

Landmark Case

THE MONTFORT HOSPITAL CASE *LALONDE v. HEALTH SERVICES RESTRUCTURING COMMISSION (ONTARIO)*

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The Canadian Constitution

The Canadian constitution is the basic framework for analyzing the relationship between people and the government. The "Constitution of Canada" is not a single document. It is made up of the constitutional texts which are named in s.52 (2) of the *Constitution Act of Canada, 1982*, as well as other written rules, acts, legislation, judicial decisions and agreements between the federal and provincial governments. The Constitution also includes unwritten rules and underlying principles. These rules and principles arise from an understanding of Canadian constitutional customs, traditions, and judicial decisions. Government agencies have to consider these rules and principles when they make their decisions.

Facts

In April 1996, the Legislative Assembly of Ontario established the *Health Services Restructuring Commission* which was made up of representatives from health related organizations, industry and government agencies. The Commission was given a four-year mandate, to be carried out independent of the government. The goal was to improve the health care system in Ontario by making the best use of the existing infrastructure. The Commission had the authority to close hospitals, restructure operations through mergers and amalgamations or completely alter the level and nature of health services provided in Ontario's health institutions.

In February 1997, the Commission released its first report and issued a notice of intent to close Hôpital Montfort (Montfort Hospital). The hospital, founded in 1953 by leading members of the Franco-Ontarian community, serves the minority francophone community in the Ottawa-Carleton area. It is also Ontario's only French language teaching hospital and while it offers medical services in both English and French, and has been designated as bilingual under the *French Language Services Act*, it is largely considered a francophone institution. The Commission believed that its decision to close the hospital would reduce costs, without compromising health care, by simply transferring services to other hospitals in the area.

S.O.S Monfort

The decision to close the hospital provoked anger and opposition from many in the community, especially the minority francophone population of the province. Within 24 hours, the community mobilized to fight this decision and created an organization named S.O.S. Montfort that was dedicated to keeping the hospital open and running as a full service health care institution. Gisèle Lalonde, former mayor of nearby Vanier, member of the board of directors for Montfort Hospital and a well-known advocate for French language rights was appointed president of the organization. S.O.S. Montfort worked hard to educate the public and influence the Commission. It stressed the importance of providing comprehensive medical care to French-speaking residents in Eastern Ontario, and emphasized the hospital’s role as a teaching and training facility for francophone health care professionals. Additional support came from the District Health Council of Eastern Ontario in the form of a report dated April 1997. The report responded to the Commission’s decision by detailing the adverse effects that its recommendations would have on the francophone community in Ottawa-Carleton and the surrounding counties.

The Commission Reverses Original Proposal

In August 1997, the Commission released its final report and reversed its original proposal to close Montfort Hospital. The Commission recognized the importance of the hospital to the community and opted to keep the hospital open but with substantially reduced services. The hospital’s operating budget would be significantly reduced, forcing the transfer of its large cardiology unit to Ottawa Hospital and the closure of its emergency ward, intensive care unit and almost all other hospital services typical of a community hospital. Only a small psychiatric ward, a small low-risk obstetric unit and a walk-in clinic would remain. It could no longer effectively serve as a teaching hospital for francophone and bilingual medical staff. S.O.S. Montfort was not satisfied with the Commission’s final decision.

In July 1998, Gisèle Lalonde and Montfort Hospital commenced legal proceedings in the Divisional Court of Ontario, hoping to have the Commission’s final directives **set aside**.

The case was heard from July 14-18, 1999 by a panel of three judges, all of who were bilingual. Over the course of four days, the plaintiffs presented arguments based on the rules of administrative law, equality rights under section 15 of the *Charter of Rights and Freedoms*, and unwritten principles of the Constitution.

On November 29, 1999, the Divisional Court made its ruling. The arguments based on rules of administrative law and section 15 of the *Charter*, were rejected by the Court. The Court did accept the argument related to the underlying constitutional principle of respect for and protection of minorities, in this case, the minority being one of the country’s founding cultures. The Court found that Montfort’s designation under the *French Language Services Act* gave the francophone community the legal right to receive health care in a “truly francophone environment”, a right that extended to the need for facilities to educate and train health care professionals in French. The Court concluded that the Commission ignored the importance of Montfort Hospital as a linguistic and cultural institution that protects the identity and assimilation of the francophone community in the province. As such, the court ruled in favour of the plaintiffs and **quashed** the directions of the Commission.

