

CANADA / JUDGMENT

Houde v. Quebec Catholic School Commn.

[1978] 1 SCR 937

COURT

Supreme Court of Canada

DECIDED

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Houde v. Quebec Catholic School Commn. Collection Supreme Court Judgments Date 1977-10-17 Report

[1978] 1 SCR 937 Judges Laskin, Bora; Martland, Ronald; Judson, Wilfred; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean; de Grandpré, Louis-Philippe On appeal from Quebec Subjects Education law Statutes Decision Content Supreme Court of Canada Houde v. Quebec Catholic School Commn., [1978] 1 S.C.R. 937 Date: 1977-10-17 Jean-Paul Houde (Plaintiff) Appellant; and The Quebec Catholic School Commission (Defendant) Respondent; and The Chairman of the School Commissioners of the Quebec Catholic School Commission and The Secretary General of the Catholic School Commission Mis en cause. 1977: February 3; 1977: October 17. Present: Laskin C.J. and Martland, Judson, Ritchie, Spence, Pigeon, Dickson, Beetz and de Grandpré JJ. ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC School law—Secret ballot—Power of school commissions to regulate their procedure—Meetings must be public—Education Act, R.S.Q. 1964, c. 235, ss. 197, 201, 203, 339 and Form 10. Statutes—Interpretation—Forms annexed to the Act—Effect—Education Act, R.S.Q. 1964, c. 235, s. 5—Interpretation Act, R.S.Q. 1964, c. 1, s. 48. Appellant is a member of the Quebec Catholic School Commission (respondent). He is attacking: (1) a resolution adopted by the latter on July 5, 1972, calling for a secret ballot for the election of the same date; (2) the articles of a by-law passed on February 27, 1973, permitting any member of the School Commission to ask for a secret ballot. Appellant contends that the Education Act does not allow voting by secret ballot and that it is contrary to public policy. The Quebec Superior Court and Court of Appeal dismissed his claim, hence the appeal to this Court. Held (Spence, Pigeon, Beetz and de Grandpré JJ. dissenting): The appeal should be dismissed. Per Laskin C.J. and Martland, Judson, Ritchie and Dickson JJ.: It might be well to emphasize two points. First, in the absence of statutory obligation or fraud, the internal regulation of the affairs of municipal councils and school commissions are for them alone. Second, when the mode of voting is not prescribed by statute, any reasonable mode not expressly or impliedly forbidden by law may be adopted. Appellant contends that Form 10 of the Education Act prohibits secret balloting by implication. Such an argument gives undue and unwarranted weight to Form 10. As the name suggests, it is a form and nothing more. Form must not be

confused with substance. A schedule or appendix is part of the statute, but whether it forms part of the text itself depends upon the terms of the Act. Since s. 5 of the Education Act and s. 48 of the Interpretation Act allow deviations and other forms to the like effect to be used, the effect of Form 10 is not to direct what should occur, or should not occur, at a meeting or to limit the freedom of action of a school commission in deciding the manner in which decisions are to be reached. Had the legislature wanted to curtail the discretion which school commissions always have to control their internal procedure, it would have used clear language, and not a cryptic insertion in a form specifically declared to be non-mandatory. The requirement in s. 197 of the Education Act that the commissions' meetings be public is not incompatible with secret balloting. There is no authority which holds that a public body, whose meetings and deliberations are in public, is precluded from voting by secret ballot. Such a limitation would run directly counter to the broad discretion all public bodies have, absent statutory discretion otherwise, to regulate their internal procedures. Per Spence, Pigeon, Beetz and de Grandpré JJ., dissenting;.

