

could be taken as settling the law, and if a federal statute based on such answers effected a constitutional guarantee of human rights and fundamental freedoms. The fact is, however, that the answers would not be the equivalent in binding effect of a decision in a litigated case arising on particular facts. Moreover, a federal statute enacted on the basis of answers to such questions would not effect any constitutional guarantee of rights as it could be amended or repealed at any time by parliament. Until amended or repealed it would bind the provincial legislatures (to the extent that it was constitutionally valid) but not the Dominion Parliament, as subsequent legislation of the Dominion Parliament inconsistent with its terms could take effect notwithstanding its terms.

It is perhaps for these reasons that the submissions to your committee in support of a bill of rights favour a constitutional amendment rather than a federal statute. Your committee is, therefore, unable to recommend that the government give favourable consideration to the enactment of a bill of rights in the form of a federal statute.

In view of the fact that decisions by the Supreme Court of Canada in individual cases would be far more satisfactory than upon a general reference in determining the powers of parliament and the legislatures, your committee gave some consideration to the question as to whether the jurisdiction of the Supreme Court of Canada should not be enlarged so that by leave of that court, appeals would lie on questions of law in some instances in which there is now no appeal. Your committee is of opinion that the government should give consideration to such an enlargement and so recommends.

Due to pressure of time it was impossible for your committee to call those who made submissions to your committee to support them orally. It is possible that had those who submitted the draft bill to amend the British North America Act been present they could have answered some or all of the numerous questions which have arisen in the minds of members of your committee regarding the consequences of incorporating the provisions of this draft bill in the British North America Act.

From the evidence of the Deputy Minister of Justice, however, it would appear that these consequences are so uncertain and may, in some instances at least, be so undesirable, that your committee would not be justified in recommending, without a great deal of further study, the adoption of recommendations such as those contained in the submission of the committee for a Bill of Rights, Toronto.

Your committee recommends that in considering proposals for the enactment of a bill

of rights as a constitutional amendment the government not only give full consideration to the submissions to the committee, the evidence of the Deputy Minister of Justice and the comments of the members of the committee, as they appear from the record of the proceedings, but also obtain the assistance of officers of the Department of Justice or an interdepartmental committee, and such others as it may consider necessary.

In making this report your committee wishes to state its belief that Canadians enjoy a large measure of civil rights and liberties. That they must be maintained is beyond question. But to attempt to define these rights and liberties in statutory language is a task not to be undertaken lightly. The difficulty of such a task is shown by the struggles for agreement on the wording of an international bill of rights which have been occupying the time of the United Nations for so long. However, the meaning of human rights and fundamental freedoms is in general well understood. They exist, are enjoyed and must be preserved.

Attention may be drawn to circumstances in which fundamental rights are alleged to have been curtailed. It is desirable that such circumstances be examined critically and earnestly for they prompt the government and parliament of the day to take stock of the extent to which Canada has maintained civil rights and liberties for her people. If imperfections appear, are recognized and are remedied, progress is made towards full realization of the ideal of general observance of human rights and fundamental freedoms for all envisaged in the charter of the united nations.

Respect for and observance of these rights and freedoms depends in the last analysis upon the convictions, character and spirit of the people. There is much to be said for the view that it would be undesirable to undertake to define them before a firm public opinion has been formed as to their nature. It is not evident to your committee that such an opinion has reached an advanced stage in Canada. There is need for more public discussion before the task of defining the rights and freedoms to be safeguarded is undertaken.

But whatever steps be advocated by way of statutory enactment or otherwise to preserve human rights and fundamental freedoms, Canadians must never fail to recognize that the ultimate and effective safeguard of those rights and freedoms lies in the people themselves, and in a resolute and effective public opinion.

A copy of the printed Minutes of Proceedings and Evidence of your committee is appended.

All of which is respectfully submitted.

L. M. GOUIN,
Chairman, Senate Section.