

THE SUPREME COURT OF CANADA AND THE PROTECTION OF MINORITY DISSENT: THE CASE OF THE JEHOVAH'S WITNESSES

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I. Introduction

Madam Justice McLachlin, Honourable Judges, Acting Dean Williamson, Members of the Faculty, guests, I am very pleased to be here with you this morning, and I am honoured by your invitation.

My job is to explain how and why the Jehovah's Witnesses turned to the courts, in particular the Supreme Court of Canada, for protection from state interference with their religious rights, and to relate that experience to the origins of the *Canadian Bill of Rights*. Underlying my remarks are two related themes. First, that we are better off with Bills of Rights than without them, and second, that the Jehovah's Witnesses made an important contribution to the campaign for a *Canadian Bill of Rights* and ultimately, the *Charter of Rights and Freedoms*.

It is appropriate to begin by asking who are the Jehovah's Witnesses? It is necessary to understand what the Jehovah's Witnesses believe in order to understand what made them act in the way in which they did and to understand why the state responded in the way in which it did. I will then briefly describe their wartime experience, in particular the genesis and effects of the government order declaring the group to be an illegal organization. To illustrate my thesis, that constitutional protection of civil rights sometimes works and sometimes does not work, I will compare and contrast the treatment of Jehovah's Witness children before Canadian and American courts. Finally, I will discuss a number of important post-war events, including several Supreme Court of Canada decisions, which led the Jehovah's Witnesses, among others, to publicly campaign for a *Canadian Bill of Rights*.

II. History and Beliefs

The religious sect known as the Jehovah's Witnesses sprang from the Bible Students movement begun by Charles T. Russell in the 1870s in Pittsburgh, Pennsylvania. Initially an Adventist, Russell came to reject the Adventist belief that Christ's Second Coming would be in the flesh, and in about 1875 he published a pamphlet predicting Christ's invisible return to earth. This doctrine, along with the printed word as the means of communicating it, became the foundation of Jehovah's Witness practice and belief. Russell claimed, on the basis of his mathematical calculations, that Christ would come invisibly to earth in 1914, and the belief that He in fact did so has become a fundamental article of faith for Jehovah's Witnesses. Members of the group also believe that the world will be

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destroyed, as predicted in the Bible, at Armageddon. The Jehovah's Witnesses first predicted that Armageddon would arrive in 1925 and later altered the year to 1975. The group now claims that the end will come within the lifetime of persons who were alive in 1914.

Jehovah's Witnesses believe that God's plan for man is revealed in the Bible, through which they interpret all human history and predict the future. To Jehovah's Witnesses, the Kingdom of God is not some vague theological hope, but a practical reality. God's Kingdom has, they hold, existed since 1914 when Christ invisibly returned to earth, and the Jehovah's Witnesses are citizens of it. Indeed, Jehovah's Witnesses believe that two worlds exist simultaneously: God's world and Satan's world. The Jehovah's Witnesses belong to the former, the remainder of humanity to the latter. Following Armageddon, 144,000 real Christians will dwell with God in Heaven and help Him govern a restored paradise on Earth where the rest of the Jehovah's Witnesses will live.

While Armageddon is expected soon, in the meantime Jehovah's Witnesses must live in Satan's world. They will pay taxes, but they will not vote. They refuse to sing national anthems or to salute flags. They will not serve in the armed forces of any nation, but their objection is not to bearing arms per se: they will gladly fight on God's behalf. Very simply, their mission, until Armageddon, is to obey God's law as set out in the Bible. And that law requires them to spread the word of Jehovah, to make God's word known. Indeed, the imminence of the end makes the Witness message all the more urgent. As many people as possible must be shown the truth before the world, as we know it, is destroyed.

Jehovah's Witnesses, then as now, deliver this message largely through relentless door-to-door canvassing. It was not, however, the means of delivering the message that caused problems, it was what the Jehovah's Witnesses were saying that created difficulties in the years before the Second World War. Particularly disturbing were the sect's repeated and offensive attacks on the Roman Catholic Church.

