

## **Theodore Litigation History And Overview**

### **Historical Background Prior To 2005 Statement Of Claim:**

The Public Boards, and historically primarily the urban Public Boards, have been concerned about the growth of the non-Roman Catholic student population in separate schools.

Public boards have expressed the opinion that the mandate of Catholic education in Saskatchewan is or ought to be limited to the education of Catholic students, exclusively, and as a result are in disagreement with any broader mandate of Catholic education to reflect an inclusiveness that extends beyond the Catholic community.

Public boards perceive this broader mandate as resulting in the separate school systems in the Province developing into a parallel general school system – in competition to the public school system and competing for provincial public funding.

Early in the litigation of the Theodore situation, government officials had expressed the view that the suit was not principally an attack on Catholic education or the Catholic community but was really “all about the money”. The apparent view of the Public Boards being that since the bulk of provincial funding was predicated on per student grants that either a disentanglement to the grants or a reduction in students in separate school systems would result in increased public school funding.

Public boards sought to pursue political solutions through lobbying and separate private negotiations with little success. A prime example of which being the letter they received from the Honourable Pat Atkinson, then Minister of Education, in 1998, outlining her Government's strong support for the status quo and the current interpretations of the law held both by Justice and separate school boards.

The closure of the Theodore Public School by York School Division in 2003, and the prompt establishment of a separate school was perceived by the Public Boards as an abuse of Catholic denominational education rights both under the Constitution and The Education Act, 1995 . The belief being that the establishment of the separate school was motivated not by a desire for a Catholic education for Catholic students in the community but rather as a device to circumvent the school closure.

Given this perception was shared by many observers including in government, the perception was that it was advantageous for the Public Boards to take advantage of this fact circumstance to commence the Theodore action.

### **Theodore Court Case History:**

July 2, 2003 Theodore RCSSD #138 was established by a Minister's Order.

March 23, 2005 Original Statement of Claim was issued for Theodore Case.

The original primary complaint was that per pupil school grants being paid to Catholic School Divisions for non Catholic students was discriminatory under the Charter of Rights and Freedoms even though the Public school divisions were paid the same per student school grant for all students attending those divisions including Catholic students.

The claim also challenged the legal status of the St. Theodore Catholic School Division, because a certain percentage of the students were non Catholic.

They are claiming that these grants to separate school Boards to the extent they relate to non-Catholic students are contrary to the Constitution, because it breaches the Charter of Rights, by discriminating against the Public school divisions.

Public boards say the existence, size and shape of the separate school system impacts the ability of public boards to access funds and to deliver and manage services.

They say that Theodore is one example of those impacts.

Public Section feels that the Theodore case is about protecting the mandate of Public boards.

May 16, 2012 court hearing to deal with proposed changes from the plaintiff and the “standing question” from the SCSBA.

With the changes, the Public Section has amended the pleadings to expand the issues further to request a determination of other constitutional rights of the separate schools minority faith school divisions in Saskatchewan. These changes broaden the scope of the case considerably.

This matter will likely get to trial in 2014.

Because the standing issue was left to be decided by the trial judge, we are required to defend the whole constitutional case. This will necessitate a much more comprehensive preparation from a historical perspective for our lawyers, including contracting expert witnesses.

## **Brief Summary Of Their Case:**

Providing funding to separate school divisions for non-Catholic students offend rights of equality and religious freedom under the Charter and the Government is not entitled to fund the education of non-Catholic students in separate schools.

Christ the Teacher and Theodore have no Constitutional right to accept the admission of, or to offer educational services to, non Catholic children.

Theodore is not a separate school under the Constitution as a result of the majority attendance at such school being non-Catholic students or such non-Catholic students comprising a significant number of attendees at such school.

They do have standing to ask the ancillary constitutional questions such as the extent of the rights of Catholic separate schools to admit or offer educational services to non-Catholic students.

## **Brief Summary Of Our Case and Defences:**

A declaration that the Saskatchewan Act, et al requires that Catholic separate schools be funded on a basis comparable to that provided public schools, and as such allows for and requires the funding of all students attending Catholic schools including non-Catholic students.

Catholic separate schools are entitled to fair and equitable funding to enable them to provide the same quality of education as public schools.

That the current funding provided by the Province is not subject to charter challenge as an exercise by the Province of its plenary powers.

The current and past funding mechanisms even if subject to Charter scrutiny does not violate the Charter or is justified under the Charter.

That the Public Section have no standing to raise and cannot raise the ancillary constitutional questions such as the extent of the rights of Catholic separate schools to admit or offer educational services to non-Catholic students since these rights are those of the minority faith constituency and additionally are not relevant to the challenges the primary subject matter of the proceedings.

If the ancillary constitutional questions require determination, Catholic separate school divisions have the right to determine to and the extent to which they may desire to admit or offer educational services to non-Catholic students both on a faith premises basis and as a response to operating a viable education program in light of the current funding mechanisms.