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Constitutional Guarantees and Education in Quebec

No matter how fair-minded a man may think he is, remove from him a choice to which he has become accustomed and he at once looks back on it as having been a right; in his indignation, the removal has become an intolerable affront to freedom. Was the freedom to choose the language in which one's child was to be educated at public expense — long available almost uniquely in Quebec — a right? Or a privilege, disturbing to the wider interests of society? Magor examines with care the Canadian story of rights in parental choice of education, and shows that in law it is difficult to hold that language is a necessary adjunct to the religious freedom that the British North America Act does guarantee. He finds a potentially more hopeful line in law in the Charter of Human Rights and Freedoms of Quebec itself (even though it is subject to amendment by the Legislature if Law 101 were to be challenged on its basis).

This study is concerned with the constitutional and legal rights of minorities in Quebec education. A major portion is devoted to a consideration of Law 101. Initially, however, we must examine the constitutional guarantees set forth in the British North America Act in education and see how these have been interpreted in the courts.

A superficial glance would indicate that there are two public school systems in the Province of Quebec under the aegis of the Ministry of Education: the Catholic and the Protestant. A more studied view shows that within the over-all system there is a much broader diversity, and that the rights of the residents within any given school municipality depend not only upon what religion the parents profess, but also upon whether that religion is in the majority or minority in the district, or is neither Catholic nor Protestant; upon when and how the school municipality was incorporated; and in some cases (native people), upon what ethnic group they belong to. In the kindergarten through secondary system at least six categories of public schools can be identified in the Province:

1. Common schools.
2. Dissident schools.
3. Confessional schools in the cities of Montreal and Quebec as these two school municipalities existed in 1867.
4. School commissions and boards which have been annexed to Montreal and Quebec since 1867.
5. Regional school boards.
6. School corporations and boards set up by order-in-council under article 46 of the Education Act.

In addition, the following religious and ethnic groups have somewhat different status:

1. Catholics and Protestants.
2. Non-Christians
 - a. Jews.
 - b. Other non-Christians.
3. Reserve Indians.¹
4. Crees and Inuits who come under the James Bay Treaty.

In order to understand the constitutional and legal status of some of the types of schools and the religious groups described above, we will look at three stages in Quebec education from the point of view of legislation and judicial interpretation: pre-Confederation, the British North America Act, and subsequent judicial interpretation. We shall then look at modern development, especially Law 101.

Pre-Confederation

It is not necessary for the purposes of this study to go into a very detailed examination of the development of education in the early days of Quebec and Lower Canada. The important fact is that in certain fundamental aspects the B.N.A. Act froze the system of education as it existed in 1867, and we must therefore know what the system was at that date.

In simple outline pre-Confederation legislation had established a dual system of common and dissident schools. It had also established two school commissions in both Montreal and Quebec City, one confessionally Catholic, the other Protestant.

Outside the cities of Montreal and Quebec, school municipalities were set up under the local direction of elected commissioners. These schools were open to all children of the municipality and will be referred to hereafter as *common* schools. The law also provided that those in the municipality whose religion differed from that of the majority (at that time only Catholic and Protestant groups

were significant) could organize their own school corporation under the local direction of elected trustees whose rights and duties were identical to those of the commissioners. In this event the payment of school taxes by the minority would be to the board rather than the commission. We will designate these schools as *dissentient*. It is significant to point out that the right of dissent was based on religious grounds only, a fact subsequently underlined by the Judicial Committee of the Privy Council.² Both the common and dissentient schools were public in the sense that they came under the jurisdiction of the Council of Public Instruction and were financed by public as opposed to private funds. But there was a fundamental difference: the common schools were open to all regardless of religion; the dissentient schools were for members of the religious minority only. Thus school commissioners could be elected from the general population, trustees only from those professing the faith of the minority. Trustees could exclude children not of their faith, commissioners could not.³

In the context of the time this law meant that common schools were in terms of population Roman Catholic and the dissentient Protestant, although in a few areas of the Province the reverse would hold. The point is that while the common schools would, in *fact*, be likely to be denominational, in *law* they were not. The dissentient schools were both legally as well as factually denominational.

In the cities of Quebec and Montreal the duality of religious persuasion was recognized at the outset, and two school commissions, one Catholic and one Protestant, were established for each city. These will be referred to as *denominational* schools. They differed from dissentient schools in that they could not exclude students of other faiths, but also from common schools in that they were legally under denominational control.⁴

The British North America Act

As indicated earlier, the B.N.A. Act froze certain rights pertaining to education as they existed at the time of Confederation. In other words, the essential aspects of what was outlined in the previous section apply to this day.

