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THE PM'S BILL OF RIGHTS

Freedom's Advocate

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OTTAWA (Staff).—Prime Minister Diefenbaker, now about to bring down his new Bill of Rights legislation after 13 years of postwar advocacy, had added many pieces to the pattern since he first began his campaign.

In his many speeches, in his own original draft bill introduced while in opposition, in his advocacy to the parliamentary committee on the subject, he has made many criticisms and many suggestions.

It will soon be seen how much his free stand in opposition has been altered by the fact of holding the present responsibilities of federal government.

In his early speeches of 1946-47-48 and again in 1955 he made it clear what he was advocating.

In 1947 before Parliament, he enumerated the rights and freedoms which such a bill should guarantee. There would be freedom of religion, of speech, of assembly, freedom from unreasonable interference with the person, home, reputation, activities and property of the individual, freedom from arbitrary detention and the abrogation of habeas corpus.

Every citizen would have the right to have his case determined without undue delay, and if he were requested to give evidence before any tribunal or commission he would have the right to be represented by counsel. Another right asked was equal protection by all against the arbitrary discrimination in the provisions and applications of law because of race, religion or any other reason.

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THESE were the political freedoms, but Mr. Diefenbaker also sought the inclusion of social freedoms, assuring educational property and social security rights, in his proposed bill.

Mr. Diefenbaker's original Bill of Rights would have guaranteed the individual his day in court. It would have inserted the right of

individuals and minorities to be protected against majorities.

In his exposition of these principles, in this and other speeches, Mr. Diefenbaker went beyond these outlined measures. He inferred that there should be protection of even broader nature than these fundamentals.

In 1948, for instance, he was not satisfied with the Saskatchewan government's Bill of Rights legislation. In his view, it did not meet the problem. It did not provide for the right of the individual to have his right to justice established in the courts of the law against any unjustifiable or unlawful interference of the government of Saskatchewan with the rights of the individual.

He held government officials suspect. He felt both farmer and businessman were subject to their dictation, since the government officials operated not under law but under arbitrary regulations which had the effect of law and which the officials themselves drafted.

In 1948, too, Mr. Diefenbaker said his Bill of Rights would "declare the ideals of justice and tolerance. It will build a united Canada by assuring the equality of the individual everywhere in Canada. It will achieve ordered liberty under law; it will make Canada a temple of freedom which the storms of class against class or province against province will not shake." It would, moreover, "define the landmarks of liberty which two wars have tended to erase."

This latter point, the clouding of liberty by the emergency of war, was indeed one of the prompters of Mr. Diefenbaker's campaign. The growth of the powers of the state were another and his reference to the powers of government officials was only one of his examples. He wondered, too, about some of the powers of the Canadian Broadcasting Corporation and he wondered whether freedom of speech was endangered by "the ever-widen-

ing system of government information agencies."

It was during this period of his campaign that he began to take note of certain potential constitutional difficulties. In this light, he suggested that the representatives of the provinces

should be called in so that the final result would be a joint federal-provincial declaration of a Bill of Rights for Canada.

In general, through this period, Mr. Diefenbaker dwelt more on examples of infringements of rights than on the nature of the bill he was proposing. Nonetheless, enough of its nature was either outlined or inferred to suggest that it would be somewhat sweeping, would give more protection against arbitrary governmental powers and might possibly lap over into the provincial sphere.

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IN 1950, the Senate committee headed by Senator Roebuck came out in favor of a declaration of human rights covering a wide field but remaining within the federal field. This committee also approved a number of articles for this declaration or draft Bill of Rights.

In 1955, when Mr. Diefenbaker made one of his most recent full-length speeches on the subject, he set down these articles, with one or two of his own amendments.

Slightly summarized, these are as follows: Everyone has the right to life, liberty and the security of person. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Everyone has the right to recognition throughout Canada as a person before the law. All are equal before the law and are entitled without any discrimination to equal protection of the law.

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EVERYONE has the right to an "effective remedy by the competent national tribunals" for acts violating constitutionally and legally stipulated fundamental rights. Arbitrary arrest, detention or exile are banned. Anyone arrested or detained shall be promptly informed of the reasons and entitled to a fair hearing within reasonable time or re-

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Subj: lease. Reasonable bail shall not be denied without just cause. No tribunal, royal commission, board or state official can compel anyone to give evidence who is denied counsel or other constitutional safeguards.

Anyone detained or arrested can make use of habeas corpus for speedy access to the courts and habeas corpus shall not be abridged, suspended or abrogated except by Parliament. Everyone is entitled to an equal, fair and public hearing by an independent and impartial tribunal to determine his rights, obligations and any criminal charges against him.

Everyone is entitled to these rights and freedoms without distinction of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Anyone whose rights or freedoms as thus set down have been violated may apply for relief by notice of motion to the supreme or superior court of the province in which the violation occurred.

These articles, numbering 11 in total, will not abridge or exclude any other rights or freedoms to which a person is otherwise entitled.

Having set down his proposed bill of rights in this form, then, Mr. Diefenbaker followed up by now showing real interest in the important question of whether such a declaration or bill was of itself constitutional and did not infringe provincial rights.

At one stage in this address to the Commons on February 7, 1955, Mr. Diefenbaker said:

"Are civil liberties a matter of federal or provincial jurisdiction? I have but to ask the question of a lawyer to have the answer as to the tremendous difficulties inherent in arriving at a decision on the basis of the judgments that have been given."

Because of this doubt, he proposed that to ensure the constitutional rights of the provinces, a draft Bill of Rights should be submitted to the Supreme Court. Following this, having determined what Bill of Rights could contain without infringing provincial jurisdiction, Mr. Diefenbaker then proposed that such a bill should be passed by Parliament.

Before he sat down, he also asked for the House of Commons and Senate to set up a com-

mittee every year "to act as a watchdog over civil rights."

In this address, therefore, Mr. Diefenbaker showed great concern over the question of infringement of provincial rights. He proposed a judicial test of a draft bill of rights. He also proposed a parliamentary committee.

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IN the new session of 1958, the government which Mr. Diefenbaker now heads is proceeding with the Bill of Rights. There is, however, to be no judicial test or joint Parliamentary committee. Neither is there to be a joint federal - provincial conference.

The inference the nation has been given is that the proposed new Bill of Rights is to be general in nature.

The danger of possible infringement of provincial rights, it appears, has had a strong influence on the new government's attitude toward a Bill of Rights. The extent of that influence may only be known in full when the draft bill is brought down and it can be compared with what Mr. Diefenbaker proposed in 1955.

It was this same danger which so influenced the previous administration's position on a Bill of Rights.