

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-17-030119-062
500-17-030120-060

DATE: June 14, 2006

IN THE PRESENCE OF: THE HONOURABLE RICHARD WAGNER, J.S.C.

RICHARD HADDAD
Plaintiff

v.

LESTER B. PEARSON SCHOOL BOARD
Defendant

ARLENE JAGGERS
CARLA BOLSIUS
ROBERT SAVARD
BRUNO SPATOLISANO
SUHINDER MANCHANDA
Plaintiffs

v.

LESTER B. PEARSON SCHOOL BOARD
Defendant

CORRECTED JUDGMENT

CONSIDERING THAT the judgment rendered on June 7, 2006, contains a clerical error at paragraph 4 and at paragraph 15.

CONSIDERING THAT it is a clerical error governed by article 475 C.p.c.

THEREFORE, THE COURT correct the territory mentioned at paragraph 4 and correct the dates at paragraph 15.

[1] Plaintiffs are the parents of pupils attending schools managed by the Lester B. Pearson School Board (the "Board"). They seek an interlocutory injunction ordering the Board not to close the Valois Park School and Allancroft School. They ask the Court to declare null and void the resolutions of January 12 and 30, 2006 and declare the consultation process followed by the Board flawed justifying the quashing of the Board's decisions.

[2] The Board contests the Motions. It invokes its administrative discretion and argues that the consultation process was followed according to law and that the decisions to close or merge some schools were arrived at in good faith.

FACTUAL CONTEXT

[3] The Board is the English linguistic board duly established by the provincial legislator. Its jurisdiction is composed of part of six previous confessional School Boards, the Protestant School Board of Greater Montreal ("PSBGM"), Lakeshore, Sault Saint-Louis, Trois-Lacs, Verdun Catholic and Baldwin Cartier.

[4] The Board provides language education services and has jurisdiction over the territory bounded by Verdun in the east to Hudson and the Ontario border in the west. In 2005 and 2006, it provided education to approximately 27,600 students in five sectors and 48 geographic attendance zones.

[5] The enrolment at all the schools has been dwindling steadily for the past few years.

[6] At the same time, there are increasing operational and capital costs which must be met by the Board to maintain adequate staff and programs while providing quality services and a safe environment.

[7] As explained in the various affidavits filed by the Board and the parents, the Council of Commissioners decided to tackle the problem by reducing the number of pupil places and by closing certain buildings and merging certain schools in specific buildings.

[8] Section 40, 79 and 193 of the Education Act provides that the Governing Board of Public School must follow a consultation process when decisions are made to close schools or otherwise change the structure of the Board's territory.

[9] Both parties agree that in the present case, there are no guidelines or prerequisites governing the consultation process. Each Board has the responsibility and latitude to put in place a process, which will achieve its goals while respecting the law. The evidence shows that the Board decided to establish a consultation process on a non

directive and open way which calls upon any parties who could be affected by the changes to make representations if need be.

[10] In the cases under study, it is established that the Valois Park Elementary School will be merged with the Northview Elementary School and a new merged school will be located in the Northview building.

[11] It was also decided that the Allancroft Elementary School will be merged with the Windermere Elementary School and the new merged school will be located at the Windermere building.

[12] Hence, the Council of Commissioners decided to prepare a document, which would include the Board's policy to achieve the closure and merger of certain schools at specific buildings. This document entitled *Major School Change*¹, calls for a consultation process with the community and describes in detail the consultations which lead to certain school closures and new school openings resulting from the Board's resolutions of January 12 and 30, 2006.

[13] This document² indicated that, amongst other things, it may lead to the amendment or revocation of the Deed of Establishment of Schools and changes to the Board's three year plan of allocation and destination of its immovables.

[14] More particularly, counsel for the Board has based his arguments on a proviso found in the document prepared in 2005³ which reads as follows:

Solutions arrived at through this process may lead to changes to the transportation network, change of programs or levels offered in a school, transfer of students, school closure, revocation and/or amendment to Deeds of Establishment and changes to the Board's Three Year Plan of Allocation and Destination of its Immovables. It is important to also note that solutions proposed by one school community may be used, with modifications where appropriate, to resolve a situation in another school community. For this reason, access to copies of all Briefs received is made available to all consultees on our website and at all of our schools.

[15] The above-mentioned document, which launched the consultation process, stated that any interested parties could submit a brief with their comments and recommendations before November 15, 2005. The filing of the brief was followed by public hearings, which were scheduled for November 22, 23 and 24, 2005. Finally, a decision by the Council of Commissioners was rendered on January 12, 2006. On January 30, 2006, the Board reconsidered the previous decision of January 12 and confirmed it. The January 12, 2006 decision is now challenged by Plaintiffs.

