

*The Constitution*

When the charter was first approved in the early 1980s, section 15 was passed in Parliament and these groups thought their rights would be protected under the law. Section 15(1) reads:

Every individual is equal before and under the law and has the right to 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.

Section 15(2) allows for affirmative action programs to be developed.

Minorities soon learned that equality rights were not as well protected as they thought because section 33, which is known as the notwithstanding clause of the charter, allows federal or provincial governments to override the equality rights which they thought were guaranteed.

Both of the organizations which I referred to in Vancouver have studied this dilemma very carefully and they have concluded that section 33 should be repealed. It should be repealed because it can be used by provincial or federal governments to override the rights of minorities. The Canadian Ethnocultural Council and its many affiliated organizations across the country also support the repeal of section 33. New Vision Canada, an organization dedicated to providing non-partisan political education to racial and ethnic minorities, also has begun a national campaign to amend the Constitution to ensure that equalities which are guaranteed in section 15 are not suspended by the application of section 33, the override clause of the charter.

• (2030)

We have a lot of concern, growing concern, as minority groups are studying these matters and becoming much more aware that indeed rights they thought were enshrined in the Charter of Rights and Freedoms really are at risk because of the override clause.

In my riding of Vancouver East, in meetings on this subject of equality rights, we considered several alternatives, all with the goal of protecting section 15 and the equality rights section from the override by section 33. I would like to just very quickly present the conclusions and the recommendations which we came to, which have both the ideal solution—which is, of course, the repeal of section 33—and also some of the interim things that

could be done because it may be difficult to get consensus on complete repeal during this round.

The first proposal we would make is that the override clause in its present form is unacceptable. The purpose of enshrining basic rights in the Constitution is to prevent government expediency from implementing policies that discriminate against minorities and also disempowered groups. We agreed with Coalition 33 and also the B.C. Coalition of Persons with Disabilities that section 33 is a very frightening clause, especially for minorities.

On the other hand, we also recognized the concerns of many of our own members that judicial decisions of the Supreme Court of Canada are often very regressive. We have seen this in some of the decisions that have been made already in charter cases. Also governments that are concerned with collective rights feel the need for more flexibility, and therefore are in favour of an override clause of some type.

However, it was our opinion in Vancouver East that any override clause must never override equality rights with the loss of protections for minorities.

Our second option was that while we prefer the repeal of section 33 from the Constitution, we recognize that political realities may make this difficult to achieve. Therefore, we recommend that any override clause must be difficult to invoke. Specifically, we propose that a special two-thirds majority of government and Official Opposition members of Parliament should be required. This would allow the override to be invoked in emergencies but would prevent it from being used as a simple political expedient by governments. It is interesting that our recommendation is much tougher than the 60 per cent majority which was proposed in the government proposals.

The third option that we suggested was a final alternative which we hope will be achievable in this constitutional round. This proposal is that at the very least the override clause should never apply to section 15 of the charter. This would require an amendment to section 33 which would read “notwithstanding a provision included in section 2 or section 7 to 14 of this charter”. You notice that we changed the number from section 15 to section 14. This amendment removes application of the override clause to equality rights.