Women and the Constitution

On October 2nd, 1980, the Government of Canada made public its "Proposed Resolution for a Joint Address to Her Majesty The Queen respecting the Constitution of Canada" and four days later introduced into the House of Commons the Constitution Act, 1980. A Special Joint Committee of the Senate and of the House of Commons on the Constitution of Canada was established to hear representations from the people of Canada on the proposed changes. The response to the proposals was immediate and overwhelming, causing the government eventually to agree to lengthen the time available for the hearings. The women of Canada had not been consulted during the drafting of the proposals and it was very apparent that many of our concerns would not be furthered or protected by the proposed constitutional changes.

It is probably true to say that most women were unaware of the government's intent to revise the constitution at this time and unaware of the significance of the proposed changes for them. A conference organized by the Canadian Advisory Council on the Status of Women, which was to be held in October 1980, was designed to inform and educate women about the constitution and its impact upon them. Owing to a strike by the government translators, the conference had to be cancelled and rescheduled for February, 1981. This February conference also did not take place, however, as a majority of the Council's members agreed with the minister responsible for the status of women, the Honorable Lloyd Axworthy, that to hold such a conference at this time could be potentially embarrassing for the government. Such a view was contrary to that expressed by the president of the council, Doris Anderson, who resigned in protest over the council's decision.

The only national conference on women and constitutional change was held on February 14th, 1981 in Ottawa and was organized by an ad hoc group of women.

The constitutional debate has raised many questions about women's participation in and relation to the political process. The three briefs presented below reflect the major concerns of women with respect to the initial constitutional proposals and the changes necessary to fully ensure and protect women's rights within Canada.

WOMEN, HUMAN RIGHTS AND THE CONSTITUTION. SUBMISSION OF THE CANADIAN ADVISORY COUNCIL ON THE STATUS OF WOMEN TO THE SPECIAL JOINT COMMITTEE ON THE CONSTITUTION, NOVEMBER 18, 1980

We welcome this opportunity to place before you these submissions on the Proposed Resolution for a Joint Address to Her Majesty the Queen respecting the Constitution of Canada. Patriation of the Canadian Constitution is a significant landmark in the history of our nation. We hope that this expression of our concerns and interests will aid in your deliberations.

The Canadian Advisory Council on the Status of Women was created in 1973, pursuant to a recommendation made by the Royal Commission on the Status of Women. It has four full-time members and 27 part-time members chosen from all parts of Canada, with a varied background of professional and volunteer concerns. Its mandate is to bring before the government and the public matters of interest and concern to women and to advise the Minister on such matters relating to the status of women as the Minister may refer to the

Council or as the Council may deem appropriate. In furtherance of its responsibilities, the Council has published over sixty studies, including briefs and comments on the federal legislative program in areas of human rights, criminal law, federal appointments, and Indian women—all areas which will be affected by the proposed Charter of Human Rights and Freedoms.

In recent months, we have been devoting considerable attention to the process of constitutional renewal in Canada. This summer, we commissioned thirteen studies on Women and the Constitution,[1] both to inform our own members and also to encourage the women of Canada to become involved in this issue which has a far-reaching impact on our lives and those of generations to come. Some of these papers in their original or summary form have been widely distributed. We have received over eight thousand letters from all parts of the nation in response, a clear sign that Canadian women feel themselves vitally affected by the present constitutional developments. Although we do not claim to be speaking as the direct agent of those women who have made their views known to us, by letter, phone, and in person, we are satisfied that our remarks here today reflect the concerns which have been expressed to us.

Our submissions are directed solely toward the proposed Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1980.

We wish to begin by emphasizing that we are in favour of the principle of entrenching in our constitution protection for our basic rights and freedoms. In the first instance, the Charter will be a signal and guide to legislatures. It is highly desirable to guarantee that certain fundamental rights and liberties will not suffer legislative curtailment or interference. As women, we are only too familiar with legislated inequality. We know only too well that our present Bill of Rights is unable to stop discrimination when it is embodied in legislation.

We welcome as well the fact that the Charter of Rights will apply to the provinces and territories and to the federal government. The incumbent provincial governments have publicly affirmed their commitment to fundamental values during recent debate on constitutional renewal. We are aware, however, that governments do not have a guarantee of perpetual power. Past experience has shown that the elected governments of provinces are certainly not immune from committing breaches of our liberties.

At present, the courts have a considerable role in determining the meaning and the constitutionality of legislation, by reason of their power of interpretation and of their role as arbiters of the Constitution. There has been concern expressed about the amount of power which would be given to the courts by an entrenched charter: it has been said that they would be called upon to play a greater political role since they would be interpreting the general principles of any constitutional charter.[2] There is also some concern that the courts have not demonstrated an ability to give satisfactory meaning and content to the freedoms and rights stated in the Canadian Bill of Rights and equivalent provincial legislation.

In our view, it is of paramount importance to ensure that the wording used in the Charter will provide such clear directions to judges that they cannot possibly misinterpret the intended content and meaning.

We wish to stress, however, that our support for the principle of entrenchment does not mean that we approve of every aspect of the

proposed Charter of Rights and Freedoms. There has been a question in the past about the Courts' capacity to strike down legislation it might find contrary to the standards in the Canadian Bill of Rights. We think that entrenchment, in particular Section 25 of the proposed Charter, makes it clear that the Courts may render such legislation inoperative. Whether they will depends on their view of the standards to be applied. We doubt whether anyone can be satisfied that a complete qualitative change in our Courts' approach will come about unless we put in the Charter new and strong standards of equality against which the Courts will test legislation.

Section 15

This section is intended to be the main guarantee of what the title refers to as "Non-discrimination Rights". We do not think that the guarantee is strong enough, for a number of reasons.

The first clause of subsection 15(1) states "Everyone has the right to equality before the law . . . " In cases involving section 1(b) of the present *Canadian Bill of Rights* this phrase has been interpreted by our Supreme Court of Canada to mean "equality in the administration of the law".[3] It does not prevent inequality that is built into legislation, as was only too clearly shown in the *Bedard* and *Lavell* cases.[4] By itself, then, this phrase is not an adequate guarantee. Because the reference to "equality before the law" in section 15 of the Charter is accompanied by a phrase different from that which accompanies it in section 1(b) of the Canadian Bill of Rights,[4a] we must carefully examine this new formulation to see whether it can avoid the unacceptable interpretation which section 1(b) gave rise to. The goal of the section, according to the Minister of Justice, is to "wipe out" discrimination on the basis, for example of sex, race, colour or ethnic origin.[5] That, then, is the standard against which its terms must be measured.

