

SUBMISSIONS TO:       The Honourable John Snobelen  
Minister of Education and Training for Ontario

RE:                       The Role of Education in Combatting Racism

FROM:                   The Canadian Civil Liberties Association  
per - A. Alan Borovoy, General Counsel  
              Danielle S. McLaughlin, Director of Education

The Canadian Civil Liberties Association is a national organization with more than 6000 paid individual supporters, seven affiliated chapters, and more than fifty associated group members which themselves represent several additional thousands of people. The membership roster includes people from all walks of life: lawyers, homemakers, writers, artists, retirees, broadcasters, trade unionists, clergy, educators, academics, and representatives of most racial, ethnic, and religious constituencies.

Among the principles that guide the organization is the quest for universal dignity and equal opportunity. It is not hard to appreciate the relationship between these objectives and the fight against racism. Anyone with the slightest understanding of human events will at once realize the corrosive impact of racism on community life. Racism is one of the greatest obstacles to both universal dignity and equal opportunity. It is clear that education can play a pivotal role in counteracting this obstacle.

The ensuing submissions are designed to disclose a number of relevant facts and propose a number of responsive measures.

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## Introduction

The ordeals of the 20th century have demonstrated the fragility of inter-religious and inter-ethnic relations. Consider, for example, the bloody conflicts of today's world: between Hindus and Muslims in India, Protestants and Catholics in Northern Ireland, Armenians and Azerbaijanis in the former Soviet Union, among Serbs, Muslims, and Croats in Bosnia, and the hideous genocide that has so recently occurred in Rwanda, to name only a few.

In view of what we see everywhere around us, elementary wisdom requires that we acknowledge the endemic nature of racial, religious, and ethnic tensions. No nation or culture has a monopoly on such conflicts. They appear to be a component of the human condition itself.

It makes sense, therefore, that all nations and peoples continuously address the state of their inter-group relations. While the Canadian experience in this regard has been better than that which exists in many other countries, this country cannot claim any automatic immunity.

Indeed, this society experiences recurring manifestations of unacceptable racism. During the past several months alone, there have been some unfortunate examples of such racial and ethnic tensions in our province. In Markham, a deputy mayor was quoted as expressing discomfort over the concentration of Chinese signs, businesses, and even residents in that community. There have also been unwarranted generalizations about the alleged tendency of immigrants from Somalia to abuse the welfare system. The Jamaican community has frequently been the target of insults and slurs regarding the allegedly disproportionate amount of violent crime perpetrated by young people from that country. Most recently, there have been claims that a radio broadcaster attributed the province's legal aid deficits to a supposed excess of Jewish lawyers.

It is wise, therefore, to adopt a policy of constant and continuous vigilance. To a very great extent, viable inter-group relations require that all of us have the ability to see things as much as possible as others do. When we can imagine ourselves in the other person's shoes, we can acquire the empathy that is necessary to counteract incipient tensions. Since we are all products of our history, our ability to empathize requires some understanding of one another's experiences.

In this regard, our various ministries of education have a vital role to play. Such considerations led the Canadian Civil Liberties Association to investigate how well the Ontario system of

education is imparting to its constituents a knowledge of each others' backgrounds and experiences. Accordingly, in late 1993 and early 1994, we circulated a questionnaire among some 200 students who were in their final year of high school. They came from 6 schools in or near Metropolitan Toronto involving 5 boards of education, one of which was in the separate school system. The questions we asked were designed to elicit how much these students knew about the backgrounds of minority groups that have experienced significant amounts of discrimination.

### Knowledge of the Immigration Experience

One of the first discriminatory encounters people have had is with the immigration department. Accordingly, we asked whether Blacks, Chinese, or East Indians have ever been refused permission to immigrate to Canada on the basis of their race or ethnicity. In fact, at one time or another, all of these groups have been denied admission to Canada on this basis.

In 1911, for example, a federal order-in-council formalized a number of bureaucratic initiatives aimed at discouraging Black immigration from the United States. The following is a partial text of that order-in-council:

.... the landing in Canada shall be and the same is prohibited of any immigrants belonging to the Negro race, which is deemed unsuitable to the climate and the requirements of Canada.<sup>1</sup>

At the end of the last century, Chinese and East Indians were imported as much-needed labour for projects such as the building of railroads. Significantly, this apparent liberalism toward the Chinese, for example, applied only to men who were capable of hard physical labour. Women were simply not admitted.<sup>2</sup> For about the last 15 years of the 1800s, Canada imposed a head tax on these Chinese immigrants: at various periods, \$50.00, then \$100.00, and then as high as \$500.00.<sup>3</sup> In 1908, Canada reduced Asian immigration by prohibiting the landing in Canada "of immigrants who shall have come to Canada otherwise than by continuous passage from the country of which they are native or citizens".<sup>4</sup> Further restrictive regulations were enacted in 1923 and 1930 as a result of which only 15 persons of Chinese origin were able to enter Canada for almost two decades.<sup>5</sup>

As a result of regulations against East Indians, only 29 were admitted between 1909 and 1913. Although an order-in-council in 1919 allowed East Indians to bring their wives and children to Canada, few could afford to come and the numbers actually dwindled between 1920 and 1930.<sup>6</sup>

Despite this notorious history, the overwhelming number of students in our survey revealed an unawareness that this country denied admission to Blacks, Chinese, and East Indians. Only 17% knew that the Chinese had been denied entry to Canada. In the case of Blacks and East Indians, the students' knowledge was even less. Nine percent of the students knew that Blacks had been denied admission here and only 6% knew that such restrictions had been applied to East Indians.