Throughout human history, according to the Witness interpretation of events, Satan has been locked in a battle with God, from the instigation of Adam eating the forbidden fruit to the murder of Christ. This battle continues and the presence of Satan explains, to the Jehovah's Witnesses, not only the persecution which they must undergo as a result of their faith, but also the contemporary condition of mankind. What other reason could there be for the tremendous increase in crime, death, disease, warfare, debauchery, juvenile delinquency and immorality? While all religions are bad, Roman Catholicism is, according to this view, the worst.

Satan's instrument for earthly evil is the Roman Catholic Church, an organization created and maintained to fight the real followers of Christ, namely the Jehovah's Witnesses. Over time there have been challenges to Satan's rule by God-fearing men such as Wycliffe and Luther, but it was not long before Satan penetrated the new Protestant denominations and brought them into his earthly

fold. The rise of the Jehovah's Witnesses challenged Satan's hegemony over mankind. Satan fought back, and the general in the battle was none other than the Pope, and his foot soldiers were nuns and priests.

Jehovah's Witnesses have been active in Canada since the early 1880s, and their proselytizing zeal periodically brought them to the attention of the authorities. But it was not until the 1930s that their numbers began to grow. While some Canadians sought solace during the Depression decade in radical philosophies of the right and left, others turned to God for salvation. Jehovah's Witnesses, with answers to every problem besetting humanity, began to be listened to with new attention. Their ranks increased, and as they did, the sect began to encounter real difficulties with the law. Nowhere more so than in the Province of Quebec.

Roman Catholic Quebecers did not appreciate being stopped on the way to Mass and being informed that they were on the "Devil's team." The Church Hierarchy appreciated even less Jehovah's Witness publications which graphically portrayed the Pope as a whore and priests as fat pigs. In the late 1930s, probably at the insistence of that Hierarchy, a number of Jehovah's Witnesses were charged with the old *Criminal Code* offence of blasphemous libel. When that charge failed to achieve desired results, Jehovah's Witnesses were charged with sedition libel, then defined to include any "acts, words or writings intended or calculated to disturb the tranquility of the State, by creating ill-will, discontent, disaffection, hatred or contempt towards. . . the established institutions of the country or by exciting ill-will between different classes of the King's subjects." Since it did not take much to convince French-speaking Roman Catholic juries that the intemperate Witness literature caused disaffection among subjects, convictions for sedition became, in the late 1930s, increasingly common.

In their defence the Jehovah's Witnesses claimed that they were exercising their "right" of free speech. Unfortunately for them, there was not in Canada any constitutional protection for freedom of speech. The Quebec Court of Appeal said as much when it upheld, in 1938, the conviction of a Jehovah's Witness for sedition. Leave to appeal to the Supreme Court of Canada was refused.

Jehovah's Witness records confirm the attraction, some would say fixation, of the sect to and with the Province of Quebec. It was surely no accident that Jehovah's Witnesses began to concentrate their activities in the one place in Canada where they were sure to receive a hostile reception. Quebec was then a Church-dominated society. Indeed, the Church was virtually established, and it did not react well to attacks on the faith. The negative reception which the Jehovah's Witnesses received served to provide confirmation to them that they were locked in battle with the real enemies of Christ. How that battle might have ended had the Second World War not intervened no one can say, but it did intervene, and one result was the official suppression of the sect soon after the war began.

III. The Second World War

That Canada would go to war on Britain's side was certain. Whether Canada could stay united in the process was far less clear. National unity meant reconciling the apparently irreconcilable. I am referring here to the divergent views of French and English Canada. There was absolutely no question how English Canada viewed participation in the war. Canada was a part of the British Empire and its place was at Britain's side. French Canada, although not generally opposed to the war, was dead set against conscription. For the country to remain united the government had no choice but to fully commit itself to the war effort while at the same time pledging not to introduce compulsory military service. Only this contradictory compromise could keep Canada at peace in the midst of war. Quebec had to be brought on side, and the job fell to Quebec's undisputed leader in Ottawa, the Minister of Justice, Ernest Lapointe.

