

Catholic Dimension - Legally Speaking - Fall 2005

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Catholic school rights "North of 60"

The Alberta Catholic School Trustees' Association includes as one of its member boards, the Yellowknife Separate Education District No. 2, established in 1951. St. Patrick Elementary School in Yellowknife opened in 1953 and is now a high school. It has been joined by two other schools, St. Joseph and Weledeh Catholic schools.

Unlike Alberta and Saskatchewan, the various *Northwest Territories Acts* have never been listed in Schedule "B" to the Constitution Act, 1982 as "constitutionally entrenched," by which these acts would be no longer subject to amendment by Legislation of the Parliament of Canada, but only pursuant to the constitutional amending formula set out in the *Constitution Act, 1982*. The search for the constitutionally protected rights of Catholics in the Northwest Territories is therefore less direct than in Alberta and Saskatchewan.

In the Northwest Territories, the constitutionally entrenched legislation includes the Rupert's Land and the North-Western Territory Act of 1869, the *Rupert's Land and the North-Western Territory Order* of 1870, the *Adjacent Territories Orders* of 1880, and the various constitution acts of 1871, 1886 and 1975. Pursuant to those acts and the *Constitution Act, 1867*, the federal government was empowered to pass the various Northwest Territories acts which are the constitution of the Northwest Territories and binding upon the legislature of the Northwest Territories, although not constitutionally entrenched with respect to the federal government. That is, a federal government may change the *Northwest Territories Act* from time to time, as ordinary federal legislation, but these acts are "constitutionally binding" on the Northwest Territories legislature.

The first *Northwest Territories Act* provision to specifically identify the right to establish a separate school system was Section 11 of the *Northwest Territories Act, 1875*, which confirmed that the Lieutenant Governor of the Northwest Territories had jurisdiction to pass all necessary ordinances with respect to education, but subject to the condition that the majority of rate-payers in any district or portion of the Territories could establish a public school, and the minority could establish a separate school. The relevant portions of that section read as follows:

" . . . the minority of the rate-payers . . . , whether Protestant or Roman Catholic, may establish separate schools . . . and . . . the rate-payers establishing such Protestant or Roman Catholic separate schools shall be liable only to assessments of such rates as they may impose upon themselves . . . "

That provision was consolidated in the 1880 Act and restated in 1886, although at that date, the authority formerly vested in the Lieutenant Governor was transferred to the Legislative Assembly. By 1906 the authority to establish a separate school was vested in the Commissioner in Council, and these basic constitutional protections were restated in the various *Northwest Territories Acts* of 1927 (Section 12), 1952 (Section 13(r)) and 1985 (Section 16(n)), where the current protection is almost identical to that first enacted 110 years earlier:

". . . the minority of the ratepayers in the area . . . whether Protestant or Roman Catholic, may establish separate schools . . . , in which case the ratepayers establishing Protestant or Roman Catholic separate schools are liable only to assessments of such rates that they impose on themselves . . . "

The protections granted to separate minority denominational education in the Northwest Territories are equivalent to those protections granted in Ontario, codified in s.93(1) of the *Constitution Act, 1867*, and in Alberta and Saskatchewan, set out in Section 17 of the *Alberta Act, 1905* and the *Saskatchewan Act, 1905*. Those educational protections are not frozen in time, nor can or should they be comprehensively listed, but they include at least the following:

1. The right or privilege to form a new separate school district;
2. The right or privilege to levy assessments upon the electors of the separate school district; and

3. The right or privilege not to be liable to assessments levied by any party other than the separate school district.

The current *Northwest Territories Education Act*, preserves this right to separate denominational education in Section 11, which provides that a parent of a student, or an adult student, is entitled to receive an education program through a "public denominational school" in the Northwest Territories.

All of the case law with respect to the rights and privileges of separate school electors in Ontario, Alberta and Saskatchewan are therefore directly applicable to the Catholic separate school electors in the Northwest Territories. The Alberta Catholic School Trustees' Association's advocacy for the protection and enhancement of those rights to Catholic separate education is therefore on the same footing and equally applicable in the Northwest Territories as it is in Alberta.

ACSTA's efforts to protect enhance the rights to Catholic education is on the same footing and equally applicable in the Northwest Territories as it is in Alberta.