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## CHARTER OF RIGHTS AND FREEDOMS

Inquiry—Debate Continued

Speech by:

The Honourable Vivienne Poy

Tuesday, May 1, 2012

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### CHARTER OF RIGHTS AND FREEDOMS

#### INQUIRY—DEBATE CONTINUED

**Hon. Vivienne Poy:** Honourable senators, I rise today to take part in this inquiry on the thirtieth anniversary of the Canadian Charter of Rights and Freedoms. As an immigrant to Canada and a visible minority, I consider the Charter to be one of the unique determining factors that defines me as a Canadian. The core values as expressed through the Charter bind me to other Canadians in a shared sense of citizenship.

I am aware of the political scenario that existed when the Charter was brought into being, initially without the support of the Prime Minister of Britain, Margaret Thatcher, as well as of the British High Commissioner to Canada, John Ford, because they believed that the House of Commons should be supreme in the interpretation of the rights of its citizens. There was also a lack of the desired backing from all the provinces.

I do recognize that the Charter is not perfect. However, time has proven that our Canadian model works well in our multicultural society, and whether one likes the term “multiculturalism” or not, diversity is a fact of life in Canada.

After the Second World War, due to our declining birth rate and our aging population, the Canadian government had to turn to immigration for population growth and economic prosperity. The Charter of Rights and Freedoms of 1982 was timely because the 1980s were the years when the immigration of visible minorities increased dramatically. Since then, the Canadian population has become increasingly diverse and, while our pluralistic groups cultivate common ground in Canadian society, the Charter became the instrument with which to interpret and articulate our national values while simultaneously preserving and enhancing the multicultural heritage of Canadians.

• (1550)

The Charter is not just a legal document. It is expressed in our thinking and in our way of life. It is expressed in our language rights and it has advanced the equality of women. It can be seen in the multicultural curriculum in our schools, in our celebration of many religions, and in our recognition of Black History Month, as well as Asian Heritage Month, which happens to begin today.

It is reflected in our horror at the bullying of gays and others who may be perceived as different from ourselves.

The Charter reflects Canada’s struggle with the challenges of a modern, multicultural, multilingual society, and it confirms that we are a participant in a global world. It is a document that entails compromise and dialogue. It protects religious freedoms and multiculturalism and simultaneously safeguards gender rights and the rights of gays and lesbians. It recognizes collective rights while acknowledging the paramount importance of individual rights. It has a unique structure for balancing what may appear to be opposing interests. It is a distinctly Canadian document in that, just as Canada was founded on the basis of dialogue and engagement, the Charter balances the rights and freedoms of

many groups that make up our society. As a result of Charter jurisprudence, Canada has become a moral leader in the world.

Today, I want to focus on the Charter’s effects on the multiculturalism policy adopted in 1971 and on our broader approach to our very diverse population.

It was the Charter that gave weight to the policy, through article 2, that guarantees freedom of conscience and religion, thought, belief and expression, peaceful assembly and association. Article 15 extends the effects of article 2 by promising equality before the law to enjoy these freedoms without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disabilities. Article 27 is an explicit statement of Canada’s commitment to “the preservation and enhancement of the multicultural heritage of Canadians.”

In 1985, just three years after the passage of the Charter, one of the most pivotal cases in terms of the rights of immigrants to Canada occurred in the case of *Singh v. Minister of Employment and Immigration*, where refugees were found to have the same rights as Canadian citizens. The Supreme Court of Canada ruled that the Immigration Act was unconstitutional because it effectively denied refugee claimants the right to a fair hearing and, as a result, they could be deprived of the security of the person in a manner that is not in keeping with principles of fundamental justice, a violation of section 7 of the Charter which states that “Everyone has the right to life, liberty, and security of the person.”

The court also ruled that, according to section 2 of the Canadian Bill of Rights, persons had a right to a full and fair hearing of their case. Since then, April 4 has been recognized as Refugee Rights Day. According to the Immigration and Refugee Board, “This decision significantly changed Canada’s refugee determination process and helped lead to the creation of the IRB as we know it.”

Shortly after this, Baltej Singh Dhillon, a Sikh, applied to the RCMP for acceptance into the force. He met the entrance requirements, but was initially told that he would have to give up wearing the turban in favour of the force’s traditional hat. He was allowed to train with no guarantee that he could wear the turban after graduation. The RCMP Commissioner, Norman Inkster, sided with Dhillon in April 1989 and proposed a change to the RCMP rules. A petition to retain the traditional dress went to Parliament and, in March 1990, Solicitor General Pierre Cadieux, responsible for the RCMP, gave his ruling allowing the wearing of the turban in the RCMP. The decision marked another victory for Canada’s Charter of Rights and Freedoms. The fact that Dhillon could wear his turban as an RCMP officer established a precedent that opened the door for all Sikh Canadians to enter the RCMP.

Over 10 years later, Gurbaj Singh Multani’s ceremonial kirpan fell out of its cloth holder in school. The mother of another student saw it and complained, and the principal sent Gurbaj home. Over the course of many years and many court decisions, the issue of whether Gurbaj could carry his kirpan, as required by the Sikh religion, found its way to the Supreme Court of Canada where, in an eight-to-zero decision on March 2, 2006, the court

ruled that a total ban on the kirpan in schools violates the Charter of Rights and Freedoms' section on religious freedom.

Most recently, the Supreme Court of Canada is considering whether a sexual assault complainant may testify in court while wearing a niqab for religious reasons. One of the defendants in a sexual assault case claimed that his right to full answer and defence was infringed by the complainant, N.S., testifying while wearing her niqab. He argued that, in order to effectively cross-examine the complainant, it is essential to be able to observe her demeanor. No doubt, this case will have a far-reaching impact on many Canadians.

The Charter does not prioritize the courts over Parliament, even though it may challenge legislation that may have been drafted without consideration of the broader implications for all groups.

Currently, there is legislation in the other place that impacts refugee rights and some groups have indicated that this may be subjected to Charter challenges. The Charter recognizes that the best outcome occurs when there is dialogue and engagement between Parliament and the courts.

The Charter is a uniquely Canadian achievement, and it is recognized as a great accomplishment worldwide. In addition to our public health care, Canada's reputation in the world is largely based on the Charter of Rights and Freedoms and the artful way it weighs competing interests. While recognizing that there are norms that all citizens must follow and that these norms are continuously changing, the Charter is the means by which the courts can respond to reflect society's attitudes. It engages both the minority and the majority in negotiation and dialogue.

Over the past 30 years, Canada has become a freer and fairer country. Honourable senators, it was not the norm to have women in policing, in law, in medicine or in the Armed Forces 30 years ago, but all of this has changed and so have society's attitudes.

The same can be said about our support for gay marriage. Only a few years after same-sex marriage was legalized in Canada, with much debate, the rights of gays to marry have become a non-issue. This shows the importance of the positive influence of the Charter on Canadian society.

The same is true for the many other groups who have been impacted by the Charter. It would be interesting for honourable senators to know that the legal protection for minority rights under the Charter is of utmost importance among well-educated immigrants I have spoken to. It was the deciding factor for them to come to Canada instead of the United States. These are the immigrants Canada needs.

• (1600)

I am very proud that the Charter of Rights and Freedoms has shaped Canada as a progressive country among nations over the last three decades. The Americans call Canada "the new constitutional superpower," and the Canadian model has been studied, emulated and adopted abroad. On the thirtieth anniversary of the Charter, I celebrate with all Canadians the document that unites us as citizens of this great country.

(On motion of Senator Poy, for Senator Andreychuk, debate adjourned.)

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