No more than 18% of our respondents knew about the head tax on Chinese immigrants. This widespread unawareness has managed to co-exist with a number of recent well-publicized efforts by the Chinese Canadian community to obtain compensation for our government's past discrimination against them.

#### Knowledge of Slavery

One of the causes of the moral superiority Canadians frequently feel about their country in relation to countries such as the United States concerns the issue of slavery. Who doesn't know, for example, that it took a bloody civil war to finally liberate Blacks from slavery in the southern United States? By contrast, few Canadians seem to be aware that there was ever any slavery in the land they now inhabit. While slavery here was never practiced on the scale that it was in the United States, there were nevertheless significant periods when it existed in the colonies that became Canada. Indeed, slavery was not finally abolished here until as late as the 1830s. At one time or another, both Blacks and native people were slaves in the territory that is now called Canada.<sup>7</sup>

Despite these facts, only 25% of the students in our survey were aware that Blacks were once slaves in this land and only 16% revealed such awareness as far as aboriginals are concerned. An even smaller number - 13% - knew that slavery had ever been legal here.



### Knowledge of Voting Rights

As the American experience so effectively demonstrated, mere liberation from slavery, while necessary, is hardly sufficient. The most repressive segregation of Blacks continued to exist for generations in the American south after the civil war. De facto liberation also required, at the very least, some amount of political power.

For such purposes, the right to vote was a minimal requirement. It is significant, therefore, that as early as 1895, British Columbia enacted legislation denying voting rights to those of Chinese, Japanese, and East Indian origin. Since it was necessary to have the franchise in a province in order to exercise it federally, British Columbians of such origins were thereby denied the vote in federal elections. Not until 1947, did B.C. people of Chinese and East Indian origin acquire the franchise.<sup>8</sup> While those of Japanese origin were given the vote shortly thereafter, status Indians were not enfranchised federally until 1960. In Alberta, they didn't acquire the vote until 1965 and in Quebec, not until 1969.<sup>9</sup>

Unfortunately, the students in our survey were unaware of even the essence of this situation. Only 32% knew that aboriginal people had ever been denied the vote in Canada. When it came to those of Japanese descent, the percentage was 26% and, in the case of Chinese, the number of knowledgeable students was even smaller - 11%. Nevertheless, all of these figures pale beside the knowledge concerning those of East Indian origin. Only 5% knew that East Indians had ever been denied the right to vote in Canada.

### Knowledge of the War-Time Measures Against the Japanese

While many more of the students knew of the misdeeds committed against Japanese Canadians during the period of the Second World War, it was still less than a majority. Forty-seven percent knew that Japanese Canadians were detained in camps and 43% knew that Japanese property was confiscated.

Sometimes, there is a tendency to excuse harsh measures during wartime. Thus, it is especially significant that, despite the human rights violations perpetrated by the Canadian government on its citizens of Japanese origin, not one Japanese Canadian was even charged with espionage during the period in question.<sup>10</sup> But only 7% of our students were aware of this critical fact. More than 90% of them either thought the number was greater than 100, or they simply didn't know.

#### Knowledge of Discrimination Against Blacks

In his special report to the Ontario government dealing with racism in this province, Canada's former U.N. ambassador Stephen Lewis made special mention of the discrimination suffered by Blacks. In his view, Blacks are one of the most victimized groups in the community. This impression is bolstered by the reams of publicity that have been accorded, in recent years, to the conflicts between Blacks and the police.

Thus, a number of our questions sought to determine what our students knew of the discrimination suffered by Blacks in Canada. We asked whether Blacks had encountered discrimination in a number of public places such as hotels, theatres, parks, and swimming pools.

In virtually all of these situations, there have been well-publicized cases. In the mid-1940s, a Black woman in New Glasgow, Nova Scotia was jailed overnight because she refused to sit in the theatre balcony which had been allocated for Blacks (whites sat downstairs).<sup>11</sup> In the mid-1950s, the prime minister of Barbados was denied a room in a Montreal hotel.<sup>12</sup> In the mid-50s, there were a number of cases involving the refusal of white restaurateurs to serve Blacks in Dresden, Ontario. At one point, the situation became so tense that a Black veteran of the Second World War was forced to leave Dresden because the white townspeople were boycotting his business.<sup>13</sup>



As late as the 1960s, there were well-publicized cases concerning the inability of blacks to obtain accommodations at Ontario summer resorts.<sup>14</sup> In the early 60s, cases were pursued under the then Fair Accommodation Practices Act over the refusal to admit Blacks at public golf clubs and bathing beaches in Windsor, Ontario. As late as 1968, a dead Black child in Nova Scotia was denied burial in what was then an all-white cemetery.<sup>15</sup>

Despite the recentness and magnitude of this history, fewer than 20% of the students in our survey had any idea that Blacks had experienced such discrimination in Canada. Only 18% knew of the segregation in movie theatres and only 16% knew that Blacks had been denied accommodation in hotels and admission to swimming areas.

#### Knowledge of Discrimination Against Jews

In some ways, knowledge of the Jewish experience paralleled that of the Black experience. Canadians seemed to know a lot more about what Jews have suffered in other countries and comparatively little of what they have experienced here. As far as the Holocaust in Europe is concerned, 89% knew that innocent men, women, and children of Jewish origin were gassed to death in large numbers by the Nazis. Even 59% knew that Jews were forced to undergo scientific experiments in the concentration camps where they were held prisoners.

