

SUBMISSION TO -

Ministerial Inquiry on Religious Education

RE -

Religious Education in the Public Schools

FROM -

Canadian Civil Liberties Association

DELEGATION -

A. Alan Borovoy
(General Counsel)
Catherine Gilbert
(Research and Field Officer)

Toronto, Ontario

18 October 1989

Introduction

The Canadian Civil Liberties Association is a national organization with more than 7000 paid supporters, 7 affiliated chapters across the country, and some 50 associated group members which, themselves, represent several thousands of people. A wide variety of persons and occupations is represented in the ranks of our membership - lawyers, academics, homemakers, trade unionists, journalists, media performers, minority group leaders, etc.

Among the objectives which inspire the activities of our organization is the quest for legal safeguards against the unreasonable invasion by public authority of the freedom and dignity of the individual. It is not difficult to appreciate the relationship between this objective and the mandate of this Inquiry. In crucial respects, the current program of religious education in Ontario's public schools authorizes significant encroachments upon certain fundamental freedoms of the individual - freedom of religion and religious equality.

Unfortunately, a measure adopted by the Inquiry creates needless handicaps for the participants in its process. Not long ago, one of our researchers telephoned the Inquiry offices and attempted to arrange an opportunity to look at the other briefs the Inquiry has received. Our researcher was advised that it is Inquiry policy not to make such material available at this time. Thus, community groups and citizens are deprived of an expedient way to learn about the practices, policies, and

proposals of other interested parties. Our researcher was unable to obtain a coherent or plausible explanation for this policy. Indeed, we are unable to conceive of an adequate explanation.

Apart from some particular considerations in certain cases, we believe that the materials presented to this Inquiry should be generally available and accessible at this time. Those who come after us should not have to sustain such a disability.

The Key Civil Liberties Issue

It is important to separate the parts of the Inquiry's mandate. The first part addresses the religious education policy that has obtained until now; the second part addresses the development of a policy that will obtain hereafter. Only the second part requires study and reflection. On the first part, there can no longer be any legitimate controversy.

The existing regulation has served as authority for the practice of religious indoctrination. In deciding not to appeal the Sudbury school prayer case, the Ontario Government effectively acknowledged that indoctrination in any one religion has no place in the public schools of this Province. Indeed, this acknowledgement is contained in a letter dated March 20th of this year from the Attorney General to our organization.

"Because the previous religious exercises regulation placed emphasis on the Christian religion, the Court invalidated the regulation".

On that basis, the Government amended the regulation for

religious exercises in order to ensure that Christian theology would no longer prevail. At that point, consistency required that the government take similar action with respect to the regulation on religious education. Instead, it created this Inquiry to study the matter.

The Canadian Civil Liberties Association believes that the second part of this Inquiry's mandate could be very helpful to the province's educational system. To be sure, there are many areas of policy that need to be delicately sorted out in order to create a workable relationship between religion and education. In saying this, we recognize that, subject to the adoption of acceptable methods, it may well be permissible for the public schools to promote knowledge about many religious ideologies. But there is simply no excuse to dally over the propriety of allowing the public schools to promote a belief in any particular religious ideology. The report of the Mackay Committee, the multicultural composition of the community, the Charter of Rights and Freedoms, the Court of Appeal decision in the Sudbury case, and the government's interpretation of that decision should make it clear, once and for all, that there are no longer respectable arguments to be made in favour of religious indoctrination in our public schools.

Unfortunately, in the very act of appointing this Inquiry, the government abdicated its responsibility to take prompt action regarding the religious indoctrination practices that currently exist. In a letter dated February 24, 1989 to the Attorney

General, our organization described certain practices that were reportedly occurring at that time in certain Ontario public schools. In Lincoln County, for example, we reported the situation of one family which alleged that their daughter was taught in school that Satan is responsible for mental retardation. We alerted the Attorney General to the reported existence in the curriculum of the following teaching topics: "the Lord Jesus teaches forgiveness", "the Lord Jesus appears in glory", "the Lord Jesus comes as a king", "the Lord Jesus is taken by wicked men".

We also informed the Attorney General of a complaint we received as recently as a year ago which alleged that the avowed purpose of certain curricular material in Fort Frances is "to show faithfulness is necessary to follow Christ". The conclusion of another lesson is to "trust Jesus to be your ark of safety". Some of the lesson topics include: "Jesus calls ordinary people to be His Faithful Followers", "Jesus calls the tax collector", "Jesus and the Kingdom".