The second part of subsection (1) guarantees "the *equal* protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex". This language is a change from our present *Canadian Bill of Rights*, which provides only that persons are entitled to "the protection of the law".[6] There was a particular reason for adding the word "equal" to the guarantee. The purpose is not elaborated upon by the government in connection with the present Charter, but we can see what it is if we go back to remarks made by the Minister of Justice in 1978.

In 1978, the federal government introduced Bill C-60, the Constitutional Amendment Bill, 1978. Like the present proposal, this earlier bill provided for "equal protection of the law".[7]

The Honourable Otto Lang, then Minister of Justice, stated that "equal protection of the law" could mean that "every individual is entitled to the same protection under the law without unreasonable discrimination on any basis". He further stated that the guarantee would mean "that a law cannot apply in a discriminatory manner unless such discrimination is found to be justifiable in the community's interest on the basis of a reasonable classification test".[8]

The significance of this approach has been pointed out by Professor Baines. By using language similar to that of the 14th Amendment of the United States Constitution, the drafters of the proposed Charter are hoping to encourage the use in Canada of American jurisprudence on "equal protection".[9]

We have no confidence that the simple addition of one word, "equal", will signal our Courts that they should adopt American jurisprudence. So far, the Supreme Court of Canada has refused to adopt American principles when interpreting our Canadian Bill of Rights.[10] The Justice Minister's opinion of the effect of the change cannot, under our rules of argument and evidence, be cited to the Court in an attempt to persuade it.

Furthermore, we do not think that simply resorting to American jurisprudence will necessarily ensure a vigorous and effective section 15.

We can appreciate why the American approach might be seen as desirable. Its basic features have a great deal of merit. To begin with, the American approach to equal protection ensures equality not just in procedural rights but also in the substance of the law.[11] Under the present interpretation of the Canadian Bill of Rights only equal procedural rights—"equality in the administration of the law"—are insured. We approve of the attempt to guarantee equality in the substance of the law as well as in its procedure.

A second most valuable feature of the American approach to equal protection is the basic recognition that making distinctions between groups of people is an inevitable part of the legislative process. Not all laws apply or can apply to all persons. On the other hand, it is recognized that some bases for drawing these distinctions are proper and some are not. We do not, for example, protest when members of the judiciary are denied the right to vote. We would protest if all unemployed persons were prevented from voting. Among the improper bases for distinction, some are more improper than others. The jurisprudence developed around the 14th Amendment to the U.S. Constitution has included methods for determining which bases are improper, and for assessing the level of impropriety.

Roughly speaking, the assessment method works something like this. On the one hand, a basis for drawing distinctions in law may be seen as "invidious" or "inherently suspect". Laws based on such classifications are subject to strict scrutiny, and only a showing by the government of some "compelling state interest" would justify legislation in which persons are categorized on that basis. In the present state of American jurisprudence, race is regarded as such a suspect classification.

On the other hand there are those bases of distinction which are not inherently suspect. In determining the validity of legislation based on this kind of distinction, the Courts ask whether it is "reasonable". If there is a reasonable relationship between the classification chosen and the purpose of the legislation, the courts will uphold it. This is sometimes called the reasonable classification or reasonableness principle. This test is not a very strenuous one. It has been pointed out that between 1937 and 1970, the United States Supreme Court used this test to sustain the constitutionality of all but one state statute challenged under the "equal protection" clause.[12] Earlier in history, "race" was regarded as a classification which could be supported on a "reasonableness" basis, although, as pointed out above, it has since been classified as "suspect", and made subject to stricter scrutiny.

We can suggest that moving from a "reasonableness" test to holding a classification "inherently suspect" shows an increase in societal disapproval of the sort of discrimination involved.

This relatively sophisticated approach to the assessment of legislation appeals to us. The

remarks of Justice Minister Lang, quoted above, show an inclination to adopt only one part—and the least effective part, at that—of the approach to "equal protection" developed in the United States. We think that this would be a mistake. A single standard will be too blunt—or too ineffective—an instrument to cope with a variety of different kinds of discrimination.

On the other hand, to adopt the present American jurisprudence in all its ramifications would not be a satisfactory solution either. The American Supreme Court has not yet reached a clear understanding on how "sex" as a basis of classification should be regarded. In one case, some justices recognized that distinguishing between persons only on the basis of sex is, like race, invidious or inherently suspect.[13] It sometimes still considers a sex-based classification to be justifiable on a mere showing that it is reasonable.[14] More often, the Court occupies a middle position, adopting what has been called a "mid-tier" or "multi-tier" approach to sex discrimination[15] "Sex" is the only ground of discrimination which is treated in this somewhat confused fashion.

We see no need to import into our law this American muddleheadedness. Canadian theory is, we submit, ahead of the Americans on this point and it is our approach which should be incorporated in our Charter.

Our Prime Minister has put the position very clearly. Some types of discrimination are more invidious than others, and these are the ones based on race and sex. He has stated:

> "Perhaps this generation has recognized as past generations have not that discrimination based upon sexual or racial reasons lasts for a lifetime. There are, after all, only two permanent conditions attributable to human beings. One is sex. The other is race. All other distinctions from which discrimination may grow are temporary in nature or are subject to change. Education, religion, language, age, health, economic statures, experience—all are or can be transient. Discrimination based upon sex or racial origin is thus doubly unfair. The person against whom the discrimination is practised had no choice of origin and has no option of change.[16]

There is, then, no reason to accord those suffering from sex discrimination a lower order of redress than that given the victims of race discrimination, as is the case in the United States.

Accordingly, we propose that subsection 15 (1) be replaced by a new subsection 15 (1), reading as follows:

15 (1) Every person shall have equal rights in law including the right to equality before the law and to the equal protection and benefit of the law.

(2) Such equal rights may be abridged or denied only on the basis of a reasonable distinction. Sex, race, colour, national or ethnic origin, and religion will never constitute a reasonable distinction except as provided in subsection (3).

We think that this formulation has a number of advantages. It begins with an explicit statement of equal rights, one that will linger in the memory and perform the educational function desirable in a Charter. It preserves the guarantee of equality in the administration of the law. The last phrase is balanced so that a Court will not think that only "protective" laws are to be extended equally. The guarantee of "equality before the law" and "the equal

protection and benefit of the law" are stated to be included in "equal rights in law". The introductory phrase is thereby, we hope, made flexible enough to allow considered judicial adjustment of rights to meet changing conditions.

