

Catholic Dimension - Legally Speaking - Fall 2007

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Repay to Caesar

All Catholic separate school boards are both "Catholic" and "separate", the first adjective being an ecclesiastical designation and the second being a legal designation. The same dichotomous designation is relevant to Catholic public school boards, which are both "Catholic" and "public". A school board utilizing both adjectives "Catholic" and "separate", or "public", is called upon to adhere to the principles and intent of both Canon Law and civil law. In this way the authority, responsibility and jurisdiction of Catholic school trustees is considerably complicated compared to their non-Catholic public school counterparts, which are called upon only to adhere to the constraints of civil law.

Separate or Public Schools in Constitutional and Civil Law

The title "separate" or "public" is a legal and constitutional designation.

The constitutional and legal entitlement to denominational schools is found in the *Constitution Act, 1867*, s.93, and the first designation of denominational schools in what is now Alberta occurred in the *Northwest Territories Act, 1875*, which allowed the minority of ratepayers in any area, whether Protestant or Roman Catholic, to establish separate schools and be liable only to taxation assessments as they imposed upon themselves. This right to establish separate schools was reinforced in the *Northwest Territories Acts of 1886 and 1889* and codified in *The School Ordinance* and *The School Assessment Ordinance of 1901*. Those constitutional rights, privileges, powers and jurisdiction with respect to separate schools were granted for the Province of Alberta by the *Alberta Act, 1905*.

As can be plainly seen, the designation "separate" or "public" schools is a civil or legislated designation, and all jurisdiction, authority and duties with respect to separate schools are constitutionally and legislatively determined.

The *School Act of Alberta* addresses extensively the rights and obligations of separate school electors and trustees, in sections 59 to 212 and 221.3. Most importantly, the preamble to the *School Act* addresses this civil, legislative jurisdiction by recognizing that Alberta's public school system is comprised of "two dimensions, the public schools and the separate schools", separate schools rights are "guaranteed under the Constitution of Canada", and the Government of Alberta is committed to "the preservation and continuation of its one publicly funded system of education through its two dimensions: the public schools and the separate schools".

While it is clear that the rights, powers and obligations of "separate" or "public" schools are specifically addressed in constitutional and legislative provisions, there is nowhere an attempt in legislation to define, describe or determine who or what is "Catholic". That is the role of Canon Law.

Structure of the Catholic Church and Canon Law

The Roman Catholic Church is governed primarily by a collection of canons called the Code of Canon Law. The Code is the fundamental legislative document and has force of law for the entire Church. It is a comprehensive document that defines rights and provides safeguards for the members of the Church in respect of other members of the faith. The civil courts, in the decision *Gruner v. McCormac, 2000*, have recognized that the Code of Canon Law contains a detailed structure for the resolution of disputes amongst its members and recognized that they may reference the Canon Law to make findings in a civil court of law respecting the duties of priests, bishops and metropolitans in the Church. In the decision *John Doe v. Bennett, 2000*, the civil courts explained their understanding of the relationship between the Church, the Pope, bishops, priests and deacons.

It is worth repeating, from the Legally Speaking article "What Makes a Catholic School Catholic" published in the spring, 2001, *Catholic Dimension*, the principles arising from church documentation with respect to Catholic schools:

1. A Catholic school is one in which Catholic education is established, directed, recognized or consented to, by the local Bishop or ecclesiastical authority, who is competent to issue prescriptions dealing with the general regulations of the Catholic schools;
2. Even if it really be Catholic, no school may bear the title Catholic school without the consent of the competent ecclesiastical authority;
3. A Catholic school is one which is visited by, and in which Catholic education is watched over by, the local bishop or ecclesiastical authority;
4. A Catholic school is one in which all instruction and education is grounded in the principles of Catholic doctrine, subject to the authority of the Catholic Church;
5. A Catholic school must be a reflection of the Church in society, and a genuine and proper instrument of the Church;
6. A Catholic school must be an instrument of the Church's evangelization, apostolate and pastoral action;
7. A Catholic school is one in which the Church is present in the school and the school is present in the Church.

In summary, a "Catholic separate" school has dichotomous rights, duties and responsibilities, those conferred by civil legislative law upon the Separate school, and those conferred by Canon Law upon the Catholic school.

The Intersection of Canon Law and Civil Law

There is one Alberta decision directly on point for the authority that the civil courts are not prepared to intervene in the division between what is "Catholic" and what is "separate", nor what is governed by Canon Law and what is governed by Civil Law. Justice D.C. McDonald said the following in *Starland School Division v. Alberta* (1988):

"The Court should not permit its judicial powers to be applied to an issue of religious belief and conscience. Such a matter is in the realm of the non-justiciable, not because the court could not entertain and compel evidence about it, but because the court ought not to do so." (para.19)

It is "the policy of the Court not to attempt to adjudicate upon matters of religious doctrine, or to employ its powers of enquiry and compulsion in matters of religious doctrine." (para. 22)

The Supreme Court of Canada said in *Brassard v. Langevin* (1877) the following about the relationship between common law and Canon Law:

"...the members of that Church thus have a perfect right to the full and free exercise of their religion in as full and ample a manner as any other Church or denomination in the Dominion, but every member of that Church, like every member of every other Church, is subordinate to the civil law. There is no man in this Dominion so great as to be above the law, and none so humble to be beneath its notice. So long as a man, whether clerical or lay, lives under the Queen's protection in the Queen's dominion, he must obey the laws of the land, and if he infringes them he is amenable to the legal tribunals of the country - The Queen's Courts of Justice."

These, and many other cases, make it clear that a Catholic institution, such as a Catholic school board, is bound by the civil law in force in the province with respect to civil matters. Canon law does not "trump" civil law, but equally, Canon law is not "trumped" by civil law. The two co-exist, are referenced and recognized by each other.

Conclusion

The rights, powers and responsibilities of a Catholic separate school board, or a Catholic public school board, are dichotomous, and the trustees of such a board are called upon to recognize and follow both the civil law, because they are "separate" or "public" school boards, and the Canon Law, because they are "Catholic" school boards, such that they at all times "repay to Caesar what belongs to Caesar and to God what belongs to God."