CASE AND COMMENT

CHABOT v. LES COMMISSAIRES D'ECOLES DE LA MORANDIERE

DENOMINATIONAL SCHOOLS — *Education Act* — NATURAL LAW — AS A.... PROTECTION FOR RELIGIOUS FREEDOM — CASE AND STATUTE LAW — AS A PROTECTION FOR RELIGIOUS FREEDOM.

Canadian courts in recent years have been increasingly concerned with the nature and extent of certain fundamental rights, and the protection, if any, afforded them by our Constitution. The determination of these rights, both in public and private law, has raised great constitutional questions; questions which our Constitution does not expressly answer. The result has been that the most liberal decisions of our Supreme Court respecting the existence of these rights, have been substantially weakened by a lack of precision concerning the exact nature of the protection afforded them. The Supreme Court has succeeded in creating an atmosphere which our judges can breathe, but no judicial condensation has taken place to leave solid precedents upon which they can rely. Hence, in attempting to give life to the idea of religious liberty, our Courts can easily arrive at the effect, but cannot always ascertain the cause.

The decision[1] in this case is illustrative of this phenomena. The Court of Appeal has rendered a judgment in terms consistent with the most liberal traditions of our century; yet, it cannot be said that this decision has resolved these issues, for there was no unanimity among the judges of the Court as to the nature and extent of these constitutional safeguards.

The Court also examined numerous provisions of the *Quebec Education Act* which raise interesting questions as to the practicability and desirability of the educational system in Quebec.

The relevant facts which gave rise to the litigation are as follows:

The Appellant was a member of the Witnesses of Jehovah. As there was no Protestant dissentient school in the district in which he lived, his two children were in attendance at the Respondent's school. Since the majority of the inhabitants of La Morandière were Roman Catholics, the course of study was authorized and controlled by the Roman Catholic Committee of the Council of Education.

The Appellant informed the teacher that he did not wish his children to participate in the religious exercises and devotions which formed part of the curriculum. For some time his wishes were complied with, until the Respondents

[1] *Chabot* v. *Les Commissaires d'Ecoles de La Morandière,* [1957] Q.B. 707.

determined that all children, including the Appellants, were to follow the entire course of study as prescribed by the Roman Catholic Committee. The failure of the Appellant's children to comply with these regulations resulted in their expulsion from the school. Further negotiations did not result in a satisfactory settlement. The Appellant maintained that he would not permit his children to submit to religious instruction, while the Respondents contended that such participation was necessary if the children were readmitted. Hence the Appellant instituted an action to obtain a writ of mandamus compelling the Respondents to admit his children, yet exempting them from participation in the religious aspects of the curriculum. He also attacked the validity of certain provisions of the *Education Act* and of the *Regulations of the Roman Catholic Committee* which appeared to oblige his children to submit to such religious teaching.

The following issues confronted the seven judges sitting in appeal:

1. Did Appellant's children as non-Roman Catholics have the right to attend the Respondent's school?

2. If possessed of such right, were they obliged to submit to the religious instruction?

3. Are any provisions of the *Education Act ultra vires*?

4. Are the *Regulations of the Roman Catholic Committee ultra vires*?

The Court easily disposed of the first question, all judges answering affirmatively, but the opinion of Rinfret, J. raises interesting questions as to the nature of that right and to the denomination, if any, of the school in question.

PART I

DENOMINATIONAL SCHOOLS

The respondents contended in part that the school in question was denominational and that the children were free to attend if they took part in the religious aspects of the curriculum. Rinfret, J. argued this point in his dissent and pointed out that changes have been made in the Education Act since the famous dictum of Lord Cave in the *Hirsch*[2] case, and as a consequence, the character of the original common school has been extensively altered.

> "De ces changements, il semble bien que la Législation a voulu instaurer dans la province un système différent de celui qui existait en 1861 et de celui qu'a considéré le Conseil privé dans l'affaire *Hirsch* et qu'elle a, sans pour cela copier et tous points le système qui prévalait en 1861 dans les cités de Montréal et de Québec, mais s'inspirant des remarques de lord Cave, établi un système d'écoles confessionnelles, tant pour celles sous l'autorité des commissaires, que pour celles des syndics, tant pour les écoles de la majorité que pour les écoles dissidentes."[3]

In the *Hirsch* case the Privy Council decided that a common school controlled by school commissioners could not be termed a denominational school.

[2]*Hirsch* v. *School Commissioners of Montreal*, [1928] A.C. 200, at 209.
[3]P. 751.

On the other hand, employing the following criteria, their Lordships determined that a Protestant dissentient school was a denominational school:

1. It is founded by a body of Protestants and is maintained by their contributions and managed by trustees appointed by them;
2. Its religious books are selected by the Protestant ministers;
3. Its teachers are chosen by those trustees after examination by a Protestant Board of examiners;
4. Admission to the school is confined (except by favor) to the children of Protestant parents.[4]

If these same criteria are applied to a school governed by school Commissioners, it would appear that in most cases all may be applicable except number four. The application of the first criterion is dependent upon the religious compositions of inhabitants in a particular school district. However, in most cases in the rural districts of Quebec, the school is established and controlled by Roman Catholics. Therefore, the most important criterion seems to have been, "Can anyone attend such a school?"

Despite this distinction made in the rural areas, the Privy Council went on to point out:

> "It is true that in the two cities (Montreal and Quebec) a school belonging to either Board might be attended by children of a faith different from that represented by Board; but it appears to their Lordships that the provisions for the management and control of the schools by persons of a particular religious persuasion set upon them a denominational stamp which could not be effaced by the attendance of a certain number of children of a divergent faith."[5]

The conclusion to be drawn is that the Privy Council regarded the city school as denominational, and the rural school managed by school Commissioners as undenominational, because the establishment and control of the former arises from law, whereas the latter owes its identical position to a fact situation.

This difference exposed by their Lordships is legally sound, but how realistic is the distinction which they drew between a dissentient and a common (majority) school in the rural areas, namely: all have a right to attend the school controlled by Commissioners, whereas only dissentients have a right to attend the school controlled by trustees.

The opinion expressed by their Lordships has subsequently been accepted by the courts, yet the reasoning which led them to such a conclusion is difficult to follow.

> "This reservation[6] though not clearly stated in the Act, appears to be deducible from its terms; and if there be any doubt upon the point, it is removed by paragraph 2 of section 93 of the B.N.A. Act, which extends to dissentient schools in Quebec, all the powers and privileges by law conferred on the Roman Catholic schools of Upper Canada including the provisions of the Upper Canada Act of 1863."[7]

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[4] *Hirsch* case, *supra*, p. 209.

