

November 26, 1980

AN EXPRESSION OF CONCERN

WITH RESPECT TO THE CONSTITUTION ACT, 1980

INTRODUCTION

We, as members of the Catholic Board of Education, wish to express concern about certain provisions contained in the proposed Canadian Charter of Rights and Freedoms. We have reached our conclusions after consultation with legal and constitutional authorities.

We are satisfied with the fact that education remains the responsibility of the provinces. In Saskatchewan, we are specially pleased with the climate of support for alternatives in education including a strong denominational separate school system. Of course, our special interest are the guarantees concerning Roman Catholic separate school systems which are enshrined in the Saskatchewan Act.

What is of greater significance at this point in time is the support expressed by Premier Allan Blakeney and other members of the government for the principle of separate schools. We are not concerned about legislation being introduced in the near future which would in any way jeopardize the existence of Catholic schools.

Our concerns are for the more distant future when the climate and circumstances may change, contributing to an undermining of existing provisions. Even so, our concern is far less with legislation than with judicial interpretation.

We express our concerns in the subsequent two sections and ask for efforts to introduce some modifications in the existing draft which will eliminate the possible jeopardy to separate schools.

#### NON-DISCRIMINATION RIGHTS

We draw attention to Section 15 of the Canadian Charter of Rights and Freedoms. We believe that this section could be the basis of placing some traditional rights of separate schools in jeopardy. We are concerned that the rights of an individual to freedom of religion and to freedom of conscience might prevail against the freedom of organized religion to protect the denominational integrity of its members and its employees in publicly supported separate denominational schools. The new charter could be the basis for litigation by persons who would claim violation of their individual constitutional rights and freedoms.

Once the Canadian Charter becomes part of the Canadian Constitution, society must adapt to its provisions. Once that Charter is entrenched in the Constitution, the claims of individuals to infringement are very broad. The courts would decide when and how a principle in the Canadian Charter applies to a particular case. Very obviously, the legal route to resolve contentious legislation would be expensive and time-consuming.

We believe that Section 15 must contain some explicit recognition of established separate school jurisdictions to manage their schools in accordance with their denominational beliefs so that their character may be maintained and their objectives may be achieved.

PROCEDURES FOR AMENDING THE CONSTITUTION

We note that Section 49 provides for amendments by provincial legislatures. We are not concerned about today's circumstances and attitudes which obviously form the basis of support for denominational school systems such as the Saskatoon Catholic School Division. However, legislators change, as do attitudes and values. Therefore, it is proposed that some enshrined guarantee is in keeping with the spirit of the foundations laid by the Fathers of Confederation.

We believe that there is a need to retain the historic rights guaranteed in Section 93 of the British North America Act and in Section 17 of the Saskatchewan Act. We propose this on the basis of ensuring the continuation of the denominational school system, as well as providing a viable alternative within publicly funded education.

We note that Section 50 guarantees certain matters as part of the Canadian Constitution. We would suggest that this should include any right or privilege of separate or denominational schools in any province existing at the present time.