

BRIEF TO THE  
SPECIAL JOINT COMMITTEE  
ON THE  
CONSTITUTION OF CANADA

Presented by:

The Ontario Conference of  
Catholic Bishops

December 22, 1980

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## FOREWORD

The Catholic Bishops of Ontario, like so many other Canadians, feel keenly about patriation of the Canadian Constitution and a proposed new Constitution for Canada. They have a deep love for their country and look to a new Constitution that will serve the Canadian people better, both securing and directing its future well-being as well as fostering its unity as a people.

Therefore, it is necessary for the Catholic Bishops of Ontario to share the concerns and aspirations of their fellow citizens. It is further incumbent upon them because of their unique role in the Catholic community to express in forthright and clear language those issues that also many of their co-religionists and other people of goodwill have brought to their attention.

As a result, we have singled out four special areas of concern in this our submission to the Joint Commission:

1. the rights of the unborn;
2. the rights of native peoples;
3. the rights of denominational schools, especially in the light of the experience of Ontario;
4. a reassertion of the privileged position of our two official languages and the need of protecting and fostering either wherever it is in a minority situation.

In some ways, we feel particularly compelled to speak on behalf of those large groups of people who, for one reason or another, cannot easily articulate their own concerns and

aspirations, or who cannot muster sufficient public support to plead their cause, but who nevertheless feel deeply about their place in the future of the Canadian people.

We honestly believe that what we advance in this submission can and will go a long way to preserve basic rights and prerogatives already in existence and operative in our Canadian society, correct serious shortcomings that have crept into our way of life, and challenge all Canadians to respect and foster what is conducive to the common good.

We ask our government for a sensitive and enlightened approach to these and other important issues being raised at this time in our history. As for ourselves, the Catholic Bishops of Ontario, we have in mind only the best interests of the Canadian people of which we are a part.

## PART I - THE RIGHTS OF THE UNBORN

1. We are pleased to see in the proposed Constitution Act, section 7, such a great emphasis placed on the dignity of the human being, a point strongly made by the present Holy Father Pope John Paul II in his encyclical letters.

2. However, the Ontario Conference of Catholic Bishops believes that section 7 as it stands is incomplete and does not sufficiently guarantee the right to life of the unborn child from the moment of conception onward. Therefore the Conference recommends the following rewording:

Everyone, from the moment of conception onward until natural death, has the right to life. Everyone too, innocent of crime, has the right to liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

3. The Ontario Conference of Catholic Bishops is also supportive of the Brief to this special Joint Committee on the Constitution of Canada, presented by Campaign Life, in regard to this organization's position on the rights of the unborn child.

## PART II - THE RIGHTS OF THE NATIVE PEOPLES

Section 24

24. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights or freedoms that exist in Canada, including any rights or freedoms that pertain to the native peoples of Canada.

Section 24 is the only reference to native peoples of Canada in the entire Charter. From the point of view of Charter protections, s. 24 is somewhat strange. It guarantees no constitutional protection to native peoples. It says only that enactment of the Charter does not deny that native peoples may have certain rights. The Charter neither defines these rights, nor entrenches them.

The Ontario Conference of Catholic Bishops is of the opinion that a Charter of rights and freedoms is incompletely realized if it does not protect the rights of everyone. In our view, the native peoples of Canada have special claims to collective protection. The constitution should recognize this as an entrenched Charter right. It is not necessary to define the content of aboriginal rights in the Charter. However, justice commends that whatever their scope, Charter entrenchment should reinforce native rights against legislative destruction. We are unimpressed by any policy which may coerce native peoples to renounce collective rights by threatening to abrogate them by legislation.

Accordingly, the Ontario Conference of Catholic Bishops

recommends amending s. 24, and adding a new section as follows:

24. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of any other rights and freedoms that exist in Canada.
- 24(a). Aboriginal rights of native peoples of Canada including, without limiting the generality of the foregoing, the Royal Proclamation of 1763, Treaties entered into between native peoples and the Crown, aboriginal title to lands, and other such rights shall not be prejudicially affected by any legislation of Parliament or a Provincial Legislature. Nothing in this section prohibits the renunciation of aboriginal rights for compensation by native peoples of Canada.