[5] *Ibid*, p. 212.

[6] That only dissentients have a right to attend the school controlled by trustees.

[7] *Ibid*, p. 208.

The Privy Council made reference to the pertinent Upper Canada Legislation, but apparently did not examine that legislation carefully to see if such a reservation did in fact exist.

Section 12 of the Act,[8] cited by the Privy Council, contemplates the attendance at Roman Catholic Separate Schools, of children who are not Roman Catholics.

> "...no children attending such school shall be included in the return hereafter required to be made to the Chief Superintendant of Education, *unless they are Roman Catholics.*"[9]

This suggestion of the attendance of children of a different religious persuasion in itself is of no significance unless it can be proved that such children had a right to attend. Hence it becomes necessary to ascertain what powers, privileges and duties were by law conferred and imposed upon the separate schools and separate school trustees respecting the attendance of children of a different faith.

Section 7 of the same Act states that:

> "The Trustees of Separate Schools forming a body corporate under this Act... shall have all the powers in respect of Separate Schools, that Trustees of Common Schools have and possess under the provisions of the Act relating to Common Schools."

Section 27 (16) of the Act relating to Common Schools enacts as follows:

> "It shall be the duty of the Trustees of each school section, and they are hereby empowered:
> To permit all residents in such section between the ages of five and twenty-one years, to attend the school... but such permission shall not extend to the children of persons in whose behalf a separate school has been established, according to the Act rsepecting the establishment of separate schools."[10]

It will be noticed that the Trustees are "hereby empowered" to carry out duties and it is therefore reasonable that these duties, with the corresponding powers, were transferred to the Trustees of Roman Catholic Schools as envisaged in section 7 of the *Separate Schools Act.* Consequently, it would seem that the separate school Trustees could restrict admission to children of the Roman Catholic faith where a common school had been established in the district. Similarly, if there was no common school, they appear to have been obliged to admit all students. By section 93 sub-section 2 of the *B.N.A. Act,* these powers, privileges and duties were extended to all dissentient schools in Quebec.

In the *Hirsch case* Lord Cave was of the opinion that a child of a faith, other than that of the dissentient minority, could attend the dissentient school with the permission of the Trustees; yet, by applying the Ontario provisions it would seem that: firstly, a dissentient school in Quebec would only be open to dissentient children, and no other children could attend, *even by leave,* if a school

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[8] 26 Vic., c. 5.

[9] Throughout the comment, all italics within quotations are those of the authors.

[10] 22 Vic., c. 64, s. 27 (16).

was being managed by Commissioners in the same district. Secondly, if only a dissentient school were in operation in a district,[11] the Trustees of such school would be obligated to admit all students. Do these two propositions represent a fair interpretation of the effect of section 93 (2) of the B.N.A. Act?

Section 93 (2) has undergone no judicial exposition that sheds light upon the question, and on its face it admits of two different interpretations.

(a.) The purpose of section 93 (2) was to extend all such powers, privileges and duties to the dissentient schools in Quebec, but not to the prejudice of any rights or privileges already existing by law in that Province, and any rights or privileges existing after such extension were to enjoy the protection from Provincial legislation afforded by section 93 (1).

(b.) The purpose of section 93 (2) was to extend all such powers, privileges and duties to the dissentient schools in Quebec, even to the prejudice of any rights or privileges then enjoyed by such schools, and any rights or privileges existing after such extension were to enjoy the protection from Provincial legislation afforded by section 93 (1).[12]

If the latter interpretation is adopted, there can be little doubt as to the validity of the two propositions asserted above. If the former interpretation is adopted, it is necessary to turn to the provisions of the *Quebec Education Act* to see if the reservation suggested by the Privy Council does in fact exist.

With all due respect to the opinion of their Lordships, such a reservation does not appear to be deducible from the terms of the Act;[13] to the contrary, many sections imply that anyone has a right to attend either type of school.

Section 97 of the *Education Act* provides as follows:

"Any child may attend the primary complementary school, or, as the case may be, the intermediate or high school in his municipality . . ."

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[11]Such a situation can arise through a change in the religious composition of a district.

[12]Section 93, *B.N.A. Act:*

"In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:

(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:

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and school Trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec."

[13]The Privy Council were examining the provisions of the consolidating statute of 1861 (24 Vic. c. 15) which was in force at Union. Since no legislation has been passed since the Union altering the character of the common or dissentient schools, it is practicable for the purpose of this discussion to examine the provisions of the present *Education Act* (R.S.Q. 1941 c. 59).

Section 2 (12) provides:

> "... The words primary complementary school mean *every* school of one or the other grades whose course of studies is determined by the Catholic Committee of the Council of Education..."
> "... the words "intermediate school" mean *every* school of one or the other of such grades whose course of studies is determined by the Protestant Committee of the Council of Education. The words "high school" mean *every* school of such grade whose course of studies is determined by the Catholic or Protestant Committee of the Council of Education."

Since the curriculum of the dissentient school is included in those determined by the Protestant or Catholic Committee,[14] it follows that any child, regardless of religious belief, can attend anyone of the schools mentioned in section 97 although such school might be a dissentient school controlled by Trustees.

From section 96 one can deduce further evidence of this right, for it enacts that:

> "Children domiciled in a district, in which there is *a* school in operation, may not attend the school in another district in the municipality, unless with special permission of the school commissioners or trustees as the case may be..."

Assuming that in a particular district the only school in operation is a dissentient school, a child professing a faith other than that of the dissentients can attend the school in another district only by obtaining special permission of the Trustees. Surely it can be inferred that he has a right to attend the dissentient school in the district.

Despite the decision of the *Hirsch case* and the prevalent opinion of our courts,[15] there seems to be sufficient evidence to assert the following propositions:

(i) A child of any religious persuasion may attend the school of the majority under the control of school commissioners. (The truth of this statement has not been contested by our Courts, and the Court had no difficulty in upholding it in the case under consideration).

(ii) A child of any religious persuasion may attend a dissentient school if there is no school in the district controlled by school commissioners. (As demonstrated, the right to attend is clearly deducible from the Education Act, and the qualification is a result of the Upper Canada legislation extended to Quebec by section 93 (2) of the B.N.A. Act. Furthermore, this qualification is to be introduced no matter which interpretation one adopts of that section, for it confers an additional right upon the dissentient school, namely: the right to exclude, in certain circumstances, children of a different religious persuasion.)