But, as soon as the questions focused on Canada, our respondents were not nearly so knowledgeable. When asked whether Canada turned back Jews trying to flee from Nazism, only 20% were aware that this had happened.

One would have thought - or at least hoped - that the story of the ship, The St. Louis, would be better known by now than it appears to be. In 1939, this shipload of Jews, attempting to escape persecution from Hitler's Germany, was unceremoniously turned back at the Canadian border. In the Canada of that era, the situation lacked sufficient importance to generate any kind of political protest or publicity. In recent years, however, the incident has received widespread

attention, particularly in the award-winning book, None Is Too Many by Irving Abella and Harold Troper.

Indeed, much of the liberalization in Canada's current refugee policy is attributable to the fact that at least some Canadians had their consciousness raised by the knowledge that the smugness of an earlier generation had so blithely preferred that a shipload of Jews perish in Europe than that they enter Canada. But, whoever else might know of this incident, our students apparently did not.

Up to that point - and, indeed, for many years thereafter - anti-Semitism in this country appeared to be deep-rooted. During the 1930s, many tourist resorts posted signs warning Jews to keep away. At one Laurentian hotel, for example, a sign contained the words "no Jews or dogs allowed".<sup>16</sup> Even in the 1960s, there were reports of anti-Semitism in Ontario resorts. In one of Pierre Berton's 1960 Toronto Star columns, for example, it was revealed that, in a third of the resorts surveyed by Berton, Jews were unable to obtain accommodations that appeared readily available to Gentiles.

The job situation was not much better. For the longest time, it was virtually impossible to find Jews working in banks, insurance companies, and even as public educators.<sup>17</sup> Historian Irving Abella has related how, despite a brilliant academic record, Bora Laskin (who later became chief justice of Canada) "could not get a job in a Toronto law firm" when he returned to Toronto from the Harvard Law School at the end of the 1930s.<sup>18</sup> In the mid-1930s, a Jewish medical student who had graduated first in his class at the University of Montreal had to resign his internship at Montreal's Notre Dame Hospital because his fellow interns refused to work with him.<sup>19</sup> As late as the early 1960s, a government administrator was widely quoted for his condemnation of discrimination against Jews in Canada's banking industry.<sup>20</sup>

Universities discouraged Jewish enrolment by imposing quotas on the number of Jews they would admit.<sup>21</sup> In the course of commenting on the acceptance of Jews at McGill University, for example, the minutes of a Queen's University senate meeting for October 29, 1943 noted that

"Jewish students in arts ... are admitted only on an academic standing of 75% or over; other students are admitted on a standing of 60% or over. This regulation is publicly known and seems to operate without any friction." [emphasis added]

Despite this terrible record, no more than 25% of the students who were surveyed showed any knowledge of the discrimination experienced by Jews in Canada. Indeed, the greatest awareness concerned employment discrimination; 25% of the students knew that Jews had been barred from certain jobs. Only 20% of the students knew of the discriminatory quotas at universities and an even lower number - 12% - were aware that Jews had been banned from tourist resorts.

### Perspectives and Proposals

In view of the fact that the students in our survey were drawn from their final year of high school, we cannot expect the educational system to provide hereafter the knowledge it has failed thus far to provide many of these young people. Regrettably, we must face the fact that a good number of students will be turned loose on the world, badly under-educated regarding this country's inter-group history.

Admittedly, a survey of 200 students is relatively small, considering the thousands who graduate from our schools every year. Unfortunately, however, there is no special reason to consider this group exceptional. We had no particular knowledge of the schools or the students who participated in our survey. We simply chose those whose cooperation we were able to get. Indeed, since they were all from or near Metropolitan Toronto, there may be some reason to believe that this group might have greater knowledge than that of their counterparts in smaller centres. After all, students in a cosmopolitan city like Toronto are more likely than those in smaller places to interact with minority groups.

As indicated, people are graduating from our schools inadequately informed about the experiences of their fellow citizens. When people know so little about one another, they are less

likely to respond with sensitive understanding to one another's opinions and grievances. These are hardly the conditions in which to encourage cooperation and trust.

At least part of the remedy is clear. The ministry of education must ensure that all teachers, from junior kindergarten to the end of high school, are trained - in college and on the job - to deal in an appropriate and meaningful manner with the experience of racism; and that every school curriculum in the province devote significant attention to these issues. The schools should provide speakers, films, and forums dealing with what has actually happened to our fellow Canadians in this and previous generations.

In classes on history, geography, and law, students should be learning about the denial of voting rights to aboriginal people, Blacks, and East Indians. Students should learn also about the systematic discrimination practiced by the immigration department against people of Chinese, Black, and East Indian origins. No one should graduate without hearing about Canada's refusal to receive a shipload of Jews who were fleeing persecution in Nazi Germany. The story of slavery in this land should be told in all of its disquieting dimensions.

The ministry should ensure that the students of this province are well-versed about the colour bars against Blacks in Dresden restaurants, Muskoka summer resorts, Montreal hotels, Windsor golf courses, and even in a Nova Scotia cemetery. Students should be made fully aware also of the sheer scope of the anti-Semitism that Jews have suffered in this country: in jobs, tourist resorts, and in universities.

The program should, of course, address the scandalous living conditions of Canada's aboriginal population - their lack of health care, housing, education, and employment. Moreover, in every group, there is good reason to believe that the women have often experienced exceptional discrimination. This should, therefore, receive a commensurate level of attention.