Subsection (2) reflects the idea that some bases—i.e. the enumerated ones—will never be acceptable as reasons for making distinctions in law. These grounds are thus put, by reason of the Charter, in a position somewhat like the suspect classification of the American jurisprudence, although we think that the protection for the individual is somewhat stronger. The Charter would, to use words Chief Justice Laskin has applied to the Bill of Rights, "itself enumerate prohibited classifications which the judiciary is bound to respect".[17] Our list of prohibited or suspect classifications does include more than "race" or "sex": we believe that these few additions reflect Canadians' views about what sort of discrimination is most grave.

The legislator would have freedom to make distinctions on bases other than those enumerated in subsection 15 (2), but those bases would still have to be reasonable ones. This aspect of our formulation allows the Courts to recognize that in a particular case, it would be unreasonable to make distinctions in law on the basis, say, of age, or marital status, even though the Charter does not contain an explicit prohibition of such distinctions.

We have removed the term "discrimination" from our proposed section. We believe that its use suggests that individuals must be adversely affected before they can invoke the equality guarantee. We think that this leaves too much leeway for highly subjective judgments about what is and is not an adverse effect. The Supreme Court in R.v. *Burnshine,*[18] for example, thought it beneficial for a young offender to be incarcerated a year and a half longer than an adult would be for the same offence because his chances of rehabilitation were thereby increased. Many would disagree with that view.

Lastly, we think that the title of section 15 should reflect the positive, symbolic content of its introductory words: we propose "Equal Rights" as a substitute for "Non-discrimination Rights".

Section 15(2)

Subsection 15(2) of the proposed Charter is designed to permit legitimate programs for the benefit of disadvantaged groups, thus preventing them from being ruled invalid on account of subsection (1).

We think that this is an important principle. A constitution by itself cannot eradicate past injustice: legislative activity by both the federal and provincial governments is necessary. We think that it is extremely important to recognize the continuing role of "ordinary" human rights legislation and similar statutes by building into the Charter of Rights an area within which they will operate.

We are of the view, however, that subsection 15(2) as it now stands, has some deficiencies. Firstly, its protective sweep is not limited to programs sanctioned by a legislature. By using this section, private employers might try to justify their own measures for giving preference to one group. We think that only programs authorized through legislation should be protected.

Secondly, the section refers only to the "disadvantaged". It makes no reference to the prohibited grounds (sex, race, etc.) set out in subsection 15(1). We think this phrasing is too

broad. Affirmative action and similar programs are very strong measures, with effects both on the groups benefited and on the groups not benefited. We definitely think that these programs should be used to redress the effects of past discrimination, but we do not think that such programs should be indiscriminately available. They would be so available under the present wording. For example, a group that could show "disadvantages" because of inability to attend private school might successfully argue that a program designed for its benefit does not violate subsection 15(1), even though such a program denied opportunities to blacks, Indians or women. On the other hand, proponents of a plan designed for the benefit of Indian people would have to prove to a Court that these people are actually disadvantaged in order to claim the protection of subsection 2 as it is now worded. Problems abound in such a requirement: would everyone benefited by a program have to be "disadvantaged"? To what extent? By what standard?

The danger is that some groups with a real need for positive programs would lose out in two ways. Firstly, because of technical requirements of proof, programs for their benefit would be declared unconstitutional. Secondly, they could be denied employment or other opportunities by some program designed for a group with a less well-founded but more easily proven "disadvantage" and this denial of opportunity could not be prevented by section 15.

We propose a change in the subsection. Our draft subsection, numbered 15(3) to accommodate our previous numbering change, is:

> 15 (3) Nothing in this Charter limits the authority of Parliament or a legislature to authorize any program or activity designed to prevent, eliminate or reduce disadvantages likely to be suffered by any group of individuals when those disadvantages are related to the race or sex of those individuals, or to the other unreasonable bases of distinction pursuant to subsection (2).

Its wording is, to some extent, based on the language of section 15 of the *Canadian Human Rights Act*. We think that this level of detail is necessary. It is similar to that of other sections of the draft Charter dealing with group rights: see, for example, section 23, dealing with minority language educational rights. Our section restricts the availability of the protection to programs dealing with correction of the results of race and sex discrimination, or discrimination based on the other unreasonable bases set out in subsection 15(2) or found by a Court pursuant to that subsection.

Section 29

We note with considerable dismay the three-year moratorium on implementation of section 15. The rationale for delaying implementation for three years is to give the governments time to bring the laws into accord with the Charter's requirements.[19] We do not think this is a valid reason. To begin with, the Report of the Royal Commission on the Status of Women,[20] issued ten years ago contained an extensive inventory of required reforms to promote equality in the law for women. The Canadian Advisory Council on the Status of Women has prepared a second report, entitled *Ten Years Later*,[21] which shows that progress in changing the law has been slow, even though government has long been aware of what is required. Similar reports on necessary changes in law to remove discrimination exist in the provinces.[22] On the basis of these reports we believe an omnibus

bill to achieve conformity with the Charter could be prepared and tabled in no more than six months. These laws should have been changed long ago. The only way to promote government action is to remove the moratorium.

Moreover, it is the government's own judgment that will decide which laws will be amended to bring about compliance with section 15. The government may believe that a particular law does not offend the section. Others may well have a different view. For example, the government stoutly maintained in the *Bedard* and *Lavell* case that section 12(1)(b) of the *Indian Act* did not deny equality before the law to Indian women. Moreover this law still has not been changed, even though the Honourable Mr. Chrétien declared on October 6 that "As a Government, we *now* consider ourselves morally bound by the non-discrimination provisions of the Charter..."[23]

The moratorium means that it will be at least three years from patriation before a person can challenge in Court the government's judgment that some law is not in violation of section 15. We already know about numerous laws which we think violate section 15, and know of the hardship these violations cause. Section 15 Court proceedings will devour further years. Even assuming that necessary facts and witnesses can be assembled after a three-year delay, the moratorium means that some will experience more than a three-year wait for justice. This is surely unconscionable, and extremely incongruous given the haste with which the government is proceeding with the rest of the resolution.

Section 29(2) should be completely removed from the Charter.

Section 24

This section seems designed to protect those rights and freedoms not explicitly dealt with in the Charter. Its closing phrase guarantees "any rights or freedoms that pertain to the native peoples of Canada".

