

# NATIONAL ARCHIVES

## IRELAND



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A  
PROPOSED  
BILL OF  
RIGHTS

**NEW ULSTER POLITICAL**

**RESEARCH GROUP**

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A PROPOSED BILL OF RIGHTS

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## I. THERE SHOULD BE A BILL OF RIGHTS FOR NORTHERN IRELAND

1. The support for establishing a Bill of Rights in Northern Ireland may be observed in both communities. Representatives of the Alliance Party, Unionist Party of Northern Ireland and the Social Democratic and Labour Party expressed to the Ulster Citizens Civil Liberties Centre their conviction that a Bill of Rights was a necessary aspect of a constitutional settlement. Lord Brockway introduced a private Bill in the House of Lords in 1971 to establish a Bill of Rights in Northern Ireland. The Northern Ireland Civil Rights Association has made a contribution of a similar nature.
2. The New Ulster Political Research Group submits this Proposed Bill of Rights to the people of Northern Ireland in its campaign to demonstrate their support for establishing such protection in the future constitution of Northern Ireland. It is essential that a Bill of Rights be embodied in the Constitution.

## II. THIS BILL OF RIGHTS

3. A variety of constitutions and international treaties were examined by the N.U.P.R.G. who were especially impressed with those provisions containing short, clear, declarations. As the Bill of Rights constitutes a powerful force in society by which the people will become aware of their rights, the primary policy of the N.U.P.R.G. requires that the Bill be so drafted that all people may easily discern those rights. Part I of this Bill comprises a series of immutable declarations.
4. Ensuring that these declarations possess the vitality of the community's will to establish effective legal protection for ourselves and posterity, required serious examination of the laws in many fields. Schedules 1, 2, and 3 enumerate detailed rights which should be protected.
5. The N.U.P.R.G., having learned through experience that much of the law is shrouded in mystique and uncertainty, so much so that the law is the exclusive preserve of the legal profession, adopts secondary by a policy of securing the transformation of the present laws into readily accessible codes. Such codes will be drafted with a view to safeguarding the rights enumerated in the Bill. Schedules 1, 2, and 3 contain directives to the Legislature to codify the law in specific fields within one year of the Bill coming into force.

### III. HUMAN RIGHTS

6. This Proposed Bill of Rights is endowed with a quality characteristic of all documents declaring the protection of human rights, that of professing adherence to an ideal concept of liberty. The N.U.P.R.G. has found some guidance in the ideas articulated by Hobhouse in his *THE ELEMENTS OF SOCIAL JUSTICE*:

"Liberty rests on the spiritual nature of the social bond, and on the rational character of the Common Good ... there is no enduring good for the individual except in the fulfilment of his personality - ... so far as coercion extends there is a certain moral pauperisation, the exertion of the will is rendered unnecessary and is atrophied. The same reasoning applies if it is a question rather of what we call judgement than of will. If a man is simply told what he must or must not do his judgement is at best unaffected, while if his whole life is thus guarded without reference to his own thought and feeling it is atrophied. It follows that it is only by action on a man's reason and feelings that his good is to be sought, and thus it is only through this rational or spiritual medium that the Common Good is to flourish."

This ideal freedom finds expression in Section [1][i] of the Bill, and this is the cornerstone for this Bill:

"ALL MEN BEING BORN FREE AND EQUAL IN DIGNITY AND GOVERNED BY REASON AND CONSCIENCE, THEIR CREATION OF GOVERNMENT COMPELS RECOGNITION THAT HUMAN RIGHTS ARE INALIENABLE ... "

### IV. SOCIAL RIGHTS

7. The Bill protects the right to life and personal security. Physical and mental ill-treatment is prohibited [Section (2)]. A right to life being devoid of substance without food, shelter, and essential services, the government is obliged to protect and promote employment, and where necessary to provide the basic commodities and services [Section 2(3)].
8. The right to liberty is safeguarded into two ways. A person may be apprehended and detained only for reasons specified in the Bill of Rights [Section 3(1)]. Secondly, a person so detained is entitled to a speedy trial which accords due process of law [Section 3(2)].
9. The right to personal life, a further aspect of liberty, includes family and related relationships, and is protected [Section 3(4)].
10. Privacy, which is generally difficult to define, is enumerated in three ways. First, the idea that a man's home is his castle, and should not be searched without

a court-issued warrant is provided [Section 4(1)]. Secondly, personal communications are protected from wiretapping and similar forms of electronic eavesdropping [Section 4(2)]. Finally, the Government and organisations are restrained from using personal information unless they ensure that it is accurate and allow the individual to examine it [Section 4(3)].

