INTERPRETING THE CHARTER — USE OF THE EARLIER VERSIONS AS AN AID

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I. INTRODUCTION

Now that the Canadian Charter of Rights and Freedoms has become part of Canada's newly patriated constitution,[1] the focus of attention has shifted from the political to the judicial arena, in particular to the judges who are being asked to interpret its provisions. The question now is, what sort of interpretation will those provisions be given? Will our judges give broad scope to the rights and freedoms spelled out in the Charter and be bold in their development of remedies to ensure their enforcement? Or will they give narrow scope to those rights and freedoms and be timid in their development of remedies?

Clearly, the task of interpretation confronting our judges is not an easy one. Constitutional documents by their very nature tend to be generally worded and the Charter is no exception. In fact, room for differences of opinion abounds. Especially problematical will be the new terms like "the right . . . to be tried within a reasonable time",[2] "the right . . . to pursue the gaining of a livelihood in any province"[3] and "the right to the equal protection and equal benefit of the law".[4] Even familiar phrases like "freedom of religion",[5]

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1 The Charter, as it will be called, is found in Part I of the Constitution Act, 1982, as enacted by the Canada Act, 1982, c. 11 (U.K.), proclaimed in force 17 April 1982.

2 See s. 11(b).

3 See s. 6(2)(b).

4 See s. 15(1).

5 See s. 2(a).

"freedom of association"[6] and "the right to life, liberty and security of the person"[7] will cause difficulties.

Fortunately, our judges are not without guidance in the performance of this difficult task of interpretation. In fact, depending on the particular provision they are called upon to interpret, our judges have a remarkably wide range of sources to which they can turn for assistance. These include *inter alia* (1) the provisions of the Canadian Bill of Rights[8] and the body of jurisprudence surrounding those provisions;[9] (2) the provisions of other bills of rights, most notably the American Bill of Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights,[10] and the bodies of jurisprudence surrounding those provisions; (3) the body of civil liberties jurisprudence based on the old British North America Act, 1867 and its amendments;[11] (4) decisions involving the

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[6] See s. 2(d).

[7] See s. 7.

[8] R.S.C. 1970, Appendix III.

[9] That body of jurisprudence will be of assistance even when the language of the Bill of Rights differs from that of the Charter. Just as similarity in wording suggests an intention to have similarity in interpretation, so differences in wording suggests an intention to have differences in interpretation.

[10] The first two of these are relevant because they operate in countries with government systems roughly similar to those which exist in Canada. The third is relevant because Canada became a signatory to it in 1976. It is of interest to note that the International Covenant on Civil and Political Rights is referred to in a number of the explanatory notes that accompanied three of the different versions of the Charter, in particular those that accompanied the second version.

[11] The British North America Act, 1867 has been renamed the Constitution Act, 1867 by s. 53(1) of the Constitution Act, 1982. The other British North America Acts have been similarly renamed.
The cases that will be of particular relevance here will be those dealing with the notion of an implied bill of rights (*e.g., Reference re Alberta Statutes* [1938] S.C.R. 100; *R. v. Hess (No. 2)* [1949] 4 D.L.R. 199 (B.C.C.A.); *Winner v. S.M.T. (Eastern) Ltd.* [1951] S.C.R. 887 (*per* Rand J.); *Saumur v. City of Quebec* [1953] 2 S.C.R. 299; *Switzmon v. Elbling* [1957] S.C.R. 285; *Oil, Chemical & Atomic Workers International Union v. Imperial Oil Ltd.* [1963] S.C.R. 584; *A.G. of Canada & Dupond v. Montreal* [1978] 2 S.C.R. 770), and those dealing with the division of powers in the area of civil liberties (*e.g., Reference re Alberta Statutes, supra*; *Saumur v. City of Quebec, supra*; *Henry Birks & Sons v. City of Montreal* [1955] S.C.R. 794; *Switzman v. Elbling, supra*; Koss v. Konn (1962) 30 D.L.R. (2d) 242 (B.C.C.A.); *Oil, Chemical & Atomic Workers International Union v. Imperial Oil Ltd., supra*; *McKay v. The Queen* [1965] S.C.R. 798; *R. v. Beattie* [1967] 2 O.R. 488 (ONT. H.C.); *Hlookoff v. City of Vancouver* (1968) 67 D.L.R. (2d) 119 (B.C.S.C.); *Walter v. A-G of Alberta* [1969] S.C.R. 383; *R. v. Harrold* (1971) 19 D.L.R. (3d) 471 (B.C.C.A.); *Nova Scotia Board of Censors v. McNeil* [1978] 2 S.C.R. 662; *A-G of Canada & Dupond v. Montreal, supra*; *R. v. Engler & Latimer* [1978] 6 W.W.R. 230 (ALTA. S.C., APP.D.). These cases deal almost exclusively with

interpretation of ordinary statutes that place civil liberties at risk;[12] (5) private law decisions in which civil liberties issues are discussed;[13] (6) the French language version of the Charter; (7) the report of the proceedings of the Special Joint Committee on the Constitution;[14] (8) the debates on the Charter in the House of Commons and Senate; and (9) the six previous versions of the Charter, starting with the initial draft of the summer of 1980, as well as the explanatory notes that accompanied three of those versions.

The purpose of this paper is to examine the last of these aids to the interpretation of the Charter. This examination will be broken down into four parts. The first part will be devoted to a brief description of each of the versions, placing it in its historical context and indicating some of its more important characteristics. In the second part we will look at some of the lessons that can be learned with respect to the meaning of particular provisions from a study of the various versions in which they appeared. The third part will focus on the propriety in law of making use of this component of the legislative history of the Charter as an aid to the interpretation of its provisions. The final and major part will consist of a series of charts showing, section by section, how each provision of the Charter arrived in its final form.

II. THE DIFFERENT VERSIONS OF THE CHARTER

In all, there were seven different versions of the Charter. Identifying each of these by the date on which it was issued, they were as follows:

1. *August 22, 1980* Entitled "Discussion Draft" and marked "Confidential", this version of the Charter was the work of the

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what in the Charter are called "Fundamental Freedoms" and hence will be of benefit primarily in the interpretation of s. 2.

12 Of primary interest here will be the cases dealing with the provisions of the Criminal Code (*e.g., Boucher v. The King* [1951] S.C.R. 265; *Moore v. The Queen* [1979] 1 S.C.R. 195; *Colet v. The Queen* (1981) 35 N.R. 227 (S.C.C.)), but there are a number of cases dealing with other statutes that will be of relevance as well (*e.g., R. v. Kite* [1949] 2 W.W.R. 195 (B.C. Co. Ct.); *Smith & Rhuland Ltd. v. The Queen* [1953] 2 S.C.R. 95; *Gay Alliance Toward Equality v. The Vancouver Sun* [1979] 2 S.C.R. 435, 27 N.R. 117).

13 I have in mind here cases in areas like the law of defamation and the law of false imprisonment. *E.g.*, the decision in *Chernesky v. Armadale Publishers Ltd.* [1979] 1 S.C.R. 1067, (1978) 90 D.L.R. (3d) 321, would be relevant to the definition of "freedom of the press and other media of communication".

14 *Minutes of Proceedings and Evidence of the Special Joint Committee of the Senate and the House of Commons on the Constitution of Canada* [*1980-81*], Supply and Services Canada, 1981.

federal government and, as its title suggests, was designed to indicate in general terms what sort of document the federal government wanted to see enacted. It was aimed at the ten provincial governments, to whom it was circulated for the purpose of eliciting their views on its contents. In spirit it was quite a bold document, with a distinctly pro-civil libertarian flavour. Some of its more noteworthy features included express provision in the "Legal Rights" category for the right to privacy; express provision in the "Mobility Rights" category for the right "to acquire and hold property in . . . any province"; the use in what is now section 7 of "except by due process of law" rather than the potentially weaker phrase "except in accordance with the principles of fundamental justice"; much broader language rights than we now have; and a broadly worded remedies provision.