In the *Bedard* and *Lavell* case, it was held that differential treatment of Indian women who married non-Indians was justified because it was a matter relating to the internal governance of Indians on Reserves, Reserves being among the rights vouchsafed to the Indian people by the *British North America Act*.[24]

We are unsure whether section 24 of the proposed Charter will justify other differentiations between Indian women and men, on the basis of real (or imagined) customs, rights, or ancient freedoms.

To clarify the position, we would like to see added at the end of section 24 the phrase: " . . . provided that such rights or freedoms pertain equally to native men and women".

Section 26

This section of the Charter preserves the power of Parliament and the legislatures to make rules respecting the admissibility of evidence in any proceeding. It also states that no provision of the Charter, except section 13 dealing with self-incrimination, would affect the laws of admissibility of evidence.

We are concerned about the impact of this section on the guarantees in section 15, which, at the very least, does deal with equality in the administration of the law. Does it mean that there can properly be different provisions concerning the admissibility of testimony of a woman and a man, an Indian and a non-Indian, a religious person and an agnostic?

Certainly members of this Committee will be aware of our long-standing interest in ensuring that laws about admissibility of evidence in cases of sexual assault are not based on sexual stereotypes, and do not unfairly prejudice the victim.[25]

A bias against women in the laws of evidence could prejudice the fair trial of the issue.

We ask that the section be amended so that its introductory words are:

> No provision of this Charter, other than sections 13 *and* 15 . . .

Section 3

This section guarantees certain political rights "without unreasonable distinction or limitation". We are not convinced that this qualifying phrase need be so broad. We are sensitive to a period in our history when women were denied the franchise and the right to stand for public office.[26] We remember that members of racial minorities have suffered the same fate.[27] Exclusions from the vote because of religion or insufficient property qualifications were familiar features of early English history.

We think that section 3 should include, after " . . . limitation", the phrase "established in conformity with section 15 . . . ". The prohibited bases for distinction set out in section 15 would thereby be incorporated as forbidden bases for denying the right to vote and hold office. There may be reasons, like youthfulness, or serious mental incapacity, why the franchise might be withheld. We do not think, however, that race, sex, national or ethnic origin, or religion should ever constitute a reason for denying to a citizen the right to vote or hold office.

The Person

The Charter deals with rights which individual persons have vis-à-vis government action. We think that the language of the Charter should emphasize this point.

The present draft uses "Everyone has . . . " as the customary way of beginning a section. The French language version is "Chacun a ..." " Only when there is some special limitation on the right is a different formula used: for example, sections 3 and 6 begin "Every citizen has . . . "

The present Canadian Bill of Rights, on the other hand, refers to "the right of *the individual* to life, liberty, security of the *person* . . . ", "the right of *the individual* to equality before the law . . . ", and restrictions on the authority of the state to "compel *a person*" or "deprive *a person*", and so on.

We would like to see each section which now begins with "Everyone" be changed, so that it begins "Every person"; in French, the phrase could be "Toute personne".

Section One

We have left until last comment about one of our most grave reservations about this proposed Charter of Rights.

Section one is, to be succinct, deplorable. In our view, if section one is allowed to continue in its present form, there is no point in having the rest of the Charter. Our liberties and rights will be in greater jeopardy while "guaranteed" by a Charter containing section one than ever they have been.

The section states that the guarantees of our rights and freedoms are "subject only to such

reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government".

This exception is a contradiction of the whole idea behind a Charter of Rights. A limitation which is "generally accepted" in a society with a parliamentary system of government is, essentially, a limitation which has the acceptance of a majority. Protection of minorities against the actions of the majority is the very cornerstone of our civil liberties, enunciated as such by John Stuart Mill:

> The will of the people, moreover, practically means the will of the most numerous or the most active *part* of the people; the majority or those who succeed in making themselves accepted as the majority; the people, consequently, *may* desire to oppress a part of their number; and precautions are as much needed against this as against any other abuse of power . . . and in political speculations "the tyranny of the majority" is now generally included among the evils against which society requires to be on its guard.[28]

To say that we will limit our liberties in ways that have majoritarian approval from time to time is to say that our Charter is hollow.

There are further grave difficulties with the suggested approach. Under the system established by the Charter, the Court is to say when a law is inconsistent with the Charter and, by operation of section 25, the law is inoperative to the extent of the inconsistency.

A Court may thus come to assess whether a particular *limitation* on our liberty is permissible under section one. The standards by which a Court can determine this question will be difficult to develop. Any piece of legislation limiting our liberty will have been passed by a majority of members of Parliament or the legislature in question. Yet, the Court will be invited to say that this does not mean that the limitation is "generally accepted in a free and democratic society with a parliamentary system of government". It will be invited in effect to say that it knows more about acceptability in a parliamentary system than does a Parliamentary majority.

It may well be that a Court would be so daunted by this prospect that few, if any, limitations on our liberties would ever be ruled inoperable. Our Courts have long functioned within a tradition of "Parliamentary supremacy", a principle which holds that the legislature is the ultimate arbiter of what is legal and acceptable. The provisions of section one may invite the Courts to continue to respond to the rule of Parliamentary supremacy, and uphold virtually every limitation on freedom enacted by a legislature. In that event, only limitations imposed in regulations or other non-parliamentary sources of law would ever be seriously scrutinized. Section 25, indeed the whole Charter, would be deprived of all meaning.

On the other hand, the Courts might be vigorous in scrutinizing limitations on the terms of the Charter, even when those limitations were imposed by legislative majority. Parliament would doubtless be wounded by any intimations in this scrutiny that its actions are unfree, undemocratic, or unparliamentary. Section one might thus precipitate needless, and sharp, conflict between the Courts and the legislature. The risks of such conflict are twofold. The Courts may be so wary of it that they will adopt an extremely cautious approach to interpreting the Charter. In the alternative, they may strategically "pick their fights", risking outcry only when the values at stake are ones they

prize most highly. Then, in truth, the Court would be radically altering the intention behind the Charter to safeguard all the enumerated rights and freedoms.

We cannot ignore the purpose behind section one. In part, it must be to provide the Courts with leeway in interpreting the Charter, so that problems posed by absurdities and absolutes can be resolved. We believe that the rules of interpretation developed over the centuries will continue to assist the Court to avoid absurdities, injustice, and anomalies, even without a clause like section one.

In part, the section is probably designed to allow limitations on our liberties, in the public interest, during a national crisis. We must sound a ringing note of caution, however, at using such a sweeping section to achieve this purpose.

