



CANADA

Debates of the Senate

1st SESSION

• 39th PARLIAMENT

• VOLUME 143

• NUMBER 85

IMPACT OF CHARTER OF RIGHTS AND FREEDOMS ON THE RIGHTS OF CANADIANS AND PREROGATIVES OF PARLIAMENT

Inquiry—Debate Continued

Speech by:

The Honourable Claudette Tardif

Tuesday, April 17, 2007

THE SENATE

Tuesday, April 17, 2007

[Translation]

IMPACT OF CHARTER OF RIGHTS AND FREEDOMS ON THE RIGHTS OF CANADIANS AND PREROGATIVES OF PARLIAMENT

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Segal calling the attention of the Senate to the impact that the *Charter of Rights and Freedoms* has had these past 24 years on the rights of Canadians and the prerogatives of the Parliament of Canada.—(Honourable Senator Andreychuk)

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, it is my great pleasure to speak today to the inquiry of Senator Segal on the impact the Charter of Rights and Freedoms has had these past 25 years on the rights of Canadians.

[English]

As honourable senators know, April 17 marks the twenty-fifth anniversary of the Canadian Charter of Rights and Freedoms. It is an honour for me to take part and, I hope, to contribute to the ongoing debate on the Charter, and I do so with the utmost humility.

On this very important anniversary marking the inclusion of the Charter of Rights and Freedoms in our Constitution, it is quite appropriate that we, as senators, should take part and reflect on the impact that this very important document has had on rights in our country.

According to Patrick Monahan, the Dean of Osgoode Law School, the Charter has made Canada a better place. He is quoted in *The Ottawa Citizen* on April 15 — and I quote:

It's a fairer society . . . It's a society that treats individuals with greater concern and respect, and I think it's a society that provides for checks and balances on the exercise of political power.

[Translation]

In their speeches, the honourable senators who spoke before me eloquently described the general impact the Charter has had on individuals by protecting their freedom of expression, association and mobility, the rights of Aboriginal peoples and the right to equality before the law.

Their thoughtful and informed interventions enrich the debate and contribute to the conversation that began 25 years ago involving legislators, legal scholars, researchers and civil society. It is also clear, by the number of documents, articles, texts, speeches and seminars that have been organized to commemorate this event that entrenching the Charter in the Canadian Constitution has significance to many people.

In my view, this shows the real and tangible impact the Charter has had on the lives of many Canadians and on certain communities.

[English]

This Sunday, on April 15, the *Ottawa Citizen* published an interesting in-depth article about Charter cases that have defined our rights over the last 25 years on matters of freedom of religion, liberty of the person, freedom of expression, equality rights and numerous others. While this article proved very interesting, it struck me that it failed to mention anywhere the indelible impact on official language minority communities' education rights of article 23 of the Charter and subsequent Supreme Court rulings.

[Translation]

This surprising omission confirmed to me that there is still room for constructive debate to underscore certain lesser known aspects of the Charter such as the impact on official language minority communities. As many of you already know, the Charter of Rights and Freedoms had a significant, tangible and very real impact on francophone minority communities.

In my view, the Charter of Rights and Freedoms, section 23 in particular, was a defining moment in the evolution of linguistic rights.

[English]

In a recent article, Graham Fraser, the Commissioner of Official Languages stated:

the Charter of Rights and Freedoms consolidated equality and language rights. . . . Language rights were central to the Charter.

As Daniel Bourgeois explained recently in his book, *Canadian Bilingual Districts*, “the Charter contains eight sections pertaining to language rights,” from recognition of English and French as the official languages of Canada and New Brunswick, to the right of instruction in the language of the minority.

However, of the Charter's eight sections pertaining to language rights, academics, community representatives, politicians and citizens alike concur that section 23, which recognized that "the English or French linguistic minority communities of a province have a right to primary and secondary instruction in their language and to the management of their school systems, where numbers warrant" proved to be a watershed moment in the evolution of linguistic rights.

[Translation]

According to Michael Behiels:

The inclusion of educational rights in the Canadian Charter of Rights and Freedoms in 1982 drastically changed French-language education.

In the words of Gino Leblanc, former president of the Fédération des communautés francophones et acadienne, section 23 of the Charter was "a revolution in the field of education". Even in its 1990 judgment on the *Mahé* case, the Supreme Court of Canada ruled that article 23:

represents a linchpin in this nation's commitment to the values of bilingualism and biculturalism.

This did not all happen overnight, and it did not prove to be easy.

As Dyane Adam, the former commissioner of official languages, stated in her 2004 annual report, even though the Charter recognized the rights of minority parents, according to her, and I quote:

— it would take the Francophone minority another 10 years of court battles to win the right for parents to govern their schools.

In a number of provinces, particularly in Alberta, the Charter brought about the first publicly funded French-language schools.