It is simply not acceptable for the Attorney General to reply as he did that we should "appreciate the decision of the Minister of Education to hold in abeyance any amendments to the religious instruction regulation pending the Court's opinion on the current regulation and the report of the Commission [i.e. the Inquiry]". We cited specific reports that Ontario school boards were permitting indoctrination practices favourable to the Christian religion. On the basis of the government's declared

interpretation of both the Charter and the Court's school prayer decision, these practices had to be terminated at once. Thus, there was simply no reason to wait for the Court of Appeal in the Elgin County case or for the report of this Inquiry. On April 14th, we put this very proposition in a letter to the Attorney General. We called upon him to do what was necessary in order to ensure the immediate termination of the practices that we had cited.

As of this date, we have received no word that any such action has been taken. Nor are we consoled by the temporary suspension of the religion classes taught by the Bible Club Movement for many years in Lincoln County schools. That suspension occurred after an individual ratepayer filed a human rights complaint against the County. There is no guarantee that the suspension will become permanent. And, in any event, there is no justification for relying on the initiatives of individual citizens. The government has a duty to protect the Charter rights of its citizens.

Our Recommendation

Accordingly, the Canadian Civil Liberties Association calls upon the Inquiry to ensure that you in no way assist this governmental abdication of responsibility. On the contrary, we believe this Inquiry should do everything in its power to promptly secure the constitutional rights of those affected by its deliberations. In our view, the best way to do this is for the Inquiry to make a formal recommendation, as soon as possible, urging the immediate

repeal of the existing regulation on religious education. Despite the arguments over what constitutes the correct interpretation of this regulation, you know that, in practice, it has been used as authority for unacceptable religious indoctrination. Thus, the regulation should be removed from Ontario law pending the report of this Inquiry on the proper relationship between religion and education.

Such a recommendation does not need to be delayed until the end of January. It can and should precede whatever recommendations the Inquiry makes on the second part of its mandate. Indeed, such action may well be necessary now in order to secure the Inquiry's credibility later. To whatever extent the Inquiry allows itself to be used to sustain the government's inaction concerning the current abuses suffered by citizens in this Province, it will have denigrated the impact of its overall contribution. We respectfully call upon you to act, therefore, without any further delay.

A P P E N D I X

Exchange of letters between
Canadian Civil Liberties Association & Attorney General

24/2/89, 20/3/89, 14/4/89

CANADIAN CIVIL LIBERTIES ASSOCIATION

229 Yonge Street, Suite 403
Toronto, Ontario M5B 1N9
Telephone (416) 363-0321



ASSOCIATION CANADIENNE DES LIBERTES CIVILES

229 rue Yonge, Suite 403
Toronto, Ontario M5B 1N9
Téléphone (416) 363-0321

Friday, 24 February 1989

COPY

The Honourable Ian Scott, Q.C.,
Attorney General of Ontario
18 King Street E., 18th Floor,
Toronto, Ontario

DELIVERED BY COURIER

Dear Sir,

This is to express the disquiet of the Canadian Civil Liberties Association regarding the government's handling of religious education in the public schools.

We appreciated, of course, the government's decision not to appeal the school prayer case. But we cannot fathom why the government would insist on defending formal religious instruction. If the Lord's Prayer is seen as an unconstitutional encroachment on freedom of religion, there can be no excuse for the even more intrusive religious instruction. While the prayer takes approximately a few moments to recite, the instruction is supposed to occupy two one-half hour periods per week. The point of the prayer is to provide a moment's inspiration. The point of such instruction is to promote actual religious belief.

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Almost two decades after the enlightened report of the Mackay Committee, it is simply unacceptable for the Government of Ontario to appoint yet another inquiry while it preserves the status quo. After a thorough study, the Y900 Committee concluded that, in view of this province's commitment to freedom of conscience, religious equality, and multiculturalism, the current provisions for religious education had no place in our public school system. Since that time, the multicultural character of our population has increased, the Charter has been adopted, and the Ontario Court of Appeal has ruled school prayer unconstitutional. This is not necessarily to oppose a further inquiry into the role of religion in public education. It is simply to say that there is no need for a further inquiry in order to determine that, whatever else might be acceptable for our public schools, religious indoctrination is not. At the very least, therefore, the existing regulation should be revoked immediately.

