

# Hays-Joyal Committee

After talks among the eleven First Ministers, which commenced in 1976, failed to produce an agreement on a new Canadian Constitution, or even agreement on how [to patriate](#) the Constitution, the federal government announced its own unilateral proposals on the subject.<sup>[1]</sup> It then appointed a Special Joint Committee of the House of Commons to consult with Canadians about the proposals. Created in October 1980 and chaired by Senator Dan Hays and MP Serge Joyal, this Committee sat through 267 hours of hearings over fifty-six days, all subject to televised scrutiny.<sup>[2]</sup> The Committee's recommendations played a part in significant amendments to the initial proposals for constitutional reform placed before it by the federal government. Some of the changes that resulted from the Committee's hearings and recommendations included:

- A preamble to the *Canadian Charter of Rights and Freedoms* that included a reference to the "Supremacy of God";
- An added section to the *Charter* that expressly guaranteed equal *Charter* rights to men and women (section 28);
- Constitutional recognition and affirmation of existing Aboriginal rights (now [section 35](#)); and
- The inclusion of mental and physical disability as prohibited grounds of discrimination in section 15 of the *Charter* (see [equality rights](#)).<sup>[3]</sup>

Notably, among the changes considered, but not included in either the Committee's recommendations or the new Constitution were:

- A recognition of property rights; and
- Inclusion of sexual orientation as a prohibited ground of discrimination under section 15 of the *Charter*.<sup>[4]</sup>

It has been argued that because of the invitation to the public to participate in the constitutional process, the hearings of the Committee marked the passing of a point of no return. An expectation of public consultation in the process of constitutional reform was created and would affect the ways in which future constitutional change could occur.<sup>[5]</sup>

<sup>[1]</sup> Edward McWhinney, *Canada and the Constitution, 1979-1982: Patriation and the Charter of Rights* (Toronto: University of Toronto Press, 2018) at 11-12, 42-49.

<sup>[2]</sup> *Ibid* at 49-51.

<sup>[3]</sup> *Canadian Charter of Rights and Freedoms*, ss 28, 15, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 ; *Constitution Act, 1982*, s 35, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11; McWhinney, *supra* note 1 at 58-60.

[4] McWhinney, *supra* note 1 at 58.

[5] Barbara Perry, "The role of popular mobilizations in the struggle for the Canadian Charter of Rights and Freedoms" (1995) 22 *Crim L & Soc Change* 183 at 188-191, 204-209; Bruce P Elman, "Altering the Judicial Mind and the Process of Constitution-Making in Canada" (1990) 28:2 *Alta L Rev* 521 at 531-532.