. The Jewish community shares that experience, occupying as it does its own special historical place within that family of problems and perceptions. This area poses the dilemma as to how far the valued movement in recent years toward accepting the reality of a "multicultural Canada" can or should be given general or special constitutional recognition. Naturally, the Canadian Jewish Congress will be concentrating here on some matters of particular relevance to Jewish communal needs, its past experience and future expectations but it will also study the problem in its general application to all minorities living in a free society with a long voluntarist tradition. Language rights and educational rights in the two official languages of Canada are matters inviting the attention of the Committee as it searches for solutions in aid of this classical Canadian linguistic/education controversy. The members of the Committee intend to address themselves to this subject as Canadians but at the same time hope to relate it to the special problem of minority cultures, seeking, wherever practicable, appropriate measures to assure survival and fulfillment in the Canadian context.

3. Human Rights Matters Not Necessarily Lending Themselves To Constitutional Entrenchment or Statement.

The Committee appreciates the fact that perhaps the larger segment of the human rights complex is to be

found in varieties of protection that do not require entrenchment but only the effective operation of statutes or the general law of the land. The Criminal Code, principles of Common law and Civil law, anti-discrimination and equal rights provisions in statutes, provincial and federal — all of these and more constitute the essence of a general legal fabric that attempts to achieve a fair and free society. Hence it is the intention of the Committee to attempt to distinguish between those human rights matters requiring constitutional protection, as distinct from the large group of protections, safeguards and encouragement to be found in many other regimes of the Canadian legal and social system. The identification of these and possible suggestions for their enlargement and improvement may be useful for you and your colleagues as you attempt to make those difficult distinctions between rights requiring constitutional entrenchment and those that do not.

4. The International Obligations of Canada and Their Implementation in Canadian Law.

The complex of Canada's obligations under international agreements to which it is a signatory and the large variety of human rights from I.L.O. Conventions to the U.N. Charter, the U.N. Covenant on Political and Civil Rights and the U.N. Covenant on Social, Economic and Cultural Rights and certain resolutions of the U.N. Assembly and specialized agencies, make it necessary to examine the extent to which these obligations, legal and moral, have become part of the law of Canada. This analysis will help to demonstrate that the present Canadian constitutional system requires the provinces to implement many provisions of treaties and agreements, signed and ratified by Canada, where the subject matter lies within provincial jurisdiction, if the agreements are to become enforceable. The Committee will seek to study the present results of this constitutional reality as it touches upon the growing international network of human rights instruments to which Canada is a party by virtue of these many agreements and their ratification or by its "acceptance" of such other instruments as U.N. resolutions. Similarly, there are a number of important international instruments dealing with human rights where Canadian participation has not yet been undertaken for political or constitutional reasons. The Committee would hope to examine into this area and study the domestic effectiveness until now of federal and provincial implementation and administration of Canada's international obligations in the human rights field.

The Committee may find in the course of its work that other subjects and approaches are necessary and desirable. It well may be that you will find that this program does not address itself to certain matters with which you believe the Committee ought to be concerned. The Committee is anxious to have your suggestions.

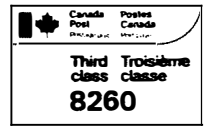
For these reasons we would welcome your comments on the above program of study and also would be happy to have your views upon any other aspect of the Committee's role in assisting governments with the shaping of the Canadian future at this critical time.

Would you be kind enough to inform the Committee about the First Ministers' timetable so that the views of the Committee may be put to you in time to be of help in your deliberations. Should you plan to invite public representations the Committee would be pleased to learn of your intentions.

Yours sincerely,

Maxwell Cohen,
Chairman.

c.c. Hon. Jean Chretien.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