

Quebec - 1993

From "Friends of Public Education in Ontario, Inc." newsletter for Winter 1993

UPDATE ON QUEBEC'S BILL 102

The Supreme Court of Canada heard the arguments for Bill 102 during a week in December, 1992. The Bill makes provision to establish language-based school boards in place of religious-based school boards while still allowing individuals their Constitutional right to dissent.

There is no indication when the decision on this hearing will be made I know. Our lawyer in Ottawa will provide us with a copy of this decision as soon as available.

Again, we will keep our membership informed.

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SUPREME COURT JUDGMENT OF QUEBEC'S BILL 107

The judgment on Bill 107 was rendered on June 17, 1993, but it must be understood that on two occasions, Bill 107 was amended. Each of these amendments required an Act which had to be passed by the Quebec Legislature. (Bill 102 was one of these Acts.) The Supreme Court of Canada ruled on the total Bill 107 "as amended".

WILL QUEBEC ALLOW DISSENT?

Unlike the judgment of the Quebec Court of Appeal, the Supreme Court made no mention of dissent to form a Roman Catholic or Protestant school being impossible if the public system is neutral. The Quebec Court of Appeal said that if the majority section had no religious imprint, a group would have no reason to dissent.

Quotations from this judgment are reproduced below. Emphasis is added.

BACKGROUND

"In 1988 the Quebec National Assembly passed a new Education Act ("Bill 107"). That Act comprises a fundamental reform of the organization of school boards in the province. The Quebec public school system would move from a system organized according to religion to one organized according to language. The organization of the new linguistic school boards will result in the dissolution of the existing 'boards for Catholics' and 'boards for Protestants'."

PROVISION FOR DISSENT PRESERVED

However, "when the new structures are put in place, Bill 107 provides for a dissent procedure available to religious minorities, Catholic or Protestant."

"Additionally, although the educational structure created by the Act for linguistic school boards is **administratively neutral**, schools may be recognized as Catholic or Protestant in accordance with an educational plan adopted pursuant to the Act."

RELIGIOUS INSTRUCTION

"Linguistic school boards are also required to organize and offer religious and moral instruction, Catholic or Protestant, and provide it to whoever requests it."

"The province can go ahead with such a reorganization so long as it does not prejudicially affect the rights and guarantees set out in s. 93 of the Constitution Act, 1867. This means chiefly that the right to dissent must be maintained. . . The right to dissent is still linked to the notion of a denominational minority. . . . the means for exercising the right to dissent must be made available without discrimination, with no prejudicial effects, and the dissentient boards must be on the same footing in this respect as the linguistic boards from which they separate."

NO CHARTER CHALLENGE

"The reference raises no issue as to the application of the Canadian Charter of Rights and Freedoms, including s. 23. It is concerned only with whether certain legislative provisions are consistent with s. 93(1) and (2) of the Constitution Act, 1867." (Section 23 of the Charter deals with minority language education rights.)

THE SITUATION IN QUEBEC

Quebec's schools at Confederation were determined by an 1861 act which applied only to Lower Canada (Quebec). ". . . In the rural areas of Quebec two types of school and school board existed by law: the 'common' schools, which were neutral, open to everyone, and eventually *de facto*" (existing, whether legal or not) "denominational, and the dissentient schools, which were *de jure*" (according to law) "denominational."

Thus, "in the rural areas of Quebec religious minorities alone were entitled to denominational schools, by means of dissenting rights" while "the religious majority was not entitled to any constitutional protection."

ONTARIO IS DIFFERENT

"In Ontario the school system was basically neutral. . . the possibility of dissent was only gradually established with the influx of Irish or French-speaking Catholics." The Scott Act of 1863, "in effect in 1867, gave Roman Catholics the right to an independent administration. Educational institutions for Roman Catholics cannot be described as dissentient schools, since in order to establish a school of their denomination they did not need to be in the minority or in disagreement with the regulations of the other educational system. Under s. 2 it was sufficient that there be at least five Catholics wishing to create their own school."

A VALID EXERCISE

"The creation of a denominationally neutral system of school boards, organized on the basis of language, is a valid exercise of provincial powers. As the dismantling of the existing system does not affect the right to dissent or the denominational rights themselves, it is not an infringement of s. 93 of the Constitution."

"By legislating in this way, the Quebec government is pursuing a legitimate purpose which is in keeping with s. 23 of the Charter. Although the measures contemplated by the legislature will occasion a fundamental upheaval in the institutions to which the province has been accustomed for over a hundred years—the legislature's power to create some other kind of school system, neutral or for denominations other than Catholics and Protestants, has been recognized since the privy Council decision in *Hirsch, supra*."

"The province can go ahead with such a reorganization provided that in doing so it does not prejudicially affect the rights and guarantees set out in s. 93 of the Constitution. As I have already explained . . . this means chiefly that the right to dissent must be maintained outside Quebec and Montreal and that in those two cities, Catholics and Protestants must continue to have access to denominational schools." * * *

FURTHER REFORM STILL POSSIBLE

It must be noted, however, that another condition of s. 93 is s. 93(3) which states, and which is clarified several times in the Bill 30 judgment, that any legislation which DOES prejudicially affect rights and guarantees set out in s. 93 may stand, as long as that legislation is not overturned by the Governor General in Council on receiving an appeal from those affected. Manitoba abolished its separate schools in 1890 using this method.

IMPLICATION FOR ONTARIO

Since the Quebec educational reform represented by Bill 107 strictly adheres to s. 93, and since the laws existing in the two provinces did not give the same privileges to the two major religious groups, there is no legal implication to Ontario.

Very much in evidence, however, is the fact that Quebec has come closer to 20th century realities. Increasingly, Ontario can be seen to be heavy-handed, arbitrary, and discriminatory when it comes to fair treatment of its citizens.