

Compassion and the Charter

*Love's firmest ground lies beneath the fragile.
Within the vulnerable She shouts her deepest prayer.*

These words are from the song *Compassion Piece* by Carolyn McDade.

On December 29, 2012, the **Globe and Mail** carried a heart-rending story about a 17-year-old girl who is a Canadian citizen and is about to be deported to Sri Lanka where her condition of severe autism will receive no attention or help.

Sabreena's parents came to Canada in 1992 before she was born, and sought refugee status. Sabreena was born in 1996 and when she was two years old, the refugee claim of the Shabdeen family was rejected and they moved to New Jersey. Now in 2013 the family is going to be deported to Sri Lanka, a country that Sabreena, at 17, has never seen.

The Canadian government refuses to allow Sabreena's parents into Canada, even temporarily, so they can make arrangements for Sabreena's care. After all, she is a Canadian citizen.

The lawyer who is trying to resolve the dilemma for the Shabdeen family said to the **Globe and Mail** reporter, "*Sabreena has the same rights as my seventeen year old daughter has as a Canadian*

citizen. And if this was my daughter, or any Canadian's daughter, they would want the best possible care and treatment and opportunity for her in the world. And Canada is a place that would offer her a much better quality of life than Sri Lanka. And I think it is very difficult for anyone to argue otherwise."

When I read this article on December 29, the Canadian Charter of Rights and Freedoms came immediately to mind. I only became fully aware of the Charter last October when the Women's Studies Department at the University of Windsor highlighted it on the 30th anniversary of its signing in 1982. Then I remembered....

I was on Parliament Hill on April 17th, 1982, when Queen Elizabeth II and Pierre Elliott Trudeau signed the Charter.

That day the Charter was the least of my concerns. I had never seen the Queen and was determined not to miss this opportunity. With two friends, we secured space in the first row of the crowds lining the path inside the gate where the landau bearing the royal couple would enter the grounds of Parliament Hill. The day was cool and bright with little showers every now and then. Sure enough, I had a perfect view of the Queen in her peacock blue dress and hat as she went by. The other memory is of Ed Schreyer, the governor general at the time, walking up the red carpet toward the peace tower with his wife, Lily,

behind him. She reached up and took a bobby pin or a clip out of a wayward curl that had been standing up on the back of his head. That day I hardly gave the Charter of Rights and Freedoms even a fleeting thought.

The next time the Charter entered my consciousness was when I saw a copy of it beautifully framed and hanging on the wall in Ann Seigel-Robertson's house. I was impressed...of all the art objects one might hang on their wall in a prominent place, imagine ~ The Canadian Charter of Rights and Freedoms!!!

It is only lately that I have begun to link what I see as a slipping away of our democracy with the Charter which I presumed must lay out what rights we have as Canadian citizens and what freedoms we enjoy.

Last November *The Walrus* magazine, published a long and elegant article on the Charter and one of its tireless and brilliant defenders, Joseph Arvey, a British Columbian lawyer. Finally, I decided to actually read the document. And you will have to wait no longer to read it yourself. Thanks to the office manager of my member of parliament, Brian Masse, I have copies for everyone today.

The Canadian Charter begins by stating the fundamental rights of all human persons, those that are laid out in the Universal Declaration of Human Rights. Then it goes on to specific rights of

Canadians: to move from province to province and find work wherever one resides, to use either of the two official languages and to receive government services in the language of one's choice, to enjoy equality of gender, race, religion, etc., to go to court in defense of one's Charter Rights and Freedoms. I am not capable nor prepared to argue sections of the charter that have been disputed and upheld over the years. I leave that to the lawyers, not as unimportant, but as beyond my preparation and scope.

Nevertheless, my hope is that our Charter remain a living document that is open to change as we discover rights that remain to be named and honored ~ one of them being the rights of Nature, of Mother Earth, which the countries of Ecuador and Bolivia have already recognized.

I return now to the observation of the lawyer for Sabreena Shabdeen's parents . His 17-year-old daughter would have the right to the best of health care in Canada, so why not Sabreena, born in Canada, and suffering from a debilitating condition that is not unknown to the Canadian Health Care system?

Here is the crux of the problem: Sabreena could receive her needed care if her parents would leave her ...in Niagara Falls, NY, in Detroit, MI, and hope someone, learning that she is a Canadian, would bring her across the border. If her parents would

abandon her, and board a plane for Sri Lanka, Sabreena might get care in Canada.

My question: Is there room for Love, for Compassion, within the Canadian Charter of Rights and Freedoms? Those who need the charter the most it seems, are the most desperate, the marginalized, the people pushed to the edges of society. These are the *fragile*, the *vulnerable* in need of Compassion. Most of us can't even imagine being in a predicament that would require we go to court and look to the Charter for redress.

But since its promulgation thirty years ago, the Supreme Court has been very busy hearing so-called Charter cases. Commenting on the Charter, Prime Minister Trudeau once remarked:

"I saw the charter as an expression of my long-held view that the subject of law must be the individual human being; the law must permit the individual to fulfill himself or herself to the utmost."

In keeping with that "long-held view", Mr. Trudeau had seen to the establishment of a fund, the Court Challenges Program, to assist the ordinary Canadian citizen who feels that her or his Charter Rights have been violated.