While many school boards have discontinued or diluted their religious instruction programs out of respect for their minority groups, other school boards have intensified their indoctrination activities. In Lincoln County, for example, the religious instruction has acquired a particularly fundamentalist character. One family in that region, said their daughter was taught that Satan is responsible for mental retardation. The following are illustrations of topics taken from the curriculum which is reportedly being

used in that county: "The Lord Jesus teaches forgiveness", "the Lord Jesus appears in glory", "the Lord Jesus comes as a King", "the Lord Jesus is taken by wicked men".

According to a complaint we received as recently as last fall, the avowed purpose of certain curricular material in Fort Frances, is "to show faithfulness is necessary to follow Christ". The conclusion of another lesson is to "trust Jesus to be your ark of safety". Some of the lesson topics include: "Jesus calls ordinary people to be His Faithful Followers," "Jesus calls the tax collector," "Jesus and the Kingdom".

As sacred as this material may be to many people, it is not proper to teach it as though it were a matter of incontrovertible fact, such as two plus two equals four or c-a-t spells cat. The schools employing this curriculum are not merely promoting knowledge about some religions, they are promoting a belief in a particular religious doctrine. Thus, while this province conducts yet another inquiry into religion and education, children of minority religions are being assaulted in the public schools they are required to attend.

Nor is the situation adequately relieved by the right of exemption. This right creates a dilemma for dissenting parents. They must choose between subjecting their children to indoctrination in a faith alien to their home or to the embarrassing conspicuousness which so often attends

religious withdrawal from the classroom. For many people, these constitute unpalatable alternatives. As the Court of Appeal noted in the prayer case, "the effect of the exemption provisions is to discriminate against religious minorities."

We should also explain why we have taken this matter directly to the Attorney General and not to the Minister of Education. Our experience with Mr. Ward has been a completely unsatisfactory one. As long ago as October 4th 1988, we wrote to him requesting that he alter his advice to school boards on how to handle the issue of the prayer. On October 19, we requested an opportunity for a personal meeting in order to discuss his proposed new regulations on opening exercises. We expressly requested the opportunity to meet with him before any such regulation came into force. On November 28th, we made the request again. As of this date, there has not even been an acknowledgement of these letters. Someone from the Minister's office did telephone us on the day he introduced the new regulation in the Legislature. But that call simply advised us about what was happening; the official who called seemed unaware of our letters. In view of the Minister's unresponsiveness and discourtesy, you will appreciate our reluctance to approach him at this stage.

Another reason for our directing this request to you has to do with the fact that your office has carriage of the appeal

in the Elgin County case. Since we are both involved in this litigation regarding the constitutionality of religious instruction, we thought it appropriate to ask you to review the matter. Taxpayers of Ontario should be spared the expense of a foolish court case. The families of religious minorities should be spared further encroachments on their integrity and equality. On this basis, the Canadian Civil Liberties Association asks that the Attorney General use his good offices to bring about the immediate repeal of the current regulation on religious instruction in the public schools.

Sincerely,

A. Alan Borovoy
General Counsel

c.c. Blenus Wright Q.C.
The Honourable Chris Ward



Ministry of
the Attorney
General

Ministère
du Procureur
général

Office of the
Minister

Bureau
du Ministre

12 King Street East
Toronto, Ontario
M5C 1C5

18 rue King, est
Toronto, Ontario
M5C 1C5

March 20, 1989

416/965-1664

COPY

Mr. A. Alan Borovoy
General Counsel
Canadian Civil Liberties Association
229 Yonge Street
Suite 403
Toronto, Ontario
M5E 1N9

Dear Mr. Borovoy: *Alan* —

I acknowledge your letter of February 24, 1989, in which you request the immediate repeal of the current regulation on religious instruction in the public schools.

The question of religious opening exercises and religious instruction in schools has evoked considerable controversy on both sides of the issue. Because the previous religious exercises regulation placed emphasis on the Christian religion, the Court invalidated the regulation. Rather than appeal, the Ministry of Education amended the regulation amidst considerable criticism that it should have proceeded with an appeal.

The current religious instruction regulation does not favour any one religion but specifically provides that issues of controversial or sectarian nature shall be avoided. Our instruction from the Ministry of Education is to support the validity of the regulation but not the practices of any Board of Education. The Elgin County Board will be making submissions on its religious education classes. I understand that the Elgin County Board has completely revised its religious instruction curriculum to reflect the multiculturalism of the community.

to quickly alleviate such abuses. Indeed, by opting to do nothing more at this point than to defend the existing regulation and to create another commission, the government is effectively telling the victims of these abuses that the only way for them to obtain speedy relief is to take their individual school boards to court. This is a response unworthy of those who have been elected to govern.

