



The English Speaking Catholic Council

Le conseil catholique d'expression anglaise

The English Speaking Catholic Council (ESCC), founded in December 1980, acts as a focal point for over 240,000 English-speaking Catholics in Metropolitan Montreal. It does this by identifying community needs and resources, analyzing issues of interest and concern and assisting in the resolution of these issues.

The Board of Directors of the Council is made up of women and men from both the private and public sectors - all volunteers - who have come together with a commitment to support their community in the social, cultural and political realms.

The English Speaking Catholic Council is pleased to present this **BRIEF** to the Special Joint Committee of the House of Commons and the Senate on the motion relating to the Constitutional Amendment proposed by the National Assembly of Quebec concerning the establishment of Linguistic School Boards in Quebec.

The English Speaking Catholic Council

Montreal, October 8, 1997

I.

LINGUISTIC SCHOOL BOARDS

AND

CONFESSIONAL GUARANTEES

The English Speaking Catholic Council (ESCC) made a major act of good faith when in May 1988, at the National Assembly Commission Hearings studying Bill 107 (the Education Act), it defended its brief in favor of the reorganization of school boards along linguistic lines while strongly advocating measures to ensure the confessional character of schools.¹

Our position stems from the fact that for over a century the control and management of Quebec's school system have been vested in the French-speaking Catholic majority and the English-speaking Protestant minority. English-speaking Catholics, whose children account for the highest percentage of students in English schools, have been virtually excluded from participating in the decision-making process affecting the education of their children.

Time and time again over the past several years, we have called on successive Quebec Ministers of Education, and more recently in our Brief to the Estates General on Education in August 1995, as well as in our Brief to the National Assembly Commission Hearings on Bill 109

¹ ESCC Brief presented to National Assembly Commission Hearings on Bill 107, May 1988.

in May 1997, to introduce without any further delay the legislative and regulatory provisions which would permit the orderly implementation of the reforms set out in the Education Act². The urgency of the reform was reiterated by the Task Force on English Education³, by the Advisory Board on English Education⁴, and by the Advisory Committee on the Establishment of Linguistic School Boards⁵. **Our objective has been, and remains, the harmonious implementation of the reform proposed in Bill 107.**

In June 1996, we were encouraged when the Education Minister, Pauline Marois, announced that in light of the large consensus which exists and in respecting the wishes of her partners in education, she would proceed to establish linguistic school boards effective July 1998.

She added that the Government of Quebec would not seek a constitutional amendment because that would delay the implementation of linguistic structures for at least three or four years.⁶ This **consensus** comprised fifteen groups out of twenty which said **NO** when asked about abrogating Section 93:

Alliance Quebec

Commission scolaire de Greater Quebec

Assemblée des évêques du Québec

Conseil catholique d'expression anglaise

Association québécoise des commissions scolaires Conseil scolaire de l'Île de Montréal

² ESCC Brief presented to the Estates General on Education, August 1995 and Brief presented to the National Assembly Commission Hearings on Bill 109, May 1997.

³ Task Force on English Education Report, January 1992

⁴ Advisory Board on English Education Report, June 1994

⁵ Advisory Committee Report, June 30, 1994

⁶ Ministry of Education Communiqué No. 1, Quebec, le 12 juin 1996.

Comité catholique du CSE	Fédération des comités de parents de la province du Québec
Comité protestant du CSE	
Commission de l'éducation en langue anglaise	Fédération des commissions scolaires
Commission des écoles catholiques de Montréal	du Québec
Commission des écoles catholiques de Québec	Mouvement pour une école moderne et
Commission des écoles protestantes du Grand Montréal	ouverte

The Constitutional amendment to Section 93 proposed by the National Assembly for consideration by the Government of Canada would, if adopted, eliminate constitutional guarantees of a denominational nature. Legislative changes of this magnitude must not be disposed of in an arbitrary manner, but must respect the principles and traditions of responsible democratic governments. It should be pointed out that this particular initiative is not required to effect

Bill 107, which has been judged to be constitutionally valid by the Supreme Court.⁷ However, many prominent politicians, both provincial and federal, have unfortunately led the public to believe that the proposed amendment is necessary to allow for the establishment of linguistic school boards in Quebec.

