

A BRIEF

SUBMITTED TO

THE SPECIAL JOINT SENATE-COMMONS COMMITTEE

ON THE CONSTITUTION OF CANADA

SUBMITTED BY

CANADIANS UNITED FOR SEPARATION OF CHURCH AND STATE

September, 1978

Canadians United for Separation of Church and State, a national body incorporated as a non-profit organization under the Canada Corporations Act, and established to uphold religious liberty throughout Canada and to help maintain a distinct separation between church and government throughout the nation, respectfully submits the following clauses for inclusion in the Constitution of Canada.

1. Laws Aiding or Hindering Religion. Parliament and Legislative Assemblies shall make no law to advance or inhibit religion.
2. Religious Freedom. The free exercise and enjoyment of religious profession, worship and practice, without discrimination or preference, shall forever be guaranteed in Canada. No person shall be denied any civil or political right, privilege or capacity as a result of his or her opinions and practices concerning religion. The liberty of conscience secured, however, shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness or justify practices inconsistent with the order, peace or safety of the nation. Similarly no person shall be granted any civil or political favour or capacity as a result of his or her opinions and practices concerning religion.  
Furthermore no person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his or her wishes. Nor shall any preference be given by law to any religious denomination or form of worship.  
Furthermore every citizen has the right to change, without discrimination or preference, his or her faith.  
Furthermore every citizen has the right to choose therapeutic treatment in harmony with his or her religious beliefs.
3. Religious Test. No religious test shall be required as a qualification for citizenship or to any office or public trust in Canada.
4. Appropriations for Private Purposes Prohibited. Neither Parliament nor Legislative Assemblies shall provide financial support for religion except as allowed in tax exemption for church property and buildings used for worship, residence, religious instruction and healing. Neither shall public funds be appropriated for the support or benefit of any religious-related or private educational institution, including theological colleges or seminaries, private schools, colleges and universities. Neither shall public funds be appropriated for the support of any religious-related or private hospital or sanatorium where the hospital or sanatorium exists to further its religion.
5. Exemption from Taxation. Parliament and Legislative Assemblies shall exempt from taxation all or any portion of property and buildings used exclusively for religious, educational, hospital or charitable purposes and owned by societies, communities, foundations or corporations organized and operated for religious, educational, hospital or charitable purposes not conducted for profit.  
The foregoing exemption does not include property and buildings owned by religious, educational and charitable organizations where property and buildings are used in profit-making ventures.

The clause in our submission titled Exemption from Taxation has been difficult to draft so that it is consistent with our other clauses.

We have asked ourselves the following questions. First, will exemption from property taxes by federal, provincial and municipal government either advance or inhibit religion? Second, will it involve government entanglement with religion? For an answer to these questions we turned to the Supreme Court of the United States where in 1970 it considered the long-established practice of exempting church property from taxation. The Court concluded, after noting that the exemption applied to other kinds of non-profit institutions, that it neither advances nor inhibits religions, is neither sponsorship nor hostility, and unlike a direct subsidy does not involve excessive entanglement between church and state. It was claimed that exemption actually involved less entanglement with religion than there would be if churches were subject to taxation.

Others have claimed, however, that there is no difference between a money grant to a church or church-related institution and a tax exemption for it. They feel that both are subsidies to religion and both contrary to the principle that government neither advance nor inhibit religion.

Our organization takes the position that tax exemption for churches and church-related institutions, if extended to other non-profit agencies, neither advances nor inhibits religion and is acceptable as a practice throughout Canada.

Respectfully submitted,

Board of Directors

  
Ian Bruce Kelsey, President

  
Wesley H. Wakefield, Vice-President

September, 1978.

Canadians United also recommends the repeal of Section 93 (Education) of the BNA Act including the sections included by Manitoba, Alberta, Saskatchewan and Newfoundland, and the following amendment included as a replacement.

#### Section 93. Education

In and for each province the Legislature may exclusively make laws in relation to education subject and according to the following provisions:

- (1) Religious exercises of a denominational nature shall not be carried on in any public school, college or university or any educational institution supported in whole or in part by public funds. This provision does not, however, include the teaching of religion as an academic subject. Such teaching may be carried on in both public and private schools, colleges and universities. This provision also does not exclude religions from the rental or use of public buildings purely for religious activities;
- (2) Respect for moral and spiritual values and the rule of law as specified in the Canadian Bill of Rights shall be inculcated by all teachers, coaches and administrators employed in schools, colleges and universities - be these public, private or parochial;
- (3) Individuals, organizations or communities have the right to establish or maintain their own private or parochial schools, colleges and universities, subject only to government accreditation of curriculum, but no public funds shall be appropriated by governments - municipal, provincial or federal - for capital expenditures or operating expenses of such schools, colleges or universities. All monies appropriated by governments for educational purposes shall be allocated only for public schools, colleges, universities and related institutions and enterprises.