Considering the context and the manner in which the forms annexed to the Education Act, including Form 10, were enacted, it is impossible to see why the provisions included in the forms should not be regarded as binding enactments on the same basis as the sections. There is no rule of interpretation according to which an appendix of an Act would be less binding than the Act itself. There is no reason to make a distinction here on the pretext that the Education Act merely provides that the forms shall form part thereof, not that they shall have the same effect as if they had been expressly enacted thereby. There is no ritual formula to express the will of the legislature. When it is provided that the forms shall be part of the Act, everything necessary has been said to express the intent that they have the force of the law. Without denying that in principle the school commissions have the power to regulate the procedure at meetings of commissioners, it must be remembered that this power is limited by the obligation to obey all provisions of the Act. The Education Act requires that meetings of the commissioners be public, and voting by secret ballot means that the details of the votes are withheld from the publicity required under the Act. This is contrary to the obligation to meet in public. There is, however, no reason to declare the resolution of July 5, 1972 void since the validity of the election relating to it was not in question. Furthermore, there appears to be a distinction to be made between an election and the adoption of an administrative resolution or by-law. [Re Howard and the City of Toronto, [1928] 1 D.L.R. 952; Canadian Northern Pacific Railway v. New Westminster Corporation, [1917] A.C. 602; Attorney General v. Lamplough (1878), 3 Ex. D. 214, referred to] APPEAL from a decision of the Court of Appeal of Quebec[1] affirming a judgment of the Superior Court. Appeal dismissed, Spence, Pigeon, Beetz and de Grandpré JJ. dissenting. Roger Pothier, for the appellant. Roger Thibault, Q.C., and Guy Des Rivières, Q.C., for the respondent. The judgment of Laskin C.J. and Martland, Judson, Ritchie and Dickson JJ. was delivered by DICKSON J.— I The appellant is a member of the Quebec Catholic School Commission and the respondent is the School Commission. The appellant's complaint arises out of the election in July, 1972 of the president, vice-president and members of the executive committee of the School Commission. The

election was conducted by secret ballot and therein lies the genesis of the dispute. The number of votes, but not the names of those voting, was disclosed in the minutes. This was pursuant to resolution CC-2-72-73 of the same date, calling for a secret ballot. On February 27, 1973 the respondent Commission passed Rule 5, of which Articles 19, 32 and 35 permitted any member to ask for a secret ballot. The appellant is attacking resolution CC-2-72-73 and Articles 19, 32 and 35 of Rule 5. He seeks annulment of the resolution and the impugned articles, and a permanent injunction forbidding voting by secret ballot in certain of the respondent's elections. His attack failed in the Quebec Superior Court and in the Quebec Court of Appeal and now, by leave, he appeals to this Court. I am in agreement with the Quebec Courts and would dismiss the appeal. The appellant rests his case on two grounds, statutory construction and public policy. Before considering these grounds it might be well to emphasize two points. First, public bodies, such as municipal councils and school commissions have broad discretion in the regulation of their procedures. It is not for the courts to dictate the manner in which such bodies shall manage their internal affairs. If a council or a commission fails to observe the formalities which the Legislature has prescribed in plain language for the calling and conduct of meetings, then the Court may, in a proper case, intervene; if questions of natural justice, or fraudulent, inequitable, or oppressive use of power arise, the courts may act; but in the absence of statutory obligation, or misconduct, the internal regulation of their affairs by municipal bodies is a matter for such bodies and for them alone: see *Re Howard and the City of Toronto*[2], at p. 965. Second, when the mode of voting is not prescribed by statute, any reasonable mode not expressly forbidden by law may be adopted: *McQuillin, Municipal Corporations* (1968 Rev. Vol.) Vol. 4, at p. 555; *Rogers, The Law of Canadian Municipal Corporations* (2d Ed.), at p. 250. Where the statute expressly prohibits a vote by secret ballot, as in s. 197(2) of *The Ontario Municipal Act*, R.S.O. 1970, c. 284, a vote taken in this manner will be a nullity, but in the absence of prohibition, express or by necessary implication, the vote will be valid. II The appellant contends that the *Education Act*, R.S.Q. 1964, c. 235, supports his challenge to the resolution and by-law of the School Commission. If it does so, it must be by implication, for there is no express prohibition of secret balloting contained in the Act. Support for an implied prohibition is to be found, it is contended, in Form 10 of the Act. Before turning to Form 10, I should state that s. 339 of the *Education Act* provides for the secretary-treasurer attending all meetings of his school board and, in accordance with s. 201, drawing up minutes of all acts and proceedings thereof, in the book kept for that purpose. Section 201 states that the minutes of each meeting shall be entered in the register of proceedings of the school board known as the "Minutes of Proceedings," and that after having been read and approved at the beginning of the following meeting, they shall be signed by the chairman and countersigned by the secretary-treasurer. The section concludes with "(Form 10)", in the French version "(Voir formule 10)". Section 203(12) imposes a duty on school boards to keep a register in which shall be entered the minutes of their meetings, which shall be signed by the chairman and by the secretary-treasurer, in accordance with the provisions of s. 201. This provision also ends with "(Form 10)," in the French version "(Voir formule 10)". Form 10, upon which the appellant strongly relies,