One commentator said with reference to the predecessor of the present section one, section 25 of Bill C-60:

> "Provisions similar to section 25 of Bill C-60 serve as the constitutional basis for some of the more authoritarian and anti-human rights conduct which the world has witnessed since the Second World War. Provisions similar to section 25 have provided the constitutional authority of Idi Amin to pursue the activities he has, for Indira Ghandi to impose authoritarian government in 1976, and for the Government of Bangladesh to impose martial law on August 25, 1975. Examples can be found in other Commonwealth constitutions and in the experiences of other Commonwealth countries such as Sri Lanka, Cyprus, Nigeria and Malaysia. Also note that the Soviet Constitution has a similarly worded provision (along with an "entrenched" Bill of Rights). Surely the experiences of these countries renders section 25 of Bill C-60 suspect if one is to take the objectives of Bill C-60 at face value."[29]

It may be noted that section 25 contained explicit, if wide, phrases describing when liberties could be curtailed.[30] Section one is far more general.

If it is regarded as necessary to provide for curtailment of liberty in times of national crisis, we ask that the grounds for such curtailment be precisely and narrowly articulated. The philosophy behind permitting such curtailment should also be expressed: we limit some liberties so that all our fundamental liberties might, in the end, flourish. Both these stipulations are necessary so that there is clear and forceful guidance to the Courts.

For a model of a desirable provision, we draw upon the International Covenant of Civil and Political Rights, to which Canada is a signatory. We propose that the provision be part of section 29, dealing with the application of the Charter. We do not think it desirable to have the limitations on our liberties take pride of place in section one.

In lieu of the present section one, we therefore propose a simple statement of purpose, which would appear as section one:

> The Canadian Charter of Rights and Freedoms guarantees to every person the rights and freedoms set out in it.

Then we propose the addition to section 29, in place of the present subsection (2), the following:

29 (2) In time of public emergency which threatens the life of the nation and the existence of which is officially pro-

claimed, Parliament may authorize the temporary restriction of certain rights and freedoms to the extent strictly required by the exigencies of the situation and in a manner that the other rights and freedoms set out in this Charter will be preserved; provided that such restrictions shall not involve discrimination solely on the ground of race, colour, sex, religion or ethnic origin.

(3) No derogation from sections 2(a), 3, 7, 12, 14, 16-22 and 23 is permissible under subsection (2).

Our proposed subsection (3) stipulates those liberties which should never be curtailed, even in times of emergency. The list closely parallels that in the International Convention. The protected liberties are: freedom of conscience and religion, the right to vote and hold office (assuming that elections have not been postponed pursuant to section 4), the right to life, liberty and security of the person and the right not to be deprived thereof except in accord with principles of fundamental justice, protection from cruel and unusual punishment, the right to a translator in proceedings, the right to use of the official languages, and right to education in the chosen official language. Moreover, the proposed subsection (2) reflects our view that denial of equality on the basis of race, colour, sex, religion or ethnic origin can never be justified, even in emergencies.

Summary of Recommendations

Accordingly, we most respectfully submit that the following changes be made to the present Charter, and that this Committee approve the entrenchment of the Charter in its revised form.

Our proposed changes are:

Section 1

The Canadian Charter of Rights and Freedoms guarantees to every person the rights and freedoms set out in it.

Section 3

Every citizen of Canada has, without unreasonable distinction or limitation, *established in conformity with section 15,* the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

Section 15: Equal Rights

(1) Every person shall have equal rights in law including the right to equality before the law and to the equal protection and benefit of the law.

(2) Such equal rights may be abridged or denied only on the basis of a reasonable distinction. Sex, race, colour, national or ethnic origin, and religion will never constitute a reasonable distinction except as provided in subsection (3).

(3) Nothing in this Charter limits the authority of Parliament or a legislature to authorize any program or activity designed to prevent, eliminate or reduce disadvantages likely to be suffered by any group of individuals when those disadvantages are related to the race or sex of those individuals, or to the other unreasonable bases of distinction pursuant to subsection (2).

Section 24

The guarantee in this Charter of certain rights and freedoms shall not be con-

strued as denying the existence of any other rights or freedoms that exist in Canada, including any rights or freedoms that pertain to the native peoples of Canada; *provided that such rights or freedoms pertain equally to native men and women.*

Section 26

No provision of this Charter, other than sections 13 *and 15*, affects the laws respecting the admissibility of evidence in any proceedings or the authority of Parliament or a legislature to make laws in relation thereto.

Section 29(2)

Section 29(2) should be completely removed from the Charter.

Section 29

(2) New Rewording of Section 1

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, Parliament may authorize the temporary restriction of certain rights and freedoms to the extent strictly required by the exigencies of the situation and in such a manner that the other rights and freedoms set out in this Charter will be preserved; provided that such restrictions shall not involve discrimination solely on the ground of sex, race, colour, religion or ethnic origin.

(3) No derogation from sections 2(a), 3, 7, 12, 14, 16-22 and 23 is permissible under subsection (2).

General clause

Each section which now begins with "everyone" should be changed so that it begins "Every person".

NOTES

1. List of Papers Prepared for the CACSW on the Constitution.
   Liste de documents préparés pour le CCCSF sur la Constitution.
   Eberts, Mary. *Women and Constitutional Renewal.*
   Baines, Beverley. *Women, Human Rights and the Constitution.*
   Native Women's Association of Canada. *Native Women and the Constitution.*
   Bénard, Nicole. *Le Droit de la famille.*
   Bowman, Nicole. *Proposed Transfer of Divorce Jurisdiction: an Assessment.*
   Huddart, Carole. *Property Division on Marriage Breakdown in the Common Law Provinces.*
   Fédération des femmes du Québec. *Les effets du chevauchement des juridictions sur la vie quotidienne des femmes.*
   Doerr, Audrey. *Overlapping Jurisdictions and Women's Activities.*
   National Action Committee on the Status of Women. *Overlapping Jurisdictions: A Pitfall in Supplying Services to Women.*
   Dulude, Louise. *Women, Poverty and the Constitution.*
   Carrier, Micheline. *Les droits des femmes et 'les intérêts de la nation'.*
   Aubert, Lucienne. *L'emploi et la maternité.*
   Fédération des femmes du Québec. *La femme et l'emploi.*
   Duckworth, Muriel. *Women's Services.*
2. A helpful expositon of the problem is found in Paul Weiler, *In the Last Resort* (Toronto, Carswell/Methuen, 1974), at page 213. He states that in the administration of a Bill of Rights " . . . the judges are faced with essentially open-ended moral categories into which they must pour precise meaning and content. In this task they cannot rely extensively on legislative or administrative definitions because these are precisely the bodies from which originate a definition that is under examination".
3. Mr. Justice Ritchie, in *Attorney General of Canada v. Lavell; Isaac v. Bedard,* [1974] S.C.R. 1349, at page 1367. Professor Baines refers to this as the "rule of law" principle of interpreting the equality before the law guarantee; see B. Baines, "Women, Human Rights and the Constitution", prepared for the CACSW, October, 1980, at p. 30. She has identified four other principles employed by the Court to interpret the guarantee; see pp. 30 to 45 of her paper for a discussion of them. They are the "Worse consequences" principle first enunciated by Mr. Justice Ritchie in *R. v. Drybones,* [1970] S.C.R. 282 at p. 297; the "valid federal objective principle" developed by Mr. Justice Martland in *R. v. Burnshine,* [1975] S.C.R. 693, at pp. 706 to 708; the "relevant distinction principle" developed by Mr. Justice Pratte and referred to by Mr. Justice Ritchie in *Bliss v. A.G. Canada,* [1979] S.C.R. 183, at p. 192; and the "prohibited classification principle" employed by Mr. Justice Laskin, as he then was, in his dissenting reasons in *Lavell,* [1974] S.C.R. 1386 to 1387.
4. *Attorney-General of Canada v. Lavell; Isaac v. Bedard,* [1974] S.C.R. 1349.

