

The Canadian Catholic School Trustees Association
67 Bond Street, 1st floor, Toronto, Ontario M5B 1X5

OFFICE OF THE
SECRETARY

January 6, 1981

Cher Ami(e)

L'association Canadienne des commissaires des écoles catholiques, après avoir examiné le projet de charte Canadienne des droits et libertés, se doit d'exprimer sa déception et sa profonde inquiétude à l'égard de sa protection, dans l'avenir, des droits et privilèges réservés aux écoles séparées catholiques romaines financées par l'État, à qui l'on a reconnu des droits et des privilèges depuis la création du pays en 1867. Une mémoire à cet effet a été présentée au Comité Mixte Spécial du Sénat et de la Chambres des Communes sur la Constitution du Canada, le jeudi 4 décembre 1980.

Nous sommes convaincus que vous ferez de votre mieux pour défendre nos intérêts.

* * * * *

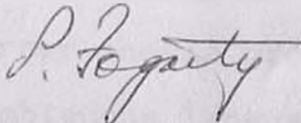
Dear Friend

The Canadian School Trustees' Association, after having reviewed the proposed Canadian Charter of Rights and Freedoms, must express its disappointment and deep concern with respect to the future rights and privileges of publicly funded Roman Catholic Separate Schools, rights and privileges which have been ours since the formation of this country in 1867.

A submission to that effect was made to the Special Joint Committee of the Senate and of the House of Commons on Thursday, December 4, 1980.

We have faith that you will do your best to deal with this matter in the best way you possibly can.

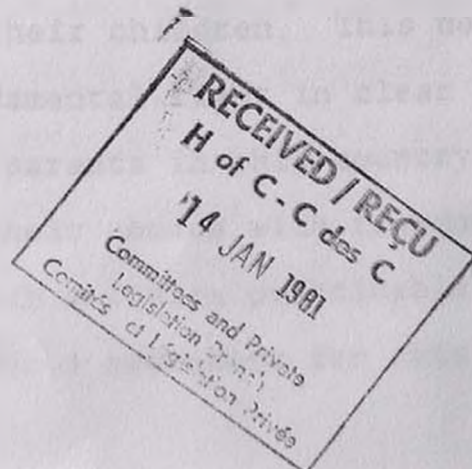
Sincerely yours in Christ



Rev. P. Fogarty
Executive Secretary

:kds

Encls 2



CANADIAN CATHOLIC SCHOOL TRUSTEES ASSOCIATION

SUBMISSION
TO
SPECIAL JOINT COMMITTEE ON THE CONSTITUTION OF CANADA

Catholic School Trustees from across Canada support the concept of a repatriated Constitution for Canada. Especially, we believe that the rights of minorities must be constitutionally entrenched, for the majority, in the normal course of events, will have its way. It is with some regret, therefore, that the Canadian Catholic School Trustees Association, after having reviewed the proposed Canadian Charter of Rights and Freedoms, must express its disappointment and deep concern with respect to the future rights and privileges of publically funded Roman Catholic Separate Schools - rights and privileges which have been ours since the formation of this country in 1867.

We are, in the first instance, disappointed that the Government of Canada, which, although one of the signatory nations to the United Nations Declaration on Human Rights, could not accept, for its own Charter of Rights and Freedoms, the principle embodied in Section 26: that parents have the prior right to choose the kind of education they wish for their children. This new Canadian Charter should proclaim this fundamental right in clear and unambiguous language - such that parents in this country would indeed be permitted to exercise their choice with freedom and the necessary public funds to make such a choice practicable and feasible. This would not have been a precedent for this country;

one such precedent already exists in Newfoundland where the terms of union with Canada do, in fact, provide for just such freedom.

We must, in the second instance, express our sincere concern that the future of existing, publically funded Catholic Schools is not adequately ensured by the proposed Charter. Although Section 93 of the British North America Act undoubtedly remains in effect as law, our concern that attrition of our rights through judicial judgments and interpretations based on the proposed charter will eventually jeopardize both the religious values and the objectives of Catholic Schools. We are particularly concerned that Section 25 of the proposed Charter, which establishes the primacy of the Charter with supremacy over all other laws, provides a basis for encroachment upon our rights, as provided by Section 93 of the BNA Act, whenever there would appear to be some inconsistency between Section 93 and specific terms of the Charter.

Coupled with the primacy of the Charter, we see Section 2, which provides for freedom of conscience and religion, and Section 15, which provides for equality before the law and equal protection before the law without discrimination because of religion (among others), as providing to the individual rights which will take precedence over denominational group rights. We are particularly fearful because we recognize that the courts will, in the final analysis, determine the specific applications of

these sections, and we are not unaware of developments in the United States where a similar dependence on the courts has ultimately reached the point where prayer is banned from an educational system originally founded in a Christian religious context. We are fearful that emphasis upon individual rights by the courts would erode group rights - such as rights in regard to: staffing policies and practices, enrolment criteria, prayer and religious practices in schools, extension of Catholic schools where some are now limited to specific grade levels, and indeed, participation in public funding - to such an extent that Catholic denominational schools would remain Catholic in name only.

