

The Constitution

The courts have striven manfully to find some principle to give—

Mr. Knowles: That is the trouble.

Some hon. Members: Oh, oh!

Mr. Clark: We all make mistakes.

Miss Jewett: On the contrary, manfully, and I mean “manfully”. The courts have striven manfully to find some principle to give substance the “before the law” clause. They have developed five different principles. I mentioned one particularly, the one saying that “before the law” meant in the administration of the law we were equal. The courts have developed four others. None of them is helpful to women. None promotes a woman’s human right to equality. What the courts need and desperately want is guidance. The message must be very clear from this Parliament, and in the Constitution of Canada, that to use the same words will do no good. A message must be clearly given to the courts by the use of new, different and stronger words, that from now on we do intend women to be treated equally.

If I may, I would like to put on the record now proposed wording. I am not a lawyer, and I have no doubt there are deficiencies in this wording. However, I have made an attempt at least to give expression to what I feel might be a clear message to the Supreme Court and other courts, that what we really want, in a positive and constructive way, is protection of women’s full rights to equality.

I would begin by calling this section not non-discrimination rights because that title refers only to the second subsection, but rather call it the right to equality. By the way, I am now referring to others who will be included in this section as hon. members will hear in a moment.

I would like to see in the first subsection the following:

All persons, men and women alike, shall be equal in the law and before the law without unreasonable distinction based on national or ethnic origin, age or religion.

I stress “equal in the law.” I hope hon. members get my point. “Before the law” has not given us equality. It must be changed. “In the law” is a logical, clearcut change.

In the second subsection, and I hope other members will agree, I would like to see the following:

Race, sex or other immutable characteristic shall never constitute a reasonable basis for distinction except as provided in subsection 3.

The vital ones are “immutable characteristic”.

The third section I propose I have taken from the Human Rights Act. I think the affirmative action in that act is the best. My proposed third subsection would read:

Nothing in this charter limits the authority of Parliament or a legislature to authorize any program or activity that is designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by any group of individuals when those disadvantages would be based on or related to race, sex or other immutable characteristic of those groups of individuals.

Some hon. Members: Hear, hear!

Miss Jewett: Finally, in my proposed section 15 I would like to see words to the effect that:

Equality is a positive goal to be sought, particularly for women and other disadvantaged peoples, and that evening-up is a necessary process to the achieving of equality.

Some hon. Members: Hear, hear!

Miss Jewett: I hope that all members of the House of Commons, not just all of the women members, although I hope all 14 of us will be together on this as much as we were a few months ago in trying to move for the total equality of Indian women, will join together to make substantive and fundamentally important changes and totally restructure section 15 of the proposed charter.

Unless we do this now, and I am anxious that we get to committee to do it, we will be 100 years more before we get these changes made.

Women in the United States have been fighting since 1924 to get an equal rights amendment in the American constitution. If we bring back the constitution with section 15 as it is now, given the interpretation by the Supreme Court of Canada, we will not, as women, genuinely be able to claim equality in our society. The likelihood of all of the legislatures getting together with the federal government and amending that section after it has been brought back is somewhat remote.

It is not good enough to say on this, and other vital issues, that we will do it later. The time to do it is now.

Mr. Friesen: Mr. Speaker, since the hon. member for New Westminster-Coquitlam (Miss Jewett) has some time left, would she permit a question?

Mr. Deputy Speaker: Would the hon. member for New Westminster-Coquitlam (Miss Jewett) accept a question from the hon. member for Surrey-White Rock-North Delta (Mr. Friesen)?

Miss Jewett: Yes, Mr. Speaker.

Mr. Friesen: Mr. Speaker, the hon. member indicated, and I agree with her, that the courts are not very good institutions for reform, which is precisely the argument the head of the Civil Liberties Association has made. Therefore, entrenchment is not an enhancement to people’s rights. Why does the hon. member plan to vote for entrenchment if this is a deterrent to reform? If there are so many flaws in this proposal, why is it such a civilized document?

Miss Jewett: On the last point, to be quite frank, my indictment includes all you guys, too. You have never read or studied the wording of the proposed charter nor have many members on the government side. Most of you have never really studied or read any of the cases wherein that wording was interpreted detrimentally to women.

Mr. Deputy Speaker: With all due respect to the hon. member, her remarks should be addressed to the Chair.