It is therefore possible to conclude that the distinction made by the Privy Council between the dissentient and majority school in the rural area leaves room for doubt, and if either or both be termed denominational it is not because of the right to admit or exclude pupils of another religious belief.

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[14]Section 221 (3).

[15]*Les Syndics d'Ecoles Dissidents de St. Romuald* v. *Shannon,* [1930] S.C.R. 599.

Rinfret, J. in his dissenting judgement refers to several sections of the *Education Act* which seem to have a denominational implication.[16] In fact, there seems to be a good deal of evidence in the Act, in further support of his view, that a school run by school commissioners is of a denominational character.

Section 30 provides:

> "Each committee shall approve the text books, maps, globes, models or other articles for use in the schools of *its religious belief* and when it sees fit may withdraw such approval."

It would appear from the wording of this section that a school managed by commissioners under the control of the Catholic Committee can properly be called a Roman Catholic school. In addition, section 47 enacts that:

> "Any public school established in town or country may be visited by the persons hereinafter mentioned, as often as they deem necessary; but each such person shall visit only the schools of his own *religious belief.*"

A public school may be established and controlled by school commissioners or trustees.[17] Thus, a Protestant minority attending a school run by commissioners is not entitled to receive Protestant visitors. This restriction indicates that a denominational or confessional nature is ascribed to the school.

However, the right to attend and the obligation to take part in the religious training of a school, even if it be denominational, are unrelated problems. Indeed, this excursion into the nature of the public school in Quebec has little bearing on the case under consideration, but it has opened avenues of uncertainty and raises questions that have never been satisfactorily answered by the Courts. It is submitted that no matter what view is adopted as to the religious nature of the school itself, it is still necessary to determine whether or not the school authorities have the right to impose religious training on children of a religious persuasion different from that of the majority. This issue was of most importance in the judgement rendered by the Court of Queen's Bench.

The Education Act

Recognizing that the principle of "religious freedom" exists in our law, each of the concurring judges was of the opinion that the *Education Act* is not to be interpreted as abrogating that right. Differences of opinion arose as to the validity of the regulations of the Roman Catholic Committee, Owen, Hyde and Martineau, J. J. dissenting on this issue, holding, in the words of Owen J. that:

> "In clear and unambiguous terms the regulations provide that all children and all schools subject to the regulations must follow the complete program of instruction including religious exercises and training."[18]

With respect to the opinion of the rest of the Court, such an interpretation does not seem unfair. However, to declare that the *Education Act* does not permit such subordinate legislation deserves greater consideration.

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[16]Per Rinfret, J., p. 750.

[17]R.S.Q. (1941), c. 59, s. 2 (12).

[18]Per Owen, J., p. 741.

The *Education Act* imposes a duty on the school boards whether they be controlled by commissioners or trustees.

> "To take the steps necessary to have the course of study authorized by the Roman Catholic or Protestant Committee, as the case may be, followed in each school."[19]

Section 29 of the Act bestows upon the Roman Catholic or Protestant Committee, as the case may be, the power to make regulations with the approval of the Lieutenant-Governor in Council,

> "for the organization, administration and discipline of public schools."

Under the authority of this section the Catholic Committee prescribed the regulations that required all pupils in attendance at the school to participate in the religious exercises and training. A dilemma arose when the learned judges attempted to reconcile the regulations of the Catholic Committee with the following provision of the compulsory education legislation introduced in 1943:[20]

> "Every child must attend school every day, in each year, on which the public schools are open in accordance with the regulations made by the proper authority, from the beginning of the school year following the day on which he attains the age of six years until the end of the school year in which he attains the age of fourteen years."

In the opinion of the Court, the introduction of this legislation made the attendance of the Chabot children at the school in question compulsory, yet the Act does not stipulate that they shall be exempt from religious training and exercises. There are, however, several sections of the Act, some of which are relied upon by the Court, from which it might be inferred that the right to freedom of religion is respected.

Section 588 enacts that:

> "The children of persons professing the Jewish religion shall have the same right to be educated in the public schools of the Province as Protestant children, and shall be treated in the same manner as Protestants for all school purposes.
>
> No pupil of the Jewish religion shall, however, be compelled to read or study any religious or devotional books or to take part in any religious exercises or devotions, to which the father or in his default the mother or tutor or person having the care or maintenance of such pupil shall object."

This section cannot be made the basis of any convincing argument for a general exemption from religious training, for its terms are not free from ambiguity. It implies that the express exemption granted to Jewish children does not extend to Protestant children, and although one might assume that it refers only to schools controlled by Protestant commissioners or trustees, this is not clearly spelled out.

The last sentence of section 221 (4) was regarded as indicative that the regulations could only apply to children of the Catholic faith.

> "The rector or priest in charge of a Roman Catholic church shall have the right to choose the books relating to religion and morality, for the use of the pupils of *his*

[19]R.S.Q. (1941), c. 59, s 221 (3).

[20]1943, S.Q., c. 13, s. 290a *et seq.*

> religious belief, and the Protestant Committee shall have the same powers as respects Protestant schools."

An argument can be made that such books may be prescribed for Catholic children and not for the school as a whole. This is, however, inconsistent with the power given to the Protestant Committee since it prescribes books for the school rather than for the individual pupils. Interpreted literally, the section confers more rights on Roman Catholics than on Protestants for the Roman Catholic rector or priest could prescribe the defined books to be used by children of his faith attending a Protestant school, whereas the Protestant Committee could not prescribe such books for the need of Protestant children attending a Roman Catholic school. Such a construction does not conform to the spirit of the legislation, and moreover, the section is not sufficiently clear or forceful to be held out as establishing a general principle of religious freedom.

The intention of the Legislature is better evidenced by section 290 v, introduced in 1943 as part of the compulsory school attendance legislation:

> "No proceedings shall be taken by reason of the absence of a child from school on a day regarded as a holiday by the church or religious congregation to which he belongs."

This provision can only be interpreted as an express recognition of religious freedom, but, it must be remembered that the provisions regarding Jewish children and the latter respecting religious holidays are both additions to the original *Education Act.*[21] The Act must be read as a whole, and it is very difficult to reconcile the latter provisions with the rest of the Act. It is submitted that these are exceptional provisions rather than examples of the spirit underlying the legislation.