11. The right to equality and to equal opportunity is generally declared, and Section 1 (1) establishes this equality or equal opportunity:

"irrespective of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Devising the methods by which equality in society will be achieved necessitates the ingenuity of Government and its people, otherwise this principle remains a bare declaration.

#### V. POLITICAL RIGHTS

12. Political rights enumerated in Sections 6 to 9, differ from social rights only in that they recognise that democratic government cannot function democratically unless certain rights are enshrined and protected, Section 9 (1) states that:

"The will of the people constituting the basis of authority of democratic government ... "

Without political rights there exists only the authority of government.

13. The right to vote allows the people to express, in a manner organised by the government, their choice of government. In the words of Edmund Burke:

"A restoration of the right of free elections is a preliminary indispensable to every other reformation."

First, people are allowed to stand for any public office and secondly, to have an equal suffrage in all elections [Section 9(1)].

14. The right to think as one may wish, unfettered by law, any political, religious, or other idea is provided [Section 6(1)]. Expression of these ideas finds similar protection in two ways: First, traditional forms of communication such as speech, press and literature is covered by 'expression' Section 7(1). Secondly, expressive acts which include church worship, display of flags, etc., is protected under the term 'symbolic expression' Section 7 (2)].

15. The right of assembly, providing the traditional manner in which people seek redress for their grievances from the government, is protected [Section 8(1)]. The assembly on private premises is distinguished from that on public premises, the latter entailing a greater measure of governmental restraint [Section 8(3)].
16. Certain limitations upon the rights of expression and assembly flow by necessity from the organisation of society, and these include public order, national security, public health and public safety [Section 8(3)]. This Bill calls for a Public Order Act to codify and clarify the law in this area [Schedule 4]. The reputations of other persons requiring some degree of protection impose restraint upon free expression [Section 7 (3)]. Also, expression calculated to incite racial, religious or related forms of hatred or war are deprived of protection [Section 7 (2)].
17. The right of men to enter into association with each other appears to be so vital to a free society, that any fetter is intolerable [Section 6 (2)].
18. The right to strike, whatever the purpose, is similarly axiomatic, reserving to the people the ultimate restraint against the exercise, by either industrial organisations or governmental authority, of power which denies recognition of their legitimate interests [Section 8 (2)].

#### VI. EMERGENCY LEGISLATION

19. Although the Northern Ireland [Emergency Provisions] Act 1973, provides the people in Northern Ireland with concrete experience and first hand knowledge of 'emergency legislation', the task of defining what is meant by the term 'emergency legislation' is formidable. For example, counter-inflation legislation might easily be characterised as 'emergency legislation'.
20. The N.U.P.R.G. policy towards emergency legislation has been consistent opposition, and to ensure effective protection of human rights three safeguards are included in the Bill. First, the government is expressly denied authority to devise and implement measures to preserve its authority against challenge from any source, except as provided in the Bill [Section 10].

Secondly, the Bill defines the 'period of public emergency' by utilising the only terms which have well established meanings:

- . War
- . Natural calamities.
- . Civil war or insurrection.

Provisions in many constitutions which authorise emergency proclamations where there is a serious threat to public order, being ambiguous, allow unfettered declarations of emergencies.

Thirdly, an emergency may only be declared by the Legislature passing a resolution in accordance with well-defined procedures. The resolution will have no effect unless it:

- . Recites substantial evidence that an emergency exists.
- . Recites substantial evidence that emergency measures will achieve the end desired by the government.
- . Is passed by a majority of all members of Legislature.

Additionally, further safeguards are included:

- . The resolution may be revoked at any time by a majority of all the members of the Legislature.
- . The resolution may last only six months.
- . The resolution, after expiry, may not be extended; only a new one passed.
- . Defects in a resolution rendering such invalid may not be cured by another resolution or law.

21. Finally, as the government seeks recourse to emergency legislation pursuant to the emergency resolution, each measure must be justified by precisely defined criteria, that is, as both being absolutely necessary and entailing no greater restriction on liberty than otherwise necessary. In the case of insurrection and civil war, the government is authorised to utilise powers subject to Schedules 3 and 4 of this Bill of Rights.