Lapointe was Prime Minister King's Quebec lieutenant in the traditional sense of the term. He was the Quebec strongman, and no decision of consequence affecting Quebec was made in his absence. An observant and pious Roman Catholic, Lapointe was naturally and frequently contacted by members of the Hierarchy when they felt that government activities or policies threatened the interests of the Church. The examples are numerous, too many to discuss today, and so I will just refer to one to illustrate my claim that Lapointe could be relied upon to protect the traditional interests of the Roman Catholic Church: Lapointe's refusal to disallow the *Padlock Act*. All students of Canadian history and law are familiar with this draconian statute, which gave the Attorney General of Quebec virtually unrestricted power to close for twelve months any building used for the composition or dissemination of communist or bolshevist propaganda. The legislation failed to define "communist" or "bolshevist," and the result was a statute that gave Quebec Premier Maurice Duplessis the power, which he regularly used, to punish anyone who got in his way.

Passage of the *The Padlock Act* led to the formation of the first civil liberties association in Canada, in Montreal, the Canadian Civil Liberties Union established in 1938. The CCLU, and kindred groups, fought the *Padlock Act*, and did everything humanly possible to convince Lapointe to exercise the disallowance power. The history of this provision can be recounted another time. Suffice it to say for the moment that Lapointe refused to disallow it because the *Padlock Act* was an effective tool in fighting communism, or was perceived as such. Nowhere in Canada was communism more despised than in the Province of Quebec. Pope Pius XI condemned communism as the destroyer of the family and society, and the fact that most communist activists in Quebec were not of French-Canadian descent served to further emphasize the alien character of the movement. The Church made clear that the *Padlock Act* had to stay, and Lapointe acceded to this request. Very simply, in this instance, and in others, when the established order in Quebec was challenged Lapointe's response was to align himself squarely and unequivocally with the ecclesiastical interest, and then, as Minister of Justice, call to its service the legal and coercive might of the state.

The truth of this claim is amply illustrated by his treatment of the Jehovah's Witnesses following the Canadian declaration of war. The federal government recognized that its policy of national unity could only be maintained with the support of the Church, and no one's support was more important than that of the Cardinal of Quebec, Jean-Marie Rodrigue Villeneuve. Cardinal Villeneuve was, like most of the clergy of the day, ultramontane. He was suspicious of attempts to compromise Roman Catholicism with modern thought, and he demanded the supremacy of religious over civil society. His aspiration for Quebec was that it remain a church-dominated self-contained society and in that way ensure that Quebecers were not swallowed up into the North American English sea. Villeneuve also, not surprisingly, hated the Jehovah's Witnesses, and made no secret of that fact.

The arrival of the war had little immediate effect on Jehovah's Witness activities. Members of the sect continued to proselytize in Quebec, and they continued to face the wrath of the state, and increasingly that of the mob. What changed however, as a result of developments on the international scene, was that federal authorities went out of their way to court ecclesiastical authorities in Quebec, especially Cardinal Villeneuve, in order to attract support for the national war effort. And, without going into extended detail, what this meant in practice was that when Cardinal Villeneuve demanded in writing, as he did, that the Jehovah's Witnesses be officially suppressed, Lapointe agreed as the *quid* for the Cardinal's war support *quo*.

And so it was on 4 July 1940 that the federal government, pursuant to the wide and virtually unfettered powers given to it under the *War Measures Act*¹, passed an order-in-council declaring the Jehovah's Witnesses to be an illegal organization. Without a hearing, and without providing the Jehovah's Witnesses with any opportunity to make representations, the federal cabinet passed an order making it a crime to meet and worship as a Jehovah's Witness. The numbers affected are hard to establish, but what records exist suggest that some 3500 men and women were directly affected by the ban. Incidentally, the only other country at the time to have taken official action against the group was, Nazi Germany. The Roman Catholic Church was, however, delighted with the ban and in *L'Action Catholique* declared as much. Now that the sect has been declared illegal, the paper said, "repression will be easier, quicker and more effective."