Under the Act, legislative authority in education is accorded to the provinces with certain provisos or safeguards. The relevant section is 93. After assigning jurisdiction to the provincial legislatures, the Act continues:

(1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union.

Sub-section 2 provides that the powers, privileges and duties pertaining to the separate schools in Upper Canada at the time of the union were conferred upon the dissentient schools in Quebec, essentially an enabling provision which

gave the trustees of dissentient schools the powers to give effect to the rights and privileges protected in sub-section 1.

Sub-section 3 provides for an appeal to the Governor-General-in-Council from any provincial act or decision affecting minority rights of Protestants and Roman Catholics in regard to education in any province where a system of separate or dissentient schools existed at the union or is established afterwards. (Note the omission of the word *prejudicially* which qualifies *affect* in sub-section 1.) Where the appeal is upheld and the provincial authority does not rectify the offending act or omission, the Parliament of Canada is empowered in sub-section 4 to pass remedial legislation.

Judicial interpretation of section 93

The essence of the guarantees contained in section 93 is contained in sub-section 1, quoted in full above. The questions which have arisen in the courts are principally:

1. What are the Rights and Privileges which are protected?
2. What does "prejudicially affect" mean?
3. What exactly is "any Class of Persons"?

It is worth observing that, with the exception of one case, the significant litigation has arisen outside the Province of Quebec. This is indicative of the widely accepted fact that the Protestant minority in Quebec has been more equitably treated in law than has the Roman Catholic minority in other provinces.

"Right or privilege"

1. The right or privilege which is protected is one existing in law at the time of Confederation. In *Ottawa, Roman Catholic Separate School Board v. Mackell et al.*,⁵ a regulation of the Council of Public Instruction in Ontario which limited the use of French in the separate schools (R. C.) of that province was contested as contravening the right or privilege clause of section 93(1). Citing a previous decision of the Privy Council⁶ the Lord Chancellor stated⁷ that "it has been decided by this Board that the right or privilege reserved in the provision is a legal right or privilege, and does not include any practice, instruction, or privilege of a voluntary character which at the date of the passing of the Act might be in operation." To be protected the right or privilege must have existed in *law* at the time of union.

By extension the right or privilege protected includes the necessary means for its exercise, such as financial and managerial. This has been generally recognized in the courts and by legal writers. However, in *Tiny Separate School Trustees v. Rex*⁸ the Privy Council upheld an Ontario ruling which refused

funding to the Separate School Trustees of Tiny, Ontario, to finance the extension of their secondary grade level to that of the public school. The higher level had not existed at the time of Confederation. The Privy Council held that the provincial legislature had been given the authority in pre-Confederation legislation for the regulation of schools and the proportion in which school funds were spent was a matter of regulation. The right to finance levels of education existing at the time of union could not be taken away, but the right to finance an extension was not protected. The Privy Council based itself on a strict interpretation of the law, although it clearly felt that an injustice had been done. The appropriate remedy, it said, would have been an appeal under sub-section 3 of section 93. The right or privilege protected in sub-section 1 was purely and simply the right to have a separate school:

They (the appellants) are still left with separate schools, which are none the less actual because the liberty of giving secondary and higher education in them may be abridged by regulation.⁹

“Prejudicially affect”

2. The words “prejudicially affect” mean to deprive the class of persons protected by sub-section 1 of the right or privilege to which they were legally entitled at the time of union. Legislation which affects them but does not cause them prejudice in any way is valid legislation. This principle is clearly enunciated in the Hirsch case:

While s. 93 of the Act of 1867 protects every right or privilege with respect to denominational schools which any class of persons may have had by law at the Union, it does not purport to stereotype the educational system of the Province as then existing. On the contrary, it expressly authorizes the provincial Legislature to make laws in regard to education subject only to the provisions of the section; and it is difficult to see how the Legislature can effectively exercise the power so entrusted to it unless it is to have a large measure of freedom to meet new circumstances and needs as they arise.¹⁰

In this judicial statement we see the desire to permit the legislature to make laws that meet the needs of the time, the only limitation being that the right to separate or dissentient schools is not abrogated.

