

Presumably the First Ministers had no intention of reversing that step. In our view it would be disgraceful if the fundamental human rights of Canadians could vary according to the individual, the part of Canada s/he lived in, the language s/he spoke, the group s/he belonged to. The Constitutional Accord must contain the explicit assurance that the price of this Accord has not been the weakening of the Charter, there is no reason to permit a potential reduction of individual rights, as Clause 16 currently does.

Recommendation

That Section 16 be amended to read:

Nothing herein shall derogate from any rights or freedoms accorded by or under the Constitution of Canada.

4. The Charter of Rights

The proposed 1987 Constitutional Accord has highlighted what remains the most serious flaw in the Constitution: the Section 33 override provision which allows Parliament or any provincial legislature to declare that any legislation will operate "notwithstanding" the fundamental freedoms, legal rights or equality rights contained in the Canadian Charter.

The fundamental freedoms and democratic rights set out in the Canadian Charter represent the core values and ideals of a liberal democracy. Historically, any time a Canadian Government has deviated significantly from these core values, we have, as a nation, come to regret these actions; indeed, we have felt a sense of profound shame that we allowed them to occur.

By entrenching the Charter of Rights, the governments of Canada, with the concurrence of the people of Canada, signalled that individual rights and freedoms are of paramount importance in our society and must be placed beyond the reach of any single legislature. However, by allowing for a legislative override and thereby providing that by a simple majority vote of a legislature, fundamental rights can be set aside, the governments in fact enabled themselves to exercise the powers of the state untempered by respect for basic rights and freedoms.

We have lived with the Charter long enough to dispel any unwarranted fears of judicial imperialism. The state will always find reasons why its actions should not be restrained by judicial review, but the best interest of the governed must be the ultimate yardstick against which a constitution is measured. Individual rights, including legal rights, equality rights and the fundamental freedoms, cannot be tailored for the convenience of governments.

Consequently, the Charter of Rights actually rests on a weak and fundamentally flawed foundation. The Accord signed June 3 not only fails to correct this basic