For the Jehovah's Witnesses the consequences of this action were immediate and disastrous. Their headquarters were seized, their bank accounts frozen and their literature confiscated. For the remainder of the war they would fight, as best they could as members of an illegal organization, to get the ban rescinded. However, it would not be until the tide of war turned that anyone, inside Parliament or out, paid any attention to their complaints. With the war going badly, as it then was, no one had time for the complaints of a small and obnoxious sect.

¹R.S.C. 1927, c. 206.

I do not propose to deal at any length with the Jehovah's Witnesses' experiences during the war. I have done that elsewhere.² What I would like to do now is to focus on what happened to Jehovah's Witness children, the weakest and most defenseless members of the community. Their experience tells us, as it told the Jehovah's Witnesses themselves, something about the value of formal protection of legal rights. During the war many public schools opened every day with the singing of God Save the King and the saluting of the flag, the British Ensign. Jehovah's Witnesses refused to do both, for to do either would be to pay homage to an earthly devilish organization. Jehovah's Witness children likewise refused, and before the war this refusal generally resulted in them being asked to remain outside the classroom during opening exercises. After the sect was declared an unlawful organization the situation changed. Now it was obvious to everyone who the Jehovah's Witnesses were and a number of school boards, most notably the Hamilton and London school boards, took the matter into their own hands and expelled the Witness children from school. State suppression was not, however, limited to Ontario. In Alberta, for instance, there were also a number of protracted legal disputes over mandatory flag saluting and anthem singing. These disputes continued until the Alberta legislature finally amended the applicable legislation giving Jehovah's Witness children the right to be excused from participating in patriotic exercises.

In Ontario, however, it was not enough, in a few celebrated cases, to merely remove the children from the classroom. Even though the Witnesses established their own schools, called Kingdom Schools, some municipal and police authorities were not satisfied. In a number of cases charges were brought against Jehovah's Witness children for being truant. These cases resound with all sorts of legal and technical arguments about what the school regulations actually required by way of patriotic instruction, and they are of interest for that reason. What makes these cases compelling, however, is their result.

Children, for respectfully refusing to salute the flag and sing the national anthem, were not just expelled from public school classrooms, they were seized from their parents and ordered placed in juvenile delinquent centres and foster homes. As one judge put it in his reasons for decision in the case of Arthur Ellison: "If he has been and is imbibing wrong ideas in his present environment and I include in this not only his home but the school which he attends, the only logical course is to change this environment and give him the opportunity to grow up in conformity with standard ideas. . . ."³

Other cases reached similar results. Jehovah's Witnesses' lawyers fought hard against this action by the state. Indeed, from their earliest days Jehovah's Witnesses have not been reluctant to go to court. But in these patriotic exercise cases they were faced with the task of persuading the courts to carve out new

²William Kaplan, *State and Salvation: The Jehovah's Witnesses and Their Fight for Civil Rights* (Toronto: University of Toronto Press, 1989).

³*R. v. Ellison*, (9 November 1940) unreported at 7.

rights. Despite valiant and often brilliant efforts, the Jehovah's Witnesses could not succeed in persuading Canadian courts to judicially review legislation so as to give members of the sect, schoolboys and schoolgirls, the right to remain in class and, where patriotic exercises were concerned, also the right to say no. It should also be noted that most of these attempts to fight for new rights were made while the organization was under legal ban. Needless to say, this fact made the struggle all the more problematic.

IV. Would a Bill of Rights Have Helped?

Jehovah's Witnesses in Canada felt themselves to be at a particular disadvantage, particularly when compared to Jehovah's Witnesses in the United States, for in that country there was a Bill of Rights protecting among other things the free exercise of religion. Many law professors and constitutional theorists bemoan the advent of the *Charter of Rights and Freedoms*. Among their various complaints are that the *Charter* gives too much power to judges and that it is resulting in an "Americanization" of Canadian law. Others see entrenched individual rights as a throw back to an earlier age. I do not have much sympathy for these views, and one reason is my historical understanding of how Bills of Rights actually work. Put another way, the conclusion that I reach, and the conclusion that the historical experience of the Jehovah's Witnesses suggests, is that Bills of Rights and courts sometimes protect rights and sometimes do not. Despite the deficiencies with Bills of Rights, and with some judges, people are better off with them than without them. And what happened with the Jehovah's Witnesses in the United States illustrates this point.