The ESCC disagrees with the Government of Quebec's proposal to repeal the four subsections in Section 93 of the Canadian Constitution. Public hearings by the Government of the Province of Quebec ought to have been conducted and we would have been very amenable

⁷ Reference re. Education Act (Que.) (17 June, 1993), 105 D.L.R. 266 (S.C.C.)

to examine together the different hypotheses that have recently been developed to facilitate the modernization of school structures which would serve the province's communities more effectively, notably: the recommendation of the Task Force on English Education, chaired by Gretta Chambers, "that the Minister of Education seek constitutional protection for English-language school boards comparable to the one now given to confessional minorities"⁸; the Kenniff Committee Report consideration that "if the multiplication and overlapping of school boards are to be avoided in Montreal and Quebec City, efforts should be made to meet the constitutional requirements for the protection of denominational rights within the framework of linguistic school boards"⁹; and the Proulx-Woehrling proposal that the right of dissidence in the Constitution be extended to apply in Montreal and Quebec City.¹⁰ Incidentally, the PQ Government did not win a mandate which included a pledge to proceed with educational reform of denominational education through a constitutional amendment nor did any Member of the Official Opposition, to our knowledge, formally consult his or her constituents prior to supporting such a measure.

In early 1996, the Estates-General on Education published its report on the State of Education in Quebec. This report claimed that, "roughly speaking, half of the participants were in favor of maintaining confessionality and half were against."¹¹ This is apparently not in accordance with the facts. Gary Caldwell, one of the Commission members on the Estates-General, in his dissident opinion concerning the denominational system, reported in the Commission's Final Report that "57 percent to 63 percent of the briefs, depending on whether ambiguous and indifferent points of view are included were in favor of denominational

⁸ Task Force Report, op cit. Recommendation 6, p. 8.

⁹ Advisory Committee Report, op cit., Proposed Solutions, p. 24.

¹⁰ Proposition de modification à l'article 93 de la Loi constitutionnelle de 1867 par Jean-Pierre Proulx et José Woehrling, Mars 1996

¹¹ The State of Education in Quebec - Estates General Report on Education, 1995-96, Chapter IX, p. 111.

schools.”¹² Majella St. Pierre and Lucie Demers, also Commissioners of the Estates-General, in their dissident opinion concerning confessionality, “do not share the majority view (among Commissioners) on the elimination of Catholic and Protestant religious education from the curriculum for parents and students who so wish out of respect for our democratic tradition”.¹³ It was ironic that on the very

evening when the Estates-General tabled its Final Report and recommended that “groups currently holding confessional guarantees should introduce mechanisms that will enable Christian education to be dispensed **in places more appropriate than the schools**”¹⁴ a public opinion poll, notably one by SOM, La Presse and Télé-Québec, found that 74% said “**Non**” to the question “Doit-on sortir complètement la religion des écoles québécoises?”¹⁵ In the face of all this evidence, it is surprising that the real intent of parents and their ability to make enlightened choices concerning the education of their children which have already been established time and time again is still being challenged.¹⁶

In March 1997, in a statement on the issue of the proposed reform¹⁷, the Minister of Education, Mme Marois, noted that the free choice between moral education and Catholic or Protestant religious education will be maintained, in accordance with Section 41 of the Quebec Charter of Rights and Freedoms¹⁸, which provides for the possibility of instruction in conformity

¹² Final Report of the Estates-General on Education, October 1996, Appendix I, p. 69.

¹³ Ibid. P. 72.

¹⁴ Ibid, p. 82.

¹⁵ *La Presse* headline “Les Québécois disent non à l’école laïque”, Oct. 11, 1996 p. 1.

¹⁶ 283,000 petitions presented to Minister Pauline Marois on December 10, 1996 by a Coalition for the Evolution of the School System for and with the Population of which the ESCC was a partner.

¹⁷ Ministerial Statement Regarding Religious Education in Quebec Schools by Minister Marois, March 26, 1997.

¹⁸ Sec. 41, Quebec Charter of Rights and Freedoms: Parents or the persons acting in their stead have a right to require that, in the public educational establishments, their children receive a religious or moral

with the parents' convictions. However, the Minister also announced that two years after the establishment of linguistic school boards, every school will be asked to review its (confessional) status and decide whether it is **meaningful and appropriate** and that she intends to establish a working group to study the whole question of the place of religion in the school.¹⁹

Section 41 does not provide constitutional protection but is rather part of provincial legislation and only assures religious instruction not necessarily religious education in schools designated as Catholic or Protestant. Knowing the position of the Parti Quebecois and the Government of Quebec on the value of the role of the school in religious education does not give us much confidence that what exists today and what is promised will continue for very long, especially if the constitutional guarantees of a denominational nature are eliminated.

The "notwithstanding clause" was invoked in 1989 and in 1994 to shield the Education Act from judicial attack against the application of the Charters. The PQ Opposition voted against the motion in question on these two occasions. Is it likely to support the measure when it is up for renewal in 1999?

