



## **Public Section**

### **Lawsuit Necessary to Protect Public Schools in Saskatchewan**

Last week's court decision, which found Government funding of non-Catholics in Catholic schools to be unconstitutional, is the outcome of a decades long effort by public schools to protect the religiously neutral public school system. The decision has attracted significant public comment based on a misunderstanding of what issues provoked the court case and why these issues were brought forward for determination in a lawsuit.

Neither the Government, nor Catholic Schools, should be surprised by the outcome of the court case. In 1987, a judgment from the Supreme Court of Canada described it as "axiomatic" that funding associated with separate schools "would be found discriminatory and in violation of s 2(a) and s. 15 of the Charter of Rights", except to the extent of the constitutional guarantee of separate schools. Saskatchewan public schools have never questioned the right of Catholic or Protestant minorities to form separate schools. The question they have asked is "*What is the proper mandate of separate schools?*"

Statements have been made in the press, including by members of the Government, that Saskatchewan has had a system of public and separate schools for over a century. These statements are true, but in part only. Historically, as the Court has found, separate schools existed to allow members of a religious minority to "separate" from the majority. In the context of Catholic separate schools, this has meant that, with relatively few exceptions, Catholic separate schools existed to educate members of the Catholic faith. This practice changed in the last several decades, when large numbers of non-Catholics began entering separate schools. The "separate" schools of today, which operate as a parallel public school system, is not the separate school system that was in existence for much of Saskatchewan's history – contrary to recent statements suggesting otherwise.

In all of these instances, the public school system has been gravely compromised. In urban centers, the loss of students has made public schools less efficient, undermined school board transportation policies, prevented the closure of unviable schools, and resulted in open competition for students – at significant expense to taxpayers. In rural areas, the creation and expansion of Catholic "separate" schools, such as in Theodore, and the creation of a Protestant "separate" school in Englefeld, have impeded school boards in making hard, but necessary choices to ensure the development of the best school systems for all residents.

Since the 1990s, Saskatchewan public schools have been asking the government to obtain an authoritative determination of the "mandate question". It is unfair to blame Saskatchewan public schools which have asked the question, or the Court which has provided its answer. Every effort was taken by public schools to avoid this issue being taken to court. These efforts included meetings with successive Ministers of Education. In 2005, Saskatchewan's public boards had reached agreement with the government of the day to make a Constitutional Reference to the Court of Appeal in order to resolve this issue without the need for an expensive lawsuit. This Constitutional Reference was cancelled at the 11<sup>th</sup> hour due to political pressure exerted by the

Province's Catholic boards. After a lawsuit was commenced, the Saskatchewan public boards participated in a three-year mediation process to resolve the issue in a less-contentious manner.

It is also unfair to blame either public schools or the Court for the steps that will be needed to abide by Canada's Constitution. Saskatchewan public schools believes that the law, particularly the Constitution, is to be respected and upheld. Any disruption caused by the movement of non-Catholics from separate schools is a product of the unilateral (and relatively recent) decision of Catholic schools to admit those students.

Saskatchewan is an increasingly diverse society. Non-Christian religious minorities and non-religious groups comprise almost 35% of Saskatchewan's population. In this context, as the Court found, providing public funding to Catholic schools to teach the Catholic faith to non-Catholic students, while denying that to other faiths, violates the government's duty to treat all religions equally. Furthermore, this unequal treatment of religious and non-religious communities cannot be justified under the guise of "choice". As the Court found, it is not acceptable for the government to facilitate the religious education choices of some non-Catholic parents who are comfortable with Catholic doctrine, while offering no support for the preferences of other non-Catholic parents.

Saskatchewan's public schools hope that the Government will work with them to pursue a smooth transition to a Constitutional funding policy . The Court has given the government more than a year to consult with all stakeholders and implement a new funding policy so that disruption to students and families can be minimized.

Recent statements from the Minister of Education, threatening legislation to bar public boards pursuing important issues of educational policy, are unhelpful in attaining that objective. More worryingly, these statements suggest that the Government is less concerned with the rule of law, and more concerned with penalizing public schools for pursuing an important case to protect the public school system for our children.

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