“Class of persons”

3. Finally, the “Class of Persons” protected is a class determined according to religious belief only. This was first established in the case of *Barrett v. City of Winnipeg*,¹¹ even though the Manitoba Act which admitted that province into the Union went further than the B.N.A. Act in that the rights or privileges pro-

tected were those existing not only in law but in practice. French-speaking Catholic schools in Manitoba certainly appeared to have acquired rights by practice if not by law to teach in French, but the right protected under the Act was held to be religious only, not linguistic. Or again in the Mackell case, the class of persons is defined as exclusively one "determined according to religious belief, and not according to language."¹²

The thorny question of how to define "Protestant" was dealt with by the Quebec Court of Appeal in *Perron v. Rouyn School Trustees*. Judge Bissonnette stated that "to be considered a Protestant it is sufficient to be a Christian and to repudiate the authority of the Pope."¹³ On this basis a member of the Witnesses of Jehovah, a sect which does not consider itself as "Protestant" from a religious standpoint, was held to be Protestant from the point of view of educational law.

The implications of this jurisprudence for Law 101 are significant. But before turning to that question we should look at the position of religious minorities other than Protestant or Catholic, as exemplified by Jews.¹⁴ In Quebec they have for some time constituted an important minority, and in 1903 the Quebec Legislature enacted that they should, for the purposes of education, be treated as Protestants. This legislation was questioned in the courts in the *Hirsch* case to which reference has already been made. This case illustrates well the varying status of schools in Quebec, for the Judicial Committee of the Privy Council considered the legal position of Jews vis-à-vis each type:

(i) The common schools are open to all and hence Jews (or any person of any faith) have a right to attend;

(ii) Dissident schools are, on the other hand, legally established on a religious basis and, constitutionally speaking, it would be prejudicial to Protestants to be forced to accept non-Protestants into their schools. The 1903 statute was therefore contrary to section 93 (1) in this instance, since Jews could not legally be considered Protestants.

(iii) The Protestant and Catholic Commissions, as they existed in Quebec City and Montreal in 1867, were denominational, but open to all. In this case it was held that Jews had the right to attend either Catholic or Protestant schools, but they could not qualify as commissioners since the denominational control had to be either Catholic or Protestant.

(iv) The Judicial Committee, however, held that it would be legally possible to establish a separate school board for Jews and, in fact, a Jewish School Commission was set up in Montreal after this decision. No schools were organized under it, however, since an agreement was reached with the Protestant School Board for the education of Jewish children.

Modern development and Law 101

We have seen, though the jurisprudence examined, that the courts have tended to interpret the guarantees of section 93 (1) of the B.N.A. Act narrowly and the authority of the provincial legislatures to legislate in the field of education broadly. As long as the legal rights of Catholics and Protestants as they existed at Confederation are not prejudiced there appears to be no limitation on provincial legislation under that subsection.

As far as religion is concerned there still remain some thorny legal questions. For example, is the act which established the School Council for the Island of Montreal invalid insofar as it puts Protestants in a minority position and thereby deprives them of full denominational control of their schools?

Denominational issues have, however, become incorporated into linguistic ones. Law 101, which came into effect on August 26, 1977, enacts in its provisions on language of instruction¹⁵ that kindergarten through secondary education in the Province must be given in the French language except, one, where at least one parent has been educated in Quebec in English; two, if the parent is domiciled in Quebec at the time of coming into effect of the law, he or she has been educated in English outside Quebec; three, the child is receiving education in English in Quebec at the time of the coming into effect of the law; or four, the child has brothers or sisters being legally educated in English in Quebec at that date.

The provisions of this law are currently under litigation. The thrust of attack is similar to the argument presented to the Protestant School Board of Greater Montreal in 1969 in a legal brief on proposed legislation antecedent to Law 101.¹⁶ The main contention of this brief, referred to hereinafter as the Report, is that at the time of Confederation the rights of commissioners and trustees to govern the schools under their jurisdiction included the right to determine whether instruction would be given in French or English, and this right is thereby protected by section 93 (1) of the B.N.A. Act.

In 1846 the legislature defined the powers of commissioners and trustees to include the engaging of teachers and the regulating of courses of instruction. Subsequent legislation (1856) did not take away this fundamental right to engage and regulate. It gave to the newly created Council of Public Instruction the right to select books, maps and globes, but left the control or direction of the schools in local hands. These provisions of 1846 and 1856 reappear in the Consolidated Statutes of Lower Canada, 1861, Chapter 15. Section 65 of this chapter gives to commissioners and trustees the duty to appoint teachers and regulate studies with the proviso that only books approved by the Council of Public Instruction are to be used. Section 24(3) gives to the Superintendent of Education the power only to make recommendations and give advice on the

management of the schools, while section 18(3) provides that the Council shall make regulations “for the organization, government and discipline of *Common Schools* (underlining ours) and classification of Schools and Trustees.” By section 21(4) the Council is “to select . . . books, maps and globes . . . due regard being had in such selection to Schools wherein tuition is given in French and to those wherein tuition is given in English.”

