



Federated Women's Institutes of Canada

Dear Members:

I promised you some months ago that I would write briefly about the Bill of Rights as I have read and studied it.

* Legislative powers in our federal system of government are exercised by the federal and provincial governments as set out in accordance with the Constitution Act of 1867 (formerly known as the BNA Act 1867) and any amendments to it.

Changes were made to the Constitution on **April 17, 1982 in the Canada Act**. The Constitution consists of the **Canada Act 1982**, including the Constitution Act 1982, which contains the Canadian Charter of Rights and Freedoms, and all the Constitutional Acts and orders adopted since 1867 including the Constitution Act 1867.

The Canadian Charter of Rights and Freedoms contains provisions relating to the principles of equality.

At the federal level, the charter applies to Parliament and the government of Canada; at the provincial level it applies to the legislature and government of each province with respect to all matters within their authority.

The Canadian Bill of Rights is not part of the Constitution of Canada but it may be used to render inoperable federal laws which are inconsistent with the Constitution. Section (B) states that in Canada there has existed, and will exist without discrimination, the right of the individual before the law and protection of the law regardless of race, national origin, colour, religion or sex.

The federal government and provincial governments all have human rights statutes. They reaffirm the principle of the equality of men and women.

By the mid 1970's all provinces had established human rights commissions to administer their human rights legislation.*

I urge you to become familiar with the Ontario Human Rights Code. The preamble to this code states, "it is public policy in Ontario to recog-

nize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law."* Revisions to the Codes in 1981 include a clause giving it primacy over other acts except where such acts specifically provide for application "notwithstanding this Act." (S 46 (2))

This is indeed very brief information but it is basic to study our new Constitution and the Bill of Rights.

As I write this there is much being written in the newspapers and much shown on T.V. regarding Section 15 of the Charter of Rights which is to become effective on April 17. You will recall that the passage of this section was to be delayed for three years to allow all governments to review their existing laws and change them to conform to Section 15, which guarantees that "every individual is equal before and under the law and has the right to the equal protection and benefit of the law without discrimination". Specifically it mentions discrimination "based on race, national or ethnic origin, color, religion, sex, age or mental or physical handicap."

This seems very straightforward and clear to you and me and to the average citizen. But when one gives it serious thought even a layman can start to ask questions and certainly the lawyers are doing so. First one might ask, "What is equality"? Can women claim the right to maternal benefits if there is no equal right for men? Can homosexuals and lesbians and prostitutes claim equality under the law or will they claim they are being discriminated against? Can those in the workforce who wish to work as long as they wish, do so instead of having to retire at 65? We could go on and on in our questions. Section 15 will be a subject of concern for years to come as the courts define the specifics of the law.

Section 28 of the Charter, fought for by women three years ago, is a vital guarantee that rights are "guaranteed equally to male and female persons". Section 15 of the Charter has two limiting rights

through two sections — Section 1 and Section 33.

Section 1 guarantees "the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". The burden of proving what is "reasonable" is left to the courts.

The other limitation is in Section 33. It provides that "Parliament or the legislature of a province may expressly declare an Act of Parliament or of the Legislature, that the Act or a provision thereof shall operate notwithstanding a provision included in Section 2 or Sections 7 to 15 of the Charter". It also states that a parliament of a province may re-enact a declaration made under Section (1).

You can see that it will take lawyers to "sort this one out" but we have a unique privilege, and, I believe, a responsibility to keep ourselves abreast of the implications and progress of matters leading to interpretation of the sections in the Charter of Rights and voice our opinions when we are able. Most particularly, let us study our Ontario Human Rights Code.

Moulding and testing our own Constitution will be a long process and one that is vital to us all, hence the need for our understanding and involvement.

Sincerely
Bernice B. Noblitt
President, F.W.I.C.

Sources:

**Convention on the Elimination of all Forms of Discrimination Against Women Report of Canada 1983, Department of Secretary of State, Ottawa.*