2. *October 5, 1980* This was the first publicized version of the Charter and the first to be accompanied by explanatory notes. Tabled in both the House of Commons and the Senate along with the other components of the proposed resolution respecting the Constitution of Canada, it too was the work of the federal government. This version, however, differed in a number of important respects from the "Discussion Draft", and in spirit was far less sympathetic to the individual and to minority groups than its predecessor. Some of the more important changes included the addition of the phrase "with a parliamentary system of government" at the end of section 1, the "reasonable limits" provision; the deletion of the right to privacy; the elimination from the "Mobility Rights" category of the right "to acquire and hold property in . . . any province"; the serious erosion of several of the rights in the "Legal Rights" category; the narrowing of several of the languages rights; and the deletion of the general remedies provision. While some of these changes may have been made because of second thoughts on the part of the federal government, it seems likely that many if not most of them were made in response to complaints made by one or more of the provincial governments about the initial draft.

3. *January 12, 1981* This version of the Charter was submitted to the special parliamentary Committee on the Constitution by Justice Minister Chretien following several weeks of testimony before that committee by a wide range of interested parties. It was said by him to embody "changes to the resolution which I would be prepared to support at this time"[15] and in tone it represented a

[15] *The Globe & Mail*, 13 January 1981, at 10.

return to the spirit of the "Discussion Draft". Thus the language of section 1 underwent dramatic changes with the deletion of the phrase "with a parliamentary system of government" and the introduction of the phrase "as can be demonstrably justified"; the legal rights that had been diluted in the October 5, 1980 version were strengthened; the right "to be informed" of the right "to retain and instruct counsel without delay" was added to section 10(b); the right to trial by jury was added to section 11; the "Equality Rights" provision was given broader scope; and a general remedies provision was re-introduced. Most of the changes were accompanied by explanatory notes.

4. *February 13, 1981* This version of the Charter was tabled in the House of Commons by the Minister of Justice following the report of the special parliamentary committee. The differences between this version and its immediate predecessor were relatively few in number. The trend, however, was still to broaden the scope of the Charter's provisions. Thus, for example, "media of information" in paragraph 2(b) was broadened to "media of communication"; "search *and* seizure" in section 8 was changed to "search *or* seizure", protection for the deaf was added to section 14; and section 15 was broadened to provide protection for the mentally and physically disabled. This was the last version of the Charter to be accompanied by explanatory notes.

5. *April 24, 1981* This was the version of the Charter that was submitted to the Supreme Court of Canada for the purposes of the *Constitutional Amendment Reference*.[16] It represented the "final version" insofar as the federal parties were concerned, at least to that stage. The only difference between it and its predecessor was the addition of a special provision guaranteeing equally to male and female persons all the rights and freedoms spelled out in the Charter "notwithstanding anything in this Charter".

6. *November 18, 1981* This might be called the "November Accord Version", following as it did on the heels of the agreement reached in Ottawa by the federal government and nine of the ten provincial governments on November 5, 1981. The impetus for that agreement had come, of course, from the decision of the Supreme Court of Canada in the *Constitutional Amendment Reference*[17] which declared the existence of a convention requiring "substantial agreement" amongst the federal and provincial governments for

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[16] (1981) 125 D.L.R. (3d) 1, 39 N.R. 1.

[17] *Id.*

constitutional amendments of the kind embodied in the proposed resolution. The most significant of the few changes made in the Charter at this stage was the addition of a provision allowing Parliament and the provincial legislatures to override certain sections of the Charter. (Also important, although not technically a change to the Charter, was the deletion of the provision which recognized and affirmed "the rights of the aboriginal peoples of Canada".)

7. *December 2, 1981* This was the final version of the Charter, the one now found in the recently enacted Constitution Act, 1982. Only two changes were made at this stage, one being the revival of the aboriginal rights provision (albeit in a slightly revised form and again as a separate part of the Act) and the other being an attempt to preclude the use of the override provision in cases of sex discrimination.

III. THE LESSONS TO BE LEARNED

It would be impossible in a paper of this nature to list all of the lessons that can be learned from an examination of the various versions of the Charter. However, two or three examples should suffice to make the point that such an examination can, on occasion, be very useful as an aid to interpretation.

The first example is taken from the category of "Fundamental Freedoms" and concerns the phrase "freedom of the press and other media of communication" in paragraph 2(b). In construing the term "media of communication" it would be useful, I think, to know that that term replaced "media of information" (which had appeared in the second and third versions of the Charter).[18] As indicated in the explanatory notes which accompanied the fourth version, in which the change to the present language was made, this change was designed to "ensure that [paragraph 2(b)] encompasses the dissemination not only of information but also of ideas and opinions". From this it is safe to conclude that "media of communication" should be construed (at least) broadly enough to include those media which disseminate ideas and opinions (in addition, of course, to those which disseminate information).

The second example is taken from the category of "Mobility Rights" and involves the scope of paragraph 6(2)(b). It is not

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[18] It is interesting to note that the word "media" by itself was used in the initial version. The change to "media of information" in the second version was clearly deliberate and must have been for the purpose of narrowing the scope of s. 2(b).

difficult to conceive of the question arising as to whether or not that provision, which now grants the right "to pursue the gaining of a livelihood in any province", provides any protection to people who gain their livelihood by speculating in real estate. Considerable light is shed on that question by the fact that, while in the initial version of the Charter, paragraph 6(2)(b) included express provision for the right "to acquire and hold property in . . . any province", that phrase was deleted from the next and all subsequent versions of paragraph 6(2)(b). The inference is that that subsection was not intended to provide protection to land speculators.

Subsection 15(1), the basic "Equality Rights" provision, provides us with the third and final example. That subsection now reads as follows:

> 15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

In interpreting this provision, one of the first and most important questions to be answered concerns the meaning to be given to the rather obtuse phrase "is equal before and under the law". A very useful source of guidance here is a passage in the explanatory notes that accompanied the third version of the Charter. In the second version the language of subsection 15(1) had been quite different:

> 15(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, religion, age or sex.

Included in the explanation of the changes between this version and the third (which was in the same basic form as the present) one finds the following note: "The addition of the words 'and under' the law after 'before' would ensure that the right to equality would apply in respect of the substance as well as the administration of the law". What this note suggests is that the phrase "is equal before and under the law" is intended to describe, not the *scope* of the right to equality as such, but the *spheres of governmental activity* to which the right to equality can be applied. Those spheres are (1) the enactment of laws (this is the "substance" component) and (2) the administration of laws. In both of these spheres, according to this interpretation, "every individual" is entitled to claim "the right to the equal protection and equal benefit of the law".

Of course, one must be careful not to jump to conclusions when making comparisons between the various versions of the Charter. In particular, one must be wary of reading into the deletion of a particular right or freedom the intention that that right or freedom is not to be protected by the Charter. It may be that the deletion was attributable instead to a belief that adequate protection for that right or freedom was already given by another provision and that a separate provision was unnecessary. Take, for example, the right to privacy. Express provision was made for such a right in the first version of the Charter but not in any of the others. The obvious inference to draw from this is that it was decided that the Charter should not provide protection for the right to privacy. That inference, though obvious, may be unjustified. It may have been the case that the drafters believed that adequate protection for the right to privacy was already provided by section 7, either through its "right to liberty" component or its "right to . . . security of the person" component, and that a separate provision for it was unnecessary.

Generally speaking, however, as the first three examples show, an examination of the various versions of the Charter can be a very useful aid to the interpretation of its provisions. In some instances such an examination may even be determinative.

IV. THE PROPRIETY OF EXAMINING THE DIFFERENT VERSIONS

The question to be addressed here is whether or not it is permissible, as a matter of law, for a judge to have recourse to a comparison of the different versions of the Charter as an aid to the interpretation of its provisions. In other words, are the first six drafts admissible in evidence? Were it not for three recent decisions involving the interpretation of the British North America Act, 1867 (now the Constitution Act, 1867), the case against admissibility would probably have been quite strong. In support of that case would have been the rulings of the Privy Council in *Maher v. Town of Portland*[19] and *A.G. for Ontario v. Winner*[20] in respect of reliance upon

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[19] G. J. Wheeler, CONFEDERATION LAW OF CANADA (1896), at 362. The following note about this case appears in LASKIN'S CANADIAN CONSTITUTIONAL LAW (4th ed. 1975), at 61:
"Joseph Brown, Q.C., during argument: 'When the Earl of Carnarvon introduced the B.N.A. Bill. . . .'"
"James, L.J.: 'We shall not be influenced by anything then said'."