If Quebec is exempted from Section 93 (1-4) and subsequently someone challenges the place of religion in public schools on the basis that it violates rights according to the Charter, what recourse would we have and what would be the consequences?

education in conformity with their convictions, within the framework of the curricula provided for by law.
¹⁹ Ministerial Statement, op. cit., March 26, 1997.

II

SECTION 23, CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The idea that Section 23 of the Canadian Charter provides strong constitutional guarantees to the minority language community in Quebec is a subject of continuing debate.

The motion for a resolution to authorize the amendment to the Constitution of Canada proposed by Quebec's National Assembly, which was tabled in the House of Commons by the Government of Canada on April 22, 1997, includes the following clause:

“AND WHEREAS section 23 of the Canadian Charter of Rights and Freedoms guarantees to citizens throughout Canada rights to minority language instruction and minority language educational facilities under the management and control of linguistic minorities and provided out of public funds;”²⁰

Section 59 of the Constitution Act, 1982, excludes naturalized Canadians of English mother tongue living in Quebec from the protection of minority official language educational rights under Section 23 of the Canadian Charter of Rights and Freedoms. Section 23 does **not entirely apply everywhere in Canada** as indicated in the “whereas” clause above, because the Quebec Government has steadfastly refused to extend its

²⁰ Motion tabled in the House of Commons for a Resolution to authorize an amendment to the Constitution of Canada, April 22, 1997

scope to make it applicable in Quebec. It must be emphasized that Section 23 of the Canadian Charter provides greater rights for French-speaking minorities outside Quebec than it does for the English-speaking minority in Quebec.

Premier Lucien Bouchard has rejected the idea of any additional constitutional protection for English schools and commented that “the federal government can not accord to the anglophone minority of Quebec guarantees it has not accorded to the francophone minority outside Quebec.”²¹ “Anglophones should give up Section 93 and be content with the same guarantees French minorities across Canada have under Section 23 of the Charter of Rights and Freedoms.”²²

Premier Bouchard failed to add that the right to minority language instruction based on an individual’s “first language learned and still understood” found in Section 23 (1) (a) of the Canadian Charter has been adopted by every other province in Canada, except Quebec.

There is also another “Whereas” clause in the preamble to the PQ Government motion asking the Federal Government to amend the Canadian Constitution, which explicitly asserts that the amendment in no way constitutes recognition of the National Assembly of the Constitution Act, 1982, of which the Canadian Charter of Rights & Freedoms is a part.²³

²¹ Statement attributed to Mr. Lucien Bouchard reported in *The Gazette*, February 12, 1997 Section A, pp. 1, 7.

²² Ibid, February 13, 1997

²³ Motion proposed by National Assembly to amend Section 93 of the Canadian Constitution, April 15, 1997.

On March 15, 1990, the Supreme Court of Canada ruled in the case of Mahé v. Alberta. Chief Justice Dickson wrote:

Section 23 of the Charter imposes on provincial legislatures the positive obligation of enacting precise legislative schemes providing for minority language instruction and educational facilities **where numbers warrant**.²⁴

This is an explicit limitation and is one example, among others, which explains why it is understandable that, according to Julius Grey, English-speaking Quebecers are reluctant to accept the Charter alone as providing adequate safeguards of minority educational rights.

“First, it (Section 23) is limited by the phrase “where numbers warrant”. Further, Quebec has consistently argued for the narrowest possible interpretation of Section 23 and for the broadest application of Section I of the Charter, which permits exceptions to the Charter of Rights.

Second, the autonomy of minority schools under Section 23, as presented by the courts, is vague and uncertain. It also varies with the number of students. By contrast, the confessional guarantees in Section 93 of the constitution ensure the existence of autonomous, elected boards that can better stand up to government pressure and which have clear and well-established functions.

²⁴ Mahé v. Alberta (A.G.), (1990), 1 S.C.R. 66 at 79, 10 D.L.R.

The most serious objection to Section 23, however, is that it is part of the Charter of Rights, which has never been accepted by the nationalist movement.

It follows that no amendment of Section 93 merits support unless it grants the same type of guarantees to anglophones that Protestants enjoyed in 1867.”²⁵

Later, Mr. Grey in commenting on the amendment proposed by the Official Opposition to recognize the right of anglophones who qualify under Bill 101 to attend English schools and for the English community to manage and control its own school system noted that if anybody ever wants to interpret the rights of anglophones in Quebec, it will be clearly one of the principles of interpretation.”²⁶

It did not take long for the PQ Government to give its own interpretation to the Liberal Opposition draft amendment which proponents and other supporters claimed recognized the right of the English-speaking community to control and manage its schools. The PQ Government defined in the draft Bill 109 who would have the right to vote in English-language school-board elections and thus pay taxes to English boards. It restricted the right to vote to those whose children are (or were or would be) eligible for English instruction under the rules in Bill 101, the French Language Charter. All other citizens who consider themselves part of the English-speaking community would not be eligible to vote in English-language school board elections; instead, they would be automatically on the electoral lists for French language school boards, as would be all francophones.