In addition to making such matters an integral part of the regular curriculum, the ministry should also encourage the schools to deal with these issues in their after-hours extra-curricular activities

for students. The idea is to spare no effort in order to promote the widest possible knowledge and understanding of racial, religious, and ethnic discrimination in this country.

This is not to suggest, of course, that knowledge of the discrimination experience would represent a sufficient component of an anti-racist educational program. Our view is that such knowledge should be seen as important but certainly not sufficient. To be sure, anti-racist education should address not only what certain groups have suffered but also what they have contributed. To whatever extent this country has enjoyed cultural, material, scientific, and social progress, much of the credit belongs to Canada's minority racial, religious, and ethnic constituencies. It would be valuable for our school system to promote knowledge of discrimination in the context of these immense contributions.

A viable anti-racist education should go still further. Students must acquire not only the appropriate knowledge but also the requisite analytical skills. This means a large emphasis on every day ethical conflicts. Consider, for example, the following. To what extent, if at all, would it be permissible for an employer to avoid hiring minority employees if hiring them were seen as likely to drive away a number of customers? To what extent should the locale of the annual school banquet be changed from the place that is popular with the overwhelming number of students in order to accommodate the small minority whose religious principles would prevent them from eating there? To immerse students in questions such as these is to help them think relevantly about the real issues that are likely to confront them in everyday life.

Imparting the evils of the Heritage Front and the Ku Klux Klan is only the bare beginning of a sound educational program in this area. In any event, these groups are the easy targets. It is much more difficult and, even more important, to foster student awareness of the plausible "villians": those who would discriminate, not out of personal hatred, but for business interest - and those who would defer to majority convenience over minority conviction. These are the kinds of perspectives that need priority treatment. Discussion of them would be much more likely to stimulate intellectual growth about what is central in Canada's inter-group relations.



Moreover, the emphasis of educational effort should focus more on behaviour than on attitudes. The primary issue is not, for example, whether employers like people of different origins but whether employers are prepared to hire the qualified members of these groups. This is not, of course, to suggest that universal love would be anything but a desirable state of affairs in human relations. It is simply to say that our educational efforts should promote hard thinking about the achievement of fair play in the here and now. Students should be helped to understand that social improvement is possible without a revolution in human nature.

Pedagogically, the idea is not only to transmit formally prescribed material but also to exploit opportunities that the school setting naturally generates. So many school situations - in the classroom, cafeteria, gymnasium, and auditorium - create opportunities for ethical exploration. So do lessons in history, literature, and geography. Very often, these situations are also laden with issues in race relations. Teachers should be trained to seek these opportunities and transform them into forums for debate and discussion.

A lot of counter-productive energy has been expended in various attempts to deny free speech to racists. Time and again, these efforts have boomeranged: they have wound up restricting the free speech of the various minorities they were designed to protect. (Consider, for example, how Canada's anti-hate law encouraged, among other things, the prosecution of French Canadian nationalists, the investigation of a Jewish community leader, and the significant detention of a film in support of South Africa's Nelson Mandela.) It would be better to focus, less on the disseminators of racist invective, and more on their potential audiences. We believe that the kind of educational program we are proposing would help immeasurably to contain the influence and spread of bigotry and racism. The findings of our survey are disquieting. We must not allow such widespread ignorance to continue. Our educational system has a duty to contribute substantially more than it has.



Summary of Survey Findings

1. Only 9% knew that Blacks have been refused permission to immigrate to Canada on the basis of race and/or ethnicity.
2. Only 17% knew that Chinese have been refused permission to immigrate to Canada on the basis of race and/or ethnicity.
3. Only 18% knew of the head tax on Chinese immigrants.
4. Only 6% knew that East Indians have been refused permission to immigrate to Canada on the basis of race and/or ethnicity.
5. Only 25% knew that Blacks were once slaves in this land.
6. Only 16% knew that aboriginals were once slaves in this land.
7. Only 13% knew that slavery had ever been legal here.
8. Only 32% knew that aboriginal people had ever been denied the vote in Canada.
9. Only 26% knew that people of Japanese origin had ever been denied the vote in Canada.
10. Only 11% knew that people of Chinese origin had ever been denied the vote in Canada.
11. Only 5% knew that people of East Indian origin had ever been denied the vote in Canada.
12. Only 47% knew that Japanese Canadians were detained in camps during the Second World War.
13. Only 43% knew that the property of Japanese Canadians was confiscated during the Second World War.
14. Only 7% knew that there were no Japanese Canadians even charged with espionage during the Second World War.
15. Only 18% knew of the segregation against Blacks in movie theatres.
16. Only 16% knew that Blacks, because of their colour, have been denied accommodation in hotels and admission to swimming areas.

17. Only 20% knew that Canada denied entry to Jews fleeing from Nazism in Europe. (Yet 80% knew that innocent men, women, and children were gassed to death in large numbers by the Nazis and 59% knew that Jews were forced to undergo scientific experiments in Nazi concentration camps.)
18. Only 25% knew that Jews have been denied certain jobs because of ethnicity.
19. Only 20% knew of discriminatory quotas against Jews in universities.
20. Only 12% knew that Jews have been denied accommodation in summer resorts.

### End Notes

1. PAC, Orders-in-Council, RG 2/1, vol. 269, no. 1324, 12 August 1911, as cited in Shepard, Bruce R.; "Plain Racism: The Reaction Against Oklahoma Black Immigration to the Canadian Plains" in Racism in Canada, ed. by Ormond Mckague [Saskatoon: Fifth House Publishers Ltd., 1991] at p. 30.

