

*The Constitution*

applies, notwithstanding a particular section of the charter in the Constitution. Such an override automatically expires after five years unless specifically renewed by a legislature. The effect of this provision is, first, that it will be politically very difficult for a government to introduce without very good reason a measure which applies notwithstanding the Charter of Rights and Freedoms in the Constitution. Second, a sunset provision of five years provides a degree of control on the use of an override clause in allowing public debate on the desirability of continuing the deliberations further.

It is important to remember that the concept of an override clause is not new in Canada. Experience has demonstrated that such a clause is rarely used and, when used, it is usually not controversial. The Alberta bill of rights was enacted in 1972 and includes an override clause. The Saskatchewan human rights code of 1979 also has an override provision. Neither has ever been used.

The Canadian Bill of Rights, enacted in 1960 by Mr. Diefenbaker, also contains an override provision. In 20 years, it has only been used once.

The Quebec charter of rights and freedoms adopted in 1975 contains an override clause which has been used several times. However, it has never successfully been used in a controversial manner. What is interesting in the Quebec experience is that the first draft of Bill 101 would have applied notwithstanding the Quebec charter of rights and freedoms. In this controversial area public pressure forced the Quebec government to delete the clause from the bill.

It is because of the history of the use of the override clause and because of the need for a safety valve to correct absurd situations without going through the difficulty of obtaining constitutional amendments that three leading civil libertarians have welcomed its inclusion in the Charter of Rights and Freedoms.

Allan Borovoy, general counsel to the Canadian Civil Liberties Association, was quoted in the *Montreal Gazette* of November 7 as saying: "Our reaction is one of great relief. They did not emasculate the charter." He went on to say:

The process is a rather ingenious marriage of a bill of rights notion and a parliamentary democracy. The result is a strong charter with an escape valve for the legislatures. The "notwithstanding" clause will be a red flag for opposition parties and the press. That will make it politically difficult for a government to override the Charter. Political difficulty is a reasonable safeguard for the charter.

Gordon Fairweather, who is well known in this House and is the Commissioner of the Canadian Human Rights Commission, said this: "I'm in no mood for nitpicking today; I'm feeling tremendously upbeat". That quote is from the *Montreal Gazette*, November 7, 1981. Mr. Fairweather said that the override clause will become as dead from lack of use as a clause in the British North America Act that, at least in theory, still enables Ottawa to disallow provincial legislation. Referring to long standing provincial opposition to entrenched rights, Mr. Fairweather said: "The gang of no has become the gang of yes!"

**Some hon. Members:** Hear, hear!

**Mr. Chrétien:** Professor Walter Tarnopolsky is a past-president of the Canadian Civil Liberties Association and an international expert on bills of rights. His view is that the override clause "is really not such a bad idea, and could have a great many advantages". That quote is from *The Globe and Mail*, November 9, 1981.

It should be clear, in conclusion, that the compromise reached by the Prime Minister with the nine Premiers maintains the principle of a full, complete and effective constitutional Charter of Rights and Freedoms. It does not exclude rights which have previously been guaranteed. In fact, the charter has been improved because unforeseen situations will be able to be corrected without the need to seek constitutional amendment. For those who remain concerned about the override clause, let me remind them that it has been said that "The price of liberty is eternal vigilance". Pressure groups must remain vigilant and we are seeing such vigilance now from women who are arguing for the removal of the override clause in Section 28 and the aboriginal people who are fighting for the reinstatement of their rights. I will say more about that in a moment.

So, what does this Charter of Rights and Freedoms do? First, it protects fundamental freedoms common to all Canadians, such as freedom of speech, of religion, of the press and freedom to vote and to hold office.

Second, it guarantees the freedom of Canadians to establish residence and seek a job anywhere in Canada without regard to provincial borders. It establishes one Canadian citizenship rather than ten provincial citizenships. But it recognizes the need for special measures to be taken to protect local residents in provinces whose rate of employment is below the national average.

Third, the charter guarantees legal rights of Canadians. It sets out protection against arbitrary arrest, against unreasonable search and seizures. It enumerates the rights of an accused to be defended by counsel, to have a fair trial, not to be forced to testify against oneself. It ensures that where evidence is obtained illegally, it shall not be used where, by doing so, the administration of justice will be brought into disrepute.

Fourth, the charter enumerates equality rights. In this area the government is taking bold steps forward in order to ensure the equality of women before and under the law. I know some would have hoped that we could do even better, and I hope we can in the next few days. The ball is now squarely in the court of Premier Blakeney. This government and the party I belong to are confident we can and must succeed. But we also know that we must not break the accord or all will be lost. I am sure that the efforts of the Minister of State for Mines (Mrs. Erola) who is responsible for the status of women will bring about the result that is the desire of every member of this House.

**Some hon. Members:** Hear, hear!

**Mr. Chrétien:** No one can deny that this constitutional charter marks very substantial progress. If its provisions are