¹ Exhibit P-1.

² Exhibit P-1.

³ Exhibit P-1.

[16] As mentioned in Mrs. Lucie Laferrière's affidavit, according to the latest decision, there will be 2300 elementary students who will be relocated and 14 elementary schools will close as of June 30, 2006. Merging the student population of the closed schools will create seven new schools. Six school buildings will close over the next two school years.

[17] The plan also provides for the students from the schools that will be closed effective June 30, 2006 to have the choice to be relocated to other new schools established through the merger of closed schools or to relocate to other existing public schools subject to the parent's choice as permitted by law.

[18] The Board has received at least 15 briefs coming from the schools presently attended by the Plaintiffs' children.

THE LAW

[19] The relevant sections of the *Education Act*⁴ are the following:

39. Schools shall be established by the school board.

The deed of establishment shall state the name and address of the school, indicate the premises or immovables placed at the school's disposal and specify the level of instruction the school is to provide.

40. A school board may, after consulting with the governing board or at its request, amend or revoke the deed of establishment of a school in keeping with the three-year plan of allocation and destination of the school board immovables.

79. The School board must consult with the governing board concerning

- 1) the amendment or revocation of the deed of establishment of the school;
- 2) the selection criteria for the appointment of the principal;
- 3) (paragraph repealed)

193. The parents' committee shall be consulted on the following matters:

- 1) the division, annexation or amalgamation of the territory of the school board;
 - 1.1) the school board's strategic plan and any updated version of the strategic plan;
- 2) the three-year plan of allocation and destination of the immovables of the school board, the list of schools and the deeds of establishment;

⁴ R.S.Q., chapitre 1-13.3, par. 38.

- 3) the policy in respect of the continued operation or closing of schools;
 - 3.1) the financial contributions policy adopted under section 212.1;
- 4) (paragraph repealed);
- 5) the distribution of educational services among the schools;
- 6) the criteria referred to in section 239 for the enrollment of students in schools;
 - 6.1) the dedication of a school to a special project pursuant to section 240 and the criteria for the enrollment of students in that school;
- 7) the school calendar;
- 8) the rules governing promotion from elementary school to secondary school or from the first cycle to the second cycle of the secondary level;
- 9) the objectives and principles governing the allocation of subsidies, school tax proceeds and other revenues among educational institutions as well as the criteria pertaining thereto, and the objectives, principles and criteria used to determine the amount to be withheld by the school board for its needs and those of its committees;
- 10) the learning activities established by the school board and intended for parents;

211. Each year, after consulting any municipality or metropolitan community whose territory is situated entirely or partially within its own, the school board shall establish a three-year plan for the allocation and destination of its immovables. The school board shall transmit the plan to every municipality or metropolitan community consulted.

The school board shall then draw up, in accordance with the plan, a list of its schools, and of its vocational training and adult education centres, if any, and shall issue a deed of establishment to them.

Where two or more educational institutions are established in the same premises or immovables, the school board shall determine the allocation of the premises or immovables, or the allocation of the use of such premises or immovables among such educational institutions.

In the case described in the third paragraph, the school board may, at the request of the governing boards concerned, establish a coordinating committee composed of representatives of the governing boards and determine the distribution of powers and functions between the governing boards and the coordinating committee, as well as the administrative and operating rules applicable to the coordinating committee.

The school board may also appoint a single principal for all the institutions and one or more vice principals for each institution. In such a case, the school board, after consulting with the governing boards concerned, shall determine the distribution of powers and functions between the principal and the vice principals.

212. After consulting the parents' committee and subject to the guidelines, if any, established by the Minister, the school board shall adopt a policy concerning the maintenance or closure of schools.

[20] The Court also wishes to stress the provisions of article 752 C.C.P. which read as follows:

752. An interlocutory injunction may be granted when the applicant appears to be entitled to it and it is considered to be necessary in order to avoid serious or irreparable injury to him, or a factual or legal situation of such a nature as to render the final judgment ineffectual.

ANALYSIS AND DISCUSSION

[21] The issue in the present case is to decide whether the consultation process required by section 212 of the *Education Act* was carried out with procedural fairness.

[22] On one hand, the Court recognizes the anxiety and frustration of the parents whose environment will be changed by the Board's decisions. Habits such as walking to school and unilingual education may have to be abandoned in the future.