It is true that the First Amendment to the American Constitution guarantees freedom of religion, but it is also true that in June 1940, just one month before the Jehovah's Witnesses were banned in Canada, the Supreme Court of the United States ruled in *Minersville School District v. Walter Gobitis* that individual states had power over education.⁴ In the result, the court held, regulations resulting in the expulsion of the Gobitis children from their public school for refusing to sing the national anthem and to salute the flag did not violate the American *Bill of Rights*.

So much, one might argue, for a Bill of Rights. The experience in the United States early on in the Second World War (although before the United States actually became engaged) suggests that Jehovah's Witnesses in the United States with their *Bill of Rights* really did not have things any better than did their Canadian co-religionists. Indeed, the historical evidence is clear that the decision of the Supreme Court in *Gobitis* set off what United States Attorney General Francis Biddle later called "a reign of terror" against the Jehovah's Witnesses, all of which was privately inspired and all of which was directed at punishing a group of unpatriotic Americans. The *Bill of Rights* was, for a time, no help in the United States and the American flag became an instrument, not of liberty, but of oppression.

⁴310 U.S. 586 (1940).

The American flag, like the American Constitution, however, stands for liberty and justice, and it was repugnant to many Americans to see the flag used as an instrument of intolerance. Small-minded bigots and patriotic zealots can wreak considerable havoc, but the generous and liberal nature of the American people is the source of that nation's greatness and strength, and when the tide of war turned, the Supreme Court signaled that it was ready to reconsider the result it had earlier reached.⁵ It gave that signal in *Jones v. City of Opelika*.⁶

It is a matter of record that in the subsequent case of *Barnette v. West Virginia Board of Education* the Supreme Court not only reversed its decision in *Gobitis*, it also reversed the rationale on which it was based.⁷ In the memorable words of Justice Jackson, who as a former U.S. Attorney General was well versed in the treatment the Jehovah's Witnesses had received, "if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion, or force citizens to confess by word or act their faith therein...We think," Justice Jackson concluded, "the action of the local authorities in compelling the flag salute...transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment of our Constitution to reserve from all official control."⁸

The American *Bill of Rights* may not have helped at first, but freedom of religion was vindicated in the end. In *Barnette* the court set out a regime of tolerance for minorities. In Canada, the legal restraints on Jehovah's Witnesses began, slowly but surely, to be reduced, in part the result of much diminished war hysteria as the tide of the battle began to turn decidedly in favour of the Allies. However, it was not until October 1945, two months after the end of the war in the Pacific, and more than five months after victory in Europe, that Jehovah's Witness children, expelled from class for refusing to sing the national anthem and salute the flag, were all finally allowed back in. A Bill of Rights might not have helped, but it could hardly have hurt.

V. Canada: Post War

My argument that a Bill of Rights might not help but certainly will not hurt was again illustrated by the experience of the Jehovah's Witnesses in the years after the Second World War. The end of official suppression on the federal level marked the beginning of official suppression at the provincial level. Quebec

⁵Another factor was the Japanese attack on Pearl Harbour bringing the United States into the war. With a new and more readily identifiable scapegoat, not to mention hysterical fears of the possible Japanese invasion of the United States, Americans soon lost interest in a handful of school children who refused to sing and salute.

⁶316 U.S. 584 (1942).

⁷319 U.S. 624 (1943).

⁸*Ibid.* at 647.

Premier Duplessis had sat out most of the war in opposition, but he returned to power in August 1944. Jehovah's Witnesses believed that the Quebec Hierarchy was responsible for the wartime ban, and as it turns out they were right. It was imperative, to the Jehovah's Witnesses, that the Hierarchy be revealed as the iniquitous satanic institution that the Jehovah's Witnesses knew it to be. Equally, if not more, important, was getting their message to the people of Quebec who were, the Jehovah's Witnesses declared, "sitting in darkness."