reads: 10.—(Sections 201, 201) Minutes of Proceedings of School Commissioners or Trustees Province of Quebec,) School Municipality of) At a meeting of the school commissioners (or trustees) of the municipality of , in the county of , held at (mention the place) in this municipality, on the day of the month of , 19 , at the hour of in the noon, at which meeting were present: Messrs. (insert the names of all the members present), all school commissioners (or trustees). The chairman (or acting chairman, in the absence of the chairman) in the chair. The secretary-treasurer being also present. Mr. (his name) moved that (write out the motion). Carried unanimously (or on the following division, or lost on the following division, as the case may be). (If there be a division, the votes shall be taken by the chairman as follows:—) Yeas:—Messrs.) (Insert names.) Nays:—Messrs.) (If the votes be equal, the chairman shall vote, and then he shall declare the motion carried or not, as the case may be.) (If there be an amendment, say:) Mr. moved in amendment that (State the amendment.) For the amendment:—Messrs.) Against the amendment:—Messrs.) (Insert the names.) (Signature of the Chairman.) (Signature of the Secretary-Treasurer.) The argument is that because the form says: “(If there be a division the votes shall be taken by the chairman as follows:—) Yeas:—Messrs.) (Insert names.)” Nays:—Messrs.) school boards are precluded from taking a secret ballot of members. I do not agree. Such an argument, it would seem to me, gives undue and unwarranted weight to Form 10. Form 10, as the name suggests, is a form and nothing more. It is intended as a guide to the secretary-treasurer if he wishes to follow it in preparing the minutes. Nothing obliges him to follow it. Although Brett L.J. in *Attorney General v. Lamplough*[3], at p. 229, is reported as saying that a schedule in an Act of Parliament is as much a part of the statute and as much an enactment as any other part, this overstates the rule. The true rule is stated in Driedger, *The Construction of Statutes*, at p. 117: “A Schedule or appendix is part of the statute, but whether it forms part of the text of the law depends upon the terms of the Act.” I can find nothing in the text of the Act which would have the effect of bringing the form into the text of the law so as to impose a mandatory prohibition, breach of which results in nullity. To the contrary are s. 5 of the Education Act:

5. The forms inserted in this act shall form part thereof, and be sufficient for all cases for which they are intended. Any other form to the like effect may also be employed. R.S. 1941, c. 59, s. 5. and s. 48 of the Interpretation Act, R.S.Q. 1964, c. 1, which reads:
48. The strict use of the forms enacted by statutes to ensure the execution of their provisions shall not be required on pain of nullity, if the deviations therefrom do not affect the meaning. R.S. 1941, c. 1, s. 48. Did the Legislature intend to limit the right of school commissioners to vote by secret ballot? That is the crucial query. The language of the foregoing two sections, it seems to me, serves to negate any such intention. How can forms, such as Form 10, be regarded as embodying the text of the law when deviations therefrom are permitted and other forms to like effect may be employed with impunity? To allow forms “to the like effect” (s. 5 of the Education Act) to be used is not to require meetings to conform to what is embodied in Form 10. The purpose and effect of Form 10 is to provide a precedent indicating the information to be recorded in minuting what occurred at the meeting. Its

effect is not to direct what should occur, or should not occur, at a meeting. Any form which has a “like effect,” in setting out what transpired, is permitted. The form does not limit the freedom of action of a school commission in deciding the manner in which decisions are to be reached. The appellant’s argument assumes that the Legislature wanted to curtail the discretion which bodies such as the school commission always have to control their internal procedures. He assumes that the Legislature wanted to turn a search light on the independent exercise of judgment by the electing commissioners. One would have thought that if this were the case, the Legislature would have used clear, precise and positive language, and not a cryptic insertion in a form specifically declared to be non-mandatory. Form must not be confused with substance. In suggesting the use of Form 10 the Legislature, in my view, has neither expressly nor impliedly regulated the manner of voting.

III The other branch of appellant’s argument rests on public policy. Section 197 of the Education Act provides that meetings of school boards shall be public, subject to the right of the board to refer to a committee, whose meetings shall be private, any complaints of a personal nature. Appellant’s argument is that the electing commissioners are themselves elected officials and thus accountable; this accountability manifests itself by the public forum in which the commissioners act; and members of the public have a right to know how each commissioner exercises the voting power entrusted to him. Secret balloting, it is contended, defeats the purpose sought to be achieved by the requirement that meetings be open to the public. I do not think this follows. Public meetings and secret balloting are not incompatible. No authority has been cited which holds that a public body, whose meetings and deliberations are in public, is precluded as a matter of broad policy from voting by secret ballot. Such a proposition runs directly counter to the broad discretion all public bodies have, absent statutory direction otherwise, to regulate their internal procedures. It may be argued that our political process should be such as to require all votes to be open. On the other hand, at least a majority of The Quebec Catholic School Commission held the view that the public interest was not advanced by requiring each commissioner to disclose for whom he voted in the election of the president, vice-president and executive of the Commission. We have neither the duty, nor the right, to choose between these competing views. It is not the task of the Court to direct a procedure other than that chosen by elected officials, except as prescribed by statute, or in the exceptional circumstances which I mentioned. I would dismiss the appeal with costs. The judgment of Spence, Pigeon, Beetz and de Grandpré JJ. was delivered by PIGEON J. (dissenting)—This appeal is against a decision of the Court of Appeal of Quebec, affirming the judgment of the Superior Court dismissing plaintiffs action. By this action appellant claimed, in brief, that the following be declared void:

1. Respondent’s resolution adopted on July 5, 1972, reading: [TRANSLATION] That the Chairman, vice-chairman and members of the executive committee be elected by secret ballot.

2. All sections of respondent's by-law No. 5 dealing with voting by secret ballot, specially s. 35, reading: [TRANSLATION] 35. Before a vote by another method is begun, any official member of the meeting may request a secret ballot. Appellant relies on the first paragraph of s. 197 and on Form 10 of the Education Act (R.S.Q. 1964, c. 235). These provisions read as follows:
197. Meetings of school boards shall be public; but the board may refer to a committee, whose meetings shall be private, any complaints made against teachers or pupils, applications for employment by teachers or any other subject of a personal nature. (Form) 10.—(Sections 201, 203) Minutes of Proceedings of School Commissioners or Trustees Province of Quebec,) School Municipality of) At a meeting of the school commissioners (or trustees) of the municipality of , in the county of , held at (mention the place) in this municipality, on the day of the month of , 19 , at the hour of in the noon, at which meeting were present: Messrs. (insert the names of all the members present), all school commissioners (or trustees). The chairman (or acting chairman, in the absence of the chairman) in the chair. The secretary-treasurer being also present. Mr. (his name) moved that (write out the motion). Carried unanimously (or on the following division, or lost on the following division, as the case may be). (If there be a division, the votes shall be taken by the chairman as follows:—) Yeas:—Messrs.) (Insert names.) Nays:—Messrs.) (If the votes be equal, the chairman shall vote, and then he shall declare the motion carried or not, as the case may be.) (If there be an amendment, say:) Mr. moved in amendment that (State the amendment.) For the amendment:—Messrs.) (Insert the names.) Against the amendment:—Messrs.) (Signature of the Chairman.) (Signature of the Secretary- Treasurer.) Form 10 has a long history. It was enacted substantially in its present form as form No. 8 of the 1876 Act, 40 Vict. c. 22, together with eighteen other forms most of which, like the form cited above, contain provisions in italics and in parentheses. Concerning these forms the 1876 Act simply provides:
53. The Schedules inserted in this Act form part thereof and are sufficient for all cases for which they are proposed; any other form to the like effect may be equally employed. This provision will be found virtually unchanged in s. 5 of the Education Act:
5. The forms inserted in this act shall form part thereof, and be sufficient for all cases for which they are intended. Any other form to the like effect may also be employed. Considering the context and the manner in which the forms annexed to this Act were enacted, I fail to see why the provision included in the forms should not be regarded as binding enactments on the same basis as the sections of the Act. I know of no rule of interpretation according to which an appendix of an Act, the heading under which the forms were collected when originally enacted, would be, on that account, less binding than the Act itself. It all depends on the character which the legislature gave to this appendix. If it was an agreement and was merely declared valid, it might be that there was no intention to change its character. However, if it had been enacted that the provisions of the agreement would have the same effect as if they had been included in the Act and formed an integral part thereof, they would be regarded as having acquired the character of legislative provisions, as the Privy Council held in *Canadian Northern Pacific Railway v. New Westminster*

