



Conseil  
supérieur  
de l'éducation  
Québec

FOR A FAIR EVOLUTION  
OF SCHOOL STRUCTURES IN QUEBEC

Advice to the Minister of Education  
January 1986

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of the Conseil supérieur de l'éducation  
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On June 25, 1985, in response to a petition made by the Protestant School Board of Greater Montreal, the Montreal Catholic School Commission and other petitioners, the Superior Court of the District of Montreal rendered a verdict on the validity of the Act respecting Public Elementary and Secondary Education (Bill 3) and ordered the government to suspend its application. The case is currently in appeal before higher courts.

The legal stakes of this debate are the same as all those which have, over the last twenty years, appeared throughout various bills on the restructuration of confessional school boards on the Island of Montreal; namely, the interpretation of the content and extent of the confessional guarantees found in Article 93 of the British North America Act of 1867. The Court also made it clear that its intervention is of a strictly legal nature: "It is not the responsibility of the courts to render a judgement concerning the value of the law, whether political, social or cultural. Also, the courts must apply the constitutional texts which represent the rule of law without pronouncement on their effect on the social conditions of a given period".

To the layman trying to understand events, the latest ruling by the Superior Court follows in the wake of the decision rendered previously by Judge Deschênes regarding Notre-Dame-des-Neiges school: the confessional guarantees in Article 93 are extensive and stringent, and there is very little leeway in attempts to re-define them. In any event, the rulings which have been made indicate that, in Montreal and in Québec, changes to present confessional school structures can easily, from a strictly legal viewpoint, be declared prejudicial to the rights and privileges accorded to particular groups of citizens by the Canadian constitution.

The Conseil neither intends nor pretends to be able to shed new legal light on the subject at this time. Its primary concern is with the actual result of the decisions rendered: in Québec, where the ethnic, cultural and religious diversity is most in emergence, confessional school structures seem firmly rooted.

At present, the school system is on hold. Waiting seems to suit some people but it demobilizes others who, during the last few years, had agreed to work toward setting up school structures which are more in line with reality and more open to the future. How much longer can the law continue to remain out of reach of social development?

This is not the time to review the reasons which motivated many people and many organizations to want language to replace religion as the criteria for the establishment of school boards. But the very breadth of the trend of opinion created by this eminently social issue deserves the greatest consideration. The two major provincial political parties, the Assembly of Bishops of Québec, unions, Alliance-Québec, the Québec Federation of Parents' Committees, the Quebec Federation of Catholic School Boards, some associations of school administrators, to name but a few, all gravitated toward this structural change. The Conseil itself also gave its support in advice published in September 1983. There is a will of the majority with respect to this issue. The will of the majority is, in fact, paralyzed.

Of course, regulations of the Catholic Committee have already introduced into our school system specific guarantees regarding individual freedom and a degree of openness to pluralism, in particular by replacing the system of exemption from religious

instruction by a system of options. But, the way that our laws are presently set up, as the judgements rendered would have us understand, there is no real possibility of having non-confessional or "other" schools in keeping with the expectations of other groups, especially where the needs are most acute, and that is among schools administered by the large protected confessional school boards.

Virtually all the hypotheses studied over the last twenty years to respond to the growing needs of pluralism, particularly in Montreal, have come up against this legal obstacle. These hypotheses have covered a fairly wide spectrum, ranging from total unification of school boards to the establishment of non-confessional school boards parallel to existing school boards, and including a series of compromise hypotheses one of which was restructuration based on language criteria as proposed in Bill 3. The idea of unification advocated by the Parent Report, was not followed up because of the objections and outcry it generated. The hypothesis of establishing parallel non-confessional school boards was qualified as being "abstract" and was regularly left out of planning decisions because doing so might promote fragmentation and marginalization thus compromising the quality of services. With regard to the hypothesis of restructuration on a linguistic basis, we are familiar with the setback it has recently suffered.

In fact, events show that, in one way or another, the various possible solutions were stymied because they did not seem to accommodate the confessional guarantees written into the Canadian constitution in a way that would be legally valid, socially acceptable and administratively viable - to such an extent that the status quo has prevailed until now.

In the wake of the most recent and new obstruction of which we are aware, the fact that unyielding and constricting attitudes will create

new tensions is no longer a theoretical possibility. A school system which, on matters so fundamentally and emotionally charged, fails to respond to the needs of its clientele and fails to ensure, within its decision-making and orientation, a balanced representation of the population it serves, can only generate deep and legitimate dissatisfaction.

It must be noted that neither the discourse nor the practise of school confessionality is similar in the protestant and catholic systems. For instance, the catholic concept of a confessional school cannot be abruptly transposed without affecting the reality of the protestant tradition. Indeed, the latter is itself built on diversity. Although its name comes from the tradition resulting from the Reformation, the schools of the protestant system receive people of the Orthodox and Jewish faith or who belong to Asian, African and other traditions - to whom the Judeo Christian world is foreign, as well as people who do not adhere to any religion. Even by making the necessary adjustments, how can these two groups - Catholic and Protestant - who are protected by Article 93, pretend to be able to respect fully the needs of those people who belong to other religions or who do not belong to any? It is therefore important to note that the large Montreal school boards who sought and obtained an injunction are precisely those whose student populations are the most culturally and religiously diverse.