It seems evident that there were, and still are, basic differences in the approach of the Roman Catholic and the Protestant to the education of youth. If not, there would be little point in establishing separate committees to regulate the respective systems. There is a fusion of education and religion in the Roman Catholic school that is not as evident in that of the Protestant. Abbé Desrosiers has written:

> "Above all, French Canadian Quebec remains faithful in matters of education to the teaching of the church. Religious neutrality is repugnant to her traditions and beliefs and she has never allowed herself to be deceived by fair words about educational necessity that so often conceal, in other countries, the boldest attacks upon religious teaching in the schools."[22]

Even Rinfret, J. in his dissent, looked with approval to regulation 9 of the Protestant Committee which provides that:

> "Religious instruction shall be given in all public schools as laid down in the Course of Study and Handbook for Teachers. No pupil in any public school, however, shall be required to read or study in or from any religious book or to join in any exercise of devotion or religion when it is objected to in writing by his parent or guardian"

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[21] Section 290v and section 588.

[22] *Canada and its Provinces,* Vol. 16, p. 441.

When commenting on this regulation, Rinfret J. stated:

> ". . . je n'ai pas à me substituer au Comité catholique pour établir ce règlement; il a, sans doute, de bonnes raisons pour ne pas l'adopter, tout comme le Comité protestant avait d'excellentes raisons pour édicter son règlement."[23]

In this statement Rinfret, J. appears to recognize that different rationale underlies each of the two educational systems in Quebec. The Protestants, apparently, do not regard religious training as an essential ingredient in a child's formal education, whereas the Roman Catholics consider religious training and education inseparable. Further support of this view is found in the following extracts taken from an affidavit of His Grace the Archbishop of St. Boniface, used in the case *Barrett* v. *City of Winnipeg*.[24]

> "In education, the Roman Catholic Church attaches very great importance to the spiritual culture of the child, and regards all education nnaccompanied by instruction in its religious aspect, as possibly detrimental and not beneficial to children. With this regard the church requires that all teachers of children shall not only be members of the church, but shall be thoroughly imbued with its principles and faith; shall recognize its spiritual authority and conform to its directions. It also requires that such books be used in the schools with regard to certain subjects, as shall combine religious instruction with those subjects; and this applies peculiarly to all history and philosophy."

His Grace, the Archbishop goes on to point out the difference between Protestant and Catholic education:

> "The main and fundamental difference between Protestants and Catholics, with reference to education is, that while many Protestants would like education to be of a more distinctly religious character then that provided for by the said Act,[25] yet they are content with that which is so provided for and have no conscientious scruples against such a system. The Catholics on the other hand insist, and have always insisted, upon education being thoroughly permeated with religion and religious aspects, that causes and effects in science, history, philosophy and aught else should be constantly attributed to the Deity, and not taught merely as causes and effects."

These extracts provide an appreciation of the difference that must also underlie the two systems in Quebec, and account for the introduction of regulation 9 of the Protestant Committee which conflicts with no "conscientious scruples" of the Protestants.

Does this judgment of the Court render regulation 9 unnecessary? It must be construed as having effect, for the *Education Act* was interpreted as not conferring the power upon the Roman Catholic Committee to impose its religious training upon pupils of another faith. However, since, the Roman Catholic Committee has the undisputed power to authorize and regulate the course of study in schools under its jurisdiction, where can be found a provision of law to prevent the Committee from prescribing a curriculum that has in its entirety a religious connotation?

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[23]Per Rinfret, J., p. 766.

[24][1891] *Manitoba Reports,* p .273 at p. 276 *et seq.*

[25]*An Act establishing a non-denominational public school system,* 53 Vic., c. 38 (M).

If children are obliged to attend such a school, as the Court has adjuged them to be, they would have no choice but to participate in a religious curriculum, which, it is submitted, the Committee in question has the power to prescribe, for it, and it alone, has the authority to determine what the content of education is. However, the Court, in order to uphold the validity of the *Education Act* adopted the following interpretation:

> "Considérant qu'il ressort des principales dispositions de la Loi de l'instruction publique que le régime scolaire établi par cette loi vise à respecter la croyance respective des catholiques romains et des protestants et le droit primordial des parents en matière de l'éducation religieuse; que cette loi ne contient aucune disposition qui doive être interprétée de manière à obliger les enfants ayant le droit de fréquenter l'école des commissaires et dont les parents professent une religion autre que celle de la majorité, de suivre une instruction religieuse ou de participer à des exercices religieux auxquels leurs parents s'opposent."[26]

The desirability of this interpretation cannot be questioned; its practicability is open to doubt.

It is not difficult to perceive the line that is drawn between religious and secular education in the Protestant school, but as the writing of the Archbishop of St. Boniface indicated, this same line of division in the Roman Catholic school is obscure, if not invisible. For example, what is the nature of a religious book that a child is to be exempted from reading, and what criteria is one to employ in distinguishing it from a history book imbued with religious principles? If the parents oppose the use of such texts are their children to be exempted from participating in these aspects of the curriculum? If so, it would appear that the *Education Act* does not provide a workable solution for our multi-religious Province, since children could be deprived of a large portion of essential education.

Unfortunately there seems to be little consultation between the Roman Catholic and Protestant Committees. The *Education Act*[27] provides that:

> "School questions affecting the joint interests of Roman Catholics and Protestants shall be under the jurisdiction of the Council of Education, and shall be decided by it."

Pratte, J. suggested that because of this section, the Council of Education constituted the proper authority to which the case in issue should have been referred.[28] No doubt the Council of Education which is representative of both Committees, could resolve such issues as the one under consideration and thus avoid the necessity of the parties involved resorting to the Courts of Justice. However, as stated in the Report of the Protestant Education Survey Committee of 1938, the Council of Education has no more than a statutory existence.

> "School questions affecting the joint interest of Roman Catholics and Protestants are placed by the *Education Act* of the Province under the jurisdiction of the

[26]P. 710.

[27]Section 22.

[28]Per Pratte, J., p. 719.

> Council of Education...The fact that the Council has not met during the past forty years suggests that questions calling for joint consideration rarely arise."[29]

Indeed, it is unfortunate that the Council of Education has not fulfilled its purpose as envisaged by the legislators. If it were to be given a functional existence, such disputes might be solved by means acceptable to both parties.

A satisfactory educational system requires co-operation and understanding between the administration, local school authorities, teachers and parents, and it is inconceivable that this necessary harmony can be attained by enforced co-operation on the strength of a mandamus.

PART II

It has been said that the legal historian of the future will mark "as more than a passing aberration the mid-twentieth century interest in natural law doctrine." The decision in this case well illustrates this claim.