In 2006, the Harper government cancelled the Court Challenges Program leaving any aggrieved individual

citizen to face the seemingly bottomless resources of the federal government in seeking justice for perceived violations of his or her Charter rights. In the face of such an imbalance of power, and without abundant financial resources, who would dare to approach the courts with a complaint about Charter wrongs that needed righting?

As a matter of fact, a civil servant by the name of Edgar Schmidt , that's who! An article in the Globe and Mail of February 23, 2013, begins like this:

Somebody had to blow the whistle on the federal Department of Justice, Edgar Schmidt believed. And he decided the best candidate was him.

“As a fairly senior person toward the end of his career, it fell to me,” said Mr. Schmidt, who launched a legal action last month accusing his department of short-circuiting a legal requirement that new laws be vetted to see whether they comply with guarantees in the Charter of Rights and Freedoms. (end quote)

Mr. Schmidt asserts that for the past twenty years his department had been violating its duty to ensure that proposed laws comply with the Charter. Even worse, he argues that lawyers in the Department of Justice had been instructed **not** to red-flag any law that might even remotely breach the Charter!

Mr. Schmidt's concern became the court costs in time and money of each Charter challenge if the laws are not examined carefully and found to be in accordance with the Charter. At the same time he mentions the injustice of a number of people being affected by a possibly unconstitutional law while cases dragged through the courts sometimes for years.

For his trouble, which in no way was motivated by a personal complaint, Edgar Schmidt was suspended without pay and barred from his office. He simply states in his defense, "*This is something I have to do if I want to live with myself.*"

The good news in this case came in the Globe and Mail of March 10. A Federal Court judge has instructed the federal government to pay Mr. Schmidt's legal expenses as this case is in the public interest. It certainly is!

In a book entitled *Healing the Heart of Democracy* by Parker J. Palmer, there is a quote by Howard Zinn which describes the meaning of Edgar Schmidt's decision to act as he did.

*The essential ingredient of all struggles for justice are human beings who, if only for a moment, if only while beset with fears, step out of line and do **something**, however small. And even the smallest, most unheroic of acts adds to the store of kindling that may be*

ignited by some surprising circumstance into tumultuous change.

Is it not a curious thing that the federal government feels compelled to propose and/or pass so many laws that will certainly have Charter challenges in the future? We see them daily, and they astound us for their lack of Compassion, their affront to Democracy. To name just a few ~ minimum mandatory sentences, denial of health care for some groups of refugees and months of detention for others... the stripping of protection of most lakes and rivers and the enormous ramifications of this move.... the muzzling of Canadian scientists. Many Canadians who never heard of the Charter of Rights and Freedoms feel shocked and helpless in the face of what we might describe as **harsh** measures.

One would expect that the government itself would be the first defender and promulgator of the Canadian Charter. It has been much praised and imitated in other parts of the world. But in 2012, the present government allotted \$28,000,000 to celebrate the war of 1812 whose outcome is often disputed. At the same time, when asked, during a visit to Chile in April of last year why our government was not celebrating the thirtieth anniversary of the Charter, Mr. Harper replied,

"In terms of this as an anniversary, I think it's an interesting and important step, but I would point out that the Charter remains inextricably linked to the patriation of the Constitution and the divisions around

that matter, which as you know are still very real in some parts of the country."

However, in spite of the divisions Mr. Harper alludes to, we must remember that all Canadian citizens regardless of their province of residence enjoy the rights and freedoms afforded by the Charter.

If there is one thing a long life has taught me it is that no struggle for justice is ever gained once and for all. Those of us who care must live on high alert, ever vigilant against attempts to take back a right, be it in the area of peace, of civil rights, of gender equality, of environmental protection. When we least expect it, a new law, sometimes couched in Orwellian language, will lie half-buried in an omnibus bill and we will lose what we thought we had won.

Our First Nations sisters recognized this when four of them decided they would be ***Idle No More***, that they would step out of line and do something, and they began by dancing. Most of us are not First Nations people but we can dance with them.

Not all of us are Edgar Schmidts, but we can stand with Edgar Schmidt. The renowned poet Adrienne Rich in her writing constantly asks, "*With whom do I cast my lot?*"

She answers her own question when she writes:

*My heart is moved by all I cannot save.
So much has been destroyed.*

*I have to cast my lot with those who
Age after age, perversely,
With no extraordinary power,
Reconstitute the world.*

It is in the many places we choose to 'cast our lot' that as Howard Zinn says, we step out of line and do something. Even that takes courage and calls on our compassion.

Carolyn McDade's song, ***Compassion Piece*** also holds questions. One of them is

*I ask you ~ will Compassion walk past shadows,
deep and many miles long,
Shouting '**Defiance and hope?***

We can support Sabreena Shabdeen, we can support Edgar Schmidt, we can support our First Nations brothers and sisters by upholding and defending the Charter of Rights and Freedoms every chance we get, by being alert to attacks on our hard-won democracy. The shadows may be deep, the journey long, but the struggle belongs to all of us.

Here are some encouraging words from Hafiz, the enchanting poet of Persia, written eight centuries ago, for today:

*Out
Of a great need
We are all holding hands
And climbing.
Not loving is a letting go.*

*Listen,
The terrain around here
Is
Far too
Dangerous
For
That.*

Joan Tinkess, April, 2013.