

REPLY TO "LETTER TO THE EDITOR"

The "Letter to the Editor" must be read as an official statement by the leaders of two advocacy organizations. "The Other Section 23"¹ was written from the standpoint of an independent scholar. The "Letter to the Editor" does not address itself at all to the technical legal analysis in the article. Instead, it challenges the constitutional philosophy that the article supposedly expresses - but actually does not. Regrettably, the reader of the "Letter to the Editor" is left with a strong condemnation of what "The Other Section 23" does not say - and insufficient indication of what the authors themselves believe.

"The Other Section 23" expressly affirms that "section 23 parents have the *right* to have their children educated in French." It expressly endorses the Ontario Court of Appeal's finding that section 23 guarantees certain parents that their children "must receive their instruction in facilities in which the educational environment will be that of the linguistic minority." When the article refers to the possibility of anglophone children attending "section 23" schools, or of general school boards directly administering those schools, the qualification is made that the minority-language environment must be maintained.

Contrary to what the "Letter to the Editor" alleges, "The Other Section 23" nowhere states or implies that the principal or exclusive purpose of section 23 is to "furnish an instrument for the enrichment of the linguistic majority." Section 23 can be construed in a number of different ways. Each possibility promotes a different set of values. "The Other Section 23" leaves no doubt that it is imperative in construing section 23 that a minority-language educational environment should be provided for certain children where their parents so desire. In construing section 23, I am readily prepared to affirm, as a primary "goal" or "function," the protection of the rights of the named class of persons for the sake of those persons and their children. But we should, if possible, construe section 23 in a way that promotes other values as well. Among those other values are social harmony, ethnic quality, administrative efficiency, respect for minority languages and their speakers, and the promotion of bilingualism.

The "Letter to the Editor" attributes to "The Other Section 23" the view that:

The minority should therefore preserve its language in order to permit the majority to become bilingual and ensure the continuation of its hegemony (my translation).

The paraphrase does not do justice to the article. Nowhere does "The Other Section 23" state that the linguistic minority has any sort of obligation (as opposed to right) to maintain its existence. The paraphrase would make the attainment of bilingualism by the majority language speakers a means to maintain dominance. What the article *expressly* states is that

... the position of the French language and the French language minority will be stronger in any province within which the people view the acquisition of [the] language as intrinsi-

1. (1986) 15/3 Manitoba Law Journal, 347.

cally desirable and its native speakers as a valuable asset - as a source of teachers of producers of a living and accessible culture (emphasis added).

In addition to completely “distorting the position in the article, the “means to dominance” charge proceeds on a mysterious logic. Somehow, learning French is supposed to assist anglo-phones in “maintaining their hegemony.” Exactly how?

The “Letter to the Editor” maintains that section 23 has the purpose of “permitting the minority to continue to live and develop itself in its language and culture, like all self respecting peoples.” For the information of the authors of the letter, there are a very large number of self respecting minority groups in Canada who do not have the constitutional right to have their children educated in separate and exclusive schools at public expense. “The Other Section 23” is willing to attribute special status to the French language. It is not prepared to concede that francophones or French Canadians have constitutional rights as an *ethnic group* that exceed those of almost all other minorities in Canada.

The “Letter to the Editor” contends that the presence of anglophone children in French-language schools would result in “assimilation” in the direction of the English language. The evidence for this contention is drawn directly from the annals of anecdotal sociology. The authors have found in their experience that the infusion of a few anglophones into otherwise francophone gathering results in everyone speaking English. I have an antidotal anecdote. The last anglophone-francophone gathering I was at took place at a reception for Manitoba lawyers at the most recent Canadian Bar Association meeting. Most of the lawyers were anglophones. I recall participating in conversations in French, however, that included Roger Bilodeau, the litigant in the celebrated case, and Guy Jourdain, the director general of the Joseph Dubuc Institut (a society for the promotion of the French language in the Manitoba legal system, of whose board of directors I am a member).

With respect to the presence of “non-section 23” children in “s. 23” schools, the Ontario Court of Appeal found that:

fundamental fairness impels the conclusion that those parents whose children use minority language educational facilities should participate in managing and controlling them. Although some fears were expressed that this might pose a threat to the linguistic minority, *nothing submitted to us indicates that the overall protection of the minority will be prejudiced* (emphasis added).²

The statement is from a Court that was prepared (unlike me) to hold that section 23 protects “social and cultural rights in addition to language rights.” I do *not* say that a large anglo- phone presence would *never* have the effect of undermining the French-language environment of a school. If school administrators were not able to devise reasonable measures to counter the linguistic disruption, then section 23 might warrant the reduction of anglo-phone admissions. “The Other Section 23” states:

2. Reference Re Education Act of Ontario and Minority Language Education Rights (1984), 10 D.L.R. (4th) 491.

Generally speaking, *as long as there is no significant interference with the linguistic atmosphere at a school*, there should be no exclusion of other children from attending it, or of their parents from participating in its management (emphasis added).