## PART III - THE RIGHTS OF DENOMINATIONAL SCHOOLS

Speaking in the House of Commons the Prime Minister has explicitly stated that the proposed Constitutional legislation was not intended to affect denominational school rights in Canada.

However, the rights will be automatically subject to a new amending formula in place of the present recourse to the British Parliament.

Moreover, new rights are being enshrined in the proposed Constitution which could very well enter into conflict with denominational school rights recognized at Confederation.

- (a) Continuing entrenchment of constitutional rights for denominational schools as per B.N.A. Act, s. 93

We feel that a time when entrenchment of various other rights and relationships is being offered in order to reassure various sectors of Canada that matters vital to them will be protected, it is more than ever essential to maintain the entrenchment which, in 1867, made possible the coming into existence of Confederation itself. The highest courts in fact have recognized that the difference of opinion with regard to education was one of the most difficult obstacles to the creation of Canada and that it was solved only by special provision safeguarding denominational schools.

This wise decision, which has been called by these courts a «legislative settlement», a «compromise», and a «Parliamentary Compact» is even more compelling today as shown by the



impressive development and support of such schools in provinces and territories where these rights have been respected.

This solution is a deeply ingrained part of Canada's origins and growth, along with the Monarchy, the Parliamentary form of government, the balance of federal and provincial powers, etc. This constitutive element must be retained as well as the others.

We believe therefore that the amending formula requiring the greatest degree of unanimity in the proposed new Constitution should apply to the rights and privileges with respect to denominational schools conferred under Section 93 of the original B.N.A. Act. It is under this Section and subject to its conditions in general that each provincial Legislature enjoys exclusive jurisdiction in the field of education and that defined minorities continue their pre-Confederation denominational schools -- this safeguard therefore should be included as a new sub-division of section 50, that is as section 50, (h).

(b) Charter of Rights and Freedoms in section 24 to apply without prejudice to rights described in (a) above

The introduction of Individual Human Rights legislation into the political structure of modern nations necessarily causes some friction where authoritarian regimes have prevailed. Care is usually taken, however, in all instances to avoid direct conflict with national characteristics rooted in historical, geographical, cultural and other experiences of the people. For example, the hereditary nature of the

British Monarchy is not considered as a case of discrimination against the rights of any Canadian citizen to reach the pinnacle of political power. Such kinds of «discrimination» are part of the personality of the country. To avoid confusion, however, as to denominational school rights, we recommend that a provision be inserted in the Charter of Rights and Freedoms in section 24, that such Rights and Freedoms are not be construed so as to adversely affect rights and privileges with respect to denominational schools conferred under Section 93 of the B.N.A. Act, 1867.

Although we do not think it is wise to confuse the patriation procedure with introduction of massive changes, we must point out that both denominational rights as enshrined for over a century in Canada's Constitution and human rights as proclaimed by the United Nations would justify a greater expansion of educational freedom at this time. We insist on maintaining our rights partly because this keeps the door of justice and tolerance open for many others who share our belief in the primacy of religious and parental option in education.

The same respect for the deep historic realities of Canada obliges us to insist on the legitimate aspirations of francophone or anglophone minorities in each province for education of their children in either of the official languages of Canada.

## PART IV - OFFICIAL LANGUAGE RIGHTS

1. The Ontario Conference of Catholic Bishops supports the contents of sections 17, 18 and 19 of the proposed Constitution Act.
2. However, the Conference of Bishops believes that the Constitution Act should go beyond this, enshrining the privileged position of the two official languages in such a way as to encourage preservation and conditions for growth of either official language when it is de facto, in this or that part of Canada, in a minority position.
3. We should also like to reiterate our insistence (cf. page 8) on the legitimate aspirations of any franco-phone or anglophone minorities in each province or territory of Canada for education of their children in either of the official languages.