## VII. DEFINITIONS

22. Throughout the Bill of Rights there are references to 'State' and 'Government'. These refer to whatever devolved government is created by the act of Parliament of Westminster. The terms 'law' and 'legislation' refer to the enactments by the devolved government. The term 'Legislature' refers to the legislative body created by the act of Parliament.

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## PART I - FUNDAMENTAL RIGHTS

### 1. HUMAN RIGHTS INALIENABLE

- [1] All men being born free and equal in dignity and governed by reason and conscience, their creation of a just and democratic government compels recognition that human rights are inalienable in all persons irrespective of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
- [2] Universal protection of human rights by the state posing problems not expressly provided for in this BILL OF RIGHTS, the enumeration of the following rights shall not exclude the protection of other rights not expressly protected herein.
- [3] Ensuring that all persons receive food, housing, clothing, medical care and other necessary services without loss of their rights from interference by private persons being essential to the maintenance of a just and peaceful society, the state shall not establish, assist or permit persons to violate any of the following provisions.

### 2. RIGHT TO LIFE AND SECURITY

- [1] The taking from a man of his life constituting the most serious deprivation of human rights, the right to life remains inviolable unless it is strictly necessary to prevent the commission of an offence endangering life.
- [2] Health and well-being of the individual being essential to the enjoyment of life and security, there shall not be physical or mental ill-treatment of a person.
- [3] Food, housing, clothing, medical care and other social services being included among the basic necessities to maintain a standard of living adequate to the well-being of the individual, the State shall:
  - a. Protect and promote the education and employment of all persons and provide the basic necessities to all unemployed persons;
  - b. Not establish, assist or permit a person to exploit labour in such a manner that the basic necessities may not be obtained; and
  - c. Require that there be equal pay for equal work.

### 3. RIGHT TO LIBERTY

- [1] Freedom of movement being essential to the person's development and enjoyment of his faculties, there shall be no deprivation of liberty except as provided in the following, that is to say:

- a. Arrest and detention for a criminal offence;
  - b. Arrest and detention to prevent the spreading of infectious diseases, and to treat persons of unsound mind; or
  - c. Arrest and detention of a minor for the purposes of educational supervision or for the purpose of bringing him/her before the competent legal authority.
- [2] Prolonged detention constituting the gravest threat to the protection of liberty, deprivation of liberty must provide for a speedy trial and accord the due process of law.
- [3] Freedom to choose a trade or profession being essential to the development of a person's creative personality and labour, there shall be no slavery or forced or compulsory labour; provided, however, that 'forced or compulsory' labour for purposes of this subsection does not include the following, that is to say:
- a. Any work or service lawfully required of a person who is under detention in consequence of conviction by a court or of a person during conditional release from such detention;
  - b. Any service of a military character and any national services required by law of conscientious objectors; and
  - c. Any service exacted in cases of a period of a public emergency declared in accordance with Section 10 of this BILL OF RIGHTS.
- [4] Free and diversified experience of the person being essential to the full development of his personality, there shall be no interference with personal life except where the law protects the interests of public safety, public health and the economic interests of the community.

#### 4. RIGHT TO PRIVACY

- [1] Free enjoyment of a person's premises being necessary to the enjoyment of privacy, there shall be no search of a person or of his premises except as included in the following provisions, that is to say:
- a. If a person is arrested his person may be searched to prevent his escape or the commission of an offence; provided, however, that if the search is not conducted immediately upon the arrest of the person, there shall not be a search of his person without a court order;
  - b. If premises are searched there must be a court order or warrant specifying the grounds for the search and the items for which the search is to be conducted; or

- c. If there is not sufficient time to secure a court order in accordance with paragraph (b) of this subsection and there is a reasonable cause to suspect that the search of the premises is necessary to avert a common or mortal danger to the public health or public safety, or to discover the commission of an offence, or to apprehend a fleeing offender, then there may be a search of premises without a court order.
- d. No personal property may be appropriated unless such property is discovered pursuant to a lawful search executed in accordance with paragraphs (a) to (c) of this subsection.

[2] The expectation that solitude and intimacy remain inviolable forming the core of privacy, there shall be no interception of private communications unless there is a court order.