The sedition provisions of the *Criminal Code* began to be put to the same good use after 1945 as they were before the war. Moreover, many municipalities enacted, or began using existing by-laws specifically directed at preventing the Jehovah's Witnesses from engaging in canvassing work. The result, in both cases, was hundreds of arrests. The Jehovah's Witnesses did not respond by turning the other cheek. Instead they entered the lion's den. And one of the ways they did so was in print. First published, in the fall of 1946 in an edition of 1.5 million copies, was *Quebec's Burning Hate for God and Christ and Freedom Is the Shame of All Canada*. This tract painted a disturbing but accurate portrait of official repression of the sect in the Province of Quebec. The evidence was all there: the Jehovah's Witnesses in Quebec were being beaten, arrested and jailed for going door-to-door talking about God.

The Roman Catholic Church was naturally singled out for attack, but absent from this pamphlet were the disturbing and offensive illustrations featured in the Jehovah's Witnesses pre-war literature. In pointing out that Quebec was a Church-dominated society Jehovah's Witnesses were not saying anything different than the rising band of Quebec nationalists. Nevertheless, issue of the pamphlet led to a new wave of repression, one that Premier Duplessis called his "war without mercy."

The war without mercy played well on the hustings, but times were beginning to change. The Second World War had left fifty million people dead. The Holocaust made manifest the evils of racism. Discrimination could have no place in the post-war world. For its part, the United Nations began work on the *Universal Declaration of Human Rights*. This was to be a Bill of Rights applicable to everyone in the world, and binding on every government. The United Nations was not the only body asked to consider a Bill of Rights in the aftermath of the war: so too was the Parliament of Canada.

In October 1945 a CCF Member of Parliament gave notice that he intended to introduce a motion calling for the incorporation into the *British North America Act* of a Bill of Rights "protecting the minority rights, civil and religious liberties, freedom of speech and freedom of assembly, establishing equal treatment before the law of all citizens, irrespective of race, nationality or religious or political beliefs and providing necessary democratic powers to eliminate racial discrimination in all forms."⁹ The Honourable Member's notice of motion did not lead to

⁹Canada, House of Parliament, *Debates*, (10 October 1945) at 900.

the incorporation of a Bill of Rights. But this was the first time in Canadian history that such a motion was made in the Parliament of Canada.

It is my argument that the experience of the Jehovah's Witnesses during the Second World War and thereafter made an important contribution to the passage of the Canadian *Bill of Rights* and the *Charter of Rights and Freedoms*. However, before turning to their campaign for that Bill, it is appropriate to briefly review the Jehovah's Witnesses post-war experience before the Supreme Court of Canada.

VI. The Jehovah's Witnesses and the Supreme Court of Canada

The tyranny in Quebec continued. However, slowly but surely, a number of key cases began to make their way to the Supreme Court. After 1949, when these cases were all heard, the Supreme Court was supreme in every respect, not just in name. Time does not permit an extensive discussion of what took place in court, but three cases, all of which arose as a result of conditions in Quebec, must be mentioned.

In *Boucher* the court considered the *Criminal Code* sedition offence and held that an intent to create hostility and ill-will between different classes of subjects was not enough to constitute that offence.¹⁰ It was an ingredient, but also necessary was an intention to incite violence or resistance to, or defiance of, constituted authority. Very simply, in this decision the Supreme Court of Canada narrowed the definition of sedition, a definition that had been widely used to suppress Jehovah's Witness speech. In this case, one judge, a New Brunswicker born and bred, Mr Justice Ivan Rand, made a singular contribution to the law.

There were, according to Justice Rand, limits on freedom of expression. What Rand was against was an interpretation of the sedition provision, which enabled the state to suppress speech because it did not like what was being said. The fact that Roman Catholics in Quebec were insulted by what the Jehovah's Witnesses had to say, or by what they published in their literature, was not enough for Justice Rand, or for the majority of the court. One wonders, however, what the court would have done if it had been construing the hate propaganda provisions of the *Criminal Code* instead of the sedition provisions. In any case, in *Boucher* the court explicitly endorsed a new approach to the treatment of minorities.