4a. "Equal protection of the law" instead of simply "protection of the law".
5. Notes for a speech by the Honourable Jean Chrétien, Minister of Justice, House of Commons, October 6, 1980, (Ottawa, 1980), "Constitutional Reform", p. 15.
6. Canadian Bill of Rights, s. 1(b). See R.S.C. 1970, Appendix III.
7. *Constitutional Amendment Bill, 1978,* House of Commons, June 1978, section 6.
8. O. Lang, *Constitutional Reform: Canadian Charter of Rights and Freedoms,* Canada, 1978, p. 8.
9. *Op.cit.*, note 4, p. 37.
10. In *Curr v. The Queen,* [1972] S.C.R. 889, Mr. Justice Laskin, as he then was, had to consider arguments that section 1(a) of the present *Bill of Rights* dealing with "due process' should be read in the light of American jurisprudence on the 5th and 14th amendments. In a well reasoned argument at [1972] S.C.R. 898-902 he rejects the argument, in part, because the Bill of Rights provides a different context for s. 1(a) than that surrounding the 14th amendment. In the *Lavell* case, he rejected 14th amendment jurisprudence on equality before the law on the ground that the Canadian Bill of Rights offered more explicit guidance on the point: [1974] S.C.R. 1349, at p. 1386. M. Justice Ritchie in *Lavell* simply denies, without elaboration, that s. 1(b) is "effective to invoke the egalitarian concept exemplified by the 14th amendment of the U.S. Constitution as interpreted by the Courts of that country": [1974] S.C.R. 1349, at p. 1365.
11. *Op. cit.*, note 8, page 5.
12. William E. Conklin, *In Defense of Fundamental Rights,* (The Netherlands, Sigthoff and Noordhoff, 1979) p. 291.
13. *Frontiero v. Richardson,* 411 U.S. 677 (1973). See the reasons of Justices Brennan, Douglas, White and Marshall.
14. See, for example, *Kahn v. Shevin,* 416 U.S. 351 (1974), and *Stanton v. Stanton,* 421 U.S. 7 (1975).
15. See, for example, *Reed v. Reed,* 404 U.S. 71 (1971) and *Craig v. Boren,* 429 U.S. 190 (1976).
16. Pierre Elliot Trudeau, *Conversations with Canadians,* (Toronto, U. of T. Press, 1972), pp. 23-24. (Taken from a speech to the Toronto and District Liberal Association, 3 March 1971).
17. [1974] S.C.R. 1349, at p. 1386.
18. [1975] S.C.R. 693.
19. *Op. cit.*, note 6.
20. Royal Commission on the Status of Women, *Report,* Ottawa, 1970.
21. CACSW, *Ten Years Later,* Ottawa, 1979.
22. See for example:
What has happened?, Nova Scotia Advisory Council on the Status of Women, September, 1980.
"Brief to the Government of Ontario Respecting Widow's Rights to Family Property", Ontario Status of Women Council, August, 1980.
5th Annual Report, Ontario Status of Women Council, April 1978 to March 1979.
"Plan of Action on the Status of Women", New Brunswick Advisory Council on the Status of Women, 1980.
Annual Report, New Brunswick Advisory Council on the Status of Women, 1978-1979, 1979-1980.
"Prise de position du Conseil du statut de la femme sur les discussions constitutionnelles", Québec, 1980.
Le livre rouge de la condition féminine, RAIF, 1979.
"Brief to the Canadian Human Rights Commission", Newfoundland Status of Women Council, 1980.
"Brief to the Committee on Constitutional Review", Newfoundland Status of Women Council, 1980.
23. *Op. cit.*, note 6.
24. [1974] S.C.R. 1349, at pp. 1359-1362.
25. See Council Recommendations on Sexual Offences, October 1979.
26. See Catherine L. Cleverdon, *The Woman Suffrage Movement in Canada,* (Toronto, U. of T. Press, 1959).
27. In *Cunningham and A.G. for B.C. v. Tomey Homma and A.G. for Canada,* (1903) A.C. 151, the Privy Council held that British Columbia could deny the vote to men who were Chinese, Japanese or Indian. The Diefenbaker government finally permitted Indian people to vote without becoming 'enfranchised', that is, giving up their rights under the *Indian Act.*
28. John Stuart Mill, *On Liberty* (Crofts Classics, Northbrook, Illinois, AHM Publishing, 1947), at p. 4.
29. W. Conklin, *Op. cit.*, note 13, p. 292.
30. Bill C-60, *Op. cit.*, note 8, p. 12. The text of section 25 is as follows: "Nothing in this Charter shall be held to prevent such limitations on the exercise or enjoyment of any of the individual rights and freedoms declared by this Charter as are justifiable in a free and democratic society in the interests of public safety or health, the interests of the peace and security of the public, or the interests of the Rights and Freedoms of others whether such limitations are imposed by law or by virtue of the construction or application of any law."

NATIONAL ACTION COMMITTEE ON THE STATUS OF WOMEN PRESENTATION TO THE SENATE HOUSE OF COMMONS SPECIAL JOINT COMMITTEE ON THE CONSTITUTION OF CANADA

November 20, 1980
Ottawa, Ontario.