[3] The dissemination of personal information posing a grave threat to the development of a person's social life, the protection of privacy requires that there be no collection or appropriation of information about a person unless such information accurately reflects the true facts and is unconditionally available to the person concerned.

## 5. RIGHT TO EQUALITY

All persons being born free and equal in dignity and rights, there shall be no denial of equal protection of the law or equality of opportunity; nor shall the state establish, assist or permit a person to deny equal protection or equality of opportunity.

## 6. RIGHT TO CONSCIENCE AND ASSOCIATION

[1] All persons cherishing the freedom to believe any religious, political, social or other idea, there shall be no law interfering with the freedom of conscience.

[2] The combination of men's strength and beliefs into an instrument of their collective conscience developing the social acceptance of their ideas, there shall be no law interfering with the freedom of association.

## 7. RIGHT TO EXPRESSION

[1] An educated public opinion flowing from the freedom of the individual to seek, receive, impart information and ideas of all kinds, regardless of frontiers, either orally, or in writing or in print, in the form of art, or through any other media of his choice, there shall be no law interfering with the freedom of expression.

[2] The actions of men being governed by their conscience there shall be no law interfering with the freedom of symbolic expression.

- [3] Freedom of expression as provided in subsection [1] and [2] for the purposes of this section does not include:
- a. Any propoganda for war; and
  - b. Any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence.
- [4] Any limitation imposed by law upon freedom of expression shall be deemed to be an interference within the meaning of subsection [1] of this section unless the person asserting that such law is not an interference proves that:
- a. The law is strictly necessary to the protection of others, national security, public health, or of persons from involuntary exposure to any matter that might reasonably be regarded as offensive in the community in which they live; and
  - b. The law is sufficiently precise so as not to inhibit those persons not falling within the limitations specified in paragraph a. of this subsection.

#### 8. RIGHT TO ASSEMBLY

- [1] Public meeting being the accepted method by which the people petition the government for the redress of their grievances, there shall be no law interfering with the right to assembly.
- [2] The public demonstration of men's solidarity in their beliefs through collective peaceful action proving to be the strongest reserve of the people's power, the right to strike is inviolable.
- [3] Any limitation imposed by law upon the right of assembly as provided in subsection [1] of this section shall be deemed to be an interference unless the person asserting that such law is not an interference proves that:
- a. The law is strictly necessary to the public health and public safety if the assembly takes place on private premises; provided, however, that any prior restraint shall be deemed to be an interference; or
  - b. The law is strictly necessary to the protection of public health or public safety, national security, or the reasonable regulation of the use of public property as to time, place and manner if the assembly takes place on premises other than private premises.

#### 9. RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS

- [1] The will of the people constituting the basis of the authority of democratic government, there shall be no law unreasonably restricting the rights of all citizens:

- a. To take part in the conduct of public affairs, directly or through freely chosen representatives;
- b. To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret vote, guaranteeing the free expression of the will of the electors; and
- c. To hold public office and to exercise all public functions established by law.

[2] The burden of proving that a restriction referred to in subsection [1] of this section is reasonable lies upon the person asserting that the restriction is reasonable.

O. INTERFERENCE WITH HUMAN RIGHTS DURING PUBLIC EMERGENCY

- [1] The desire of the people to live in communion with each other constituting the basis of peace and harmony in society, and the use of force against the people being the gravest threat to the life of the community, the state shall not declare any state of martial law, nor quell any public disturbance, nor suppress any internal subversion of the authority of the state, nor take any other necessary actions to preserve the authority of the state except during a period of public emergency as provided in Schedule 4.
- [2] Restraint in the use of force against the people being the highest virtue of democratic and peaceful government, the state shall interfere with human rights only insofar as it is required by the exigencies of the period of public emergency.