Appeal to the Ontario Court of Appeal

In December 1999, the Ontario government decided to **appeal** the ruling of the Divisional Court. The case was heard in the Ontario Court of Appeal from May 14-17, 2001, by a panel of three bilingual judges. The government focused on the unwritten constitutional principle of respect for and protection of minorities and its impact on the government of Ontario. It argued that its obligations were limited to section 23 of the *Charter*, which guarantees French language instruction in primary and secondary education. The government was concerned that an unfavourable ruling would lead to future implications around the provision of French language services in other sectors. Montfort Hospital used the same constitutional principle, arguing that it should ensure the preservation of institutions that enhance the development of the linguistic and cultural identity of the francophone minority in Ontario.

Unanimous Decision

On December 7, 2001, the Ontario Court of Appeal ruled unanimously to **affirm** the ruling of the Divisional Court and **dismissed** the government’s appeal. Montfort hospital would remain open as a full service hospital and teaching facility with no reduction in services.

In making its decision, the Court of Appeal considered the following six issues:

1. Did the Divisional Court err in its findings of fact?

The Court of Appeal agreed that Montfort played a vital role in the life of the francophone minority in Ontario. The Commission’s directions would reduce available health care services in French, jeopardize the training of French language health care professionals and hurt the Hospital’s role as a linguistic and cultural institution.

2. Does s. 16(3) of the *Charter* protect the status of Montfort Hospital as a francophone institution?

The Court stated that Montfort was not protected by section 16 of the *Charter*, which is about the advancement of status or use of English or French. The Court stated that s.16(3) could not be used to gain new rights, but could be used as a shield to protect rights from government action.

3. Do the Commission’s directions **infringe** s. 15 of the *Charter*?

The Court upheld the Divisional Court’s ruling that the Commission’s directions did not infringe s.15 of the *Charter* and could not be used to add to language rights already specifically guaranteed by the *Charter*.

4. What is the relevance to Montfort Hospital of the unwritten constitutional principle of respect for and protection of minorities?

Montfort is important to the survival of the minority francophone community of Ontario. The Court referred to the Supreme Court’s decision in *Reference re Secession of Quebec*. In that decision, the Supreme Court of Canada stated that respect for and protection of minorities is a fundamental structural feature of the Canadian Constitution. This explains and goes beyond the minority rights specifically guaranteed in the Constitution in s.16(1) of the *Charter* which proclaims French and English to be official languages of Canada, and

Section 23 which guarantees the general right to primary or secondary school education to English or French minorities of a province. Respect for and protection of minorities is a "**bedrock principle**" which influences the interpretation of laws.

5. Do the Commission's directions violate the *French Language Services Act*?

The Court looked to the *French Language Services Act* and stated that the underlying purposes of the *Act* included the protection of the Ontario francophone community, advancement of the French language and the promotion of its equality with English. These purposes go together with the unwritten principles of the Constitution. Under the *French Language Services Act* Montfort was named as a French language service provider. The Commission's decision would endanger the ability to train health professionals in French and would increase the assimilation of Franco-Ontarians. The Court found that the negative effects of this decision were contrary to the purpose and objectives of the *Act*.

6. Are the Commission's directions reviewable pursuant to the unwritten constitutional principle of respect for and protection of minorities?

The Commission could only change and limit services offered by Montfort when it is "reasonable and necessary". The Commission must act in the public interest; therefore it must take into account constitutional principles. The Commission's objectives were not important enough to justify its failure to give serious weight and consideration to the linguistic and cultural role of Montfort to the francophone community in Ontario.

Four Unwritten Constitutional Principles

In 1998 the Supreme Court of Canada in *Reference re Secession of Quebec* identified four unwritten Constitutional principles: **federalism**; democracy, **constitutionalism** and the **rule of law**; and respect for and protection of minorities. The Court talked about Canada's historical commitment to its minorities, to aboriginals, and about equality, legal and language rights. It also talked about a number of written constitutional provisions protecting minority language, religion and education rights. The Court stated that the protection of minority rights is an independent principle, which underlies Canada's constitutional order.



Classroom Discussion Questions

1. How does section 15 of the *Charter* relate to this case?

2. How does section 23 of the *Charter* relate to this case?

3. How did S.O.S. Montfort win the case even though the Court decided that there was no violation of the *Charter*?

4. In your opinion, are unwritten principles just as important as written laws? Explain.

5. Do you think the decision of the Ontario Court of Appeal was fair? Explain.



Lalonde v. Health Services Restructuring Commission (Ontario): Timeline of Events

April 1996 -

February 1997 -

August 1997 -

July 1998 -

July 14-18, 1999 -

November 29, 1999 -

December 1999 -

May 14-17, 2001 -

December 7, 2001 -



Worksheet 1

Using your textbook, a dictionary, the *Criminal Code* or any other resources available, define the following terms. They are in **bold** typeface in the introduction and case summary.

Constitutionalism

Appeal

Affirm

Dismissed

Set Aside

"Bedrock Principle"

Infringe

Rule of Law

Federalism

Quashed