In my community in Alberta, it was not until 1984, two years after the Charter was entrenched, that the first publicly funded French-language schools opened their doors: Maurice Lavallée school in Edmonton, and Marguerite Bourgeois school in Calgary.

Before the Charter, there were no publicly funded French-language schools in Alberta. It was only after 1982 that it was possible to think about creating publicly funded French-language schools.

I sat on the first parents' committee that fought for publicly funded French-language school in Edmonton. We had to hold many meetings, draft petitions, make submissions to the school boards, and change the mindset and culture of organizations with respect to the educational rights of Francophones.

In addition to the authorities and anglophone parents, francophone parents who were satisfied with the existing situation quite often had to be convinced.

As the former Official Languages Commissioner stated so eloquently in her 2004 annual report:

In the beginning, neither the majority community nor the francophone community were fully behind the project.

This was due to the fact that, before 1982, the demands of French-speaking Albertans were not legitimate in the eyes of a majority of Albertans.

Schools for francophones? It was a whim and thus unnecessary. There was no infrastructure; it would have to be built from the ground up.

The Charter gave legitimacy to parents' demands presented to the provincial government, school boards and local authorities. French-language schools were no longer a whim; they were recognized by the country's fundamental, constitutional law.

As you know, in Alberta's case, a group of parents had to go to court to assert the rights recognized by the Charter.

As a mother, I would have liked my daughter to be educated entirely in a French-language school. It was not until 1990, when she was in grade 12, that my daughter was finally able to be educated in such a school for the first time.

It was also in that year that the Supreme Court of Canada recognized, with the *Mahé* decision, the right of French-language minority communities to establish and manage their own schools.

It was not until 1994, 12 years after the Charter came into force, that the Alberta government established French school boards. And yet, in 1982, Alberta had signed the new Constitution and accepted the Charter.

The province accepted, on paper, the principle of minority language education, but in practice, things took much longer. Many of you might have similar stories to tell about the establishment of French-language schools in your own province, be it Manitoba, Nova Scotia, Prince Edward Island or even Ontario. Despite the fact that the Charter recognized our right to be educated in our own language, many of us had to go to court, at great cost, to make our provincial governments understand that we had rights. How many parents, teachers, school principals and community associations have had to work hard to convince local authorities, school boards and provincial governments that they have constitutional rights guaranteed under the Charter? The Charter changed everything.

Before the Charter, there were no publicly funded French-only schools in Alberta. Today, there are more than 30 francophone schools in Alberta, five school boards and almost 5,000 students.

Francophone schools have helped slow assimilation and stimulate the vitality of our francophone communities.

I also believe that the Charter has promoted dialogue among federal and provincial legislators, the courts, civil society and governments.

As the Commissioner of Official Languages said in a recent article:

[*English*]

. . . language rights have developed and advanced in Canada over the last quarter century through an elaborate three-way discussion between the Canadian Parliament, the provinces and the Canadian courts.

[*Translation*]

Without the Charter, that discussion would not have taken place.

[*English*]

If, as Lord Sankey opined in the famous *Persons Case*, the Canadian Constitution should be seen as “a living tree capable of growth and expansion within its natural limits,” then the Charter and the language rights it recognized and helped develop will continue to grow and evolve over time. The “conversation,” as Graham Fraser calls it, between Parliamentarians, provincial governments, the courts, the federal government and official language minority communities will continue to evolve and shape our future.

[*Translation*]

We should also remember something very important that Roger Tassé pointed out in a recent article:

The Charter is a framework, an instrument, a method that enables us to protect our basic rights from abuses of power and the excess of government authority in response to the changes that are transforming and will continue to transform our society and our world.

The Charter protects minorities from the potential tyranny of the majority.

Before the Charter, as André Braën pointed out:

A few language-related issues ended up in the courts at the end of the 19th and the beginning of the 20th centuries.

Does anyone remember the Manitoba Schools Act? What about New Brunswick’s Common Schools Act? What about the Alberta Schools Act and Regulation 17 in Ontario?

The Charter made such legislation impossible or invalid, because it was no longer possible for provincial governments to prevent the teaching of the French language or the creation of French-language schools, as they had done with that previous repressive legislation.

As our former colleague, professor Gérald Beaudoin, pointed out, the path of language rights in Canada has been very long, and the Charter marked a turning point in the evolution of linguistic rights in Canada.

[*English*]

Honourable senators, while the political, philosophical and academic debates surrounding the impact of the Charter on this quarter-century anniversary continue, we must never forget that the Charter is not simply an abstract document of law with remote implications on our daily lives. It has proven to be one of the most important political and legal documents in our recent history, with a real and tangible effect on the daily lives of Canada’s official language minority communities. As my own story and that of many others in official language minority communities demonstrate, the Charter has not only had an abstract, high-level impact on our political institutions and political thought, it has also changed, very tangibly, the lives of many Canadians.
