

BRIEF
TO THE
SPECIAL JOINT COMMITTEE
OF THE SENATE AND THE HOUSE OF COMMONS
ON THE CONSTITUTION OF CANADA

BY
THE UKRAINIAN GREEK ORTHODOX CHURCH
OF CANADA

30 December, 1980

BRIEF

In a free and democratic society with a parliamentary system of government, the check upon exercise of power is normally the sense of self-restraint by such government and society.

From time immemorial, majority groups and numerically large minority groups have well managed to protect their own interests and particularly so in periods of crises or uncertainty.

Churches and church related institutions, ethno-cultural minority groups, and other disadvantaged or underprivileged groups, which normally do not have the capacity to be represented in parliament, often fall victim to proponents of "economic" or "priority" arguments and, as a result, must either continue to suffer in silence or "gratefully accept" that which a majority in parliament or a legislature may, from time to time, dole out or enact.

If a Charter of Rights and Freedoms is to be "entrenched" such Charter must include as one of its prime objectives the protection of spiritual beliefs, languages, cultures, and traditions of minority groups.

To these religious, ethnocultural, underprivileged, and disadvantaged groups some special status must be envisioned

so as to assure their survival and growth within the confines of our free and democratic society.

Although Section 2 of the proposed Constitutional Act provides, inter alia, that everyone has the fundamental freedom of "conscience and religion", the interpretation of other sections of the proposed Act may adversely affect the right of such Church or religious institution to control its denominational integrity with respect to its clergy, employees, members, and other internal matters.

With these objectives in mind, the following recommendations for amendment are respectfully submitted so as to provide more clearly parliament's intent to our Courts who will be faced with the responsibility of interpreting the delicate balance of individual rights against other rights:

A. Section 15, as it presently reads, unfortunately lends itself to an interpretation that individual rights, without responsibility, will take precedence over denominational or minority group rights and we, therefore, recommend the following amendments:

1. Amend Section 15(2) to read as follows:

"15(2) This section does not preclude any law, program, or activity that has as its object the amelioration of conditions of disadvantaged persons or groups, nor the right of Churches and church related institutions to control their respective denominational integrity."

2. Add new Section 15(3):

"15(3) Everyone has the right to preserve and develop their spiritual and religious beliefs, cultural, and linguistic heritage."

B. Section 22. "Sections 16 to 20" referred to in Section 22, although appearing to provide protection for legal rights of languages other than English and French, do not, in fact, do so and, therefore, require amendment by deleting any reference to the phrase "Sections 16 to 20" and substituting therefore "this Charter or any other Act of parliament or any legislature" so that the amended Section 22 would then read:
"22. Nothing in this Charter or any other Act of parliament or any legislature abrogates or derogates from any legal or customary right or privilege acquired or enjoyed either before or after the coming into force of this Charter with respect to any language that is not English or French."

C. Section 23.

1. With respect to Section 23 dealing with "Minority Language Educational Rights" we join the argument and wording put forth on behalf of the Ukrainian Canadian Committee, in its Brief dated November 27, 1980, as it appears to be an improvement over the present draft, and recommend the amend-
ment of Section 23(1) as follows:

"23(1) Citizens of Canada shall have their children receive their primary and secondary school instruction in the language

of the majority of the population of the province in which they reside and in any other language(s) in accordance with the expressed desire of parents in any area of the province in which the number of children of such citizens is sufficient to warrant the provision out of public funds of such minority language educational facilities in that area."

2. Section 23(2) should be deleted as it then becomes superfluous.

D. Section 24, dealing with "Undeclared Rights and Freedoms" should provide for a much wider and forceful intention. It is, therefore, recommended that Section 24 be amended to read as follows:

"24. The guarantee in this Charter of certain rights and freedoms shall not be construed as denying the existence of, or abrogating or derogating from any other rights or freedoms that exist in Canada, including any rights or freedoms that pertain to the native peoples of Canada, ethnocultural minority groups, Churches, and related institutions."

E. As Section 31(1)(c) appears to deal with the principle of equality, but not necessarily relating to economic equality, we recommend that the principle of of a multi-cultural Canada be included therein and accordingly recommend that a new Section 31(1)(d) be added to read:

"31(1)(d) Promote the principle of multi-culturalism within Canada."

Our Church has other concerns that hopefully have been or will be dealt with by other groups appearing before your Committee, but we would like to stress that any provisions in the proposed Constitution which are capable of ensuring that ethnocultural minorities seeking to preserve and develop their spiritual, cultural, and linguistic backgrounds be assured of the protection of such rights and privileges in the new Constitution.

Respectfully submitted on behalf of

THE UKRAINIAN GREEK ORTHODOX CHURCH OF CANADA.

30 December, 1980

Russell L. Dzenick