THE ROLE OF NATURAL LAW IN THE DECISION

Five of the seven judges in the case expressly relied upon natural law in order to determine the legal effect which was to be given to s. 221 (3) of the *Education Act.*

This section provides:

> "It shall be the duty of school boards (i.e. commissioners or trustees):...
> 3. To take the measures necessary to have the course of study authorized by the Roman Catholic or Protestant Committee, as the case may be, followed in each school."

This section of the *Education Act* was deemed by the court to be susceptible of two meanings. Firstly, it can mean that it is the duty of such commissioners to see that the *total curriculum* (i.e. secular and religious courses) authorized by the Roman Catholic Committee is followed by *all* the pupils in the school. Alternatively it can mean that it is the duty of such commissioners to see that the *total secular curriculum* authorized by the Roman Catholic Committee is followed by all the pupils in the school, and that the religious curriculum and exercises are only followed by the Roman Catholic children in the school.

It was in attempting to give legal effect to this section of the statute, the words of which admitted of two possible meanings that the five judges relied upon the doctrine of natural law. This doctrine was not, however, uniformly applied by all the judges who invoked it.

Two different applications, at least, are immediately evident in the decision. These are found in the judgments of Casey and Hyde, J. J.

The view of Casey, J. is the more forceful of the two views. To the learned judge, positive law is valid only so far as it corresponds to the natural law.

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[29] *Report of the Quebec Protestant Education Survey Committee,* 1938, p. 9. (The Council has not met since the publishing of this Report).

The right to practice one's religion and the right to control the education of one's children are to Casey, J. rights which "find their source in natural law, those rules of action that evoke the notion of a justice which human authority expresses, or ought to express, but does not make a justice which human authority may fail to express, and must pay the penalty for failing to express by the diminution, or even the forfeiture, of its power to command..."[30]

At page 722 he propounds what appears to be the strongest statement about natural law to be found in the decision of any Canadian court. He states:

> "On this point there can be no doubt for if these rights find their source in positive law, they can be taken away. But if, as they do, they find the existence in the very nature of man, then they cannot be taken away and they must prevail should they conflict with the provisions of positive law."

A less extreme view of natural law is that expressed by Hyde, J.[31] The learned judge appears to postulate a dualism of positive and natural law, but he does not find in this dualism the inevitable superiority of natural law.

At p. 724 he states:

> "To say, however, that children of faith other than Roman Catholic, who, be it remembered, may be attending such schools not only of right, but as a duty, must follow the religious part of the program laid down for Roman Catholics, is to force upon them the teaching of the Roman Catholic Church and oblige them to go through forms of worship in accordance with that faith. It requires no text of law to demonstrate that this cannot be so."

But, Hyde, J. is not prepared to go as far as Casey, J. in the event of a conflict between positive and natural law. At page 725 he states:

> "The power given to the Roman Catholic Committee to determine the course of studies in the schools under its jurisdiction cannot be construed to override this basic principle of natural law. It would require very specific provisions in the Act to that effect to justify any such interpretation and then, of course, the constitutionality of such provisions would be a matter for consideration."

The views of Casey and Hyde, J. J. bear some analysis. Both judges are persuaded by natural law that s. 221 (3) of the *Education Act* was not *intended* by the Quebec Legislature to abrogate the religious rights of a Witness of Jehovah. But natural law persuades each of them for different reasons. This is because the existence of natural law forms part of the minor premise in a syllogism, the major premise of which is different for each judge.

Casey, J. appears to begin with the following premise: If these are two possible meanings which can be given to the words of a statute, one of which would render the statute *ultra vires* and one of which would render it *intra vires,* that meaning most consistent with its validity should be given legal effect by the court.[32] Such a rule of construction was enunciated in the Supreme Court of Canada in 1918:[33]

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[30]P. 722.

[31]Martineau, J. concurring.

[32]Such a rule of construction is nowhere expressly stated in the judgment of Casey, J. The writer has taken the liberty of deducing this from the fact the learned judge has placed on interpretation upon s. 221 (3) of the *Education Act* which as he states, makes it unnecessary for him to declare that section ultra vires.

[33]*Gauthier* v. *The King,* 40 D.L.R. 353, at 365, per Anglin, J.

> "An interpretation that would render it *ultra vires* should, of course, be placed upon a statute only if unavoidable."

Since to him an interpretation contrary to natural law would render the statute invalid, Casey, J. gave to the statute a meaning consistent with its validity. The remarks of the learned judge concerning the supremacy of natural law are therefore, *obiter dicta,* because he was not dealing with a provision of positive law which conflicted with a provision of natural law. They do, however, provide an important argument for considering a statute *ultra vires.*

Casey, J. does not cite any authority to justify the overriding supremacy of natural law in a Quebec court. Of course, once one accepts the existence of such law, the citation of any authority would be quite meaningless because the acceptance or rejection of its supremacy it not something to which the decision of any court could lend weight. It is more than a question of precedents; rather it is a question of precedence.[34]

Hyde, J. appears to begin with a premise quite different from that of Cosey, J. It may be stated as follows: Whenever the language of the Legislature admits of two constructions and, if construed in one way, would lead to obvious injustice, then the Court should give to the statute the meaning which is the more consistent with the liberty of the individual.[35] There is high judicial authority to support such a rule of construction.[36]

Since an interpretation contrary to natural law would render the statute unjust, Hyde, J. concluded that s. 221 (3) of the *Education Act* did not intend to abrogate religious liberties.

The other judgments which rely upon natural law are not as clear in the application which they make of that doctrine. Whether it is invoked because it would render the statute *ultra vires,* or merely unjust, is something which is not clearly spelled out. Nevertheless, it is propounded with some vigour.

Thus, Taschereau, J. states at p. 730:

> "Il serait d'ailleurs contraire au droit naturel, ainsi qu'aux principes les plus élémentaires de nos institutions démocratiques qu'un père ne puisse exercer le droit, ni remplir son obligation de faire instruire ses enfants, sans renoncer à sa foi religieuse. (*Loi de l'instruction publique,* art. 290 a)."

And Pratte, J. states at p. 717:

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[34]The powerful language concerning natural law in Casey's J. decision must, of course, be read subject to his statement at p. 720 that "while in principle no one should be coerced into the practice of a religion... this immunity disappears if what he does or omits is harmful or opposed to the common good or in direct violation of the equal rights of others."

[35]Such a rule of construction is nowhere expressly stated in the judgment of Hyde, J. but it appears to the premise from which he has reasoned.

