

What You Can Do – Help Fund Our Legal Case

OPEN (One Public Education Now) wants to bring a legal case asking the Supreme Court to re-examine their 1987 *Reference re Bill 30* decision.¹ The case would be an application under the *Charter of Rights* for a declaration the Ontario *Education Act* sections covering funding of separate schools be declared void. If successful, public funding of Ontario Catholic Separate schools would be:

- a) Completely abolished or ;
- b) Greatly reduced so Grades 9-12 were no longer funded and funding for Grades 1-8 for Catholic Separate schools would be only around 63% of the funds public schools received.

Summary of Background:

Section 93 of *Constitution Act, 1867* (formerly known as *British North America Act, 1867*) gives the provinces control over education with the exceptions listed in s.93(1) to s.93(4). Section 93(2) **states whatever rights Ontario gives Catholic Separate schools must be given to Quebec Protestant and Catholic separate schools.** Section 93(1) says no provincial law can remove whatever rights separate schools had in Ontario or Quebec at Confederation (July 1, 1867).

In 1985, the Ontario provincial government extended funding to separate schools to the end of high school (then Grade 13). Unsurprisingly, various groups objected. In the 1987 *Reference re Bill 30* decision, the Supreme Court said the *Charter of Rights and Freedoms* which guaranteed equal protection and benefit of the law without discrimination on the basis of religion **did not apply** to the funding of Ontario Catholic separate schools or their right to teach Catholicism.

They also ruled that in 1867, separate schools had taught the equivalent of high school, which overturned the long-standing *Tiny Separate-School Trustees v. The King* [aff'd [1928] A.C. 363].

Why We Think The Supreme Court could overturn its decision

In 1997, at the unanimous request of the Quebec Provincial Parliament, the *Constitutional Amendment, Quebec* was passed which stated s.93(1) to s.93(4) did not apply to Quebec. Quebec now has only one secular two-language public school system.

So our first argument would be that s.93(2) which says whatever rights Ontario gives Catholic separate schools must be given to Quebec Protestant and Catholic schools is now clearly unenforceable and void. The argument would be all clauses s.93(1) to 93(4) are so intertwined they should all be declared void. Therefore, Ontario no longer has any constitutional obligation to fund Catholic Separate schools.

If the Supreme Court ruled s.93(1) was still valid, the second argument is the 1987 Supreme Court decision placed great emphasis on what they called the “great compromise” of s.93. One main party to that compromise, Quebec, has now withdrawn. So at the very least the Supreme Court should rethink its ruling that the *Charter of Rights* did not apply at all to Ontario Separate schools. *If* the Charter of Rights applies, all Catholic separate schools are guaranteed is the rights they had in 1867, which we would argue is **only 63%** of the funding provided for public schools and no funding for high schools.

There are also other changes since 1987, such as scholarly books on high school education in nineteenth century Ontario, Supreme Court decisions on related areas, etc. that we think justify a re-examination of the ruling that the *Charter of Rights* does not apply to Ontario Separate schools as well as the ruling that high schools were funded in 1867. A previous case failed because the judge ruled the applicant did not have standing; the judge did not rule on the merits of the case. Our plaintiffs, a teacher and a parent, should get standing.

¹ *Reference re Bill 30*, [1987] 1 S.C.R. 1148