

While it is true that no provision is made for a clergyman or the representative of a clergyman of any other denomination giving religious instruction to any of the pupils of his faith, and that, therefore, the resolutions, as they stand at present, give the right to the representatives of the Roman Catholic Church only, there is nothing to prevent applications by the clergy of other denominations being made for the privilege, and under regulation 100 it would be the duty of the Board of Trustees, in such case, to "decide on what day of the week the school-house shall be at the disposal of the clergymen of each denomination after school-hours; and, if application is made, the Board will be compellable to pass the necessary enabling resolution and to amend the present resolutions accordingly.

Mr. Proctor also urged that a teacher in the school could not also be a representative of the clergy of any denomination for the purpose of giving religious instruction after the closing. So long as there is nothing in the Public Schools Act or in the regulations prohibiting a teacher from giving religious instruction after school-hours, when authorised by the clergy of any denomination to which he belongs, I think he is entitled to do so when so authorised. I cannot see on what principle he may not do so. *Prima facie* no one would be more suitable for that duty than the teacher, assuming that he possesses the necessary religious fitness, which ought to be presumed where he is expressly requested by the clergyman of the parish to perform that duty.

In the result, therefore, the action must be dismissed, but without prejudice to any proceedings which may be taken to compel an amendment of the resolutions and the adoption of other enabling resolutions, upon application of the clergy of any other denomination, for the privilege of giving religious instruction to the pupils of their faith after school-hours.

In the circumstances, there will be no costs to either party.

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DIVISIONAL COURT.

FEBRUARY 3RD, 1911.

BREEN v. CITY OF TORONTO.

*Highway—Obstruction or Nonrepair—Injury to Pedestrian—Negligence of Municipal Corporation—Boulevard Forming Part of City Street—By-law Prohibiting Use of as Crossing—Foot-path across Boulevard—User by Public—Obstruction—Dangerous Condition—Absence of Warning—Liability.*