[36]*Smith* v. *G. W. Ry Co.* (1877), 3 A.C. 165; *Rothes* v. *Kirkcandy Commissioners* (1882), 7 A.C. 702; *Hill* v. *East and West India Dock Co.,* 9 A.C. 456; *Railton* v. Wood, 15 A.C. 363.

> "Ainsi donc, si l'on s'en tient au droit naturel, le premier de tous les droits, il faut conclure que les enfants qui fréquentent une école ne doivent pas être tenus de suivre un enseignement religieux auquel leur père s'oppose."[37]

The learned judge, it is interesting to note, derives some assistance from the writings of Saint Thomas:

> "Pater est principium et generationis et educationis et disciplinæ, et omnium quæ ad perfectionem humanæ vitæ pertinent." (*Summa theologica,* 11-11, question 102, art. 1).[38]

Although Taschereau and Pratte, J. J. both refuse to give an interpretation to s. 221 (3) which would be contrary to natural law, there is nothing in their judgments which warrants the conclusion that they would declare the section *ultra vires* if such an interpretation were unavoidable.

Owen, J. does not rely upon natural law to support the existence of religious freedom in Canada. At p. 736 he states:

> "Religious freedom or freedom of worship is a right which is recognized and protected in Canada. There are differences of opinion as to the nature of this right, whether it is a civil right or a political or public right, but its existence is consistently admitted by our Courts.
> The principle of religious freedom has also been recognized by statute."

Thus, he does not attempt to describe the source of religious freedom in Canada. Nor does he determine whether it is a right which is inviolable. But, there are implications in his judgment which suggest that a provincial statute, or a regulation under a provincial statute, which purports to violate religious freedom would be *ultra vires.*

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[37]In view of his remarks in *Saumur* v. *City of Quebec,* 104 C.C.C. 106, at pp. 110-111, it does not appear that Pratte, J. would support the overriding supremacy of natural law. In that case he stated: "In the long factum which he presented to the Court in support of his contentions the appellant reviewed the battles which have been fought to provide men the freedom of expression which they enjoy today, a review which is accompanied by many extracts from the writings of those who made themselves champions of this liberty. All that might be appropriate before a body seized of the political side of the issue, but there is nothing there that could assist in the solution of the problem before us, since it is purely a legal question... The truth here as in Great Britain, is that, contrary to what is in the United States, the people have not abrogated the power to legislate on the matter and that the area in which the liberties we know can be exercised is susceptible of being narrowed by competent legislative authority."

[38]The fact that he bases his reasoning upon the writings of Saint Thomas does not, it is submitted, necessarily force Pratte, J. to accept the overriding supremacy of natural law. Apparently, the only place where Saint Thomas would permit actual disobedience of a positive law is when it is contrary to the Divine law and therefore unjust because beyond the scope of human power. (*Summa Theologica,* 1-11, q. 96, art. 4) Otherwise he would appear to advocate toleration of the law until it be changed, in order to avoid scandal (q. 96, art. 4), notwithstanding the fact that the law may be tyrannical, (q. 92, art. 1, ad 4; 96, art 4), unjust (q. 94, art. 6, and 3; 93, art. 3, ad. 2), or beyond the powers of the lawgiver (q. 96, art. 4). (The translation used is the First Complete American Edition in 3 volumes, 1947, literally translated by the Fathers of the English Dominican Province).

At p. 739 he states:

> "In my opinion, the *Education Act* when properly construed does not infringe the provisions of the *British North America Act,* nor violate the right of freedom of religion and is *intra vires.*"

And at p. 741, referring to the regulations of the Roman Catholic Committee, he states:

> "...the said regulations are invalid as being in excess of the authority granted to the Roman Catholic Committee by the *Education Act* and as violating the right of religious freedom."

The right of religious freedom cannot, however, on the strength of his judgment be said to rest upon natural law. All of the other judges, with the exception of Rinfret, J. do attribute this right to natural law. Nevertheless Casey, J. is the only member of the Court who expressly declares the overriding supremacy of natural law.

NATURAL LAW AS A PROTECTION FOR RELIGIOUS FREEDOM

The judgment of Casey, J. is this Province's most vigorous and determined judicial pronouncement concerning the protection which the subject may expect from the actions of a tyrannical Legislature. Its boldness and courage will be a source of great confidence in a time when increasing governmental activity has produced cries of concern. But, its very power raises questions of great constitutional significance. If, as the distinguished judge argued, there are rights which find their existence in the very nature of man and "cannot be taken away," one is prompted to consider whether all that we have been taught concerning the sovereignty of Parliament has not been exaggerated. It is a fear of the potential exercise of this sovereign power which has led many Canadians to urge the adoption of a Bill of Rights. The judgment of Casey, J. suggests that this fear is unwarranted as the legislative supremacy of our Parliament and Legislature is, he claims, already limited by natural law. The continued development of this line of judicial activity would ultimately result in an unwritten Bill of Rights as binding as any legislative enactment. Such can only be the case however, if our Courts are prepared to abandon the traditional methods of statutory interpretation, including the notion that Dominion and Province are each, within their own sphere, sovereign and supreme.[39]

[39]It is interesting to note that W. Glen How, the appellant's lawyer did not raise the natural law argument in his factum. Had he done so, he would have probably been met with his own words written in the Canadian Bar Review in 1948: "There is nothing to prevent any legislature, municipal council, magistrate or other public authority from denying fundamental freedoms whether willingly or unwillingly." (The case for a Bill of Rights, (1948) 26 Can. Bar Rev. 759, at 794).

The sovereign character of the provincial legislatures was firmly established in *Hodge* v. *The Queen.*[40] This is not an unlimited sovereignty however. It is not only within the spheres of jurisdiction assigned to them under the *B.N.A. Act,* and with some exceptions expressly stated in the *B.N.A. Act,* that our provincial Legislatures are supreme.[41] Thus, Earl Loreburn stated in the *Supreme Court Reference Case,* at p. 581:[42]

> "Now, there can be no doubt that under this organic instrument (the *B.N.A. Act*) the powers distributed between the Dominion on the one hand and the provinces on the other hand cover the whole area of self-government within the whole area of Canada. It would be subversive of the entire scheme and policy of the Act to assume that any point of internal self-government was witheld from Canada."