Women could be worse off if the proposed Charter of Rights and Freedoms is entrenched in Canada's Constitution. Certainly, the present wording will do nothing to protect women from discriminatory legislation, nor relieve in-

equities that have accumulated in judicial decisions.

Differences between the life patterns of women and men have not been considered by the drafters of the proposed Charter. We ask you to look at the new Charter in a different way, from the perspective of over half the people of Canada, to see its deficiencies and consider amendments to affirm and protect the fundamental rights to equality of women with men.

The National Action Committee on the Status of Women is a voluntary organization working to improve the status of women in Canada. NAC is an umbrella for more than 150 non-governmental organizations across the country—some regional, others Canada-wide. It promotes reform in laws and public policies, informs the public about women's concerns, and fosters cooperation among women's organizations.

NAC held a public forum on the Constitution in Toronto on October 18, 1980, the recommendations from which were considered by the Executive and form the basis of this brief. Notably, it was agreed that we support entrenchment of a Charter of Rights and Freedoms in principle. However, Part 1 of the Constitution Act, 1980, would be acceptable only if amendments are made to Sections 1, 15(1) & (2), 24 and 29(2), and a new section on the Supreme Court.

We remind you that NAC has already informed the Minister of Justice of its opposition to moving divorce from federal to provincial jurisdiction. Nor do we address the division of powers which has wide application especially in the area of social services. Women have encountered difficulty by interminable referrals back and forth because of federal-provincial sharing of responsibility for financing and administration.

SCHEDULE B

CONSTITUTION ACT, 1980

PART I

CANADIAN CHARTER OF RIGHTS AND FREEDOMS

Guarantee of Rights and Freedoms

Rights and Freedoms in Canada

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it **subject only to such reasonable limits as are generally accepted in a free and democratic society with a parliamentary system of government.**

The opening section under Guarantee of Rights and Freedoms falls short of the principle we would expect. Imprecise wording in the limitations clause (bold type ours) could open the way to a variety of interpretations of permitted exceptions. Indeed, the potential for driving a truck through led participants at our conference to dub it "the Mack truck clause." Failure to clarify the guaranteed rights and freedoms by removing the limiting clause would render useless subsequent sections.

A. **NAC PROPOSES THAT THE GENERAL LIMITING CLAUSE BE DELETED.**

If there have to be restrictions on rights and freedoms in time of war, these should be specified, as well as those rights and freedoms not to be abridged under any circumstances.

B. NAC RECOMMENDS THAT RIGHTS AND FREEDOMS NOT TO BE ABRIDGED UNDER ANY CIRCUMSTANCES, SHOULD INCLUDE, AT LEAST, THE RIGHT NOT TO BE SUBJECTED TO ANY CRUEL AND UNUSUAL TREATMENT OR PUNISHMENT AND THE HUMAN RIGHT TO EQUALITY IN THE LAW.

Non-discrimination Rights

Equality before the law and equal protection of the law

15. (1) Everyone has the right to **equality before the law** and to the equal protection of the law without discrimination because of race, national or ethnic origin, colour, religion, age or sex.

Affirmative action programs

(2) This section does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged persons or groups.

"Equality before the law', (bold type ours)—the wording proposed in the government's Charter of Rights, and used in the present Canadian Bill of Rights, has been interpreted to mean only that laws, once passed, will be equally applied to all individuals in the category concerned. The law as written could discriminate against women, which is neither just nor acceptable. The courts have been concerned with maintaining the just administration of the law, but not with discrimination built into the law itself. Thus the Supreme Court of Canada decided **against** Lavell and Bedard, two Indian women who lost their status on marriage to non-status men. If the present wording prevails, there is no guarantee that Indian women will not continue to be denied equal rights with Indian men.

C. NAC RECOMMENDS AMENDMENT TO PROVIDE FOR EQUALITY IN THE LAWS THEMSELVES, AS WELL AS IN ADMINISTRATION OF THE LAWS.

Better still would be a statement that equality is a positive objective, and requiring an 'evening-out' process towards its achievement. This would be consistent with the view that freedom from discrimination is a positive human right women are entitled to enjoy. It would discourage a narrow interpretation of equality and prevent objections to affirmative action programs which could lead to costly, time-consuming litigation.

D. NAC RECOMMENDS A NEW CLAUSE TO SPECIFY THE HUMAN RIGHT TO EQUALITY AS A POSITIVE OBJECTIVE.

E. NAC RECOMMENDS THAT THE SPECIFIED CATEGORIES IN SECTION 15(1) BE AMENDED TO INCLUDE MARITAL STATUS, SEXUAL ORIENTATION AND POLITICAL BELIEF.

In view of the Stella Bliss case especially, it is clear that more specific directions need to be given to the courts for the interpretation of equality. Notably it is necessary to specify that discrimination on the basis of sex is proscribed whether the law discriminates against **all** women or only **some** of them.

F. NAC RECOMMENDS THE ADDITION OF A NEW CLAUSE TO

SECTION 15 SPECIFYING THAT DISCRIMINATION ON THE BASIS OF A SPECIFIED CATEGORY IS PROSCRIBED WHETHER ALL MEMBERS OF THAT CATEGORY ARE AFFECTED OR ONLY SOME.

Part 1, Section 15(2) (above)

We believe this clause on affirmative action programs is intended to include women, but nowhere is this expressly stated. Given the sorry records of the courts on women's rights cases, this is not a matter to be left to judicial discretion. Should affirmative action programs be established we do not want to have to spend years in court proving their legality.

G. NAC RECOMMENDS ADDING TO SECTION 15(2) THE WORDS "INCLUDING WOMEN."

Application of Charter

Applications of Charter

29. (1) This Charter applies:
(a) to the Parliament and government of Canada and to all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
(b) to the legislature and government of each province and to all matters within the authority of the legislature of each province.

Exception

(2) **Notwithstanding subsection (1), section 15 shall not have application until three years after this Act, except Part V, comes into force.**

No delay should be necessary in the application of (1) and (2) (bold type ours) of Section 15 (above). Advisory Councils on the Status of Women have the necessary inventories of relevant legislation requiring up-dating which could be proceeded with immediately.

H. NAC RECOMMENDS THAT SECTION 29(2) BE DELETED.

Part 1, Sections 24 and 25

Undeclared Rights and Freedoms

Undeclared rights and freedoms

24. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada, including any rights or freedoms that pertain to the native peoples of Canada.

General

Primacy of Charter

25. Any law that is inconsistent with the provisions of this Charter is, to the extent of such inconsistency, inoperative and of no force or effect.