2. Hill, Daniel G. and Schiff, Marvin; Human Rights in Canada: A Focus on Racism (2nd ed.) [Ottawa: Co-published by the Canadian Labour Congress and the Human Rights Research and Education Centre, University of Ottawa, 1985] at p. 13.

3. Lower, J. Arthur; Canada on the Pacific Rim [Toronto: McGraw-Hill Ryerson Ltd., 1975] at p. 179.

4. Hill, at p. 14 and Lower, at pgs. 181-182.

5. Lower, at p. 183.

6. *Ibid*, at p. 183.

7. Canadian Encyclopedia [Edmonton: Hurtig Publishers, 1985] at p. 1704 and Hill, at pgs. 11-12 and Tulloch, Headley; Black Canadians: A Long Line of Fighters [Toronto: NC Press Ltd., 1975] at pgs. 91-94.

8. Hill, at p. 13.

9. Canadian Encyclopedia, at p. 1221.

10. Berger, Thomas R.; Fragile Freedoms: Human Rights and Dissent in Canada [Toronto: Clarke, Irwin & Co. Ltd., 1981] at p. 113 and Canadian Encyclopedia, at p. 914.

11. Walker, James W. St. G.; A History of Blacks in Canada: A Study Guide [Ottawa: Ministry of State-Multiculturalism, 1981].

12. Hill, at p. 15.

13. *Ibid*, at p. 14.

14. *Ibid*, at p. 15.

15. Walker.

16. Abella, Irving; A Coat of Many Colours: Two Centuries of Jewish Life in Canada [Toronto: Lester & Orpen Dennys Ltd, 1990] at p. 182.

17. *Ibid*, at p. 181.

18. *Ibid*, at pgs. 218-219.

19. *Ibid*, at pgs. 179-180.

20. Borovoy, A. Alan; Uncivil Obedience: The Tactics and Tales of a Democratic Agitator [Toronto: Lester Publishing Ltd., 1991] at pgs. 101-102.

21. Abella, at pgs. 215-217 and 219-220.

Standing committee on the Legislative Assembly

Thursday 12 September 1996

## Referenda

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1530

### CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair: Our next presentation is going to be from the Canadian Civil Liberties Association, represented by Alan Borovoy and Steven McCammon. Would you please come forward and identify yourselves for the purposes of Hansard.

Mr Alan Borovoy: Thank you very much, Mr Chairman. I am Alan Borovoy the elder, and this is Steven McCammon with me. Just a preliminary point to begin with: To whatever extent the object of this exercise is to encourage greater public participation, it would help considerably if we members of the public were given a little more notice of these hearings than we got in this case. We weren't told about this until -- and I'm sure this is not unique to us -- some time towards the end of the week before last. There was little opportunity for us to consult with our own board members, let alone do the kind of research we normally like to do for these things. That, of course, was the experience we had with Bill 26 as well.

The very first recommendation I would make is a procedural one and that is that there be no legislation introduced into the House based on this exercise until and unless there was at least one more round of public hearings where there was more ample notice. That's the first recommendation -- a procedural one.

Now, to address the substantive issues, partly they're influenced by the constraints we've been operating under. As a result, my presentation will be addressed to general principles rather than specific details. There may well be some permissible exceptions to what we are about to say, but our position should be taken as a general admonition.

As an organization whose very essence deals with improving the democratic processes, the Canadian Civil Liberties Association believes it would be a serious mistake to use the referendum as a significant device for making law and government policy. In our view, that would be a mistake. Although the referendum attempt is designed to vindicate one component of the democratic process -- majority rule -- it imperils another component of the democratic process -- minority rights. The difficulty is that when questions are boiled down to yes or no, it discourages the tradeoffs and the compromises which enable minorities to exert some influence on the social consensus. By promoting no-compromise, winner-take-all solutions, the referendum can

encourage, and in other places has encouraged, majorities to take some unfair advantage and often winds up abusing minorities.

Just a few examples: In about a 20-year period, of 10 referenda, 10 initiatives, approved by the voters in California, six were struck down as violations of the Constitution; the US Supreme Court struck them down. One of the most notorious of the initiatives approved by the voters in California was Proposition 13, which effectively said that incumbent land owners would have caps imposed on their property taxes. The result of that same referendum wound up making other land owners, new land owners, pay disproportionate amounts of taxes, an obviously unfair situation.

The state of Colorado a few years ago adopted an initiative, a constitutional amendment barring the state Legislature from prohibiting discrimination against gays and lesbians -- flat out, you can't do it ever -- by constitutional amendment. Fortunately, that too was struck down by the US Supreme Court. That's an example of what happens when you boil down some of these cases to an oversimplified yea or nay.

In Arkansas and Michigan, you had initiatives deny funding to poor women seeking abortion. It's one thing to oppose abortion in principle, but it's another thing entirely -- I should say they impose severe limits on poor people -- to restrict it to people who have money. That's the kind of thing that has often happened when you boil down questions in this way.

With representative government wherein the people who govern us are elected by our votes, there is far less risk of this kind of damage to minority interests when you have representative democracy as opposed to plebiscitary democracy. The more aggrieved people in our society are, the more likely they are to translate their complaints into votes at election time. As they get more aggrieved, you know those people are going to vote that way in order to vindicate those grievances. The votes of other people are less predictable and often dispersed. This gives politicians an incentive to reach some kind of accommodation with those minorities, some compromise, and that whole exercise serves as a deterrent to abusing minority groups. It's some protection they can get out of that kind of system.

