



In 2012 Canadians celebrated the 30th anniversary of the 1982 *Constitution Act* with its Charter of Rights and Freedoms, which was a milestone in the evolution of democracy in Canada. The importance of this document to our nation cannot be overstated. Canada's Charter of Rights and Freedom has proven to be a model studied and emulated by other countries around the world.

Before 1982 our founding constitutional documents were all British. With the *Constitution Act* the legal basis for Canada as a country was "repatriated" so to speak.

The introduction of the Charter gave Canadians, for the first time, a clear understanding of their individual rights backed by the full force of law, not just constitutional convention. It was perhaps the highlight for Canadian constitutional law in the 20th century, more important than the 1931 Statute of Westminster or the 1949 abolition of appeals

to the Judicial Committee of the Privy Council.

Among the individual rights finally enshrined in law by the enactment of the Charter of Rights and Freedoms was freedom of thought, belief and opinion; the right not to be deprived of life, liberty and security of person except in accordance with the principles of fundamental justice; the right to be secure against unreasonable search and seizure; the right not to be arbitrarily detained or imprisoned;

the right to be informed promptly of the reason for arrest or detention and the right to obtain and instruct counsel without delay and to be informed of the right of habeas corpus and the right when charged with an offence to be informed without delay of the specific offence.

Canadians also have the right not to be

subjected to any cruel and unusual treatment or punishment and to apply to the court for an appropriate remedy if we feel





our charter rights have been infringed or if we have evidence that would bring the administration of justice into disrepute if excluded.

Of great importance in the Constitutional Act, is the Disallowance Article that allows for the Governor General or Lieutenant Governor of a province to disallow federal or provincial legislation that is deemed inappropriate or which impacts negatively on Canadian Rights and Freedoms.

In 1996, as part of the Special Committee for Canadian Unity (SCCU), which my wife and I brought to Edmonton from Montreal following the 1995 Quebec Referendum. I took part in a constitutional study group with three lawyers where we followed the development of Canada's

Constitution from the Capitulations on the Plains of Abraham, Treaty of Paris, London Resolutions, to the British North America Act of 1867 (BNA Act) and of course to the 1982 *Constitution Act* with its Charter of Rights and Freedoms.

The Charter, with its complex amending formula, ensures that rights cannot be changed by the whim of the government of the day. One of the two important acts of the Commit-

tee members was to "Challenge" unconstitutional actions in the Courts of Canada.

I have utilized this knowledge gained through my work in the SCCU in my Parliamentary duties, particularly the Bills in Parliament to amend Section 93 of the BNA Act regarding Quebec schools and to amend the terms of Confederation for Newfoundland schools.



Occupy demonstrators in Ottawa, Toronto, Edmonton and other Canadian cities were exercising their constitutional rights.

In the Standing Committee on Foreign Affairs and International Development I had an occasion to "challenge" the legitimacy of a motion put forward by MP Paul Dewar which called upon the Government of Canada to live up to its "constitutional duty" to support Canadians who ran afoul of local laws while visiting abroad. In doing so I

spoke for three hours in great detail, explaining the illegitimacy of his motion. There is no constitutional statement requiring the support of Canadians abroad, although, of course, our embassies do the best that they can to help. Canadians abroad are subject to the laws of the country that they are in.

I attended the Occupy demonstrations, both in Edmonton and Toronto, where the central concern was for their rights to protest to be protected. I related that the wonderful,



peaceful message of the Orange Revolution (in Ukraine in 2004) would not have been made if police had forcibly evicted the protestors. In Canada it was important that the Occupy demonstrators be allowed a reasonable length of time to continue their demonstrations and make their points before conclusion.

The enactment of the Charter led to an increased role for Canada's judiciary, as the courts were given an increased duty and responsibility to ensure that individual citizens' rights were respected and protected. Some court rulings in Charter cases over the years have led to charges that judges were being activist, creating rather than interpreting the law, and that the Charter was being stretched in ways that were not originally intended when it was introduced. But supremacy remains with Parliament through the "notwithstanding clause," which has been used by some provinces but not by the federal government.

The Charter has certainly added an extra lens of judicial scrutiny which enhances Canadians rights for a fair trial. The document is intended to safeguard all of us, which makes the Charter of Rights and Freedoms

something to celebrate.

That does not mean that there isn't room for improvement or amendment to the constitution. For example, it is time to recognize Nunavut Territory in the Canada's Constitution, which I have done by introducing the Nunavut Inclusion Resolution in the House of Commons.



Ukraine's non-violent Orange Revolution allowed to proceed to its conclusion brought about a new election by peaceful means.

In the *Constitution Act 1982*, articles 30 and 32, specific mention is made to only two of the three federal territories, Yukon Territory and the Northwest Territories. To add greater clarity, Canada's Charter of Rights and Freedoms should also include Nunavut!

Since Nunavut was created in 1999 the Charter of Rights and Freedoms has not been amended to include it, possibly because it was felt that would require using the general amending formula in Section 38 which requires assent from the House of Commons, the Senate and at least two-thirds of the provincial legislative assemblies with an aggregate of at least fifty per cent of the provincial population. That formula has only been successfully used once since its inception in 1982 and constitutional amendment is considered by many to be too difficult and controversial to attempt.

Regardless, it is right that Nunavut Territory also be referenced. The Charter is a living document designed to protect our rights and freedoms. We should not be afraid to discuss it or amend it as necessary, no matter the perceived political obstacles. Otherwise our rights can easily be infringed on or abolished by well-meaning governments who become overconfident that Canadians do not care for their rights in a "government knows best" situation.

this change would also attest to the importance of all our northern Territories to Canada and add clarity to our Government's emphasis on Arctic sovereignty.

Our Constitution and Charter of Rights and Freedoms are important and must be protected if at all possible. They are, after all, the very foundation of our civil liberties and, while at times inconvenient, are indeed the envy of the world.

To bring Nunavut Territory into the Charter by name is consistent with our Canadian values of inclusiveness and equality. Making

Update: Because of the importance of Nunavut as Canada's all important representation for our sovereignty in the high arctic. Peter Goldring would like to introduce a motion in the House of Commons calling for the inclusion of the name Nunavut in the Charter of Rights and Freedoms. What do you think?

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This brochure series is intended to highlight special issues that Member of Parliament, Peter Goldring, has been involved in. If you wish to comment, please take a moment to fill out the survey below, write or call to the address above.

Your Opinion Matters...

Q1: Do you agree with the wording of the Charter of Rights and Freedoms, should it be amended to include Nunavut?

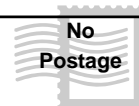
Yes No

Q2: Are your Constitutional Rights and Freedom Important to you?

Yes No

Comments: _____

Name: _____
Address: _____
City: _____
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