Encouraging many different groups is what our society is all about, and discouragement is only justified if the expression is likely to cause some serious harm. Justice Rand and the other members of the majority did not endorse what the Jehovah's Witnesses said about the Roman Catholic Church, but were ready to stand up for their right to say it. A vigorous pluralism demands that we, as a society, accept unpopular speech. The *Boucher* case removed an important obstacle to freedom of speech.

¹⁰*Boucher v. R.* [1951] S.C.R. 265.

In *Saumur* the Jehovah's Witnesses challenged one of the municipal by-laws which, like the sedition offence, was used to frustrate their activities.¹¹ At the Supreme Court of Canada five of the judges held that Mr. Saumur's rights had been infringed, and seven of the nine members of the court gave reasons for decision. Four judges, with Rand at the lead, held that the by-law was legislation in relation to freedom of religion and freedom of the press. These two freedoms were not, this liberal quartet held, provincial matters. They did not fall within the property and civil-rights grant of power given to the provinces by the *British North America Act* and so were beyond provincial legislative purview. A fifth member of the court held that religious rights did fall within provincial power but that a pre-existing statute, the *Freedom of Worship Act*, proscribed Quebec from passing legislation interfering with the Jehovah's Witnesses' religious rights.

It was on this basis that Mr. Saumur won his case. The court had come very close to saying that it was beyond the reach of a provincial legislature to interfere with fundamental freedoms, such as those of speech and religion. To have said this would have been to logically extend the decision of the court in a prewar reference on the constitutionality of certain Alberta legislation where the Chief Justice, Lyman Poore Duff and Justice Lawrence Arthur Cannon held that free political discussion was a matter of national importance. As a result, it could not be subordinated to other legislative objects or be regarded as a local or private matter within a province or as coming under provincial power over civil rights.

Duplessis circumvented the decision of the court in *Saumur* by amending the *Freedom of Worship Act* so as to make it inapplicable to the Jehovah's Witnesses by giving the government the power to outlaw any religious group that published abusive and insulting attacks on established religions. That something was needed to be done to curb Premier Duplessis's exercise of power became even more apparent in the *Roncarelli* case.¹²

The facts of that case are so notorious that they do not even need to be summarized. What Duplessis did to *Roncarelli* was vocational outlawry for the exercise of a legal right. What was different about this case was the public attention it attracted. Depriving a man of his job for posting bail was something that many citizens could relate to, and public protests began to mount. In the end, *Roncarelli* won his case against Duplessis, and Justice Rand's reasons for decision stand, in my view, as the most eloquent statement in Canadian jurisprudence of the rule of law. The case could have easily, however, gone the other way. So too could have both *Boucher* and *Saumur*. Without a doubt a differently constituted court would have decided these cases differently. One need only consider the 1939 Supreme Court of Canada decision in *Christie v. The York Corporation* where the court ruled that a black man had no right to buy a beer in a public tavern in order to illustrate the point that judges do make a difference and that

¹¹*Saumur v. The City of Quebec*, [1953] 2 S.C.R. 299.

¹²*Roncarelli v. Duplessis*, [1959] S.C.R. 121.

private notions of what is right and wrong can influence judicial results.¹³ The Jehovah's Witnesses realized as much and that is one of the reasons why they campaigned so vigourously for a *Canadian Bill of Rights*.

VII. The Fight for a Canadian Bill of Rights

The Jehovah's Witnesses realized that they could not rely on the courts to protect them from either official or unofficial attack. It is not surprising that the Jehovah's Witnesses soon became convinced that what they needed was a Bill of Rights. The Second World War ban, just like the events in postwar Quebec, had illustrated to the Jehovah's Witnesses that they could not count on Parliament for protection. Nor could they count on the courts. Although the Supreme Court of Canada had protected and advanced their rights in three cases in a row, there was hardly a judge in Canada who had stood up for the Jehovah's Witnesses when they appealed for assistance in the face of persecution by the state. What was required, they believed, was some formal mechanism for the protection of their rights and that meant a Bill of Rights.