[20] [1954] A.C. 541. In this case the Privy Council ruled inadmissible the London Resolutions as an aid to the interpretation of the B.N.A. Act, 1867. No reasons for this ruling were given.

the legislative history of the B.N.A. Act, 1867,[21] as well as the traditional reluctance of Anglo-Canadian courts to make use of the Parliamentary history of legislation as an aid to its interpretation.[22]

The three recent decisions, in the order in which they were rendered, were *Jones v. A.G. for New Brunswick et al.*,[23] *Blaikie v. A.G. for Quebec*[24] and *The Senate Reference*.[25] In the first of these, which involved a challenge to the validity of certain provisions of the federal Official Languages Act,[26] Laskin C.J.C. made reference to one of the Quebec (and later London) Resolutions in the course of rejecting an argument that section 133 of the B.N.A. Act should be construed as being "exhaustive of constitutional authority in relation to the use of English and French."[27] In *Blaikie*, in which a successful challenge was brought on the basis of the same section 133 to certain provisions of the French Language Charter,[28] Deschênes C.J.S.C. went even further than Laskin C.J.C. had done in *Jones*. In the course of deciding whether or not section 133 should be characterized as an entrenched provision of the B.N.A. Act, 1867, he relied upon the Confederation Debates of 1865, in particular on passages from the speeches of both Sir John A. Macdonald and the Honourable Georges-Etienne Cartier.[29] In spite of the fact that Deschênes C.J.S.C. seemed to be breaking new ground, neither the Quebec Court of Appeal nor the Supreme Court of Canada saw fit

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21 Further support might also have come from V. MacDonald, *Constitutional Interpretation and Extrinsic Evidence* (1939) 17 CAN. B. REV. 77, at 83; Laskin, *supra*, note 19, at 61-62.

22 See, *e.g.*, MAXWELL ON THE INTERPRETATION OF STATUTES (12th ed. 1969), at 50: "But the modern rule is clear: the Parliamentary history of legislation is not a permissible aid in construing a statute."

It would seem, however, that Canadian courts are becoming more flexible about this today. Particularly noteworthy is the judgment of Lamer J. in *R. v. Vasil* (1981) 58 C.C.C. (2d) 97 (S.C.C.) in which, in the course of interpreting s. 212(c) of the Criminal Code, R.S.C. 1970, c. C-34 (the culpable homicide provision), he relied upon both Hansard and the Report of the Royal Commissioners leading to the adoption of the English Draft Code of 1878. See also *Babineau v. Babineau* (1981) 32 O.R.(2d) 545 (ONT. H.C.).

23 [1975] 2 S.C.R. 182.

24 (1978) 85 D.L.R. (3d) 252 (QUE. S.C.), aff'd (1979) 95 D.L.R. (3d) 42 (QUE. C.A.), aff'd [1979] 2 S.C.R. 1016, 101 D.L.R. (3d) 394.

25 *Reference re Legislative Authority of Parliament to Alter or Replace the Senate* (1979) 102 D.L.R. (3d) 1 (S.C.C.).

26 R.S.C. 1970, c. O-2.

27 *Supra*, note 23, at 192.

28 Charter of the French Language, 1977 (Que.), c. 5.

29 *Supra*, note 24, at 273 of 85 D.L.R. (3d).

to comment directly upon the propriety of what he had done when the case came before them. Those members of the Court of Appeal who took note of the fact that he had relied upon such extrinsic evidence simply said that it was unnecessary to have recourse to it in order to interpret section 133[30] (which might be taken to constitute disapproval); Laskin C.J.C., who gave judgment for the Supreme Court, simply said, "On matters of detail and history, we are content to adopt the reasons of Deschênes C.J.S.C. as fortified by the Quebec Court of Appeal"[31] (which might be taken to amount to approval). In *The Senate Reference* it was the Supreme Court itself that had recourse to the Confederation Debates to assist it in determining the constitutional status of certain provisions of the B.N.A. Act, 1867, this time the provisions relating to the Senate. On this occasion it was the speeches of Sir John A. Macdonald and the Honourable George Brown that were relied upon.[32]

These three decisions, in my view, provide strong support for the argument that our courts should be permitted to have recourse to the earlier versions of the Charter as an aid to the interpretation of its provisions. The fact that in *Blaikie* and *The Senate Reference*, the legislative history of the B.N.A. Act was used as an aid in determining the constitutional status of particular provisions rather than their scope and meaning, as in *Jones*, is surely of no importance. In a sense, even the latter two cases involved problems of interpretation — the difference is that, in them, the B.N.A. Act as a whole was being interpreted rather than particular provisions thereof. Moreover, whatever arguments one could use to support a rule precluding the use of such extrinsic evidence to assist in interpreting particular provisions could, it would seem, be equally well used to suggest a similar rule in respect of the use of such evidence to assist in determining the constitutional status of other provisions.[33] The decisions in *Blaikie* and *The Senate Reference* suggest, therefore, no less than

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[30] *Supra*, note 24, at 45 of 95 D.L.R. (3d).

[31] *Supra*, note 24, at 1027 of S.C.R., 401 of 101 D.L.R. (3d).

[32] *Supra*, note 25, at 9-10.

[33] Maxwell, *supra*, note 22, at 51, suggests two reasons for "the rule against reference being made to legislative material". They are as follows:

> One is that a statute can only be regarded as the language of the three Estates of the realm, and the meaning attached to it by those who drafted it or by individual members of one of those Estates should not control its construction. The other is the danger that the members of either House might, in the course of debate, attempt to influence the future interpretation of a statute by expressing their own "views" as to its probable effect in the hope that these would remain uncontradicted at the conclusion of its passage through Parliament.

the decision in *Jones*, that, in the constitutional sphere at least, those arguments have been rejected.

It is of considerable interest, and possibly also of some importance, to note that, parallel to the relaxation of the rule relating to the admissibility of legislative history as an aid to the interpretation of the B.N.A. Act, 1867, there has in recent years been a relaxation of the rules relating to the admissibility of various types of extrinsic evidence as an aid to the characterization of ordinary statutes for the purposes of division of powers analysis. In its most recent pronouncement in this latter development,[34] the Supreme Court of Canada, speaking through Mr. Justice Dickson, said that, at least in a constitutional reference, "Material relevant to the issues before the Court, and not inherently unreliable or offending against public policy, should be admissible . . .".[35] In support of this approach it was said that "[an] inflexible rule governing the admissibility of extrinsic evidence in constitutional references" might have the effect of excluding "logically relevant and highly probative evidence".[36] The fundamental concern in these characterization cases, as it presumably is in the interpretation cases, is that the decisions in constitutional cases be as well-informed as possible.

Whatever view one takes of the traditional reluctance of our courts to use legislative history as an aid to the interpretation of ordinary statutes,[37] it seems to me that a strong case can be made for a different approach in the interpretation of constitutional documents. As Jacobus tenBroek argued in his series of articles on the use of extrinsic aids in the construction of the American constitution,[38] there are two important differences between ordinary statutes and constitutions. The former tend to be "specific efforts to accomplish individual or highly related ends"[39] and are susceptible of relatively easy change if they are misinterpreted by the courts. Constitutions, on the other hand, tend to be very general in both objective and terminology and "if the original intent is not carried out

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[34] *Reference re Residential Tenancies Act of Ontario* (1981) 37 N.R. 158.

[35] *Id.*, at 166.

[36] *Id.*, at 165.

[37] For a penetrating analysis of the traditional approach, see L. Barry, Q.C. *Law, Policy and Statutory Interpretation under a Constitutionally Entrenched Canadian Charter of Rights and Freedoms* (1982) 60 CAN. B. REV. 237.

[38] J. tenBroek, *Admissibility and Use by the United States Supreme Court of Extrinsic Aids in Constitutional Construction* (1938) 26 CALIF. L. REV. 287, 437 and 664; (1939) 27 CALIF. L. REV. 157 and 399.