[23] The main grievances raised by Plaintiffs are summarized in the proceedings as follows:

- 23.1. no notice of projected closing was given and the resolution to close was made public only on January 12, 2006;
- 23.2. insufficient information was provided;
- 23.3. the alternatives were not clearly spelled out (St. Kevin c. CECM);
- 23.4. there was no formal hearing;
- 23.5. new undisclosed documents surfaced at the time of the vote (William Hingston c. CECM);
- 23.6. there was apparently no 3-year plan contrary to law and, in any event, no consultation with respect to the plans which was never shown to the parents;
- 23.7. the intention to close was announced too late in the academic year;

23.8. the parents were denied right of choice of school by obliging them to register students in a new school and requiring them to apply for transfer if another school was chosen;

23.9. the board exceeded its jurisdiction and abused its powers by closing the school in order to change its immersion program.

[24] However, at the hearing, Plaintiffs' counsel suggested there was really only one important issue requiring the Court's intervention, the omission by the Board to divulge and deposit the documents filed as Exhibits P-3, LBP-30, 31 and 32, all of which should have been distributed to the parents and the interested parties before making the final decisions.

[25] The Board's attorney suggested that the Superior Court had already decided on the merits of Plaintiffs' allegations in the case of *Flook*⁵ in which Tellier J. dismissed a Motion for interlocutory injunction presented by some parents to contest the Board's decision in 2001 which adopted the consultation process similar to the one followed in the present case.

[26] Seeing as a judgment has already recognized the validity of the consultation process, the Board's counsel suggested that this precedent should lead the Court to dismiss the present proceedings.

[27] However, the opposing counsel suggested that the case under study is very different from the case decided by Tellier, J. in as much as there was no question in *Flook* of any omissions by the Board to file specific documents as there was in the present matter.

[28] However, *Flook*, if rendered on the same facts and based on the same legal issues, must be looked at very seriously before putting it aside.

[29] The Court also realizes that the Board, to which the government has entrusted the mandate to manage the public school system, has difficult decisions to make given its financial responsibility and the declining enrolment, which will continue in the future.

[30] The Court reiterates, what was mentioned several times before, that its role is not to decide on the opportunity to close one school but rather to decide whether the consultation process was reasonable and met the requirements of the law.

[31] The Court is not a political body responsible for reviewing the merits or lack thereof of a decision of the Board. Its mandate according to article 33 C.C.P. is to make sure that the Board's decisions are not patently unreasonable, that the law was not violated and that the principles of natural justice were respected.

⁵ *Douglas Flook c. Lester B. Pearson School Board*, C.S.Montréal, no 500-05-063500-019, 20 juillet 2001, j. Tellier.

[32] Aside from the above-mentioned circumstances, the Court will not get involved in the administrative or political arena.

[33] Plaintiffs' counsel alleged that the consultation process was a sham and was not carried out with procedural fairness. More specifically, they alleged that the Board failed to deposit copy of certain documents⁶, which were filed into the Court record under Exhibits P-3 and LBP-30, 31 and 32.

[34] For the Board, those documents are "Inspiration Software Charts" prepared by the administration, which should reflect the consultation analysis and directions the Board members were ready to adopt in order to define possible scenarios.

[35] Based upon those directions, outlined by the Board members, the administration prepared another set of "Inspiration Software Charts" on January 5, 2005. Those documents were used for the benefit of the Board members regarding possible scenarios, which resulted from the consultation launched in 2005.

[36] On January 12, 2006, a new package of information was put together and distributed to all the governing Board chairs⁷, the sector representatives and the principals, which covered the various charts prepared by the administration early in January 2006.

[37] As mentioned in Mrs. Patricia C. Dean's affidavit, this package has information very similar to the one already distributed in the *Major School Change 2005-2006* document and has shown the "final inspirations software slides" that portrayed, in the charts, the state of the consensus of the Commissioners.

[38] On January 12, 2006, the Council of Commissioners held a public meeting at which time the resolutions regarding the closure and the merger of certain schools was passed. More than 400 people attended the meeting.

[39] On January 30, 2006, the Council reconsidered the resolutions adopted on January 12, 2006 and confirmed the original decisions. The Court understands that this decision was made following a rather lengthy question period during which the parents and all those interested had the opportunity to make additional representations.

[40] Counsel for Plaintiffs suggested that the Court must quash the Board's decision seeing as it did not respect the principles of natural justice, that documents were hidden and that the whole process was contaminated.

[41] Both parties agreed that there are no specific provisions in the Education Act governing the consultation process. Therefore, although this obligation is based on the Act, there is no specific and established procedure. It follows that this consultation must

⁶ Exhibit P-1.

⁷ Exhibit P-3.

be fair and honest and must give the opportunity to any interested parties to submit their opinions and comments before the Board makes a final decision.