And at p. 583 he stated:

> "It is true that from time to time the Courts of this and of other countries whether under the British flag or not, have to consider and set aside, as void, transactions upon the ground that they are against public policy. But no such doctrine can apply to an Act of Parliament. It is applicable only to the transactions of individuals. It cannot be too strongly put that with the wisdom or expediency or policy of an Act, lawfully passed, no Court has a word to say."[43]

Just how far the principle of parliamentary sovereignty has enabled a provincial Legislature to legalize racial discrimination, for example, is seen in the Privy Council decision which upheld the validity of a Brtish Columbia statute which provided that "no Japanese whether naturalized or not, shall be entitled to vote."[44] The Committee stated at p. 155:

> "The question which their Lordships have to determine is which of these two views is the right one, and in determining that question the policy or impolicy of such an enactment as that which excludes a particular race from the franchise is not a topic which their Lordships are entitled to consider."

It is true that the right to vote is not as "fundamental" as the right to religious freedom, but the deprivation of either one of these rights does equal violence to the dignity of the individual. In terms of human worth it is difficult to justify the importance of one over the other.

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[40] 9 A.C. 117. See also *R.* v. *Burrah* (1878), 3 A.C. 889; *Powell* v. *Apollo Candle Company* (1885), 10 A.C. 282; *Banter* v. *Ah Way* (1909), 8 C.L.R. 626; *Engineers' Case,* 28 C.L.R. 129.

[41] Some implied prohibitions seem to have arisen as well. Thus, the provinces appear to have no power to bind the Crown in right of Canada, (*Gauthier* v. *the King* (1918), 56 S.C.R. 176, at pp. 182, 194); nor are the provinces competent to delegate any part of their legislative power to the Dominion (*A.G. for N.S.* v. *A.G. for Canada,* [1951] S.C.R. 31).

[42] *A.G. for Ont.* v. *A.G. for Canada,* [1912] A.C. 571.

[43] It is well-established that the existence of legislative power is not to be denied by the possibility of its abuse. See *Bank of Toronto* v. *Lambe* (1887), 12 A.C. 575 at 586, 587; *A.G. for Can.* v. *A.G. for Ont., Que. and N.S.,* [1898] A.C. 700 at 713; *Union Colliery Co. of B.C. Ltd.,* v. *Bryden,* [1899] A.C. 580 at 584; *Cooperative Committee on Japanese Canadians* v. *A.G. for Can.,* [1947] A.C. 87, at 102.

[44] *Cunningham and A.G. for B.C.* v. *Tomey Hamma and A.G. for the Dom. of Can.,* [1903] A.C. 151.

As regards matters of education, (these formed the issue in the *Chabot* case), the Privy Council has clearly expressed its inability to deal with rights other than those created by positive law. In *Roman Catholic Seperate School Trustees for Tiny* v. *The King*[45] Lord Haldane stated:

> "Their Lordships are of opinion that where the head of the executive-in-council in Canada is satisfied that *injustice* has been done by taking away a right or privilege which is other than a legal one from the Protestant or Roman Catholic minority in relation to education, he may interfere. The step is one from mere legality to administrative propriety, a totally different matter."

Sections 91-95 of the B.N.A. Act distribute all subjects of legislation between the provinces and the Dominion. In assigning legislative power to one or to the other it does not appear to have been made a statutory condition that the exercise of such power shall be, in the opinion of a court of law, just. In so far as they possess legislative jurisdiction the discretion committed to the provincial Legislatures would appear to be unfettered. The judgment of Casey, J. however, seriously challenges this proposition.

It is with the greatest respect that we prefer the judgment of Rinfret, J. on this point. At p. 746 he states:

> "La seule limite à l'autorité de la législature des provinces en matière d'éducation est celle contenue à l'art. 93 de l'*A.A.B.N.*
> Hors ces limites qui sont assez restreintes, même si importantes, l'autorité provinciale a, sur la question d'éducation, juridiction absolue et souveraine."

This is more in conformity with the weight of the jurisprudence as represented by Lord Watson in *Union Colliery Company of B.C. Limited* v. *Bryden:*[46]

> "It is the proper function of a court of law to determine what are the limits of the jurisdiction committed to them (Provinces and Dominion), but when that point has been settled, courts of law have no right whatever to inquire whether their jurisdiction has been exercised wisely or not."

Recent case law as a protection for religious freedom

The judgment of Owen, J. suggests the possibility that in recent years we may have acquired a common law Bill of Rights. "Religious freedom or freedom of worship," he states,[47] "is a right which is recognized and protected in Canada. There are differences of opinion as to the nature of this right, whether it is a civil right or a political or public right, but its existence is consistently admitted by our Courts." The learned judge footnoted these remarks with a reference to three recent Supreme Court decisions: *Saumur* v. *City of Quebec,*[48] *Birks* v. *City of Montreal*[49] and *Chaput* v. *Romain.*[50]

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[45][1928] A.C. 363, at 370.
[46][1899] A.C. 581, at 585.
[47][1957] Q.B., at p. 736.
[48][1953] 2 S.C.R. 299. This case is also relied upon by Casey J. at p. 720.
[49][1955] S.C.R. 799.
[50][1955]S.C.R. 834. This case is also relied upon by Hyde J. at p. 724.

Owen, J. does not expressly state that the right to religious freedom will be given *absolute* protection by our Courts. To have said so would have been to go beyond the necessities of the case because he was primarily concerned with the meaning of s. 221 (3) of the Education Act and not with its validity. But, he did state that religious freedom is protected in Canada, and it is the nature of this protection which bears examination.

There is very little in the three Supreme Court cases to support the proposition that religious freedom is beyond the reach of provincial and Dominion legislative enactment. There are statements in these cases which *might* suggest this, but there are also others which expressly assert the contrary.

In *Chaput* v. *Romain*,[51] Taschereau, J. (with Kerwin, C. J. and Estey, J. concurring) states:

> "In our country there is no state religion.[52] All religions are on an equal footing, and Catholics as well as Protestants, Jews and other adherents to various religious denominations, enjoy the most complete liberty of thought. The conscience of each is a personal matter and the concern of nobody else. It would be distressing to think that a majority might impose its religious views upon a minority, and it would also be a shocking error to believe that one serves his country or his religion by denying in one Province, to a minority the same rights which one rightly claims for oneself in another Province."

Despite the power of his words, Taschereau, J. does not expressly declare that religious rights cannot be abrogated. He finds it distressing that a majority *might* impose its religious views upon a minority, but does not dispute its ability to do so.

In *Birks* v. *City of Montreal*,[53] Taschereau, J. concurred with Fauteux, J. who stated at p. 335:

> "Sur ce point qu'il est d'abord essentiel de déterminer pour pouvoir décider ensuite sous quel paragraphe des articles 91 ou 92 de l'*Acte de l'Amérique Britannique du Nord* se classe la loi incriminée."