[39] *Id.*, at 289 of 26 CALIF. L. REV.

by the courts, there is not the ready opportunity to revise and restate which exists in the case of statutes".[40] These two factors combine to make it all the more important in cases involving constitutional interpretation that the decisions be well-informed — in other words, that the decision-makers have at their disposal all the information that is relevant to the particular problem of interpretation at hand.

V. SECTION BY SECTION EXAMINATION

In this, the major part of this paper, we set forth in chart form the version-by-version development of each of the sections of the Charter. The following notes should assist the reader in understanding the charts that follow:

1. each section is examined separately;
2. the number indicated in each section heading is taken from the final version of the Charter;
3. directly under each section heading, in parenthesis, is the title of the part of the Charter in which that section appears;
4. beneath that title are the three column headings, "Version No.", "Text of Provision" and "Explanatory Notes";
5. the versions are examined in chronological order, from first to last;
6. changes in the text of a provision are highlighted either by the italicization of words (where the change consists of the substitution or addition of new words) or by an asterisk (where the change consists of a deletion of words);
7. the words "As above" in the "Text of Provision" column indicate that the text of the provision in the version in question was identical to the text in its immediate predecessor;
8. the words "As above" in the "Explanatory Notes" column of the version in question indicates that the text of those notes was either identical or virtually identical to the text in its immediate predecessor;[41]
9. where the explanatory notes comment upon a group of sections (as occurs when they deal with the first of several rights in a

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[40] *Id.*

[41] The test employed was whether or not the change in wording resulted in a change of any significance in meaning.

given category) such comments are reproduced only for the first of those sections;

10. section 34, which simply gives the Charter its formal title of the Canadian Charter of Rights and Freedoms, has been omitted;

11. included, even though not sections of the Charter itself, are the preamble, section 35 (the aboriginal rights provision) and subsection 52(1) (the primary clause).

Preamble

Version No.	*Text of Provision*	*Explanatory Notes*
I	Omitted	—
II	Omitted	—
III	Omitted	—
IV	Omitted	—
V	Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law:	—
VI	As above	—
VII	As above	—

Section 1

(Guarantee of Rights & Freedoms)

Version No.	*Text of Provision*	*Explanatory Notes*
I	1. The Canadian Charter of Rights and Freedoms recognizes the following rights and freedoms subject only to such reasonable limits as are generally accepted in a free and democratic society.	—
II	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 generally accepted in a free and democratic society *with a parliamentary system of government.*	New. Section 1 expresses a constitutional guarantee of the rights and freedoms set out in the Charter while at the same time acknowledging that such rights may be subject to reasonable limits traditionally recognized by the courts in a democratic society with a parliamentary system of government.

Version No.	*Text of Provision*	*Explanatory Notes*
III	1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits *prescribed by law* as *can be demonstrably justified* in a free and democratic society.*	This proposed amendment would narrow the limits that could be placed on the rights and freedoms guaranteed in the Charter. For a right to be limited, the limitation would be required to be prescribed by law and to be both reasonable and capable of being demonstrably justified.
IV	As above	This proposed amendment would narrow the limits that could be placed on the rights and freedoms guaranteed in the Charter. For a right to be limited, the limitation would be required to be prescribed by law and to be both reasonable and capable of being demonstrably justified to the court by the authority seeking to impose it.
V	As above	—
VI	As above	—
VII	As above	—
	Section 2 (Fundamental Freedoms)	
I	2. 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; and (c) freedom of peaceful assembly and of association.	—
II	2. 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.	Section 2 declares the fundamental freedoms of all people in Canada. They are, with some modifications, essentially the freedoms now found in section 1 of the Bill of Rights. In section 2 (a) freedom of "religion" is expanded to include "conscience"; (b) freedom of "thought", etc., enlarges the prior freedom of "speech" to encompass not only the right to express one's views but also the right to hold those views. It includes freedom of the press and modernizes that concept by expressly including other media of information;

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		(c) freedom of "peaceful assembly", etc., adds the qualification "peaceful" to the prior freedom.
III	2. 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; (c) freedom of peaceful assembly; and (d) *freedom* of association.	An amendment would be made to the French version of paragraph (b) to make it clear that the paragraph relates to more than major media of information. Paragraph (c) would be divided into two paragraphs to make it clear that the freedoms contained therein are separate freedoms. These freedoms are expressed separately in the International Covenant on Civil and Political Rights.
IV	2. Everyone has the following fundamental freedoms: (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of press and other media of *communication*; (c) freedom of peaceful assembly; and (d) freedom of association.	The word "communication" would replace the word "information" to ensure that the paragraph encompasses the dissemination not only of information but also of ideas and opinions. Paragraph (c) would be divided into two paragraphs to make it clear that the freedoms contained therein are separate freedoms and need not exist in conjunction. These freedoms are expressed separately in the International Covenant on Civil and Political Rights.
V	As above	—
VI	As above	—
VII	As above	—
	Section 3 (Democratic Rights)	
I	3. 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.	—
II	As above	Sections 3-5. These sections declare certain rights that are fundamental to the continued existence of a free and democratic parliamentary system. New. Section 3 would ensure the right of citizens to vote and become members of legislative bodies.

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III	As above	An amendment to the French version would make it clear that the right to vote and the right to be qualified for membership in a legislative body are separate rights.
IV	3. Every citizen in Canada has* 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 qualifying words "without unreasonable distinction or limitation" would be deleted as unnecessary so that any limitation of the right to vote would be subject to the same test as a limitation of any other right, namely, the test set out in section 1.
V	As above	—
VI	As above	—
VII	As above	—
	Section 4 (Democratic Rights)	
I	4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date of the return of the writs for the 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 the period of 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.	—
II	4. (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.	Section 4 would modify section 50 of the B.N.A. Act[42] and similar provisions in provincial constitutions in respect of the duration of the House of Commons and the legislative assemblies

[42] S. 50 of the B.N.A. Act reads as follows:

50. Every House of Commons shall continue for five years from the day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor General), and no longer.

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	(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.	and would combine the substance of those provisions with part of section 91, class 1 of the B.N.A. Act.[43] It would guarantee federal and provincial elections at least once every five years (except in time of real or apprehended war, invasion or insurrection). (Section 91, class 1 would be repealed by section 51 of Schedule B.)[44]
III	As above	An amendment to the French version would remove any doubt as to the precise date from which the period of five years is to be computed.
IV	As above	As above
V	As above	—
VI	As above	—
VII	As above	—
	Section 5 (Democratic Rights)	
I	5. There shall be a sitting of Parliament and of each legislature at least once in every year and not more than twelve months shall intervene between sittings.	—

[43] S. 91(1) empowered Parliament to make laws in relation to:

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.

[44] Now s. 53 of Schedule B of the Constitution Act, 1982.

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II	5. There shall be a sitting of Parliament and of each legislature at least once *every twelve months.*	Section 5 would modify section 20 of the B.N.A. Act[45] and similar provisions in provincial constitutions in respect of sittings of Parliament and the legislatures. It would require at least one sitting of those bodies every twelve months.
III	As above	—
IV	As above	—
V	As above	—
VI	As above	—
VII	As above	—
	Section 6 (Mobility Rights)	
I	16. (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 has the right (a) to move to and take up residence in any province; and (b) to acquire and hold property in, and to pursue the gaining of a livelihood in any province. (3) The rights specified in subsection (2) are subject to any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence.	—
II	*6.* (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	Section 6 would recognize three rights. The first right is that of a citizen to enter, remain in and leave Canada. The other rights are those of a citizen or permanent resident, firstly, to move to and to take up residence in any

[45] S. 20 read as follows:

20. There shall be a Session of the Parliament of Canada once at least in every Year, so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the next session.