[42] In the *St-Patrick School Governing Board*⁸, Barbeau, J. described the extent of such a consultation as follows:

La consultation doit être réelle: elle constitue une règle fondamentale du principe de la justice naturelle et de l'équité procédurale : celui à qui elle incombe doit procurer, à celui qui y a droit suffisamment de renseignements et de temps pour lui permettre de se former une opinion valable de la situation relative à la fin recherchée ; autrement la consultation n'est pas suffisante.

[43] It goes without saying that the commissioners must respect the rules of procedural fairness without being submitted to strict and imperative proceedings. As mentioned in many Court cases, the Court should not interfere with the administration of schools save and except for very serious reasons. The Court must attribute a large measure of autonomy to administrative bodies such as the Lester B. Pearson School Board provided they act fairly with all interested parties.

[44] There were several ways for the Board to launch and control the consultation process. The evidence shows that the Board had decided, rightly or wrongly, to adopt a more general policy regarding the closure and merger of certain schools instead of targeting specific school in advance. As mentioned in the affidavit in support of the Board's position, this policy was adopted to obtain as much information and comment as possible from the parents and the other interested parties and to avoid being limited to follow certain guidelines for the closure and merger of certain schools.

[45] Plaintiffs suggest that the Board should have directed the level of consultation by targeting certain schools rather than opening the debate to each and every school mentioned in the *Major School* document.

[46] Moreover, Plaintiffs' attorneys suggest that the fact that the documents, Exhibits P-3, LBP-30, 31 and 32, were hidden and not filed before the final Board's decision, is fatal and renders the whole process flawed and illegal. They were the final proposals and the parents should have had access to this information before the vote.

[47] The Court has reviewed the documents filed as Exhibits P-3, LBP-30, 31 and 32.

[48] It considers that those documents, as described in the affidavit of Mrs. Patricia C. Deans, are summaries and charts of possible scenarios which were discussed during the consultation process and which permitted the Board members to make a final decision.

⁸ *St-Patrick School Governing Board c. English Montreal School Board*, 500-05-047788-995, 20 juillet 1999, p.11.

[49] The evidence shows that nobody was taken by surprise. The idea that documents were not deposited in due course before a final decision is made is irrelevant. The Court considers that the initial warning mentioned in the consultation document⁹ dated August 30, 2005 is very explicit and informs a reasonable reader that all the schools referred to in the document may be affected by the proposed mergers and closures. It may not be the best way to proceed but it's the way the Board has chosen. Given the level of discretion provided by the Education Act, the Court is of the opinion that there are no grounds for intervention.

[50] In order to succeed in these proceedings, Plaintiffs needed to establish the following:

- 1) An apparent right;
- 2) That the balance of inconvenience favours Plaintiffs; and
- 3) That should the Order not be issued, irreparable harm or prejudice will be suffered.

[51] Plaintiffs failed to establish an apparent right to the conclusions sought in the proceedings. The Court concludes that the consultation process required by the Act was followed according to the requirements of procedural fairness and that accordingly, it should not intervene.

[52] Although, the Court is of the opinion that the judgment rendered by Tellier, J. in *Flooke*, is not binding, the Court is nevertheless of the opinion that the consultation process met the requirements of the law and that the omission to file the chart summaries are no reasons for the Court to conclude that the whole process was flawed or illegal.

[53] In light of the above and given the failure by Plaintiffs to establish such an apparent right, the Court will briefly address the two other criterias essential to obtain injunctive relief. The Court finds that the balance of inconvenience clearly favours the Board and that Plaintiffs have failed to establish an irreparable harm or prejudice.

[54] Plaintiffs' counsel argued that should the Board's decisions be maintained, there would be irreparable harm in as much as the parents would definitely "lose their schools".

[55] While the Court understand the parents frustration, it nevertheless concludes that following the Board's decision, they won't loose their schools but simply lose access to specific buildings whereas the schools are entities which will survive the closure of any buildings.

⁹ Exhibit P-1.

[56] There is no irreparable harm but only a new way to provide education and to keep up with an inescapable reality, the changing demography.

[57] Given that the parties diligently worked to have these cases heard as soon as possible, the Court, using its discretionary power, will dismiss the Motion, but without costs.

[58] **WHEREFORE THE COURT:**

[59] **DISMISSES** Plaintiffs' Motions;

[60] **THE WHOLE**, without costs.

RICHARD WAGNER, J.S.C.

Me Julius Grey
Me Elizabeth Goodwin
GREY, CASGRAIN
Attorney for Plaintiffs

Me Mark Peacock
Me Rémi Poliquin
Me Marianne Hardy-Dussault
Attorney for Defendants

Date of hearing: May 8 and 9, 2006.