



New Brunswick Human Rights Commission

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New Brunswick's influence during the late 1970s and early 1980s

Premier Hatfield asked me, “Noël, what do you think about this idea of a Charter of Rights and Freedoms?” I said, “Premier, in 1967, the United Nations adopted the international treaty called the *International Covenants on Economic, Social and Cultural Rights* and—there were two instruments—the second one was the *International Covenants on Civil and Political Rights*.” Canada—the prime minister was Prime Minister Pearson, of the day—wrote to every premier and said, “It’s fairly well established that the federal government cannot enter into an international treaty that impacts on part of the provincial jurisdiction without the provinces agreeing, so I’m ready to get your consent and agreement that Canada should deposit the instrument of ratification of these two new international treaties on human rights.” And by 1977, agreement was reached on the decision that Canada should ratify these two treaties. New Brunswick played a major role in having that happen in 1977. The Human Rights Commissions were mainly representing the various provinces at national meetings, and we had formed our own organization of Human Rights Commissions, as prior to that, when each year the labor law administrators would meet once a year from across Canada, the Human Rights Commissions that were under the Labor Minister—that included Ontario and New Brunswick and Nova Scotia and Alberta, but it did not include a number of other jurisdictions that had placed the *Human Rights Act* (that they had copied from New Brunswick) under the Attorney Generals or another minister. So that’s why we formed this Canadian Association of Statutory Human Rights Agencies. At any rate, the same people met at federal-provincial meetings on the United Nations instruments and we had organized the first federal-provincial ministerial meeting on human rights. We raised the question of what the United Nations was doing, and that we had this treaty and Canada should ratify it. We were able to get the ministers to go to the premiers and most provinces studied very carefully the content of the two international covenants on Human Rights. To make a long story short, we had in writing the written agreement, and the province of Quebec did the most—in my opinion—serious analysis of these two international treaties. We did our study. So Canada ratified and it came into force on the 17th—mid-august of 1977. So I was able to say to Premier Hatfield who had asked me the question, would I recommend that he would support the Charter of Rights and Freedoms in our Constitution. I said, “Premier, absolutely yes, because we are already committed under international human rights law to meet these standards of human rights.” And he said, “Well, we’re going to have to follow these standards of human rights anyways.” I said, “Yes, Premier.” He said, “Fine, we’ll support it.” So you see the connection between a good public policy from a small province, and the rest is part of constitutional history. I had the good fortune of having been in the room when the final decision was made at the first ministers’ meeting. You might recall, there was the Gang of Eight, as they were called, and at the meeting of the first ministers, I was present; I have a picture that was taken 30 seconds before it happened. The Prime Minister of Canada said, “We’re deadlocked.” Deadlocked between the premiers who would support him—it’s known his parliamentary supremacy. They didn’t want the courts to make the final decisions as to what laws are valid and which laws would violate these principles of human rights. And the Prime Minister of Canada, Ontario and New Brunswick were for the charter rights. Any way, the critical meeting that took place in November ’81, at the end of the conference, in the conference hall across from the Chateau Laurier in Ottawa, Prime Minister Trudeau comes into this meeting, puts his

papers down, and he says, “OK, we’re deadlocked. This is what I propose: We bring the Constitution back and give ourselves three more years to see whether we can reach an agreement on the Charter of Rights and Freedoms in the Constitution, and if we fail to get agreement among ourselves, we’ll give it to the Canadian people by way of a referendum question. And he swings around and he stared at Premier René Lévesque in the eye; he says, “*Vous est le grand démocrate*” (You’re the big democrat).” Lévesque had just come off of his referendum and during that debate he kept arguing that in a democracy the people decide through referendum on which way we should go. I was astonished. “My gosh, I think Trudeau has cornered him!” And Lévesque thought for awhile, and he says, “D’accord (I agree).” And I always remember seeing Peter Lougheed’s face drop. Evidently he was doing this in French, and then the translation went through. Lévesque had abandoned the Gang of Eight. And because of that breakup, during the rest of the day, Roy Romanow, who was the Attorney General of Saskatchewan and Roy McMurtry, Attorney General of Ontario, and Jean Chrétien, Attorney General of Canada went across the corridor and there was a little kitchen on the fifth floor of the conference centre, and they said, “We’ve got to salvage this.” And then, during the day, that’s when they came up with the Section 33 of the Charter—the notwithstanding clause—that allowed for a little bit of supremacy of parliament. And at the same time, they accepted a Charter that at the end of the day would be ruled on by the Supreme Court of Canada. So, that’s a really important part of the work of the New Brunswick Human Rights Commission in those very early days—I’m talking the late 70s, early 80s—that had an impact way beyond our province’s jurisdiction.