	(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 of 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.*	province and, secondly, to seek a livelihood in any province, without discrimination based on provincial boundaries. These last two rights would be subject to the same general laws as are applicable to residents of that province (e.g. laws respecting the payment of taxes and the terms and conditions of employment) and to laws specifying reasonable residence requirements for newcomers as a condition for receiving public social services.
III	As above	—
IV	As above	—
V	As above	—
VI	6. (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 of 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. (4) *Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.*	—
VII	As above	—

Section 7

(Legal Rights)

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I	6. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except by due process of law.	—
II	7. 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.*	Sections 7-14. These sections set out basic legal rights in Canada. Some of these rights are now recognized in the Bill of Rights and others would be recognized for the first time in this Act. Of the latter, some now find expression in the International Covenant on Civil and Political Rights (the U.N. Covenant) to which Canada became a party in 1976. All rights would have immediate application except for the non-discrimination rights which would begin to apply three years later. (See the explanatory note for section 29.)[46] 7. This provision derives from section 1 of the Bill of Rights with some modification in wording.[47]
III	As above	—
IV	As above	—
V	As above	—
VI	As above	—
VII	As above	—

Section 8

(Legal Rights)

I	7. Everyone has the right to be secure against unreasonable search and seizure.	—
II	*8.* Everyone has the right *not to be subjected to search or seizure except on grounds, and in accordance with procedures, established by law.*	New. This provision derives in part from the U.N. Covenant.

[46] Now s. 32.

[47] The language of s. 1(a) of the Bill of Rights is as follows: "the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law".

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III	8. Everyone has the right *to be secure against unreasonable search and seizure.*	The right to be secure against search and seizure would be subject to the test of whether the search or seizure is reasonable as opposed to whether it is provided for by law.
IV	8. Everyone has the right to be secure against unreasonable search *or* seizure.	As above
V	As above	—
VI	As above	—
VII	As above	—
	Section 9 (Legal Rights)	
I	8. Everyone has the right not to be arbitrarily detained or imprisoned.	—
II	9. Everyone has the right not to be *detained or imprisoned except on grounds, and in accordance with procedures, established by law.*	This provision derives from paragraph 2(a) of the Bill of Rights.[48]
III	9. Everyone has the right not to be *arbitrarily detained or imprisoned.*	The right not to be detained or imprisoned would be subject to the test of whether the detention or imprisonment is arbitrary rather than whether it is provided for by law.
IV	As above	As above
V	As above	—
VI	As above	—
VII	As above	—
	Section 10 (Legal Rights)	
I	10. Everyone has the right on arrest or detention (a) to be informed promptly of the reasons therefor; (b) to retain and instruct counsel without delay; and	—

[48] The language of s. 2(a) of the Bill of Rights is in terms of precluding any law of Canada from being "construed or applied so as to . . . authorize or effect the arbitrary detention, imprisonment or exile of any person".

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	(c) to the remedy by way of habeas corpus for the determination of the validity of the detention and for release if the detention is not lawful.	
II	10. Everyone has the right on arrest or detention (a) to be informed promptly of the reasons therefor; (b) to retain and instruct counsel without delay; and (c) *to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.*	The provisions on arrest and detention are in essence the same as those set out in paragraph 2(c) of the Bill of Rights.[49]
III	10. Everyone has the right on arrest or detention (a) to be informed promptly of the reasons therefor; (b) to retain and instruct counsel without delay *and to be informed of that right*; and (c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.	An amendment would be made in the French version of paragraph 10(a) to better express the intent of the paragraph. Paragraph 10(b) would be amended to include, with the right to retain counsel, an additional right to be informed of that right.
IV	As above	Paragraph 10(b) would be amended to include, with the right to retain counsel, an additional right to be informed by the custodial official of that right to counsel.
V	As above	—
VI	As above	—
VII	As above	—
	Section 11 (Legal Rights)	
	11. Anyone charged with an offence has the right (a) to be informed promptly of the specific offence;	—

[49] The language of s. 2(c) of the Bill of Rights is in terms of not depriving a person who has been arrested or detained

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

(ii) of the right to retain and instruct counsel without delay, or

(iii) of the remedy by way of *habeas corpus* for the determination of the vadility of his detention and for his release if the detention is not lawful.

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I	(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 without just cause; (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. 14. A witness has the right not to be compelled to testify if denied the right to consult counsel.	
II	11. 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 procedures, 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;	Paragraphs 11(c) and (d) would assure rights of an accused in criminal and penal proceedings at present found in paragraphs 2(e) and (f) of the Bill of Rights.[50] Paragraphs 11(a), (b), (e), (f) and (g) would assure new rights of an accused in such proceedings and are drawn from similar provisions now found in the U.N. Covenant.

[50] S. 2(e) of the Bill of Rights protects "the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations". S. 2(f) grants to "a person charged with a criminal offence" the right "to be presumed innocent until proved guilty according to law in a fair and public hearing by an independent and impartial tribunal" and the right not to be denied "reasonable bail without just cause".

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	(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.	
	*(Section 14 omitted.)	
III	11. *Any person* 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) *not to be compelled to be a witness in proceedings against that person in respect of the offence*; (*d*) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; (*e*) not to be denied reasonable bail *without just cause*; (*f*) *except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment*; (*g*) 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 *under Canadian or international law*; (h) *if finally convicted or acquitted of the offence in Canada, not to be tried for it again and, if so convicted, not to be punished for it more than once*; *and*	The following paragraphs of section 11 would be amended as follows: (c) This new paragraph would state the right of an accused not to be called as a witness in proceedings against the accused, a right at present reflected in the Canadian Bill of Rights.[51] (e) The present paragraph (d) would be amended so that the right to reasonable bail would be subject to the test of whether any denial of bail is for just cause rather than whether it is provided for by law. (f) This new paragraph would provide a constitutional right to trial by jury in respect of serious offences, other than those under military law that are tried before a military tribunal. (Murder, rape and manslaughter cannot be tried in Canada before a military tribunal.) (g) and (h) The present paragraphs (e) and (f) would be amended to make it clear that the rights set out in those paragraphs would not be interpreted to preclude the prosecution in Canada of a person for crimes recognized by international law at the time of their commission. (h) and (i) A technical amendment to paragraphs (h) and (i), the present paragraphs (f) and

[51] Reference is made here to s. 2(d) of the Bill of Rights which protects a person from being compelled by "a court, tribunal, commission, board or other authority to give evidence if he is denied counsel, protection against self crimination or other constitutional safeguards".

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	(*i*) *if convicted of the offence and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.*	(g), would permit the deletion of the words "he or she" and clarify those paragraphs.
IV	11. Any person charged with an offence has the right (a) to be informed *without unreasonable delay* of the specific offence; (b) to be tried within a reasonable time; (c) not to be compelled to be a witness in proceedings against that person in respect of the offence; (d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal; (e) not to be denied reasonable bail without just cause; (f) except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment; (g) not to be found guilty on account of any act or omission *unless, at the time of the act or omission, it constituted an offence under Canadian or international law or was criminal according to the general principles of law recognized by the community of nations*; (h) if finally *acquitted of the offence, not to be tried for it again and, if *finally found guilty and punished for the offence*, not to be *tried or* punished *for it again*; and (i) *if found guilty of the offence* and if the punishment for the offence has been varied between the time of commission and the time of sentencing, to the benefit of the lesser punishment.	The following paragraphs of section 11 would be amended as follows: (a) Paragraph (a) would be amended to better express the intent that an accused must be informed of the offence charged at the earliest possible time. This time may vary depending on whether the accused is arrested or served with a summons. (c) As above. (e) As above. (f) As above. (g) and (h) The [Version II] paragraphs (e) and (f) would be amended to make it clear that the rights set out in those paragraphs (protection against retroactive offences and double jeopardy) apply not only to offences under domestic law but also to offences recognized by international law, or acts or omissions recognized internationally as being criminal, at the time of their commission. (h) and (i) As above.
V	As above	—
VI	As above	—
VII	As above	—

Section 12

(Legal Rights)

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I	12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.	—
II	As above	This provision derives from paragraph 2(b) of the Bill of Rights.[52]
III	As above	—
IV	As above	—
V	As above	—
VI	As above	—
VII	As above	—

Section 13

(Legal Rights)

I	13. A witness has the right when compelled to testify not to have any evidence so given used against him or her in any subsequent proceedings, except a prosecution for perjury or the giving of contradictory evidence.	—
II	13. 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 protection against self-crimination is an elaboration of the right now provided in paragraph 2(d) of the Bill of Rights.[53]
III	13. A witness *who testifies in any proceedings* has the right not to have any incriminating evidence so given used to incriminate *that witness* in any other proceedings, except *in* a prosecution for perjury or for the giving of contradictory evidence.	This amendment would make it clear that the protection against self-crimination applies to a voluntary witness as well as to one who is compelled to testify. It would also replace "he or she" by the generic word "witness".
IV	As above	As above
V	As above	—
VI	As above	—
VII	As above	—

[52] The language of s. 2(b) of the Bill of Rights is in terms of prohibiting "the imposition of cruel and unusual treatment or punishment".

