

is unconstitutional. I think there are some distinguished constitutional lawyers, notably Professor Scott, who have said certain features of it are unconstitutional. On the whole I am rather doubtful about the opinions that have been expressed on some of these things. I have a good deal of sympathy with their views, but on the whole I am rather doubtful about them.

In my opinion, the question of the constitutional validity of this act or any part of it should be tested in the courts by the aggrieved minority, and any other remedy should be invoked only after that has been done. I don't think it would be a good idea for the government to take a reference case on the thing, because that would be merely an advisory opinion and the provincial government could say, "It's just an advisory opinion. If an actual piece of litigation, if that is the proper word, came before the court, it might be convinced by the facts and the evidence before it, and the argument, that the advisory opinion had been too hastily formed and was not its final opinion on the subject."

This is, of course, rather unlikely. It seems to me that the English-speaking minority in Quebec is perfectly capable, financially and otherwise, of testing any feature of this bill in the courts. There are poor English-speaking people in the province of Quebec, but there are an awful lot of English-speaking people in the province of Quebec who are by no means destitute or even moderately poor. A lot of them are very well off and could perfectly well afford to take a case on this matter to the courts if they see fit. It seems to me that if they are seriously aggrieved and feel they are seriously—I think the French legal term is *lésés*—this is the thing for them to do. They should not expect somebody else to do it for them.

The objection to that, saying "Leave the whole question of constitutionality to the courts, and don't do anything else until that has been done," is that this might take a very long time, and by the time the final decision came down it might be too late to invoke some of the other remedies which, theoretically at least, are available to the English-speaking minority.

I don't think that is a very serious matter in fact, because the only extraordinary remedy which would be theoretically available, available only for a very limited time, is the Dominion government's power of disallowance, and I think I may say with some confidence that it is highly unlikely, to say the least, that that particular power would be invoked in this particular case.

As far as the education provisions are concerned, if the aggrieved minority is not happy about those, even if the decision of the courts goes against it, it can always avail itself of paragraph 3 of section 93; which says:

Where in any Province a System of separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority—

Any act or decision of any provincial authority.

—affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education.

There is no time limit upon that, and it applies, as honourable senators can see from what I have just quoted, not merely to the legislation itself but also to any regulations, directives, decisions, or whatnot, by any administrative authority under the legislation.

That brings me to one other consideration about this bill. One of the most objectionable features of it, I think by common consent of the Parti Québécois on the one hand and the English-speaking minority on the other, is the enormous scope left to administrative discretion.

I went through the bill in its final form and counted 17 different places—and they were on matters of substantial importance—where it says, "The minister shall make regulations," or "the Régie shall make regulations", or some administrative authority shall decide. Power is placed in the hands of public servants, officials, functionaries, and this was strongly objected to during the proceedings on the bill in the Legislative Assembly of Quebec both by the Parti Québécois and by the English-speaking people who came before the committee, and I think by the two English-speaking Liberals who broke party ranks on the thing.

Of course, some administrative discretion is inescapable, but I think both the Parti Québécois and the English-speaking opponents of the bill are right in arguing that the degree of administrative discretion, indeed the kind of administrative discretion, provided for in this act is dangerously wide.

I think that explains to some extent the very widespread alarm in the English-speaking community about the ultimate effects of this legislation.

Rightly or wrongly many people in that community believe that the real effect of this legislation will come from the decisions made by administrative bodies, administrative officials—not merely ministers but civil servants—and rightly or wrongly they suspect that a great many of those civil servants, and especially in the Department of Education, are in what I might perhaps be permitted to call imperfect sympathy with the point of view of the English-speaking community, imperfect sympathy with the rights of the English-speaking community, as the English-speaking community at least sees them.

● (2130)

I am coming very near the end of what I wanted to say. There are certain features of the act which appear to be merely vexatious and oppressive; for instance, the provisions which require that the public administration, which specifically includes universities—an extraordinary provision that, universities as part of the public administration—that the public administration shall have, as its language of internal communication, French. There is provision that in the case of English-speaking universities they could also have an English version, but it seems quite clear that McGill, for example, would have to have all its internal communications in French. Doubtless, there would be an English version, too, but there would have to be a French version, and in case of conflict between the two, the French version would prevail. I cannot see—and this is certainly the opinion of Professor Scott and his colleagues, and appears to be well founded—I cannot see that that can do the French Canadian or the French language any good at all. It seems to me it will merely be