The conclusion of the Report is that:

The *legal* right to select as between teachers proficient in English and teachers proficient in French and to select between teaching materials designed for English language schools and those designed for French language schools is necessarily the *legal* right to choose the language of instruction.¹⁷

According to the Report these are legal rights protected by section 93(1) of the B.N.A. Act, at least as far as dissentient and denominational schools are concerned. The rights were also in fact in the common schools, but could in that instance be taken away by the legislature.

Difficulties with the P.S.B.G.M. Report

The Report has, of course, to answer the jurisprudence we have already examined, which has held that the rights protected and the “Class of Persons” designated in section 93(1) are religious or denominational, not linguistic. Its reply is that the cases in question arose outside Quebec and therefore do not strictly apply. Its authors argue that in Ontario, for example, the Council of Public Instruction had much broader powers than its counterpart in Quebec. It had the power to govern the schools, whereas in the corresponding legislation in Quebec the French word used is not *le gouvernement* but *la gouverne*, a word implying more the giving of guidelines than the exercise of authority.

The facts are, however, that whatever powers commissioners and trustees held at the time of Confederation, there is no question that they have been eroded in favour of provincial authority; that the courts have upheld this centralization in most instances where it has been challenged; that in matters of principles of interpretation of the B.N.A. Act it is not particularly significant in which province the litigation arose; that this interpretation has defined section 93(1) as applying to religious minorities only; and that there having been little or no *legal* contestation in Quebec of the erosion of the authority of commissioners and trustees generally, why should it suddenly become of major concern on the particular issue of language? It is unrealistic to suppose that the courts of this Province or the Supreme Court of Canada would reverse a long-standing jurisprudence which has restricted section 93(1) to religious minority groups and has supported provincial jurisdiction to legislate as it sees fit, provided Protestant and Catholic denominational rights are not prejudicially affected. It is tenuous, to say the least, to argue that a particular language is a necessary adjunct to the maintenance of a particular religious right, even if in historical fact

most Protestants in Quebec have been English and most Catholics French.

The authors of the Report reveal their philosophical bias when they state that "the protection of individuals or groups against the power of the State is a basic aim of the law in all civilized societies."¹⁸ This is not an argument in law, nor is it incontestable in fact. If the elected representatives of a state decide, rightly or wrongly, that legislative intervention is required for the survival of certain components within that state which are deemed essential, and if that intervention involves limitations on choices hitherto left to individuals, this does not suddenly make of that state an uncivilized society. Put another way, the evolution of Anglo-Saxon civilization toward making individual freedom its fundamental value does not mean that equally civilized societies may not have different norms or philosophies.

To sum up our legal analysis, however, it would be foolhardy to base an argument against the francization of education in Quebec on section 93(1) of the B.N.A. Act.

A ground of privilege

We must also briefly consider sub-sections 3 and 4 of section 93. These stipulate that an appeal lies to the Governor-General-in-Council (in effect the federal cabinet) from any act or decision of a provincial authority, in a province in which there is a separate or dissentient school system, where the act or decision affects any right or privilege of the Protestant or Roman Catholic minority. If the appeal is upheld and the province does not act accordingly, the Parliament of Canada may pass remedial legislation.

The courts have held that this is a much broader provision than sub-section 1. The right or privilege may be *de facto* rather than *de jure* and it need not have existed at the time of Confederation. The effect on the right or privilege does not have to be prejudicial, and the words "provincial authority" include the legislature itself.

The provision led to a major political crisis in the 1880s in Manitoba where the Privy Council upheld the appeal to the Governor-General-in-Council by the French-speaking Catholic minority in Manitoba. While sub-section 1 did not protect the right to teach in French, the Catholics had enjoyed the privilege and, in terms of sub-section 3, the Manitoba legislation took it away, thus affecting the privilege. Remedial legislation was introduced in Parliament. It was never enacted, however, as Parliament was dissolved and an election ensued in which the Manitoba legislation and the federal intervention were a major issue. Following the election a compromise solution was reached, but the constitutional crisis caused by the invoking of sub-sections 3 and 4 had been one of major proportions.