Sections 24 and 25 of the proposed Charter actually threaten to entrench **unequal** rights for native women. Under the present Indian Act men are given special rights to pass on Indian status to a non-Indian spouse and their children, while native women are denied the same ability. Indian women indeed lose their

status on marriage to a non-status spouse, and cannot regain it, even on divorce or widowhood. The spouse of a status man, by contrast, retains Indian status even if the marriage is dissolved. Entrenchment of the rights and freedoms now existing for the native people could be interpreted to mean entrenchment of special rights to native men and their denial to native women.

I. **NAC RECOMMENDS AMENDMENT TO SECTION 24 BY ADDING "PROVIVIDING THAT ANY SUCH RIGHTS OR FREEDOMS APPLY EQUALLY TO NATIVE MEN AND TO NATIVE WOMEN."**

SUPREME COURT OF CANADA

Decisions as to what rights and freedoms Canadian women will enjoy will continue to be made by the courts, and ultimately by the Supreme Court of Canada. Yet, the Supreme Court of Canada decided:

- —that women were not persons—the famous 1928 Persons' Case;
- —that discrimination against Indian women in the Indian Act does not violate 'equality before the law';
- —that Stella Bliss was not discriminated against because she was a woman, but a pregnant person;
- —that, again in the Bliss case, there was no discrimination because not **all** pregnant women were denied benefits under the Unemployment Insurance Act;
- —and that Irene Murdoch had no claim to a share in the ranch on which she had, for 20 years, done the haying, raking, swathing, mowing, driven the horses and tractors, and dehorned, vaccinated and branded the cattle, as well as kept house and raised four children, because she had done "no more than what a normal farm wife would do."

A representative number of women on the bench is not just a demand for symbolism—that women and men are equal—nor for career opportunities—although women deserve the same chance at judicial appointments and promotions as men. Very practically, numbers count. The decision on Lavell and Bedard was by a 5-4 majority in the Supreme Court of Canada. Altogether, 14 judges ruled on these cases—8 in favour of the women's argument, 5 against, and 1 did not decide on the equality aspects. Clearly, the appointment of even 1 or 2 women to the Supreme Court of Canada could have made a difference in these crucial women's rights cases.

At present, 3 out of 9 places on the Supreme Court of Canada are allocated to Quebec because it is accepted that judges without experience in civil law should not be deciding civil law appeals. Should the same argument not hold for women's appeals, if not on grounds of socialization, gender identity and roles, then on the actual record of male judges in women's rights cases?

J. **NAC RECOMMENDS ADDITION OF A NEW SECTION TO GUARANTEE THE APPOINTMENT OF A REPRESENTATIVE NUMBER OF WOMEN TO THE COURTS, INCLUDING THE SUPREME COURT OF CANADA.**

The consistent use of the word "everyone" throughout the Charter, concerns us. "Every person" would be more specific, since "person" as used in the B.N.A. Act, has been clearly defined by the Courts in the Persons Case.

K. NAC RECOMMENDS REPLACEMENT OF THE WORD "EVERYONE" WITH "EVERY PERSON" THROUGHOUT THE CHARTER.

To sum up, in order for the Charter to provide unmistakably for the human right to equality for every person in Canada, including women, key changes are required in Section 1, Section 15(1) and (2). Amendments proposed in Sections 24 and 29 (2) contribute to the same end. These changes are required to protect the fundamental rights and freedoms of all people in Canada, of women and men, in their encounters with government and each other.

THE AD HOC COMMITTEE OF CANADIAN WOMEN CONFERENCE ON CANADIAN WOMEN AND THE CONSTITUTION FEBRUARY 14 AND 15 1981 RESOLUTIONS ADOPTED AT THE CONFERENCE ON CANADIAN WOMEN AND THE CONSTITUTION

I. RESOLUTIONS PASSED ON THE CHARTER OF RIGHTS AND FREEDOMS:

BE IT RESOLVED:

that this Conference endorse in principle the concept of an entrenched Charter of Rights as per the recommendations passed February 14, 1981 and that unless the Charter reflects the amendments made here today, that it not be included in the submission to the British Government in order to provide time to incorporate these amendments,

that failing the full adoption of our amendments, incorporation of a Charter of Rights be accomplished by a constituent assembly of 50% women.

REQUIRED AMENDMENTS:

Clause 1 — a statement of purpose should be added providing that the rights and freedoms under the Charter are guaranteed equally to men and women with no limitations

any limitation to clause (1) should follow the format and content of Article 4 of U.N. International Covenant on Civil and Political Rights

the word "person" should be used throughout the Charter, in lieu of any other word denoting human being

Clause 7 — That clause 7 be amended to include the right to reproductive freedom

that clause 7 be amended to include the right to equality of economic opportunity

Clause 15 (1) — that the list of prohibited grounds of discrimination in clause 15 (1) be amended to include: (1) marital status (2) sexual orientation (3) political belief

that clause 15 contain a two-tiered test recognizing that there shall be no discrimination on the basis of sex, race, religion, colour, national or ethnic origin, mental or phys-

ical disability, age, marital status, sexual orientation, and political belief, and that there be a compelling reason for any distinction on the basis of sex, race, religion, colour, or national or ethnic origin, sexual orientation or political belief

Clause 15 (2) affirmative action programs under clause 15 (2) should apply only to disadvantaged groups as listed under clause 15 (1) and not to individuals. Explanatory note: it is our opinion that individuals who are members of disadvantaged groups benefit under the programs listed above

Clause 26 clause 26 on multiculturalism be dealt with in the preamble

Clause 29 (2) the three-year moratorium for the implementation of clause 15 be deleted from the Charter

BE IT RESOLVED:

that this meeting approves the principle of equitable representation of women throughout the political system. In the case of appointments to the Upper House, Boards, Commissions and the Bench women should have equal access to appointments and positions and hold at least half the positions at all levels.

II. RESOLUTION PASSED ON THE CONSTITUTION

BE IT RESOLVED:

that the women of this Conference support bringing home the Constitution with an amending formula.

III. PROCESS OF CREATING THE CONSTITUTION

Whereas the process of creating our Constitution has been done in great haste and does not adequately reflect the needs of women,

BE IT RESOLVED:

that the Women's Conference on the Constitution insist on a full and fair debate in Parliament on the Constitutional package before it, and oppose any use of closure on that debate.

THE AD HOC COMMITTEE OF
CANADIAN WOMEN
FEBRUARY 15, 1981
OTTAWA