[53] The language of s. 2(d) of the Bill of Rights is reproduced *supra*, note 51.

Section 14

(Legal Rights)

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I	15. A party or witness has the right to the assistance of an interpreter if that person does not understand or speak the language in which the proceedings are conducted.	—
II	*14.* A party or witness *in any proceedings who does not understand or speak the language in which the proceedings are conducted* has the right to the assistance of an interpreter.	This provision derives from paragraph 2(g) of the Bill of Rights.[54]
III	As above	—
IV	14. A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted *or who is deaf* has the right to the assistance of an interpreter.	This amendment would make it clear that a deaf party or witness in any legal proceedings has the right to the assistance of an interpreter.
V	As above	—
VI	As above	—
VII	As above	—

Section 15

(Equality Rights)

I	17. (1) Everyone has the right to equality before the law and to equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex. (2) This section does not preclude any programme or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.	—

[54] S. 2(g) of the Bill of Rights speaks of the right of a person "to the assistance of an interpreter in any proceedings in which he is involved or in which he is a party or a witness, before a court, commission, board or other tribunal, if he does not understand or speak the language in which such proceedings are conducted".

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II	*15.* (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, religion, age or sex. (2) This section does not preclude any program or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.	The guarantee of the right to equality before the law and to the equal protection of the law without discrimination based on race, national or ethnic origin, colour, religion, age or sex derives essentially from Section 1 of the Bill of Rights except for ethnic origin and age which are new.[55] Subsection (2) would ensure that "affirmative action" programs for disadvantaged groups will not be prohibited even though such programs may discriminate among persons. Section 15 would not have applicatiton until three years after the coming into force of this Act. (See the explanatory note for Section 29.)[56]
III	*15.* (1) *Every individual is equal* before *and under* the law and *has the right to* the equal protection *and equal benefit* of the law without discrimination *and, in particular,* without discrimination *based on* race, national or ethnic origin, colour, religion, sex or age. (2) *Subsection (1)* does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged *individuals* or groups *including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex or age.*	(1) The word "everyone" would be replaced by the words "every individual" to make it clear that this right would apply to natural persons only. The addition of the words "and under" the law after "before" would ensure that the right to equality would apply in respect of the substance as well as the administration of the law. The addititon of the words "and equal benefit" of the law after "protection" would extend the right to ensure that people enjoy equality of benefits as well as the protection of the law. Certain proscribed grounds of discrimination would be listed in the section. However, those grounds would not be exhaustive. (2) This subsection would make it clear that affirmative action programs would be permitted in respect of individuals or groups that are disadvantaged on any grounds including those listed therein.
IV	15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and,	The grounds of discrimination listed in the section would be enlarged to include mental and physical disability. Otherwise as above.

[55] S. 1(b) of the Bill of Rights reads as follows: "(b) the right of the individual to equality before the law and the protection of the law".

[56] Now s. 32.

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	in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or *mental or physical disability.*	
	(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or *mental or physical disability.*	As above
V	As above	—
VI	As above	—
VII	As above	—
	Section 16 (Official Languages)	
I	18. (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) In addition, English and French have the status set forth in this Charter, which does not limit the authority of Parliament or a legislature to extend the status or use of the two languages or either of them.	
II	*16.* (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.	Sections 16-22. These sections would give constitutional equality of status to English and French and recognize language rights at the federal level.
	(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.*	16. (1) New. Subsection 16(1) declares English and French to be the official languages of Canada and would recognize their equality of status and use in all institutions of the Parliament and government of Canada. It derives from section 2 of the

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		Official Languages Act of Canada.[57] (2) New. Subsection (2) anticipates legislation by Parliament and the legislatures to extend the status of English and French beyond that specified in the Charter.
III	16. (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) *English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick.* (*3*) Nothing in this Charter limits the authority of Parliament or a legislature to *advance the equality of* status or use of English and French.*	Sections 16 to 20: In each of those sections, a new subsection (2) would make the language rights provided for in the Charter applicable to New Brunswick. Similar rights are now provided for by the law of that province. (2) This subsection would confirm that English and French are the official languages in New Brunswick and provide for their equality of status and use in provincial institutions. (3) The present subsection 16(2) would be amended to reflect more correctly the objective of advancing the equality of English and French.
IV	As above	As above
V	As above	—
VI	As above	—
VII	As above	—
	Section 17 (Official Languages)	
I	19. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament. (2) Everyone has the right to use English or French in the debates of the legislature of any province.	—

[57] S. 2 of the Official Languages Act, R.S.C. 1970, c. O-2 reads as follows:
2. The English and French languages are the official languages of Canada for all purposes of the Parliament and Government of Canada, and possess and enjoy equality of status and equal rights and privileges as to their use in all the institutions of the Parliament and Government of Canada.

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II	*17.* Everyone has the right to use English or French in any debates and other proceedings of Parliament. *(Subsection (2) omitted.)	The right to use English and French in debates of Parliament is provided for in section 133 of the B.N.A. Act.[58] The Charter would extend the right to cover other proceedings (e.g. Parliamentary committees).
III	17. (1) Everyone has the right to use English or French in any debates and other proceedings of Parliament. (2) *Everyone has the right to use English or French in any debates and other proceedings of the legislature of New Brunswick.*	(2) This subsection would confirm a right to use both official languages in the legislature of New Brunswick.
IV	As above	As above
V	As above	—
VI	As above	—
VII	As above	—
	Section 18 (Official Languages)	
I	20. (1) The statutes, records and journals of Parliament shall be printed and published in English and French. (2) The statutes, records and journals of the legislatures of Ontario, Quebec, New Brunswick and Manitoba shall be printed and published in English and French.	—
II	*18.* The statutes, records and journals of Parliament shall be printed and published in English and French *and both language versions are equally authoritative.* *(Subsection (2) omitted.)	The requirement in Section 18 to print and publish federal statutes, etc., in English and French derives from section 133 of the B.N.A. Act.[59] The section would also ensure that both language versions are equally authoritative.

[58] S. 133 of the B.N.A. Act reads as follows:

133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.

[59] S. 133 of the B.N.A. Act is reproduced *id.*

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III	18. (1) The statutes, records and journals of Parliament shall be printed and published in English and French and both language versions are equally authoritative.	
	(2) *The statutes, records and journals of the legislature of New Brunswick shall be printed and published in English and French and both language versions are equally authoritative.*	18. (2) This subsection would confirm the right to use English and French in the statutes and records of the New Brunswick legislature.
IV	As above	As above
V	As above	—
VI	As above	—
VII	As above	—
	Section 19 (Official Languages)	
I	21. (1) Either English or French may be used by any person in, or in any pleading or process in or issuing from, the Supreme Court of Canada or any court established by Parliament.	—
	(2) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of Ontario, Quebec, New Brunswick or Manitoba.	
	(3) Either English or French may be used by any person in, or in any pleading or process in or issuing from, any court of a province not referred to in subsection (2), to the greatest extent practicable accordingly as the legislature prescribes.	
	(4) Nothing in this section precludes the making of such rules by any competent body or authority for the orderly implementation and operation of this section.	
II	*19.* 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.	This section would confirm the right to use both English and French in all courts established by Parliament. It derives from section 133 of the B.N.A. Act.[60]
	*(Subsections (2), (3) and (4) are omitted.)	

