

## Catholic Dimension - Legally Speaking - Spring 2011

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### Catholic and Public - Not An Oxymoron

CATHOLIC AND PUBLIC – NOT AN OXYMORON

There has been much consternation in the public press recently over the mandate, history and rationale for Catholic public schooling in Alberta. One author has even made the surprising allegation that there is no such thing as a “Catholic public school”. Those comments are wrong, and show a surprising lack of knowledge of Alberta history. Many of the original school districts in Alberta and Saskatchewan were in fact Catholic public schools including St. Albert, Cunningham and Bellerose (all established in 1885), Lac St. Anne (1890), Thibault (1892) and Vegreville (1895). In fact, seven of the original 10 public boards in Alberta and Saskatchewan were Catholic public boards.

This historical recognition has been constantly affirmed by the Courts in Canada, and a most recent reference can be found in the unanimous decision of the Supreme Court of Canada in *PSBAA v. Alberta*, (2000):

“Presently, both Protestant and Roman Catholic ‘separate’ schools co-exist within Alberta along side public schools. Public schools are generally not religiously affiliated, but specific population patterns have given rise to at least one Roman Catholic public school in Alberta.”

The area of Rupert’s Land and the Northwest Territories was brought into Confederation on June 23, 1870 and the Government of Canada was given constitutional authority to pass legislation for these new Northwest Territories. In 1875, it passed the first Northwest Territories Act and provided that the majority of ratepayers in any area could form a public school district, Protestant or Catholic, and once a public school district of a particular denomination was established, dissenting members of the denominational minority could form, in the same geographical area, a separate school district, again Protestant or Catholic. Every Northwest Territories Act in the succeeding 136 years had a substantially identical provision up to and including the present Act of 1985.

The establishment of schools in the Northwest Territories followed that federal legislation, providing for Protestant public schools, Catholic public schools, Protestant separate schools and Catholic separate schools. There was then, and is now, no provision for non-denominational secular education in the Territories. The first Schools Ordinance, passed in 1884, specifically provided for a school division to be both Catholic and public, or for that matter, Catholic and separate. Under this legislation, the school district was designated Catholic first, and public or separate second. The Schools Ordinance of 1885 had similar provisions, and it was under this Ordinance that, for example, St. Albert Catholic schools was established as a Catholic public school district.

Dr. Frank Peters, Professor of Educational Policy Studies in the Department of Education at the University of Alberta, spoke to the issue of Catholic public schools in an interview on Alberta Primetime Television on February 11, 2011 entitled “Lack of a Secular Education?” and said the following:

“Very often changes are brought about because of some sort of a social demand or social pressure and the arrangements in St. Albert, indeed right across the province, are historical in nature, and in St. Albert’s case you go right back to the Ordinances of 1884, 85, 86 where (the St. Albert boards were founded in 1885 in fact and) at that time the Ordinance demanded that those who set up the school district stated whether they were Catholic or Protestant, and that was with a view to making sure that when the minority wanted to establish a district, if they wanted to establish a district, you knew whether they were Catholic or Protestant. So it’s an historical artefact. In the rest of the province, virtually everywhere else, not exclusively, but virtually everywhere else, the public board took over everything and the separate board was the Catholic board in most cases, but in St. Albert, it’s unique and the Catholic board is the public board.”

The most relevant Northwest Territories school ordinance to the Province of Alberta, because of its incorporation into section 17 of the Alberta Act, 1905, is the School Ordinance, 1901 (NWT c. 29). It again provided for formation of a public school district, Protestant or Catholic, to be formed by the majority of the denominational electors, and a separate school district, Protestant or Catholic, to be formed, in the same geographical area as the public school district, by those of the minority denominational population.

Those provisions for Catholic public education are in full accord with the constitutional provisions respecting publicly-funded denominational school rights in Alberta, section 93 of the Constitution Act, 1867, section 17 of the Alberta Act, 1905, and section 29 of the Charter of Rights and Freedoms, and is recognized in the current School Act in the definitions of public and separate school districts and separate school electors.

A similar recognition that a separate school district may be Protestant or Catholic, opposite to the public school district designation, which can also be Protestant or Catholic, is found in the residency requirements of the School Act, sections 44(4) and 220(6), which provide that faith, Protestant or Catholic, is the determinant as to whether one is a resident of a particular school district, public or separate.

Finally, almost universally, historical academic articles, doctoral dissertations and master’s theses on the history of education in Western Canada, and in particular in the original area of the Northwest Territories, recognize the significant role and historical place of Catholic public education in what is now Alberta and Saskatchewan. Clearly, the concept of a Catholic public school is well recognized in Canadian constitutional provisions and legislation, including the various Northwest Territories Acts, Ordinances of the Northwest Territories, the Alberta Act, 1905, and the various School Acts of the Province of Alberta. There is also no doubt that Catholic public education is entrenched historically and in case law in the Alberta educational scene and is called upon, just like Catholic separate schools, to provide an education to its resident students which is fully permeated by Catholic theology, philosophy, practices and beliefs, the principles of the Gospel and teachings of the Catholic Church, in all aspects of school life, including the curriculum of every subject taught, both in and outside of formal religion classes, celebrations and exercises.