#### Rationale

In this complex area of relationship between religion and government there are two major aspects that present themselves for resolution. First is the freedom or right of every citizen to worship God according to the dictates of his or her conscience, the freedom or right to advocate one's religious convictions, and the freedom or right to practice these convictions or beliefs. This can be considered religious liberty or religious freedom.

Second is the need for both religion and government to function separately. This is the necessity that each carry out its purposes without entanglement with the other. Government legislation and laws should reflect purely secular purposes and their effects should neither advance nor inhibit religion. In other words government should not sponsor, financially support or become actively involved in religious activity. Similarly religion should not be entangled with government through excessive involvement. Involvement obviously does occur simply through the existence of both, but it is the excessive involvement - whenever there is undue influence - that needs to be prevented.

It is the view of Canadians United for Separation of Church and State that inclusion of the preceding clauses in the Constitution of Canada will help prevent excessive involvement.

With regard to the first aspect - religious liberty or freedom - we believe the right to worship or not to worship as one wishes has been almost universally accepted in Canada. The principle was stated in the Freedom to Worship Act legislated for Ontario and Quebec in 1857, and later supposedly accepted as part of the British North America Act of 1867 - although it has never been spelled out in the Act. And while freedom of religion is identified in the Canadian Bill of Rights (1960) as a fundamental right, it lacks definition of what this entails. Similarly the BNA Act with its various revisions over the years has remained silent on religion. It is the feeling of Canadians United that it is time to break that silence.

Accordingly, strongly supportive of the freedom of every Canadian to worship God as he or she wishes, and not wishing to inhibit or make difficult that practice, Canadians United advocates that the clauses relating to religious freedom, laws aiding or hindering religion and no religious test be enacted as law in the Constitution of Canada.

In addition, the separation of church and state, although accepted as an ideal with passage and acceptance of the Freedom to Worship Act and in effect nullifying the possibility of a state church, has not been practised. While public funds appropriated by federal and provincial governments have not necessarily gone directly to churches, government funds have supported and are supporting church-related activities and institutions such as schools, colleges, universities, hospitals, seminaries and church-sponsored aid to other countries. Tax exemption is also allowed for church property and buildings. Some claim that this practice too is government financial support of religion - in the form of a subsidy.

There is no doubt either that religious groups do get involved with the government by influencing legislative and policy changes. The question is to what extent this is desirable. No doubt religious-minded citizens, sponsored in some cases by a particular church or denomination, are elected to parliament, legislative assemblies, city councils, school boards and so on, or become powerful lobbyists for legislative or policy changes which reflect their religious beliefs. Likewise a number of well-organized churches lobby for changes which will reflect their religious beliefs. This is inevitable, and a right and a practice which needs to be supported. The concern of our organization is that legislative and policy changes reflecting the view of a specific religion or groups not advance or inhibit a particular religion and not infringe upon the rights and practices of those not accepting the beliefs of the sponsoring group.

Our organization feels that the laws relating to advancing or inhibiting religion and lack of preference for any religious denomination or form of worship provide safeguards in this area, - a legal wall to help separate the church and the state.

Another major concern of Canadians United is that the state not appropriate public funds for the support of any religious body or religious-related institution or activity. Every activity of a religion or church is carried on to further that religion. So even though the activity may be the education of children that education is a fostering of commitment to the sponsoring religion; if it is provision of food to developing countries, if done under the sponsorship of a religion, it is done ultimately as a furthering of that religion; if it is the healing of a physical problem, it is the furthering of the religious beliefs held by the sponsoring hospital or sanatorium where the healing work is done.

Canadians United is not unaware, however, that in special circumstances government funds may well be channelled through a particular church or religious body to meet specific needs of a group of citizens. Where government agencies are unable to provide essential services such as hospitalization, care of the sick or elderly, food or clothing in disasters, etc., and these can be provided by a church or religious organization - if done without religious indoctrination or furtherance of religion-government funds may be used to support these services. This should be done not on a continuous or permanent basis but only until the government or its agencies can provide the needed services.

We are persuaded that clauses are needed in the Constitution which state that by law no public funds shall be appropriated for private purposes, especially those related to religion, and that exceptions may be permitted only where it is clearly established that there is no furtherance of religion. And under no condition shall appropriations be made for the support of any private or parochial school, college or university because they are established to further a religion or a way of life the majority of the public does not wish to support.

For these reasons we request inclusion of the section titled Appropriations for Private Purposes Prohibited and repeal of Section 93 (Education) of the British North America Act along with acceptance of the amendment as presented here.