But let me even say a word about how well referenda really can be used as a barometer of the majority will. In our view, that too is not a very reliable device. Why? Because the positions of most people on most issues are qualified. We live in a complex society. Most of us, what we really say about the greatest number of issues facing us is, "Yes, if this and this happens," or "No, unless this and this happens." That's what we do. When you try to boil it all down to a simplified yes or no, you often wind up with a misleading picture of what people really want.

Again, an interesting example of this is a recent one in California: An initiative was approved which said, "Notwithstanding any other law" -- key words -- "people convicted of three felonies will automatically get a lengthened prison term." Contrary to the wishes, to the obvious intentions of those who were promoting this initiative, this appeared to deny capital punishment to murderers who had two previous felony convictions. This has become the subject of litigation in



that state. It's a mess, and partly because the referendum result did not effectively reflect the majority will, even of those who were promoting it.

In the state of Arizona recently the voters approved one initiative abolishing the office of the state auditor and approved another initiative extending the terms of office of all their state officials, including the state auditor. Those are the kinds of results one gets, and you can even see it on the same ballot.

When governments have attempted to provide adequate explanations for some of these complex difficulties, the results are often staggeringly complex. A law professor described his experience in California. He moved to California and received a 150-page document explaining all these initiatives; he thought it was the telephone directory.

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The other thing about it is that there are surveys that have been done where people say flatly how few of them felt they knew enough about any of these particular complex questions to cast a wise vote. There was a recent poll in which only 15% felt that they could vote competently on these issues.

There is one more reason why, in our judgement, the referendum is the wrong way for a sensible democratic society to go, and that is that anyone who has lived in the real world for longer than an hour knows that the popular thing to do is not always the right thing to do; in fact, it is often the wrong thing to do. Indeed, it's the reason why we so often admire those politicians who have had the courage to do what they believed was right even as they knew it was unpopular. Of course, the democratic safeguard in all this is that ultimately those politicians can be turfed out, but the genius of representative democracy is that in the meantime it enables those politicians to act courageously if they will and attempt to lead their public.

Aren't we grateful today that Franklin Delano Roosevelt had this kind of courage, that prior to America coming into the Second World War he promoted aid to beleaguered Britain when Britain was the only free nation able to withstand Nazi aggression? Roosevelt promoted that aid. We know very well that if there had been a referendum he might well have lost on that issue, but the genius of the system is that it gave its leaders an opportunity to lead. Ultimately, the public could judge whether it was happy with that leadership.

In this way, representative democracy strikes a sensible balance between popularity and responsibility. The referendum doesn't even attempt a balance; popularity always prevails, even if it produces irresponsibility.

On the basis of all these considerations -- the inadequate attention, the inadequate accounting of minority interests; the distorting of majority wishes; and the need for responsibility -- the Canadian Civil Liberties Association urges this committee to disapprove of the thrust of the

government document. All of which is, as always, respectfully submitted.

The Chair: Thank you for your presentation. I assume you're prepared to answer some questions and engage in dialogue with the members?

Mr Borovoy: If I may say so, I'm even eager to do so.

The Chair: I thought you might be.

Mr Bartolucci: Thank you very much for your presentation. So you're saying that there is no time when a referendum should ever be held?

Mr Borovoy: I hope I was too careful to say that. What I said was that I was not addressing specific details, the possibility that there might be some permissible exceptions. I'm talking in general terms. I say, as a general proposition, don't make this a significant device for lawmaking, whatever argument there may be some time for an exception.

Mr Bartolucci: I agree with that certainly, but maybe can we become just a little more focused? The government has indicated its intention to bring in this referenda legislation. They have a majority, so it's their indication they're going to do it. What issues should they narrow that legislation to, in your estimation?

Mr Borovoy: This is the reason I requested, and now I would implore, this committee to schedule subsequent hearings so that we have an opportunity to address some of those questions. I don't come here with instructions from my board. There hasn't been ample opportunity to consult them. I would like very much to be able to respond to questions like that, because there again, this is a good example. If you just put the question, "Yes or no?" I'd have to say no -- that's the problem with referenda -- but if I could address some of those specifics I might say, "There's an argument for it here but not there." Please give us an opportunity to do that, and I would like to respond to those questions.

Mr Bartolucci: I think you're not the only one to suggest that they've had little notice, and I'm sure some member of the government will address that. Maybe you will have the opportunity to present again, and maybe at that time we would focus in on the issues and maybe the type of wording and who should do the wording and the geographical restrictions, threshold levels etc. There is much to talk about in subsequent meetings.

Mr Silipo: Mr Borovoy, thank you very much for your presentation. We are, by a decision that we've made in this committee, I hope going to continue to hear, because I'm assuming from what you've said and what a couple of other groups have said that there is continuing interest in this issue and that we need to do some more thinking and discussing before we get to the point of rolling along with legislation. I hope the government members will agree with that approach as we get to the end of today and of this set of hearings.

I want to pursue also this notion, and I appreciate very much what you've said, that you haven't turned your mind beyond the broad issue of when, if indeed ever, there should be the use of referenda, and you've left open the possibility. Perhaps I could just probe a little bit on that, because I understand very much the argument you're making and I think I would generally be in agreement with the notion that referenda should be used sparingly. I wonder, in a couple of specific examples that have been put before us and that we've lived through as citizens, whether you have any comments either personally or reflecting your organization. Was the Charlottetown accord, in your view, an appropriate use of a referendum?