In March 1947, at the height of the persecution in Quebec, every Jehovah's Witness congregation put on a public lecture entitled "The Fight for Freedom of Worship in Quebec! Awake Canadians to the Facts." This lecture inaugurated a national campaign inviting the people of Canada to petition the government for a bill of rights. The petition called for a bill guaranteeing freedom of speech and freedom of worship. In short order, the Jehovah's Witnesses collected petitions with hundreds of thousands of signatures. In a nation of just over twelve million people the extent of this accomplishment speaks for itself, although some, if not many of these signatures, may have been obtained from co-religionists in the United States. The government promised to consider the matter.

The cabinet had, however, already made up its mind. It had met in January 1947 and among the issues discussed was a Bill of Rights. It made a decision to do nothing. The Jehovah's Witness petition could not change the government's mind, but it was undoubtedly among the reasons why the government decided to establish a special joint committee of the Senate and House of Commons to consider the question of whether Canada should have a Bill of Rights. This was a bandwagon that one Conservative Party member, John Diefenbaker, could not resist and he soon emerged as the dominant spokesman in the House for passing a Bill of Rights. His record on civil liberties during the war, I should mention, was nothing to be proud of and is, moreover, inaccurately described in his memoirs.

The Jehovah's Witnesses continued to press for a Bill of Rights as they continued to face repression in Quebec. A second campaign soon began, and this time more than 600,000 men and women were persuaded to sign the petition. Eventually an eleven-foot high stack of names was presented to the Speaker of

¹³[1939] S.C.R. 50.

the House. This petition, like the first, did not directly lead to the enactment of a Bill of Rights. Before that took place, there would be more committees, more study, and a change in government. By the time John Diefenbaker got to power and was in a position to implement his new dream, the Jehovah's Witnesses had lost some of their interest in fighting for a Bill of Rights, and the explanation is simple enough. The Quiet Revolution transformed Quebec society and while perhaps Jehovah's Witnesses were still viewed unfavorably by most Quebecers, the state was no longer leading the attack. Nevertheless, their experience and their activities had made a contribution to the struggle for a Bill of Rights because they believed that such a Bill could protect them from future state attack. By interesting Canadians in a Bill of Rights, and informing Canadians of their historical experience, the Jehovah's Witnesses made an important contribution to the emerging debate.

The fact that the *Bill of Rights* which was eventually passed did not entrench fundamental rights was, of course, unfortunate as was the fact that Diefenbaker's *Bill of Rights* provided for its automatic suspension upon the *War Measures Act* being invoked. Nevertheless, what is important for the purposes of my argument, is that the Jehovah's Witnesses can claim some credit for interesting and, you will forgive me, awakening Canadians to the idea that formal legal protections could make a difference in protecting and promoting human freedom and civil rights.

In all of this I do not wish to ignore other groups and interests which pressed for formal protection for civil rights. The Communist Party of Canada, and after August 1945 groups suddenly interested in the mistreatment of the Canadian Japanese, became involved in the campaign for a Bill of Rights. International covenants protecting human rights soon came to be reflected by provincial enactments providing for such things as fair employment and housing practices. Before the war no one, or almost no one, had spoken about the need to formally protect human rights. After the war, however, a vigorous and informed dialogue began, one that ultimately led to the patriation of the Constitution and the entrenchment of the *Charter*. My argument is that one reason, a major one perhaps, why this process began is because of the experience of the Jehovah's Witnesses and their efforts to promote the entrenchment of formal legal protections in order to ensure that their experience was not repeated, or that if it was, that a means existed in law to fight for their rights. The Jehovah's Witnesses, in their confrontation with the state, did not vindicate established standards for the protection of minority dissent. Instead, they helped to create those standards, standards which they then sought to have constitutionally entrenched and standards which are reflected in our *Charter* today. These standards will undoubtedly determine the kind of society in which we will live in tomorrow.