PART II - INTERPRETATION

11. (1) In ascertaining the meaning of any provision of this BILL, the matters which may be considered shall, in addition to those which may be considered for that purpose apart from this section, include the following, that is to say:
  - a. All indications provided by the BILL OF RIGHTS as printed by authority, including punctuation and side notes, and the short title of the BILL OF RIGHTS;
  - b. Any relevant principles which may or may not have been in force at the date at which this BILL OF RIGHTS came into force, but only to the extent to which such principles provide assistance in ascertaining the history and meaning of any provision and are not inconsistent with the meaning of any such provision ascertained in pursuance to and in accordance with subsection (2) of this provision;
  - c. Any document (whether falling within the foregoing paragraphs or not) which is declared by this BILL OF RIGHTS to be a relevant document for the purposes of this section.
- (2) The weight to be given for the purposes of this section to any such matter as is mentioned in subsection (1) shall be no more than is appropriate in the circumstances.
12. The following shall be included among the principles to be applied in the interpretation of the BILL OF RIGHTS, namely:
  - (1) That a construction which would promote the constitutional purpose underlying the provision in question is to be preferred to a construction which would not;
  - (2) That a construction which promotes the enjoyment of human rights free from unfettered restriction by governmental action is to be preferred to that which would not; and
  - (3) That a construction which is consistent with the international obligations of the Ulster Government is to be preferred to a construction which is not.
13. In ascertaining the meaning of any provision of any other law, the following shall be included among the principles to be applied in the interpretation of any provision which affects any of the rights protected by the BILL OF RIGHTS, namely:
  - (1) That a construction which does not result in the provision in question being rendered in conflict with any provision of the BILL OF RIGHTS is to be preferred to a construction which does not so result; and

[2] That a construction which enables the severance of any provision of the BILL OF RIGHTS from the other provisions of the Act in which such provision is contained shall be preferred to a construct which does not so enable.

SCHEDULE 1  
CRIMINAL PROCEDURE

1. Within one year of the BILL OF RIGHTS coming into force, which shall be known as the transitional period for purposes of Schedules 1, 2, and 3, the Legislature shall enact legislation containing a comprehensive enactment of all positive law authorizing any person to act in pursuance to any provision of any law regarding any criminal or supposed criminal matter.
2. The legislation enacted pursuant to the provision in Section 1 of this Schedule shall not violate any provision of the BILL OF RIGHTS and the following matters shall be included, namely:
  - (1) The rights of a person to be free from arrest and detention as provided in Sections 1 and 2 of the BILL OF RIGHTS, that is to say:
    - a. Arrest shall not be lawful unless there is a warrant or reasonable cause to suspect that the person has committed an offence or is about to commit an offence; he is informed at the time of the arrest of the grounds for his arrest, that he is entitled to remain silent and to a solicitor -- and that if he cannot afford a solicitor such will be provided free of charge;
    - b. A person arrested shall be taken before a magistrate within forty-eight hours, and, if not released before this time, shall be charged;
    - c. Prior to being charged with an offence, no person shall be compelled to submit to fingerprinting or photographing or participation in identification parades;
    - d. No person accused of a criminal offence shall at any time be denied his right to:
      - i. Consultation with his solicitor; or
      - ii. Consultation with his doctor; or
      - iii. Any other basic necessities required to ensure an adequate standard of living .provided that if a person cannot afford a solicitor, such will be provided free of charge;
    - e. No person held in custody shall be compelled to make any statement nor provide any evidence at any time;
    - f. No person held in detention pursuant to any arrest for any criminal offence shall be denied at any time the right to challenge the validity of such custody in the courts;

- g. For the purposes of paragraph f. of this subsection, Sections 3 and 4 of the Habeas Corpus Act 1816 or similar law shall extend to any criminal or supposed criminal matter;
  - h. Detention of a person accused of committing a criminal offence shall not be lawful unless there is a hearing before a fair and impartial tribunal to determine whether the person accused be detained pending his trial for the offence;
  - i. No person shall be detained pursuant to paragraph h. of this subsection unless the person asserting that such detention is necessary proves that such detention will prevent the person from committing a similar offence of a serious nature or his failure to appear at his trial;
  - j. The term 'consultation' as used in these Schedules shall include consultation in private;
  - k. The term 'solicitor' as used in these Schedules shall include the solicitor's authorised representative;
  - l. No criminal offence shall be retrospective or a bill of attainder.
2. The rights of an accused person to a speedy, fair, and impartial trial as provided in subsection (1) of Section 2 and subsection (2) of Section 3 of the BILL OF RIGHTS, that is to say:
- a. No person accused of a criminal offence shall be denied a trial before a fair and impartial tribunal;
  - b. No accused person shall be denied a trial within a reasonable period of time following his arrest;
  - c. No law shall interfere with the presumption that an accused person is innocent until proven guilty beyond a reasonable doubt;
  - d. No person shall be compelled to testify against himself;
  - e. No person shall be compelled to submit to trial unless he is provided with a solicitor and where he cannot afford to employ a solicitor, such must be provided free of charge;
  - f. No person shall be denied the right to cross-examine any witness or to challenge any other evidence presented against him at any trial;
  - g. The enumeration of specific rights in paragraphs e. and f. of this subsection shall not be construed to limit the right of an accused person to a full answer in his defence;