While we have argued that Law 101's language stipulations do not fall within the narrow guarantees of section 93(1), there is a strong case for arguing that they do come within the broader scope of sub-section 3. While the legal right protected under sub-section 1 is religious and while a particular language is not necessary to maintain a particular religious freedom, the Protestant minority in Quebec has in fact enjoyed the privilege of receiving education in the English language as, indeed, have English Catholics. Law 101 affects that privilege, and it is to be remembered that under the clause being considered now, it does not even have to do so prejudicially to give rise to the appeal.

In the eyes of most constitutional experts the provisions of section 93(3) and (4) are so politically untenable as to have become a dead letter. They have not, however, been repealed, and it still lies within the right of any private citizen or group to invoke them. The federal government is fortunate that no one has taken this step with respect to Law 101 since if it upheld an appeal it would play into the hands of separatism in Quebec, and if it did not it would alienate many anglophone voters across the country.

If Law 101 does not contravene section 93(1), and if invoking sub-sections 3 and 4 is politically unfeasible, is there any other ground on which to test the validity of Law 101 as it relates to education?¹⁹

Grounds of discrimination

One such possibility rests on Quebec's own Charter of Human Rights and Freedoms.²⁰ The basic principle of the Charter is set forth in section 10:

Every person has a right to full and equal recognition and exercise of human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, sexual orientation, civil status, religion, political convictions, language, ethnic or national or social condition.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

Other relevant sections are 40, which provides that everyone has the right to free public education; 42, that parents can choose private education provided it complies with prescribed standards; 50, that the charter does not suppress or limit the enjoyment of rights not enumerated in it; 52, that sections 9 through 38 prevail over any provision of any subsequent law unless that law specifically states it applies despite the charter; and 54, that the charter binds the Crown.

It is important to observe that the provisions of the Charter relating to education are not protected by section 52 since they are subsequent to section 38. In other words, a subsequent statute could derogate from the Charter in, for example, taking away the right to private education without specifically stating that it suspends the Charter.

There are, however, at least two grounds on which it could be argued that the education clauses of Law 101 contravene the Charter. The first is that even if the right to be educated in French or English according to parental choice is not enumerated in the Charter, in terms of section 50 Quebec parents have long enjoyed that right and the deprivation of it is a discrimination based on language contrary to section 10. Section 10 does come under the umbrella of section 52 that no subsequent law can derogate from the Charter unless it so specifically states. Law 101 does not state that it applies despite the Charter.

It would be argued in opposition that Law 101 does not discriminate in that it does not take away from any person, of whatever language, the right to a free public education. It is not, the argument would say, a discrimination that that education is to be given in the French language. Everyone is equally entitled to it. This argument would have more validity, however, if it were not the case that four classes of persons, enumerated earlier in this paper, are nevertheless permitted to receive education in English. This gives rise to the second ground on which Law 101 could be attacked: that in allowing certain persons to receive education in English, the Law discriminates on the basis of language against those the Law does not so allow. In terms of section 10 of the Charter there is a distinction, preference, or exclusion which has all the earmarks of discrimination. It is ironic, but nonetheless the case, that Law 101 would be on stronger ground vis-à-vis the Charter of Human Rights and Freedoms if it required universal French-language instruction without exception. By creating exceptions it discriminates.

One further argument that might be brought against the education clauses of Law 101 is somewhat nebulous but does have judicial precedent of a kind. In the case of *Chabot v. School Commissioners of Lamorandière*,²¹ a father who had converted to the Witnesses of Jehovah sect and whose children had been expelled from school for refusing to participate in Catholic religious exercises, successfully sued the School Commission for their reinstatement. While the case involved a religious principle — freedom of religious conscience in the common school — the judges of the Quebec Court of Appeal showed a marked tendency to invoke a broad norm of natural law: the right of a parent to oversee the education of his child.

Mr. Justice Pratte quoted Lord O'Hagan of the Privy council with approval:

The authority of a father to guide and govern the education of his child is a very sacred thing, bestowed by the Almighty, and to be sustained to the utmost by human law."²²

Mr. Justice Casey likewise stated in the same case that rights of conscience are a matter of natural law and prevail over positive law which restricts them. While we have argued earlier in this paper that a legislature which puts the needs of the collective state ahead of individual choice is not by that fact less

civilized than one which does the opposite, it is nonetheless true that the courts of the Commonwealth, not excluding those in Quebec, have traditionally seen themselves as protectors of the rights of individuals, and any contestation of Law 101 in the courts would be remiss if it did not invoke the principle stated in the Chabot case.