Mr Borovoy: I'm not sure. I have some considerable doubt about amending constitutions by referendum. As a general proposition I have considerable doubt about it. How far I could justify an exception there, I'd have to think back through the history of it more carefully than I now have an opportunity to do, but let me just say as a general proposition, while it's important to make constitutions harder to amend than ordinary statutes, we ought not to make it too difficult. The world changes; conditions in the country change. We should not put ourselves in the position of having referenda as an ongoing device for constitutional amendment. While there might be an argument under some extreme circumstances, as a general proposition I would say no.

Mr Silipo: Is it fair to say that one possible approach to this might be for there not to be hard and fast rules about when referenda should be used and leave that as part of the exercise of that leadership you were talking about, and on the other hand proceed to set some rules around how a referendum would be held, in other words, the nuts-and-bolts rules that would govern a referendum if and when there was a decision made as to how that should be used?

Mr Borovoy: If I follow your question, and I'm just going to restate it to make sure I understand it, you suggest that rather than provide some kind of machinery in an elaborate statute today, we might continue to muddle through as we have been for all these years, and if we come upon a situation where there is a special argument for a referendum, jump off that bridge when we come to it.

1550

Mr Silipo: Either that, or I guess I was going a little bit beyond and suggesting that there's been some discussion about at least looking at establishing some rules that might govern in the event that there was a referendum to be held; for example, all the nuts and bolts around, "Do we establish a Yes/No committee? Do we establish spending limits?" etc, all those things that would have to at least be dealt with in some way in terms of how you would run the machinery of a referendum.

Mr Borovoy: Of course you are catching me notoriously unprepared, as I warned you I was, on these questions. Just off the top of my head I would lean against what you're suggesting. I'm persuadable but I would lean against it on the basis that to invest a lot of energy in referendum rules today would, I think, create a situation in which there would be a greater temptation than

otherwise to use it. Because in our view it is as a matter of course the thing not to do, I would rather not go through this exercise which might create a temptation that in my view is essentially a dubious, wrong temptation.

Mr Silipo: I just hope, Mr Borovoy, that your organization and you personally continue to not just give some thought to this whole issue but provide us as a committee with your views, because I think they would be very valuable, because certainly the government has indicated, as has been mentioned, its interest to proceed with some form of legislation on this. In that sense your warning to us is sound and I hope it is heard in terms of us not proceeding too quickly without giving some serious thought to a lot of major issues that have been flagged as a result of even these three or four days of discussion.

Mr Hastings: Thank you very much for appearing, Mr Borovoy, on such short notice and giving us a very illuminating dissertation. This first round of hearings regarding the referenda consultation paper is only chapter 1 in the saga. We have made some limited attempts through teledemocracy, videoconferencing etc with other parts of Canada and Ontario to get views on this issue of direct democracy.

I would like to hear what your response would be to Mr Tuck, who was here from the Hastings County Ratepayers Association this morning, if we could watch you two engage in a dialogue as to what he characterizes as the existing system of parliamentary democracy. To use some of his terms, and I don't think I'm taking them out of context, he said both orally and in his written submission that today's democratic institutions, particularly in Ontario, in his estimation are actually anti-democratic or undemocratic, unrepresentative, unresponsive institutions, particularly from a taxation viewpoint, but that wasn't the only one. He also cited unjustified government land expropriation and the way in which the élites rule this province.

He would point out that the antidote, what he sees as a beginning to change that, was to introduce some forms of direct democracy. Otherwise, he says, people are really pretty well disfranchised. He cited particularly market value assessment in his county, in which a deputy reeve of a township voted in favour, quietly. The citizens' group did their research to find out, according to his version of the story, that the particular gentleman benefited in his business by approximately \$15,000 in reduced taxes. He cited that as just one example.

I would like to know from you how you would engage him and respond. If direct democracy isn't the case to be made, how do you then reinvent parliamentary democracies so that they do become as the original view: representative, democratic and responsive?

Mr Stockwell: In five or 10 words.

Mr Hastings: Three, actually.

Mr Borovoy: How did I know you were going to say that? I don't think one has to choose



between accepting the status quo and going the way of referenda. There's, to be sure, lots to criticize in our society, and you may know that our organization usually appears here in the role of critic, not in the role of defender of the status quo. There are lots of things to criticize, but that doesn't make the referendum an improvement, and that's really the issue on the table before us: whether the referendum is going to improve upon whatever unresponsiveness there may be in the system.

Mr Hastings: What do you suggest, then, are three examples or ways of making things more responsive?

Mr Borovoy: I'm not sure how instantly creative I can be for these purposes, but for openers I might think of real hearings. That's not to denigrate this, but I mean hearings in which members of the public are given a fair amount of notice, lots of notice, where there are even some resources available to them to assist in research or whatever so that they can do a better job of trying to influence. I'm not talking about reams of money, because to be sure, referenda are going to be very costly also. If we were talking about money, that kind of thing would probably improve the process, make members of the Legislature much more engaged with members of the public and have much better discussions as a result. That's for openers. I'm sure there are others.

Mr Stockwell: Mine is more of a comment and a statement, maybe, than a question.

Mr Borovoy: I hope it invites a response.

Mr Hastings: Five words.