- h. No person shall be denied the right to be tried before a jury representative of the community unless the offence of which he is accused carries a sentence upon conviction of no more than six months imprisonment;
- i. The verdict of a jury in cases enumerated in paragraph h. of this subsection shall be by a majority of not less than 10 to 2 in order to convict an accused person.

[3] The rights of any person convicted of a criminal offence to just and humane treatment, that is to say:

- a. No person convicted of a criminal offence shall be denied review of the conviction and the sentence imposed upon such conviction by a court of appeal; and such review shall not prejudice the right to subsequent review for matters not touched upon in that review;
- b. No convicted person shall be denied the right to communicate with his solicitor;
- c. No convicted person shall be denied the right to communicate with his family or other close relatives, subject to reasonable restriction;
- d. No convicted person shall be denied remission, release on licence or compassionate parole, nor shall such release on licence be revoked unless such a person is accorded the due process of law.

[4] The rights of all persons to be free from search and seizure as provided in subsections (1) and (2) of Section 4, that is to say:

- a. No search conducted pursuant to a court order shall be valid unless the court order is issued by a Magistrate's Court and such order precisely specifies the grounds for the search, and the place at which the search is to be conducted;
- b. No interception of communications pursuant to a court order shall be valid unless the court order is issued by a Court and precisely specifies the grounds justifying the interception which in no case shall exceed thirty days, and that within seven days of the expiry of such an order that the person whose communications have been intercepted is informed that there has been such interception and is provided with a transcript of all intercepted communications, including those not specified in the order;
- c. Evidence which is seized by the authorities contrary to the provisions contained in this subsection of this Schedule or any other provision of this BILL OF RIGHTS or any other law shall not be ad-

missible at any trial of any person irrespective of whether that evidence is seized in a manner not violating the rights of the accused person.

- [5] The rights of persons enumerated in international agreements or treaties to which the Government of Ulster is a party may be invoked in any proceeding by any person accused of a criminal matter or supposed criminal matter:
- [6] No person shall be deemed to have waived any right contained in this Schedule or any other provision in this BILL OF RIGHTS unless:
  - i. He has consulted his solicitor; and
  - ii. He waives such right or rights in the presence of his solicitor.

3. Following the expiry of the transitional period:

- [1] The legislation enacted by the Legislature pursuant to and in accordance with the provisions contained in Section 1 and 2 of this Schedule shall come into force and shall be known as the Criminal Procedure Act; and
- [2] Any provision of the Criminal Procedure Act passed in the manner described in this Schedule or of any other Act which conflicts with any provision contained in the BILL OF RIGHTS shall not have any effect.

SCHEDULE 2

ADMINISTRATIVE PROCEDURE

1. Within one year of the BILL OF RIGHTS coming into force, the Legislature shall enact legislation containing a comprehensive enactment of all positive law authorizing any person to act in pursuance to any provision of law regarding any action by any administrative agency.
2. The legislation enacted pursuant to the provision contained in Section 1 of this Schedule shall not violate any provision of this BILL OF RIGHTS, and the following matters shall be included, namely:
  - [1] Legislation other than that referred to in Section 1 authorizing any person to promulgate delegated legislation shall not authorize or include curtailment of human rights protected by this BILL OF RIGHTS unless such curtailment is contained in this BILL OF RIGHTS; and
  - [2] With regard to adjudication of matters arising from action by an agency resulting in the curtailment of human rights, there shall be:
    - a. Adequate notification of the action curtailing human rights;