Conclusion

We have tried to trace the history and judicial interpretation of Constitutional guarantees in education in Quebec. We have seen that as far as the main guarantee, section 93(1) of the B.N.A. Act, is concerned it applies to religious minorities alone, and that, in our view, language is not a necessary adjunct to the exercise of religious freedom to the extent that to deprive a Protestant of English language instruction affects him prejudicially.

We have also seen that while sub-sections 3 and 4 of section 93 might very well be successfully invoked against the education clauses of Law 101, to do so would in the long run cause politically more harm than good.

We have observed finally that there may be stronger grounds for testing the Law in Quebec's own Charter of Human Rights and Freedoms, supported by the principle of natural law, cited in the Chabot case, of the parent's right to oversee the education of his child. If that principle applies to choice of religion, it might also apply to choice of language which, if not believed to be a medium of religion, is nevertheless held to be a medium of culture.

The fact is, though, that unlike the British North America Act the Quebec Charter of Human Rights and Freedoms is a law of the Quebec legislature and as such is subject to amendment by that legislature if a decision against Law 101 were based upon it.

This raises the interesting question, one beyond the scope of this study, as to whether an issue of this kind can effectively be settled in courts of law. The roots of it are essentially social and by consequence political, and it is probable that development in those spheres, if allowed to pursue its course without the acrimony of litigation, would be more productive and beneficial to majority and minority alike.

NOTES

1. To restrict our study, the situation of native people has not been discussed in this paper. Law 101 does not apply to reserve Indians (sec. 97), at least insofar as the schools are situated on the federal reserves. In schools under the Cree School Commission and the Kativik School Board, the languages of instruction are Cree and Inuit respectively, although they are expected to move toward instruction in French so that their students may be able to pursue higher education in that language (sec. 88).

2. Ottawa R. C. Separate Board v. Mackell et al., 1917 *Law Journal Reports*, Vol. 86 (Privy Council), at p. 69. The application of Ontario jurisprudence to Quebec will be explained below.
3. Hirsch et al. v. Protestant School Board of Greater Montreal, Privy Council, 1928 1 D.L.R. 1041. More complete reference to this important case will follow. The pre-Confederation statute discussed here is Chapter 15 of the *Consolidated Statutes of Lower Canada*, 1861, which consolidated a number of previous laws and amendments.
4. Hirsch case, *op. cit.*
5. *Op. cit.*, at p. 65.
6. City of Winnipeg v. Barrett, 1892 A.C. 445.
7. Mackell case, *op. cit.*, p. 67.
8. 1928 3 D.L.R. (Privy Council), p. 753.
9. Tiny case, *op. cit.*, p. 772.
10. Hirsch case, *op. cit.*, p. 1052.
11. 1892 A.C., p. 445.
12. *Op. cit.*, p. 69.
13. 1955 Q.B. 841.
14. The legal position of other religious minorities, while important in an increasingly pluralistic society, has not been discussed here because of space limitations.
15. Chapter VII, Sections 72-88.
16. T. Palmer Howard, Q.C., Jean Martineau, Q.C., Peter Laing, Q.C., Frank Scott, Q.C., *Report of the Legal Committee on Constitutional Rights in the Field of Education in Quebec*.
17. *Op. cit.*, p. 17.
18. *Op. cit.*, p. 84.
19. Recent contestation of the clauses relating to the use of English in the courts and the National Assembly did not apply to education, as a different section of the B.N.A. Act was in question.
20. *Laws of Quebec*, 1975, Chapter 6.
21. 1958 12 D.L.R. (Vol. 2), p. 796.
22. *Ibid.*, p. 802.

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Résumé

Un homme a beau se considérer parfaitement impartial, il suffit de lui retirer un choix auquel il s'était habitué pour qu'il pense qu'on vient de le léser d'un droit; dans son indignation, il juge que ce retrait est une atteinte inadmissible à sa liberté. La liberté de choisir la langue d'instruction de son enfant dans les écoles publiques (liberté dont seuls ou presque, les Québécois jouissaient depuis longtemps) était-elle un droit? Ou un privilège entrant en conflit avec les intérêts plus généraux de la société? Magor examine avec une vigilance particulière l'historique du choix des parents en matière d'éducation au Canada et il démontre que juridiquement parlant, il est difficile de prétendre que la langue est nécessairement liée à la liberté religieuse en fait d'éducation, liberté garantie par l'Acte de l'Amérique du Nord britannique. Il place davantage d'espoir dans la charte des droits de la personne du Québec (même si celle-ci risque d'être amendée en cas de contestation de la Loi 101).