²⁵ Article, *The Charter is not enough*, by Julius Grey, *The Gazette*, February 12, 1997.

²⁶ *The Gazette*, April 11, 1997, p. A4.

It was only after intense lobbying by associations of parents, administrators, teachers, and even PQ supporters as well as endorsement by most of the French and English language media, that the Government grudgingly withdrew the restrictive clause. Bill 109 assented to in June 1997 now allows any elector who has a child enrolled in a school to vote in an election of that school board and every other elector to vote in either the French or the English language school board.²⁷

On March 6, 1996, speaking to the Newfoundland amendment, fifteen members of the Permanent Council of the Canadian Conference of Catholic Bishops, of which **six** Bishops were from Quebec, agreed to the following recommendation:

The Canadian Conference of Catholic Bishops asks the members of the House of Commons and the members of the Senate of Canada to weigh carefully the implications of this proposal, and to indicate that they cannot associate themselves with the passage of legislation that would deprive minorities of religious and educational rights.²⁸

It appears to us that there are dangerous similarities between recent events in Newfoundland and the direction of the PQ Government on this issue.

²⁷ Bill 109, ss. 529.1 - 529.2, p. 54.

²⁸ Statement by the Permanent Council of the Canadian Conference of Catholic Bishops, Ottawa, March 6, 1996.

III

CONCLUSION

Over the past few decades we have witnessed profound social change in Quebec. In particular, the diversity of ethnic groups, cultures, ideologies and religious preferences is an increasingly visible phenomenon, especially in the Montreal metropolitan region. This diversity is modifying Quebec society and inevitably will have a powerful influence on the evolution of its schools.

The issue of the legitimacy of Catholic and Protestant schools in a changing Quebec society has already prompted considerable controversy. Several influential persons in the educational domain are challenging the place of religion in the public school and favouring the secularization of the school system, declaring that religious instruction should be left to the churches and the families themselves. This position is disturbing to us.

During the debate on the issue of the establishment of linguistic school boards, parents of children attending English Catholic schools spoke time and time again, with eloquent conviction, of the legitimacy of Catholic schools and of the merits of their role in Quebec society. They want assurance that Catholic education will continue to be an option in the future.

The English Speaking Catholic Council opposes the constitutional amendment to Section 93 proposed by the National Assembly for consideration by the Government of Canada which would , if adopted, not only eliminate constitutional guarantees of a denominational nature but also place at risk the endurance of the Catholic school in the future, and diminish religious and linguistic rights for minorities in Quebec. We submit that no consensus supporting this measure exists.

As a matter of fact, there is a lot of opposition, which includes, for example, the Assembly of Bishops of Quebec, which continues to demand a constitutional guarantee in order to assure that parents may have “where numbers warrant”, the right to a confessional school.²⁹

The PQ Government has not revealed what has motivated it to seek an amendment to the Constitution which would eliminate the protection of confessional education, especially since the Education Act has been judged to be constitutionally valid by the Supreme Court and which, as a matter of fact, is currently being implemented.

The PQ Government has not given any substantive reasons why it objects so strongly to expanding rights in the Constitution to include linguistic educational guarantees or why it adamantly refuses to accord to the English-language minority in Quebec, rights to education that are enjoyed by French-speaking minorities in every other province in the Nation.

²⁹ Synthèse du mémoire, Comité épiscopal de l'éducation de l'Assemblée des évêques du Québec, le 10 août, 1997.

Section 93 of the Constitution Act of 1867 is the product of an historic compromise without which “Canada” would not have been possible. Any change to the Constitution of a country is not an insignificant occurrence, but one which compels **through due process**, careful scrutiny and consideration of the implications for our society and for future generations.

Bishop Leonard Crowley reminds us of our duty in regard to Religious Education: “It is very important for the Council to make insistent representation that the values that have been part and parcel of our Catholic schools will continue to have a place in whatever school pattern emerges in the future. To do anything less would be to forego our heritage and our responsibilities to the future of the Faith in Quebec.”³⁰

The English Speaking Catholic Council

Montreal, October 8, 1997.

³⁰ Extract of Message from Bishop Leonard Crowley, Honorary Chairperson, English Speaking Catholic Council's 1996-97 Annual Report.