- b. A hearing before a fair and impartial tribunal;
- c. The right to be represented by a solicitor, and where a person cannot afford a solicitor, such representation shall be provided free of charge;
- d. The right to challenge any evidence presented by other parties or persons to the tribunal;
- e. The right to participate in and to present evidence to the tribunal;
- f. That in cases involving the detention of a person as provided in subsection (3) b. and (3) c. of Section 3 of the BILL OF RIGHTS, there shall be a presumption that there are no grounds to justify detention;
- g. That in cases arising under paragraph f. of this subsection there shall be no detention unless the agency or person asserting that detention is authorised by law proves that the grounds for detention exists beyond a reasonable doubt;
- h. That in cases arising under paragraph f. of this subsection that there shall be the right to challenge the detention of the person in open court, subject only to reasonable restraints upon reporting by the media, at any time;
- i. That in cases arising under paragraph f. of this subsection, there shall be no detention unless such proceedings accord the due process of law;
- j. There shall be a full record of the proceedings of any hearing provided to the parties upon request and free of charge;
- k. No decision by administrative agencies shall be valid unless reasons therefore are provided upon request by the persons affected thereby;
- l. Nothing shall prevent an appeal by an individual to a higher court either by prerogative writ or trial de novo.

3. Following the expiry of the transitional period:

- [1] The legislation enacted by the Legislature pursuant to and in accordance with the provisions contained in Sections 1 and 2 of this Schedule will come into force and shall be known as the Administrative Procedure Act; and
- [2] Any provisions of the Administrative Procedure Act passed in a manner described in this Schedule or of any other Act which conflicts with any provision contained in the BILL OF RIGHTS shall not have any effect.

4. For the purposes of the provisions of this Schedule the following terms shall have the meanings ascribed by this Section, that is to say:

[1] "Agency" means each authority of the government, whether it is within or subject to review by another agency, but does not include:

- a. The Legislature;
- b. Agencies composed of representatives of the parties or of representatives of organisations of the parties to the disputes determined by them;
- c. Courts martial and military commissions;
- d. Military authority exercised in the field in time of war or in occupied territory; and
- e. The courts of the government.

[2] "Action" means any decision rendered by an agency, whether required by law or not, and whether such decision is final for the purposes of the agency or in law or not; and any omission to render a decision which is requested by law and where such decision must by law be rendered;

[3] "Curtailement" means any limitation upon human rights imposed by action of any agency which does not qualify as an interference with the human rights by reason of the provisions contained in the BILL OF RIGHTS;

[4] "Delegated Legislation" means any promulgation of any Orders in Council, statutory instruments, regulations or similar matters pursuant to an Act of the Legislature authorising such promulgation.

### SCHEDULE 3

### PUBLIC ORDER

1. Within one year of the BILL OF RIGHTS coming into force, the Legislature shall enact legislation containing a comprehensive enactment of all positive law authorising any person to curtail the right to assembly as protected in subsection [1] of Section 8 of the BILL OF RIGHTS.

2. The legislation enacted pursuant to Section 1 of this Schedule shall conform to the requirements contained in Section 8 of the BILL OF RIGHTS.

3. Following the expiry of the transitional period:

[1] The legislation enacted by the Legislature pursuant to Sections 1 and 2 of this Schedule will come into force and shall be known as the Public Order Act; and

- [2] Any provision of the Public Order Act enacted in the manner described in this Schedule or any other Act which conflicts with any provision contained in the BILL OF RIGHTS shall have no effect.

SCHEDULE 4

PERIODS OF PUBLIC EMERGENCY

1. [1] For the purposes of and in accordance with Section 10 of the BILL OF RIGHTS, there shall not be any period of public emergency except as provided in the provisions contained in this Schedule.
- [2] In this Section a "period of public emergency" means any period during which:
- a. The State is engaged in war;
  - b. As a result of the occurrence of any fire, flood, outbreak of pestilence, outbreak of infectious disease or other natural calamity there is a public emergency; or
  - c. There is a state of civil war or insurrection.
- [3] A period of public emergency for purposes of subsection 8 of this Section shall exist only if the Legislature passes a Resolution which recites the following matters, including substantial evidence and reasons in the recitals, that is to say:
- a. The State is engaged in war, or as a result of the occurrence of any fire, flood, outbreak of infectious disease, or other natural calamity there is a public emergency; or there is a state of insurrection or civil war; and
  - b. That without the Resolution of the Legislature declaring the period of public emergency the Legislature lacks the constitutional authority to enact legislation which is necessary to:
    - i. The successful execution of the war;
    - ii. Restoring order to the state where the emergency arises from any fire, flood, outbreak of pestilence, outbreak of infectious disease, or other natural calamity; or
    - iii. Suppression of insurrection or civil war;
  - c. That the area in which the period of public emergency is declared does not include territory of the state in which there is no period of public emergency.
- [4] If a period of public emergency is imminent, the Legislature may pass a Resolution declaring that a period of public emergency is imminent only if such Resolution is

passed in pursuance to and in accordance with the provisions contained in this subsection, that is to say:

- a. A Resolution passed by the Legislature declaring that a period of public emergency is imminent shall not be effective for purposes of subsection [8] unless such Resolution complies with the provisions contained in subsection [3] of this Section and recites substantial evidence and reasons proving that a period of public emergency is imminent; and
- b. A Resolution shall not be passed by the Legislature declaring a period of public emergency to be imminent if there has been prior to the passage of such resolution or the proposed passage of such resolution in force at that time or within a period not exceeding one week previous to that time a resolution declaring a period of public emergency to be imminent.

[5] A Resolution passed by the Legislature declaring a period of public emergency for the purposes of and in accordance with this Section:

- a. Shall, unless previously revoked, remain in force for such period, not exceeding six months, as the Legislature may determine by a resolution supported by the votes of a majority of all the members of the House; provided, however, that if during the period of emergency the Legislature is dissolved and no resolution is passed by the Legislature prior to the dissolution directing that the resolution declaring the period of public emergency remain in force during the period of dissolution, the resolution declaring the period of public emergency shall, if the Legislature is convened during the period in which the resolution is in effect, remain in force no longer than the shorter:
  - i. The period stated in the Resolution declaring a period of public emergency; or
  - ii. Thirty days from the date on which the Legislature first meets;
- b. May not be extended from time to time by a resolution of the Legislature passed in a like manner described in paragraph a. of this subsection for further periods; provided, however, that if the period of public emergency remains upon the termination of the effect of the resolution, the Legislature may pass a subsequent resolution in a like manner described in subsection [3] of this section; and
- c. May be revoked at any time by a resolution supported by the votes of a majority of all members of the Legislature.

- [6] A resolution passed by the Legislature declaring that a period of public emergency is imminent in a manner described in subsection [4] of this section for the purposes of and in accordance with this Section:
- a. Shall unless previously revoked, remain in force for such period, not exceeding seven days, as the Legislature may determine by a resolution supported by a majority of all the members of the Legislature;
  - b. May not be extended from time to time by a resolution of the Legislature passed in a like manner described in paragraph a. of this subsection for further periods; and
  - c. May be revoked at any time by a resolution supported by the votes of a majority of all the members of the Legislature.
- [7] A Resolution passed by the Legislature for the purposes of subsections [3] to [6] of this section:
- a. May be revoked at any time by a resolution of the Legislature supported by a majority of all members thereof; and
  - b. May not cure any defect in the resolution as may arise from the failure of the resolution to conform to any of the requirements contained in subsections [3] to [6] of this Section.
- [8] Nothing in this Section may be construed to authorize:
- a. Any person to violate any law in force at the time at which the Legislature passes the resolution declaring the period of public emergency or that period of public emergency is imminent or at any other time;
  - b. The Legislature to pass a resolution or to include in a resolution declaring a period of public emergency or that a period of public emergency is imminent in any area in which there is no period of public emergency or that such emergency is imminent;
  - c. The Legislature to enact any legislation pursuant to the Resolution declaring the period of public emergency or that a period of public emergency is imminent except to the extent that the legislation which authorizes measures to be taken which interferes with any of the provisions contained in this BILL OF RIGHTS is strictly required by the exigencies of the period of public emergency, that is to say such legislation:
    - i. Promotes the successful execution of the war; restores the order to the state where the period of public emergency arises from

fire, flood, outbreak of infectious disease, or other natural calamity; and

- ii. Does not interfere with the human rights protected in the BILL OF RIGHTS in a manner greater than might otherwise be effected by similar legislation which achieves the same ends in a like manner described in paragraph b. i. of this subsection;
  - d. The Legislature to enact any legislation pursuant to the Resolution declaring a period of public emergency or that period of public emergency is imminent which interferes with the human rights protected in Sections 2 and subsection (3) of Section 3 of this BILL OF RIGHTS; and
  - e. The Legislature to enact any legislation pursuant to a Resolution declaring a period of public emergency or that a period of public emergency is imminent owing to insurrection or civil war in a manner described in paragraph b. iii. of subsection (3) of this Section except as contained in the provisions of Section 2 of this Schedule.
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