Corporation[4]. Respondent argued that the Education Act merely provides that the forms shall form part thereof, not that they shall have the same effect as if they had been expressly enacted thereby. I cannot agree with such a distinction. There is no ritual formula to express the will of the legislature. It cannot be said that an enactment is of more limited effect than another because it is not expressed in all the words that another draftsman may have used. See the recent decision of this Court in *General Motors of Canada v. Brunet*[5]. The sole question at issue is that of the legislative intent. If a schedule is an agreement, this is a good reason for believing that the legislature merely intended to validate it without altering its character. To hold that it is to be regarded as an enactment, this must have been said. The same is not true in the case of forms, especially forms embodying specific directions. When it is provided that they shall form part of the Act, everything necessary has been said to express the intent that they have the force of law. See what was said by Brett L.J. in *Attorney General v. Lamplough*[6], at p. 229. ...a schedule in an Act of Parliament is a mere question of drafting—a mere question of words. The schedule is as much a part of the statute, and is as much an enactment as any other part. One must therefore consider what form No. 10 provides when it states: “If there be a division, the votes shall be taken by the chairman as follows: Yeas: Messrs. Nays: Messrs. (Insert names.)”. The imperative character of the enactment is clear: it states in English: “the votes shall be taken by the chairman as follows:”. It may be noted that when this form was enacted, the Education Act was not detailed and did not contain the elaborate provisions concerning the duties of commissioners and secretary-treasurers, which were later enacted. These new provisions were, however, related to the form and the words “Form 10” were added at the end of s. 201 and of para. 12 of s. 203, which clearly indicates the legislator’s intent that it complements these provisions. Let us now consider the extent to which the Act allows deviations from the prescribed forms. Here again the statute is specific: “Any other form to the like effect may also be employed”. The substance of what is prescribed by the forms must therefore be retained. In this regard, I would add that there still are in the form of Teacher’s Engagement (Form 18 corresponding to Form 19 of 1876, amended on several occasions) many provisions concerning the duties of teachers in public schools. I do not deny that in principle the school commissions have the power to regulate the procedure at meetings of commissioners. However, this power is limited by the obligation to obey all provisions of the Act. For instance, s. 197, the first paragraph of which was enacted by the 1899 Act, 62 Vict., c. 28, s. 209, requires that meetings of the commissioners be public; only certain matters may be referred to a committee whose meetings shall be private. Voting by secret ballot means that the details of the votes are withheld from the publicity required under the Act. An essential feature of the decision is concealed from the taxpayers attending the meeting, namely, the way each commissioner present has voted. It seems quite reasonable to me to draw this conclusion from the commission’s obligation to meet in public. Members of Parliament do not vote by secret ballot. Judges of our courts sitting in banc do not take refuge in anonymity, even if their deliberations, like those of a jury, are secret. When the decision is rendered, the individual opinions are declared, and when there is a jury verdict, the litigants are entitled to require that each of the jurors be called upon to declare his conclusion

individually. In my opinion the provisions of by-law No. 5, which provide for a secret ballot at meetings of commissioners, are in conflict with the provisions of s. 197 and those of Form 10. In my view, it does not matter whether s. 35 of the by-law means that each member is entitled to demand a secret ballot, or that he may merely propose it, so that it will only take place if the request that it be held is approved by the majority. In any case the secret ballot means that an essential part of the procedure of the meeting is withheld from the publicity required by the Act, and that it is made impossible to record in the minutes what the Act requires, that is, the names of those who voted for or against each motion. One should bear in mind that under s. 348 of the Education Act the minutes, like all other documents in the custody of the secretary-treasurer, are open to examination by any interested party. In the case of the resolution of July 5, 1972, the situation appears to me to be different. First, the decision was taken solely for the purpose of the election which was to be held at the meeting. The validity of this election was not contested and it was not made clear what purpose would be served if the resolution relating to the ballot were declared null and void, when the validity of the election was not in question. Furthermore, I incline to believe that a distinction must be made between the election of a chairman, vice-chairman and members of the executive committee and the adoption of an administrative resolution or a by-law. Accordingly, I do not think that the claim for a declaration that the resolution is void should be allowed. For these reasons I conclude that the appeal should be allowed, the decision of the Court of Appeal and the judgment of the Superior Court should be reversed and plaintiffs action should be maintained, with costs in all courts against respondent, and the provisions of respondent's by-law No. 5 dealing with voting by secret ballot, that is, the words "or by secret ballot" in ss. 19 and 32, and s. 35 in its entirety, be declared void. Appeal dismissed with costs SPENCE, PIGEON, BEETZ and DE GRANDPRÉ JJ. dissenting. Solicitors for the appellant: Tremblay, Pinsonnault, Pothier & Morisset Quebec. Solicitors for the respondent: Des Rivières, Paquet, Vermette, Bérubé & Thivierge, Quebec.

[1] [1974] C.A. 423.

[2] [1928] 1 D.L.R. 952 (Ont. C.A.).

[3] (1878), 3 Ex. D. 214.

[4] [1917] A.C. 602.

[5] [1977] 2 S.C.R. 537.

[6] (1878), 3 Ex. D. 214.

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