The stalemate faced by the school system is all the more difficult to accept now that the expected evolution in confessional structures has caused various responsible confessional authorities to proceed on their own with projects to deepen, reaffirm or redefine specifics: the recent plan of action of the Montreal Catholic School Commission intended to support the encouragement of Christian values in its schools is one example. In a context where diversity was going to be able to institutionalize itself and where the moorings and concrete

guarantees of religious expression and education were about to be displaced it was both natural and foreseeable that such steps be taken to define the religious specifics and to "tell the truth" about school confessionality actually experienced. From the time when the expected evolution is stopped and, catholic and protestant school boards in Montreal and in Québec must continue being virtually the common and obligatory system, these same projects of reaffirmation and authentication may well reinforce the rigid and monolithic nature of the system. They may make the practise and acceptance of pluralism yet more difficult; particularly if these projects were to be interpreted as being gestures, on the part of those who possess acquired rights, which would be used to increase the visibility of their condition as haves as opposed to have-nots.

We must remember that the desire to eliminate this confessional manacle from the school system does not involve challenging the confessional rights and guarantees which our history and laws have always protected and encouraged. In any event, those who, over the last few years, reached a consensus on the need to reorganize the exercise of confessional rights in a more socially and ethically acceptable manner were not looking at the situation from this perspective. The issue is simply that the exercise of established rights and privileges translates into a seizure of the public school system and prevents the advent of a desirable and inevitable plurality.

The same applies to the guarantees surrounding the exercise and promotion of the linguistic rights of the anglophone community. In fact, everyone knows that the Québec debate on confessional school structures has never been completely separate from the language issue. Many anglophone protestants have traditionally considered Article 93 as a true source of language guarantees. The discussions of recent years have been an opportunity used by many to

make a distinction between the two issues; some Anglophone community spokesmen have even suggested that clearer language guarantees, entrenched in the Canadian Constitution, would allow them to approach the subject of confessionality with more flexibility. Whatever the case, it is clear that the desire for a breakthrough in the present confessional school system in no way challenges the linguistic rights of the anglophone community. Indeed, a clarification of the language issue - which would go far beyond the "where numbers warrant", as did Bill 3, of Article 23 of the Constitutional Act of 1982 - would have an important effect on the issue of confessionality itself.

Faced with the present paralysis of the Québec school system in matters of confessionality, it is the opinion of the Conseil that it would be inadvisable to "let things ride" or to wait. Individual rights and freedoms cannot be exercised satisfactorily, the wishes of the majority are ignored, the possibility of experiencing positive changes which everyone agrees are necessary is becoming slimmer: this is the increasing social cost that accumulated delays are forcing us to pay.

Since the judgements rendered cite Article 93 of the British North America Act, upheld by Article 29 of the Constitutional Act of 1982, as the key to Québec's school confessionality issue at least in Montreal and Québec, it is advisable that attention and efforts be focused on making this Article more flexible. Constitutional talks announced by the federal government and by the new Québec government concerning Québec's support of the 1982 constitutional agreement constitutes the necessary framework for renewed efforts for clarification and negotiation.

The stakes are not simple but they are clear: Québec must have full authority to give itself a school system which will comply with increasingly diverse needs and which will respect the rights and freedoms of all its citizens. To do so, it may be necessary to demand an article specifically applicable to Québec or to agree to a wording of the existing articles which would be acceptable to all of the provinces concerned. That will be left to the lawmakers and negotiators to decide. However, the objective itself cannot be hidden: we must be able to implement procedures that will allow for an equitable evolution of school structures in Québec.

For this reason, the Conseil supérieur de l'éducation recommends to the ministre de l'Éducation:

that, during the forthcoming constitutional negotiations, announced recently, the Government of Québec include the question of school confessionality in its dossier of positions;

that, in the matter of school confessionality, the objective of the Government of Québec be to ensure to Québec the power to give itself an educational system which, while taking into account recognized confessional and linguistic rights, will provide for a more adequate response to the increasing existence of pluralism and a better respect for the rights and freedoms of all citizens.

One member voted against the adoption of this advice. Mr. Lucien Rossaert, Vice Chairman of the Conseil, insisted on expressing the following dissent: "Whereas the Superior Court of the District of Montreal passed judgement on the Act respecting Public Elementary and Secondary Education (Bill 3) in June 1985 and that this case is currently in appeal, I must record my disagreement with the transmission, at this time, of recommendations to the ministre de l'Éducation

respecting the constitutional question of school confessionality as adopted by the Conseil supérieur de l'Education on January 23, 1986, inasmuch as and for as long as this matter is before the courts".

All other votes were in favour of the adoption of the advice.

There were no abstentions.

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