The adoption of Canada's Charter of Rights and Freedoms was designed to augment, not to replace, the responsibility of our various governments for the human rights and civil liberties of their citizens. Going to court is a costly and lengthy process. Our current case against the government and Elgin County, for example, is not slated even to be heard until September. Who knows when a judgment will finally issue? And what are the citizens in other counties supposed to do in the meantime? Are they to undertake court cases at their own expense and will they have to wait for the judgment in our case, in any event? Are you content to tell these people that, despite the abuses they are currently suffering, there can be no relief for a long time?

Your letter implies agreement with us at least to the extent of impugning religious instruction that favours any one religion. Presumably, therefore, you would regard such instruction as unconstitutional or at least improper. Thus, it is fair to insist that the government take action now to protect those of its citizens who are the victims of school

board religious instruction that favours one religion.

By the same token, it is not acceptable to counsel us to wait until the Commission deals with this matter.

Conceivably, the Commission may make a useful contribution to public thinking about the desirable relationship between religion and education. But, in the year 1989, we don't need yet another commission to tell us whether it is appropriate for public schools to promote the faith of some as though it were fact for all. Some twenty years after the eminent McKay Committee recommended the abolition of such instruction, there is no need to wait any longer with respect to this segment of the Commission's terms of reference. Whatever else the Commission may recommend regarding the interaction of religion and education, there is no excuse for any further toleration of religious indoctrination in our public schools.

The government's decision to defend the current religious instruction regulation is based upon the questionable proposition that the regulation "does not favour any one religion". The history and context of the regulation readily demonstrate the invalidity of this position. The Hansard record of the 1940s legislative debates leaves little doubt that the idea was to promote Christian ideology among the public school students of this province. Consider also the materials which were published by the government itself as an accompaniment to the regulation. One of these

materials, for example, is a document entitled Program for Religious Education in the Public Schools. It contains the following statement:

"They (the Scriptural interpretations) will be confined to those expressions of the Christian faith upon which all Christian denominations are in substantial agreement".

Apart from the difficulty of discerning such a consensus, this document put our public schools in the position of being officially in favour of the Christian interpretation of the Scriptures. Indeed, this will explain the provision in the regulation to which you referred that "issues of a controversial or sectarian nature shall be avoided". This was generally interpreted to mean that the schools should avoid controversial or sectarian issues that divide Christians. It was not interpreted to mean that the instruction should avoid issues which are controversial to Jews, Muslims, Buddhists, Hindus, Unitarians, or Humanists.

In the same document, the teacher is admonished to remember that

"...Jesus Christ is more than a hero to be admired; He is the Revelation of God in history..."

On the basis of this government material, the teacher is not obliged impartially to teach that only Christians believe this proposition while others have different views. On the contrary, the teacher is obliged to teach the controversial doctrine of the Divinity of Jesus as though it were a matter of incontrovertible fact.

While this document is reportedly out of print, it remains

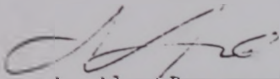
one of the government's few written sources of information about the prescribed religious curriculum. To interpret the regulation as the government now proposes to do is to ignore all of this history.

Another critical factor which the government's interpretation effectively neglects is the existence in the regulation of a right of exemption. If the point of the religious instruction regulation were simply to promote, without favouritism or discrimination, the student's general knowledge of the various religions in our society and the world, how could we explain the right of parents to exempt their youngsters? There are no comparable exemption rights with respect to history, literature, social studies, mathematics, or science. The only way we can account for the exemption rights in this area is to recognize that the regulation was designed to indoctrinate the youngsters in one faith, not to educate them about many faiths.

Accordingly, the Canadian Civil Liberties Association asks once again that the Attorney General use his good offices to bring about the earliest possible revocation of this regulation. There is no excuse for emburdening the taxpayers of the province with the kind of litigation which is involved. Moreover, on the basis of the government's current position, there is even less excuse to tolerate the sectarian practices that you know are occurring today in many Ontario public schools. At the very least, the

government should exercise the leadership to ensure that these practices are halted forthwith.

Sincerely,



A. Alan Borovoy

General Counsel

cc: The Honourable Chris Ward

Blenus Wright, Q.C.