[60] *Id.*

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III	19. (1) 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.	
	(2) *Either English or French may be used by any person in, or any pleading in or process issuing from, any court of New Brunswick.*	(2) This subsection would confirm the right to use English and French in the courts of New Brunswick.
IV	As above	As above
V	As above	—
VI	As above	—
VII	As above	—
	Section 20 (Official Languages)	
I	22. (1) Any member of the public in Canada has the right to communicate with and to receive services from any head or central office of an institution of the Parliament or Government of Canada in English or French, 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.	—
	(2) Any member of the public in a province has the right to communicate with and to receive services from any head, central or principal office of an institution of the legislature or government of the province in English or French to the greatest extent practicable accordingly as the legislature prescribes.	
II	*20.* 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	Section 20 would assure to members of the public the right, in specified circumstances, to use either English or French in communications with, and in receiving services from, institutions of the Parliament and government of Canada. The section derives in part from sections 9 and

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	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.	10 of the Official Languages Act of Canada.[61]
	*(Subsection (2) omitted.)	
III	20. (1) 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, *and has the same right with respect to any other office of any such institution where (a) *there is a significant demand for communications with and services from that office in such language; or* (b) *due to the nature of the office, it is reasonable that communications with and services from that office be available in both English and French.*	(1) This amendment would leave to the courts rather than to Parliament the ultimate determination as to whether other federal offices should provide bilingual services. The test for the provision of services in English or French would be based on a significant demand for services in the language rather than on the number of persons in the area using the language. The amendment would also require the provision of services where there is a reasonable requirement for such services (e.g. at a customs port of entry or an airport).
	(2) Any member of the public in New Brunswick has the right to communicate with, and, to receive available services from any office of an institution of the legislature or government of New Brunswick in English or French.	(2) This subsection would confirm the right of the public to use either English or French in communications with and in receiving services from New Brunswick provincial institutions.
IV	As above	As above
V	As above	—
VI	As above	—
VII	As above	—
	Section 21 (Official Languages)	
I	30. Nothing in sections 19 to 21 abrogates or derogates from any right, privilege or obligation with respect to the English and	—

[61] Because of their length, these sections are not reproduced here. Readers are referred to the Official Languages Act, *supra*, note 57.

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	French languages, or either of them, that exists or is continued by virtue of any provision of the Constitution of Canada.	
II	*21.* Nothing in sections *16 to 20* abrogates or derogates from any right, privilege or obligation with respect to the English and French languages, or either of them, that exists or is continued by virtue of any other provision of the Constitution of Canada.	By section 21, existing language protection provided for by the present Constitution (e.g. the protection set out in section 133 of the B.N.A. Act and section 23 of the Manitoba Act, 1870)[62] would be continued.
III	As above	—
IV	As above	—
V	As above	—
VI	As above	—
VII	As above	—
	Section 22 (Official Languages)	
I	23. Nothing in sections 18 to 22 abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the commencement of this Charter with respect to any language that is not English or French.	—
II	*22.* Nothing in sections *16 to 20* abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the *coming into force* of this Charter with respect to any language that is not English or French.	New. This section would preserve existing rights and privileges relating to languages other than English and French.
III	As above	—
IV	As above	—
V	As above	—
VI	As above	—
VII	As above	—

[62] S. 133 is reproduced *supra*, note 58. The language of s. 23 of the Manitoba Act, 1870, is very similar.

Section 23

(Minority Language Educational Rights)

Version No.	*Text of Provision*	*Explanatory Notes*
I	24. (1) Citizens of Canada in a province who are members of an English-speaking or French-speaking minority population of that province have a right to have their children receive their education in their minority language at the primary and secondary school level wherever the number of children of such citizens resident in an area of the province is sufficient to warrant the provision out of public funds of minority language education facilities in that area. (2) In each province, the legislature may, consistent with the right provided in subsection (1), enact provisions for determining whether the number of children of citizens of Canada who are members of an English-speaking or French-speaking minority population in an area of the province is sufficient to warrant the provision out of public funds of minority language education facilities in that area.	—
II	23. (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*	New. Subsection (1) would establish a right for Canadian citizens whose first language learned and still understood is English or French to have their children educated in that language. Subsection (2) would enable citizens who move from one province to another to have their children educated in English or French if any of their children started their studies in that language. In both cases, the right would be subject to there being a sufficient number of students in a given area to warrant the provision in that area of minority language educational facilities.

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	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.	
III	23. (1) Citizens of Canada (a) whose first language learned and still understood is that of the English or French linguistic minority population of the province in which they reside, *or* (b) *who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province,* have the right to have their children receive *primary and secondary school instruction in that *language *in that province.*	(1) This amendment would, in addition to the right guaranteed in the present draft subsection (1), guarantee to citizen parents who have received their primary school instruction in Canada in one of the official languages, the right to have their children receive school instruction in the same language in a province in which that language is the minority language. (See also subsection (3).)
	(2) *Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada,* have the right to have *all their children *receive primary and secondary school instruction in *the* same language.*	(2) This amendment would delete the limitation in the present subsection (2) whereby the right to have all children instructed in the language of school instruction of the first child applies only where the parents move from one province to another. (See also subsection (3).)
	(3) *The right of citizens of Canada under this section to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province applies where they reside in an area of the province in which the number of children of citizens who have such a right is sufficient to warrant the provision out of public funds of minority language instruction in that area.*	(3) The limitation of the language of instruction rights to situations where the number of children warrant the provision of instruction is restated in subsection (3) to remove references to the provision of "educational facilities".
IV	23. (1) Citizens of Canada (a) whose first language learned and still understood is	(1) As above

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	that of the English or French linguistic minority population of the province in which they reside, or (b) who have received their primary school instruction in Canada in English or French and reside in a province where the language in which they received that instruction is the language of the English or French linguistic minority population of the province, have the right to have their children receive primary and secondary school instruction in that language in that province.	
	(2) Citizens of Canada of whom any child has received or is receiving primary or secondary school instruction in English or French in Canada, have the right to have all their children receive primary and secondary school instruction in the same language.	(2) As above
	(3) The right of citizens of Canada under *subsections (1) and (2)* to have their children receive primary and secondary school instruction in the language of the English or French linguistic minority population of a province (*a*) applies *wherever in the province* the number of children of citizens who have such a right is sufficient to warrant the provision to *them* out of public funds of minority language instruction*; and (*b*) *includes, where the number of those children so warrants, the right to have them receive that instruction in minority language educational facilities provided out of public funds.*	(3) The limitation of the language of instruction rights to situations where the number of children warrants the provision of instruction is restated in subsection (3) to remove references to residence in a particular area of the province. There would be a general right to instruction in the minority language provided out of public funds wherever the number of children is sufficient. This would include a right to instruction in minority language educational facilities provided out of public funds wherever the number of children so warrants. Subsection (3) would thus make it clear that, while various modes of providing minority language instruction may be employed, those modes include normal classroom instruction where the number of students so warrants.
V	As above	—
VI	As above	—
VII	As above	—

Version No.	*Text of Provision*	*Explanatory Notes*
	Section 24 (Enforcement)	
I	27. Where no other legal recourse or remedy is available, anyone whose rights or freedoms as declared by this Charter have been infringed or denied to his or her detriment has the right to apply to a court of competent jurisdiction to obtain relief or remedy by way of declaration, injunction, damages or penalty, as may be appropriate and just in the circumstances.	—
II	*26. No provision of this Charter, other than section 13, affects the laws respecting the admissibility of evidence in any proceedings or the authority of Parliament or a legislature to make laws in relation thereto.*	Section 26 would make it clear that no provision of the Charter other than the section respecting self-crimination (section 13) would affect existing or future laws respecting the admissibility of evidence.
III	*24. Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.*	New. The proposed section 24 would introduce into the Charter a general provision for the enforcement of rights guaranteed by the Charter.
IV	24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.	(1) As above
	(2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.	(2) New. This subsection would provide a rule respecting the admissibility of evidence to replace the one proposed in the [Version II] section 26. Evidence obtained in a manner that infringes or denies a right guaranteed by the Charter would be excluded if the court were satisfied that its admission would bring the administration of justice into disrepute.
V	As above	—
VI	As above	—
VII	As above	—