Further concern is caused by Section 42 which provides for amendment to the constitution by means of a referendum. Is it not possible that at some future date certain minority rights - including our right to Catholic denominational schools - could be eliminated by a simple majority in a single referendum or series of referenda?

Section 49, providing for the legislature of each province to make laws amending the constitution of the province, causes similar concern, not only with respect to the continued existence of Catholic separate schools, but also with respect to possible changes in provincial legislation which could make it very

difficult for denominational schools to fulfill their mandate, or for new ones to be established.

Finally, although Section 24 indicates that the Charter is not intended to affect any rights now existing in Canada, we are fearful that the primacy of the Charter, coupled with interpretations and reinterpretations made by courts in the future, poses a serious threat to the meaningful existence of Catholic Schools.

The Canadian Catholic School Trustees Association requests reconsideration of and amendment to the proposed Charter in order to protect Catholic minority rights to publically funded Catholic Schools. We have taken the liberty of appending to this submission proposed amendments for consideration.

Respectfully Submitted: in respect

P.J. Hammel,
President.

PROPOSED AMENDMENT #1

Add a NEW section after present section 24

(1) The guarantee in this Charter of certain rights and freedoms shall not be construed as preventing or limiting

(a) any rights or privileges, by any provision of the Constitution of Canada, granted or secured with respect to separate, dissentient or other denominational schools;

(b) the establishment or extension by authority of public statute or otherwise of any separate, dissentient or other denominational school or system of schools or of any scheme of funding from public revenues or otherwise for the support of such school or system as is deemed appropriate; or

(c) the operation of any separate, dissentient or other denominational school or system of schools in accordance with its denominational requirements including, but not limited to, the right to follow a selective policy with respect to enrolment on the basis of sex or religion and to employ persons subscribing to the tenets of a particular religion.

PROPOSED AMENDMENT #2

Amend section 36 by adding subsection (2)

(2) The procedure prescribed by section 33 shall be used to amend any provision of the Constitution of Canada whereby any rights or privileges are granted or secured with respect to separate, dissentient or other denominational schools.

PROPOSED AMENDMENT #3

Amend section 50 by adding paragraph (h)

(h) any rights or privileges, by the Constitution of Canada, granted or secured with respect to separate, dissentient or other denominational schools.

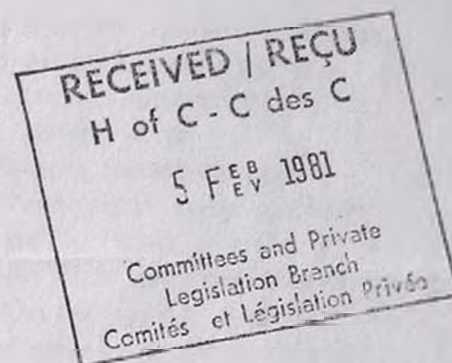
The Canadian Catholic School Trustees Association

OFFICE OF THE
SECRETARY

January 30, 1981

Joint Clerks
Special Joint Committee on the
Constitution of Canada
Room 512
180 Wellington Street
Ottawa, Ontario
K1A 0A7

Sub



Honorable Co-Chairmen and Members:

On December 4, 1980, the Canadian Catholic School Trustees Association appeared before the Committee to present its position in regard to the proposed Constitution of Canada. Our position, in summary, was that we recognized that Section 93 of the British North America Act remained in effect as law and, therefore, provided for the continued existence of Roman Catholic Separate Schools. We were concerned, however, that, because of the emphasis placed by the Charter upon individual rights and freedoms without any reference to religious minority group rights to denominational schools, the essential nature of Catholic schools was threatened by attrition resulting from judicial decisions in favor of individuals. We were particularly pleased with the reception afforded us by the Committee and we were optimistic that our fears would be alleviated.

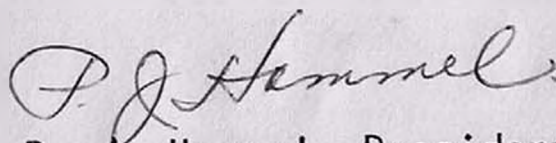
With the release of the document, Consolidation of Proposed Resolution and Possible Amendments As Placed Before The Special Joint Committee By The Minister of Justice, January, 1981, our concerns are renewed. Sections 25(b) and 52, the only amendments which would seem to address the issue, are simply reaffirmations of Section 93 of the British North America Act. There is no statement which would provide specifically for the protection of religious minority group rights in regard

to the administration and operation of denominational schools. Our fear of the erosion of such rights through judicial decisions in favor of individuals remains.

The Canadian Catholic School Trustees Association, on behalf of the Catholic parents across Canada, respectfully request the members of the Special Joint Committee to consider favorably our petition and to urge the Government of Canada to include at least such amendment as to provide that neither this constitution nor any other law shall be construed as affecting adversely the rights and privileges granted or secured to any class of persons with respect to denominational schools. Only with such a statement can the future of religious minority denominational schools be guaranteed.

Although we do not again raise the question of the amending formula, we trust the Committee will in this regard recommend justice for all Canadians.

Respectfully,



P. J. Hammel, President
Canadian Catholic School
Trustees Association

PJH/kt