This is the traditional approach to statutory interpretation which presupposes that either s. 91 or s. 92 enables the passing of a law.

The judgment of Rand, J. in the *Saumur* case[54] also contains a statement concerning religious liberty. He stated:

> "Strictly speaking, civil rights arise from positive law; but freedom of speech, religion and the inviolability of the person, are original freedoms which are at once the necessary attributes and modes of self-expression of human beings and the primary conditions of their community of life within a legal order. It is in the circumscription of these liberties by the creation of civil rights in persons who may

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[51][1956] I D.L.R. 241, at 245.

[52]It is perhaps well to insert the remark of Edwin W. Patterson that the conception of natural law as divine reason "has no place in the political or legal process of a modern democratic-representative state, at least not in one which is not committed to a particular established religion." See Edwin W. Patterson, *A Pragmatist looks at natural law and natural rights,* Natural Law and Natural Rights, Southern Methodist University Press, Dallas, 1955, p. 54.

[53][1955] 5 D.L.R. 321.

[54][1953] 4 D.L.R. 641, at 670.

> be injured by their exercise, and by the sanctions of public law, that the positive law operates. What we realize is the residue inside the periphery... there is no prior or antecedent restraint placed upon them;..."

Again, although we find here a great statement concerning fundamental liberties, no absolute protection is afforded them as would be by a Bill of Rights. Rand, J. expressly recognizes that these rights can be circumscribed by positive law. The issue for him is, whether the Dominion *or* the Provinces have the jurisdiction to so circumscribe,[55] but he does not appear to doubt that either one or the other has this power.

In point of fact the *Saumur* case contains some very strong statements upholding the ability of either the Dominion or the Province to abrogate religious liberties. Thus, Kerwin, J. stated at p. 665:

> "While it is true that, as recited in the preamble of the B.N.A. Act, the three provinces expressed a desire to be federally united with a constitution similar in principle to that of the United Kingdom, a complete division of legislative powers being effected by the Act, I assume... that provincial Legislatures are willing and able to deal with matters of importance and substance that are within their legislative jurisdiction."

Here Kerwin, J. recognized that the most fundamental principle of the United Kingdom Constitution is the Sovereignty of Parliament.

Cartwright, J. at p. 274 (Fauteux, J. concurring) stated:

> "Under the *B.N.A. Act* the whole range of legislative power is committed either to Parliament or to the provincial Legislatures and competence to deal with any subject-matter must exist in one or other of such bodies. There are thus no rights possessed by the citizens of Canada which cannot be modified by either Parliament or the Legislature..."

And Estey, J. referring to religious freedom, stated at p. 698:

> "It must be assumed, therefore that it was intended that legislation would come within the provisions of the *B.N.A. Act* and be competently enacted either by the Parliament of Canada or the provincial Legislature as therein provided."

STATUTE LAW AS A PROTECTION FOR RELIGIOUS FREEDOM

The possibility that religious liberty may be protected by statute law was also raised in the *Chabot* case. The *Quebec Freedom of Worship Act* (R.S.Q. 1941, c. 307, act 2) was relied upon by the appellant, but the Court did not choose to rest its decision upon this Act. It was felt that the *Freedom of Worship Act* merely "recognized" the existing principle of religious freedom. In any event, if the source of religious freedom in Quebec flowed from this statute alone, no permanent protection would be provided since the statute could be repealed at any time.

A pre-Confederation statute (1852 (Can), 14-15 Vict. c. 175) which guaranteed religious freedom in Canada was also invoked by the appellant. Again, the Court looked upon this as no more than the recognition of an existing prin-

[55]In the *Birks* Case, [1955] 5 D.L.R. 321, at 324, Rand, J. again implied that it was a question of jurisdiction rather than absolute prohibition which prevented the provinces from abrogating religious liberties. He concluded that legislation in relation to religion is beyond provincial authority to enact.

ciple, and did not rest its decision upon it. But, there is a strong possibility that this statute may afford an absolute protection for religious freedom against *provincial* legislation.

The statute of 1852 was carried on after Confederation by s. 129 the *B.N.A. Act*. If religious freedom is deemed to be a matter not within the jurisdiction of a provincial Legislature, then the statute of 1852 is subject to be repealed only by the Dominion Parliament. The question of who has legislative authority over religious freedom is something which our Courts have yet to determine. In the *Saumur* Case[56] four judges of the Supreme Court held that religious freedom was a matter reserved to the Dominion;[57] three held that it was within the provincial domain;[58] and two felt that they would decide when the issue arose.[59] Thus, a majority of the Supreme Court has not yet determined the question.

Conclusion

The decision in the *Chabot* case, taken as a whole, cannot be said to have given religious freedom absolute protection against any and all infringements. To demand this of a court is to ask the court to act like a Legislature. The decision in the *Chabot* case is however the decision of a liberal Bench which has invoked the full power of judicial discretion in order to secure the liberty of the individual. But it must be remembered that the opportunity for such a decision was presented to the Court by the fact that s. 221 (3) of the *Education Act* admitted of two possible interpretations. The Court seized this opportunity to leave the individual unmuzzled. What the outcome would have been had the statute been explicit in its meaning is only a subject for speculation.

The unsettled state of religious freedom in Canada still remains to trouble our courts. This is well-illustrated in a judgment of the British Columbia Appeal Court which was rendered two months after the decision in the *Chabot* case.[60]

The appellant in this case was a Doukhabour who objected, on religious grounds, to his child attending a public school. Sec 157. (1) of the *Public School Act* required all children to attend public school. The Appellant claimed that this section was *ultra vires* beeause it infringed the religious freedom of the Doukhobours. (The Doukhobours object to public schools because it is claimed they interpret history so as to glorify, justify and tolerate intentional taking of human and animal life; expose their children to materialistic influences and ideals; and separate secular matters from spiritual matters in education.

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[56][1953] 4 D.L.R. 641.

[57]*Ibid,* Rand, Kellock, Estey, Locke, J.J. at pp. 670, 689, 699, and 715 respectively.

[58]*Ibid.* Rinfret C. J. Taschereau., J., Kerwin J. at pp. 656 and 664 respectively.

[59]*Ibid,* Cartwright and Fauteux, J.J. at p. 724.

[60]*Perepolkin et ux* v. *Superintendent of Child Welfare* (1958), 23 W.W.R. 592.