Canada's high court weighs free speech

by Our Special Correspondent

A landmark freedom of expression case heard in May before the Supreme Court of Canada may well put the Charter of Rights and Freedoms through a crucial test before the June 23, 1990 ratification deadline for Canada's new "social contract," the constitutional amendments known as the Meech Lake Accord. The human rights charter became part of the Canadian Constitution in 1982.

It is in this context that Her Majesty's Government in Canada had appealed to the Supreme Court of Canada an earlier decision from the Federal Court Appeal's Division which recognized the right of the Party for the Commonwealth of Canada (PCC) to disseminate in airport terminals, ideas, policy documents and programs that it promotes. The party believes this is key to solving the constitutional crisis affecting Canada and the particularly virulent form of economic disease spreading throughout the North American economies.

What now appears to be the only policy document proposing a serious solution to the Meech Lake impasse—*The Draft Constitution for the Commonwealth of Canada*—authored by Lyndon LaRouche, is soon to go into its second printing. A reassertion by the Supreme Court of the PCC's right to organize in airports would allow the continuation of such forums for its dissemination. Both the Federal Court and the Appeal Division have previously judicially declared that airport terminals are "extensions of streets, parks and other public places [that] are traditionally viewed as public fora."

Freedom of expression at issue

The party's attorney Gerard Guay based his argument before the court on the facts that freedom of expression rights of organizers for the PCC have already been recognized by two federal courts and that, notwithstanding, PCC representatives have subsequently suffered harassment by the RCMP and Transport Canada. Mr. Guay wrote in his statement before the Supreme Court, "it is insufficient to declare that a person's rights have been infringed or denied. Such a declaration does not prevent a repetition of the infringement or denial and does not promote fundamental freedoms. A judicial declaration that public property to which the public is openly invited is a public forum, a place where fundamental freedoms may be exercised, is the appropriate remedy. . . . [T]he respondents submit that a declaration to the effect that their activities are Charter-protected is a further appropriate remedy."

In the Supreme Court case, one of the points at issue was that "freedom of expression is the cornerstone of political democracy and far outweighs government's property interests or any objective found in the airport concessions regulations," according to the brief submitted by the PCC. Quite simply, "government property rights cannot be used to limit fundamental freedoms in areas that are generally open to the public. To do so would create a dangerous precedent whereby a non-Charter right (state property rights) could override a Charter-right (freedom of expression). The appropriate role for the state should be to protect and enhance fundamental freedoms rather than to risk to limit those freedoms by an unreasonable defense of its property rights."

With jurisprudence cited from Supreme Court cases in both the United States and Canada, the PCC brief concludes that, in fact, "when freedom of expression is infringed, all other rights are infringed. Freedom of conscience, thought, belief, and opinion are so intimately related to freedom of expression, that they cannot truly exist if freedom of expression is denied."

Cincinnatus principle can save the nation

The fundamental freedoms case which was heard on May 22, 1990 before seven of the nine Supreme Court Judges of Canada will also be remembered for the distinguished presence of Glen How, Queen's Counsel, who presented an Intervenant's Factum (*amicus curiae* brief) in support of the respondents' case. The 69-year-old lawyer from Halton Hills, Ontario, had made judicial history in Canada in 1953 when he argued before the Supreme Court the famous *Saumur* case involving the Jehovah's Witnesses. By this case, the principle of free speech was judicially established as the cornerstone of democracy in Canada. (See *Saumur v. A.G. Quebec and City of Quebec*, [1953] 2 S.C.R. 299, per Rand J. at p. 332.).

Thirty-seven years later, seeing Glen How standing again before the highest court, defending fundamental freedoms for all Canadians, is a proud reminder of the patriotism of Cincinnatus, the Roman farmer, who answered his nation's call to arms; when peace was achieved, Cincinnatus, now a hero, refused political office, and returned to his farm as an ordinary citizen, but always remained ready to defend the nation. The Canadian people should thank Glen How, not only for what he has done, but also for who he is.

As Lyndon LaRouche wrote in his *Draft Constitution:*

"In such rare intervals a great people rises for a time above preoccupation with the immediately personal and local concerns of the ephemeral mortal lives of each, and locates its most immediate sense of self-interest in the condition of the world and nation bequeathed to its posterity as a whole."

The Supreme Court of Canada is hearing this case at such a moment.