The "Letter to the Editor" criticizes "The Other Section 23" for urging that we go beyond the constitutional minimum in Manitoba, and try to ensure that *all* parents are able to send their children to school in the parents' choice of English or French. Quebec tried "free choice," say the authors, and the threat of assimilation led to Bill 22 in 1974. The analogy is badly askew. The "Letter to the Editor" perceives a threat to the linguistic *minority* in allowing those in the linguistic majority to attend minority language schools. The government of Quebec perceived a threat to the linguistic *majority* by allowing those in the linguistic majority to attend minority language schools. The government of Quebec restricted the ability of francophone parents to have their children attend English language schools. It did not hesitate to require more anglophones and immigrants to attend French-language schools. For the analogy to Bill 22 to make any sense, we would have to imagine this scenario: fearful for the position of the *English* language in Manitoba, the legislature passes a statute that prevents anglophone and immigrant children from attending French language schools. The statute would also contemplate forcing increased numbers of francophone children to attend English language schools. It seems likely that the authors of the "Letter to the Editor" would vehemently reject a Manitoba version of Bill 22.

The "Letter to the Editor" heads to its conclusion with another strange analogy. Anglophones in Quebec had the right to separate schools, the letter contends, "under the guise of a denominational school system." In other words, the letter implies the francophone minority in Manitoba should have the same rights as the Protestant minority have in Quebec. The analogy is flawed and unattractive in several ways. Not all Protestants were or are English-speaking, not all Roman Catholics were or are French-speaking. (The authors of "Letter to the Editor" seem to be unaware of the fact that Quebec has recently attempted to introduce into its system French and English Language school boards.) Then there were the Jewish children, who may have had their own "social and cultural fabric", but did not have the right to their own publicly funded separate schools. There is, however, an obvious parallel that the authors of the letter seem to overlook. Whatever interpretation is made of section 23(c) with respect to francophone minorities in other provinces will also apply to the anglophone minority in Quebec. How's that for equality?

The authors conclude by endorsing the Ontario Court of Appeal's statement that minority language facilities should be "regarded as part and parcel of the minority's social and cultural fabric."

Meaning exactly what? The authors of the letter are not very specific about their objectives. Can a francophone child (say a Swiss or Lebanese immigrant) be excluded from a "section 23" school because she does not fit into the "social and cultural fabric"? Can the child of anglophone parents who learned french at day-care and kindergarten be excluded because he does not "fit in" culturally and socially? I would hope the authors of the

letter would agree that no child should ever be the subject of this kind of discrimination.

Indeed, I would hope that on reviewing "The Other Section 23," the authors of the "Letter to the Editor" would find a great deal that they could agree with.

We would very likely agree that:

- s.23 parents have the constitutional right, where numbers warrant, to send their children to schools in which the linguistic environment is French;
- school administrators ought to be able to communicate with "s.23" parents in French; and
- the admission of anglophone children may be limited where their presence would produce, despite reasonable pedagogic and administrative policies, a serious impairment of the French-language educational environment.

Perhaps we would agree in theory that no child should ever be excluded from a school on "social or cultural" grounds. Even if we could not, the authors might well find in practice that it was never necessary and appropriate to do so.

We seem to disagree in theory on whether the constitution gives "s.23" parents the independent right to separate or partially separate political control of schools. In some practical cases, though, we might agree that all things considered, some special political board or body might be established (by ordinary legislation or administrative decision) for all parents of children in schools mostly attended by "s.23" parents.

Despite some of the specifics and the overall tone of the "Letter to the Editor," we might well agree so long as the linguistic environment of "schools for s.23" children are not disrupted, parents should have the maximum opportunity to have their children educated in the parents' choice of English or French.

Perhaps despite the authors' reference to "hégémonie," we might agree that greater bilingualism among all Manitobans would be intellectually and culturally rewarding to the individuals who attain it; and that it would promote in Canada tolerance for the language rights of others and the sentiment of shared nationhood.

Bryan Schwartz
Associate Professor of Law
University of Manitoba