

The inclusion of the charter of rights and freedoms in the canadian constitution

Law



of Topic: Do you support or oppose the inclusion of the Charter of Rights and Freedoms in the Canadian Constitution? Why or why not?

This paper seeks to analyze and discuss the whether there is basis to support or oppose the inclusion of the Charter of Rights and Freedoms in the Canadian Constitution. This paper takes the position that the maintaining the inclusion of the charter of guaranteed rights under Constitution is more beneficial to Canadians.

Supporters argue that the minority groups and others who were victims of state discrimination prior to the inclusion have new course of remedy under the present Constitution as they claim that “ Charter, like any bill of rights, protects minorities against the tyranny of the majority.”¹ They also argue that the inclusion has the effect of strengthening of the Canadian national identity. Christopher Dunn cites the provision of democratic rights and general mobility rights due to inclusion as proof of strengthening the identity of Canadians.²

On the other side of the coin, opponents found inclusion of the Charter to be anti-democratic due to the weakening of Canada’s traditional parliamentary system.³ They that the inclusion of sets of guaranteed rights “ opens another avenue of access for citizens.”⁴ They point out the possibility for any citizen go to court to have the law enacted by the legislature declared void and this weakens the role of the elected representatives in favor of a less accountable judiciary which just interprets the law. It may be counter argued not putting a restraint to the parliament in making laws would be subject to abuse. Hence the view that the judiciary is overpowering the legislative branch may be missing the point since one of the principles of

democracy is the presence of check and balances among the department of government.

Opponents also point that the inclusion of the set of rights Americanizes Canadian politics. They disagree that that Canada's Constitution is not like the American Constitution, which incorporated the Bill of Rights, and support a strong sense of individualism among Americans. They argue that although the notion of individuality is important in Canada, the "Canadians also see themselves in terms of collectives or a part of a group" 5 which they actualized in some legislative efforts such Medicare and employment insurance. They claim that the inclusion "will erode collective tendencies." 6 It may be counter argued that opponents value also individuality without sacrificing collective spirit of Canadians and since Canadians were able to show their collective efforts in Medicare and employment insurance under present constitution, then working collectively under the present set up has confirmed the effectiveness of the present constitution for collective spirit. It is hereby concluded that maintaining the inclusion of the Charter of Rights and Freedom under the present Canadian Constitution benefits Canadians more. Having explained and rebutted the opponents' counter arguments, there is basis to sustain the thesis of this paper. A constitution contains the government powers and maintaining the Charter therein is one way of preventing the abuse of these powers. Allan Cairns might be correct in saying that "from the evidence available, there is little possibility that a new constitution will emerge." 7

Works Cited:

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Unit Two, Federalism, The Constitution, and the Charter of Rights and Freedoms,