Section 25

(General)

Version No.	*Text of Provision*	*Explanatory Notes*
I	25. The enumeration in this Charter of certain rights and freedoms shall not be construed to exclude, or to derogate from, any other rights or freedoms that may exist in Canada, including any rights or freedoms that may pertain to the native peoples of Canada.	—
II	*24.* The *guarantee* in this Charter of certain rights and freedoms shall not be construed *as denying the existence of* any other rights or freedoms that *exist in Canada, including any rights or freedoms that *pertain to the native peoples of Canada.	New. Section 24 would make it clear that the Charter is not intended to affect any rights and freedoms not specified in it, including those of the native peoples.
III	*25.* The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of (a) *any aboriginal, treaty or other rights or freedoms that may pertain to the aboriginal peoples of Canada including any right or freedom that may have been recognized by the Royal Proclamation of October 7, 1763; or* *(b) any other rights or freedoms that may exist in Canada.*	This section is the present section 24 amended to state in greater detail the kinds of rights and freedoms pertaining to native peoples that are not affected by the Charter and would set them apart from other rights and freedoms not affected by the Charter. (For the present section 25 see subsection 52(1) and the explanatory note thereto.)
IV	25. The guarantee in this Charter of certain rights and freedoms shall not be construed *so as to abrogate or derogate from* any aboriginal, treaty or other rights or freedoms that *pertain to the aboriginal peoples of Canada including *(a)* any rights or freedoms that *have been recognized by the Royal Proclamation of October 7, 1763; *and* *(b) any rights or freedoms that may be acquired by the aboriginal peoples of Canada by way of land claims settlement.*	Sections 25 and 26: The [Version II] section 24 would be divided into two sections, section 25 and 26. The general statement of rights not affected by the Charter would be set out in section 26. The reference to rights of the native peoples would be deleted therefrom and the new section 25 would state in greater detail the kinds of rights and freedoms pertaining to the aboriginal peoples that are not abridged by the rights guaranteed in the Charter. (For the [Version II] section 25 see the new subsection 58(1)[63] and the explanatory note thereto. In respect of the [Version II] section 26, see the new subsection 24(2) and the explanatory note therefor.)

[63] Now s. 52(1).

Version No.	*Text of Provision*	*Explanatory Notes*
V	As above	—
VI	As above	—
VII	As above	—
	Section 26 (General)	
I	As per section 25.	—
II	As per section 25.	As per section 25.
III	As per section 25.	As per section 25.
IV	26. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada.	As per section 25.
V	As above	—
VI	As above	—
VII	As above	—
	Section 27 (General)	
I	Omitted	—
II	Omitted	—
III	26. This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.	The [Version II] section 26, which states the relationship between the right guaranteed by the Charter and the laws governing the admissibility of evidence, would be deleted. The proposed new section 26 is an interpretation section. It would require an interpretation of the Charter consistent with the preservation of the multicultural heritage of Canadians.
IV	27. As above	As above
V	As above	—
VI	As above	—
VII	As above	—

Section 28

(General)

Version No.	*Text of Provision*	*Explanatory Notes*
I	Omitted	—
II	Omitted	—
III	Omitted	—
IV	Omitted	—
V	28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons.	—
VI	28. Notwithstanding anything in this Charter, *except section 33*, the rights and freedoms referred to in it are guaranteed equally to male and female persons.	—
VII	28. Notwithstanding anything in this Charter,* the rights and freedoms referred to in it are guaranteed equally to male and female persons.	—

Section 29

(General)

I	Omitted	—
II	Omitted	—
III	Omitted	—
IV	28. Nothing in this Charter abrogates or derogates from any rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.	New. The proposed new section 28 would ensure that the Charter would not derogate from rights guaranteed by or under the Constitution in respect of schools operated by religious bodies. Those rights are guaranteed by such constitutional provisions as section 93 of the Constitution Act, 1867, section 22 of the Manitoba Act, 1870, section 17 of the Alberta Act, section 17 of the Saskatchewan Act and section 17 of the Schedule to the Newfoundland Act.[64] They are also guaranteed by ordinary laws in some jurisdictions.
V	29. As above	—
VI	As above	—
VII	As above	—

[64] Because of their length, these provisions are not reproduced here.

Section 30

(General)

Version No.	*Text of Provision*	*Explanatory Notes*
I	30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory or the Northwest Territories or to the appropriate legislative authority thereof, as the case may be.	—
II	30. A reference in this Charter to a province or to the legislative assembly or legislature of a province shall be deemed to include a reference to the Yukon Territory *and* the Northwest Territories, or to the appropriate legislative authority thereof, as the case may be.	This section makes it clear that the Charter, where relevant, would apply in its entirety to the Yukon Territory and the Northwest Territories.
III	*27.* As above	—
IV	*29.* As above	—
V	*30.* As above	—
VI	As above	—
VII	As above	—

Section 31

(General)

I	29. Nothing in this Charter confers any legislative power on any body or authority except as expressly provided by this Charter.	—
II	*28.* Nothing in this Charter *extends the legislative powers of any body or authority.**	The Charter would not extend any legislative powers.
III	28. As above	—
IV	*30.* As above	—
V	*31.* As above	—
VI	As above	—
VII	As above	—

Section 32

(Application of Charter)

I	Omitted	—

Version No.	*Text of Provision*	*Explanatory Notes*
II	29. (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.	On coming into force, the Charter would be entrenched in the Constitution and, except for the non-discrimination rights contained in section 15, would have immediate application. Section 15 would not have application for three years in order to permit Parliament and the provincial legislatures to make consequential amendments to other legislation. The Charter could only be amended under sections 36 and 50.[65]
III	As above	—
IV	*31.* (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 effect until three years after this Act, except Part *VI*, comes into force.	—
V	As above	—
VI	*32.* (1) This Charter applies (a) to the Parliament and government of Canada *in respect of* 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 *in respect of* all matters within the authority of the legislature of each province.	—

[65] The new provisions relating to constitutional amendment are ss. 38 to 49. The relevant provision depends on the type of amendment sought.

Version No.	*Text of Provision*	*Explanatory Notes*
	(2) Notwithstanding subsection (1), section 15 shall not have effect until three years after this *section* comes into force.	
VII	As above	—

Section 33

(Application of Charter)

Version No.	*Text of Provision*	*Explanatory Notes*
I	Omitted	—
II	Omitted	—
III	Omitted	—
IV	Omitted	—
V	Omitted	—
VI	33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter, or section 28 of this Charter in its application to discrimination based on sex referred to in section 15. (2) An Act or provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration. (3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration. (4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1). (5) Subsection (3) applies in respect of a re-enactment made under subsection (4).	—
VII	33. (1) Parliament or the legislature of a province may ex-	—

Version No.	*Text of Provision*	*Explanatory Notes*
	pressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.* (2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration. (3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration. (4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1). (5) Subsection (3) applies in respect of a re-enactment made under subsection (4).	
	Section 35 (Rights of the Aboriginal Peoples of Canada)	
I	Omitted	—
II	Omitted	—
III	Omitted	—
IV	33. (1) The aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.	New. This new Part would recognize and affirm the aboriginal and treaty rights of the aboriginal peoples of Canada, who are defined as including the Indian, Inuit and Metis peoples.
V	*34.* As above	—
VI	Omitted	—
VII	*35.* (1) The *existing* aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed. (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.	—

Section 52(1)

(General)

Version No.	*Text of Provision*	*Explanatory Notes*
I	26. Any law, order, regulation or rule that authorizes, forbids or regulates any activity or conduct in a manner inconsistent with this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.	—
II	25. 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.	Section 25 provides that any law that is inconsistent with the Charter is inoperative to the extent of the inconsistency. This would establish the supremacy of the Charter over all other laws.
III	52. (1) The Constitution of Canada is the supreme law of Canada and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.	Subsection (1) is the present section 25 amended to make it clear that laws inconsistent with any part of the Constitution, not only the Charter, are, to the extent of the inconsistency, of no force or effect.
IV	58. As above	As above
V	59. As above	—
VI	51. As above	—
VII	52. As above	—