

Catholic Dimension - Legally Speaking - Fall 2008

Kevin P. Feehan
Dentons Canada LLP

Catholic Education: Hip to be square

If in 2008 it's "hip to be square" or radical to be different, then Catholic education must be the in thing.

Catholic education has a weighty responsibility to deliver a distinctly different, radical and fundamentally opposed education that is fully permeated with Catholic theology, philosophy and sociology.

It is the antithesis of public school education, and the transmission of knowledge and skills must be delivered in a Christ-centered vision that permeates everything in the school system from the playground to the lunch room, from math and science to religion classes in the integral formation of the whole student. It is by definition "separate", counter-cultural, and it must challenge the norms of the secularly-based, God-shy education available across the street.

It has been legally accepted since the earliest consideration of Catholic school rights that Catholic separate schools, or Catholic public schools, should operate on a distinctly Catholic denominational philosophy. The Judicial Committee of the Privy Council said in *Brophy v. A.G. of Manitoba*, [1895] at p. 214, that Catholic minorities:

"regarded it as essential that the education of their children should be in accordance with the teaching of their Church, and considered that such an education could not be obtained in public schools designed for all members of the community alike, whatever their creed, but could only be secured in schools conducted under the influence and guidance of the authorities of their Church."

In *Tiny Separate School Trustees v. The King*, (S.C.C., 1927), Chief Justice Anglin said the following at p. 656 about the philosophical separateness of Catholic schools:

"The idea that the denominational school is to be differentiated from the common school purely by the character of its religious exercises or religious studies is erroneous. Common and separate schools are based on fundamentally different conceptions of education. Undenominational schools are based on the idea that the separation of secular from religious education is advantageous. Supporters of denominational schools on the other hand, maintain that religious instruction and influence should always accompany secular training.

Any statute or regulation that would materially diminish or curtail the scope of the education which denominational schools were, at the date of Confederation, legally entitled to impart, or that would tend to restrict the period during which supporters of such school, Catholic or Protestant, were then legally entitled to have the education of their children subject to the influence of denominational control and instruction, would `prejudicially affect a right or privilege with respect to denominational schools' enjoyed by the class of persons of which such supporters form a section."

In *Caldwell v. Stuart*, (1984), the Supreme Court of Canada said the following about the doctrinal foundation of a Catholic school: "Catholic schools are significantly different from other schools mainly because of the doctrinal basis upon which they are established. It is a fundamental tenet of the Church that Christ founded the Church to continue His work of salvation. The Church employs various means to carry out his purpose, one of which is the establishment of its own schools which have as their object the formation of the whole person, including education in the Catholic faith."

At p. 618: "... the Catholic School is different than the public school. In addition to the ordinary academic program, a religious element which determines the true nature and character of the institution is present in the Catholic School. To carry out the purposes of the school, full effect must be given to this aspect of its nature...."

At p. 624: "... the Catholic School differ(s) from the public school. This difference does not consist in the mere addition of religious training to the academic curriculum. The religious or doctrinal aspect of the school lies at its very heart and

colours all its activities and programs." The trial Court in *Daly v. Ontario* (1997), said the following about the distinct Catholic separate philosophy of education at p. 485: "... the Roman Catholic philosophy of education ... is that education is not merely the transmission of knowledge and development of skills but rather the integral formation of the whole person according to a vision of life that is revealed in the Roman Catholic tradition";

At p. 486: It is 'central' to the concept and practice of Catholic education (to) attempt at every stage and in every institutional aspect to achieve a synthesis of faith and culture, and faith and life which are the underpinnings of Catholic education";

At pp. 486 & 487: "From the Catholic perspective, education is neither merely the transmission of knowledge nor the development of various cognitive and affective skills. It is rather the integral formation of the whole person according to that vision of life revealed in the Christian tradition. Such an understanding of education is penetrated with the spirit and meaning of the Gospel and promotes the full development of the human person, in terms of the welfare of our earthly society and the building of the world developed in evermore human fashion."

At p. 495: "...the very purpose and mission of a separate school is the inculcation of a particular religious faith... .the attempt to achieve a pervasive infusion of religion throughout the entire curriculum... .(including) a pervasive and integral element in ... subjects other than religion";

And at p. 496: "Separate schools do not aim to teach their students about these matters from a neutral or objective point of view. Separate schools explicitly reject that secular approach and have consistently defined their mission to be the inculcation of a particular religious faith as the appropriate way for students to confront these issues in their lives."

The Ontario Court of Appeal in *Daly* (1999), agreed with the above at p. 256: "The evidence establishes that the aim of Catholic education is not merely the transmission of knowledge and development of skills, but rather the integral formation of the whole person according to a vision of life that is revealed in the Catholic tradition."

The Ontario Superior Court in *Hall*, at p. 319, agreed with this analysis:

"...Catholic schools are not the same as non-denominational schools. The education that takes place there is one of the central means by which the Roman Catholic Church accomplishes its mission - the nurturing and development of young persons in a Christian community so that Catholic values, Catholic life and Catholic faith become integrated in their students' lives. ... a Catholic education involves the development and inculcation of knowledge and values as viewed from the perspective of the religious believer. Publicly funded Catholic schools both develop particular guidelines, texts and curricula and also employ teachers who are expected to teach the Catholic faith. Religious celebrations take place at these schools."

In *Moose Jaw School District v. Saskatchewan*, (1974, Sask. Q.B.) the Court said: "I accept the testimony that Roman Catholics expect that religion will permeate a Roman Catholic system in all its relationships and that it is a Christian community in itself."

The Alberta Queen's Bench in *re Casagrande v. Hinton Roman Catholic Separate School* (1987) said:" ...I conclude that s.17 of the Alberta Act, 1905, grants a constitutional right to the Roman Catholics in Alberta to establish separate schools. This right includes the right to preserve the essential religious character of such schools..."

The trial judge in *Ontario English Catholic Teachers' Association v. Ontario*, (1998) (overturned on other grounds) confirmed this essential Catholic philosophy:

"Inherent to the right of a separate school system is the right of management and control. Public and separate schools are based upon fundamentally different approaches to education. Public schools see the separation of secular from religious education as being advantageous. In contrast, separate school supporters believe that religious instruction and values should permeate and be integral to the teaching of secular subjects."

Indeed, a Catholic separate school board will be "deprived ... of status" unless it can prove that it provides such denominational education, according to the Alberta Court of Queen's Bench in *Jacobi v. Board of Education of Aqueduct Roman Catholic Separate School District No. 374* (1994). So let Catholic education be "separate", different, radical and based upon a concept of education fundamentally opposed to that of the public school system. If that is seen as square, then let us resolve that it is "hip to be square."