Mr Stockwell: Knowing you as I've seen in your public image, I'm sure it will elicit a response, as a matter of fact. I'm not a big fan of referendums, personally. I've seen the American experience first hand, and what they've done to their education system is absolutely pathetic; it's a sad commentary on how badly the referendum system can and will work. I don't think what this committee is doing today is anything but a byproduct of the frustration of the constituent, the frustration of the people of this country in believing that they have a say in how their government operates.

I firmly believe we will address this issue, and hopefully satisfy some concerns by some people. I don't think anyone in this room would believe for a minute that by passing any piece of legislation that allows for a referendum we will have a satisfied, empowered populace; I don't think anyone believes it.

You come forward and make some very compelling arguments as to the downsides to referendums. But as I listen to my friend the member for Etobicoke-Rexdale, there is this conundrum that we find ourselves in, that we have the disaffected, which are the constituents, and the marginalized, which are your backbench MPPs, butting their head against the powers, and the power becomes more central, administration after administration. I blame not a party; I don't think

the NDP nor Liberals were any different from us when they ran the train.

The direct question to you and statement, maybe follow-up is: When you go away to think about this and you discuss it with your board, you will come up with the same conclusion, that you don't favour the approach of referendums. What we need is not necessarily a knee-jerk piece of legislation giving a referendum power to the people; what we need are some answers on how we can go back if it's possible. You know what? The status quo never is acceptable, in my opinion, in a lot of ways. But it seems to me that going back to the way it was when people felt empowered, felt that they had some kind of commitment, some kind of input to the decision-making of this place, that's the reason we're here today, because the people don't believe they get input into their own government.

1600

Next time you come back, and I hope we do have a committee that allows you to come back, rather than spend time talking about just referendums, I would much prefer to talk about how are we going to create a system that once again gives the public enough opportunity for input that lets them believe that the government is a government of the people.

Mr Borovy: You know, in our earlier years we spent considerable time ourselves working with disadvantaged people, particularly native people at one point, helping them create their own organizations and helping them acquire a lot of the tactics that are necessary to pressure the politicians, which of course is what it's all about.

I think people feel empowered to the extent that they are more or less successful in exerting non-violent, lawful, democratic pressures on their representatives. Were you to arrange hearings challenging our creativity in this respect, I would be happy to respond. Of course, you appreciate -- and I can tell by your remarks you appreciate -- that we were prepared in a limited way to address what was on the agenda. I learned a long time ago that the very least I have to do is speak to what's on the agenda.

But thereafter, if there is some will to go further, we would be happy to look at it. What I fear with this initiative, as happens so often, is there is a desire for a quick fix, something that's going to satisfy people quickly. This won't do that and it will do a lot of harm on top of that.

The Chair: Thank you very much for your presentation. We appreciate your advice.



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## RECOMMENDATION FOR THE TORONTO POLICE SERVICES BOARD

The Canadian Civil Liberties Association calls upon the Police Services Board of Toronto to take whatever steps are necessary in order to ensure centralization in the handling of civilian complaints against the police.

Toronto, Ontario

June 18<sup>th</sup>, 1998

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The Canadian Civil Liberties Association requests the Police Services Board of Toronto to adopt the following measures:

- (1) Provide that the police may conduct no strip searches unless there is a reasonable basis to think those to be searched are concealing on their persons
  - (a) evidence of the crimes occasioning their arrests,
  - (b) weapons,
  - (c) other items when there is a significant risk that such persons will use them to cause injury or commit offences,
 and no less intrusive measures are likely to reveal what the police may confiscate.
- (2) Instruct the chief of police to prepare a public report on all of the publicized police strip searches that have been conducted within the past year. Such report should indicate whether the chief believes the strip searches were justified and, if so, the grounds of such justification and, if not, what he intends to do about it.

November 19<sup>th</sup>, 1998





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The Canadian Civil Liberties Association calls upon the Toronto Police Services

Board to provide for an independent review and assessment of the way the police

treated four young people ages 17, 15, 15, and 13 who were arrested at the

December 1, 1997 Queen's Park Crescent protest against Bill 160. This review

should be conducted by some person or persons who are not fettered by the

interests of the police, the Board, or any of the parties. It is not necessary for such

review to be a full-scale inquiry - a properly conducted investigation might well

suffice.

The review should include an examination of the relevant police policies and

practices. Among the matters upon which it should make findings, are the

following:

## General Custodial Conditions

To what extent is there verification that, as alleged, the police:

used handcuffs on these young people;

denied these young people the opportunity to telephone their parents;

avoided telephoning parents despite being requested to do so;

denied these young people the opportunity to telephone a lawyer?

If so, how many of them experienced these deprivations and, to what extent, if at all, was any of it justified?

### The Strip Searches

To what extent is there verification that, as alleged, the police subjected these young people to strip searches?

If so, how many of them experienced this and to what extent, if at all, were such strip searches appropriate?

### Length of Detention

In any event, to what extent, if at all, should any of these young people have been detained following their initial arrest?

### Police Intentions

Is it fair to conclude that, as alleged, the police were attempting to intimidate these and future protesters by any of the measures they imposed upon this group on the day in question?

Is it fair to conclude that, as alleged, the police attempted to punish any of these protesters by any of the measures they imposed upon them on the day in question?

### Responsibility and Policies

To whatever extent police behaviour is found wanting, who is responsible for it (was it ordered and, if so, by whom) and what should be done about it?

To whatever extent the review uncovers any police policies that should be changed, what are those policies and how should they be changed?

February 26, 1998