

# The Catholicity Clause – The Importance Remains



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Over the years, the courts in Alberta, with some “help” from the Supreme Court of Canada, have confirmed and solidified the constitutional protections given to Catholic separate schools. The “Catholicity clause” has developed over the years to reflect the constitutional protections, and to ensure those who accept employment in a Catholic separate school board agree to carry out their duties in accordance with the philosophy and theology of the Catholic Church. While much has changed over the years, the importance and legitimacy of the Catholicity clause has not. A review of the justifications for the Catholicity clause serves as a valuable reminder of its continued importance today.

Pursuant to section 93 of the *Constitution Act, 1867* and section 17 of the *Alberta Act, 1905* separate schools are granted the constitutional right to establish separate schools. Section 29 of the *Charter of Rights and Freedoms* reaffirms and continues the constitutional rights granted to denominational schools, giving those rights precedence over the individual rights protected by other provisions of the Charter.

The constitutional rights also render inapplicable any rights granted by the *Alberta Human Rights Act* to the extent that such rights conflict with the constitutional rights of a separate school board. However, as set out by the Supreme Court of Canada in *Casagrande v. Hinton Roman Catholic Separate School District No. 155* (1987), any limitations on the individual rights granted by the Charter or the human rights legislation can only be permitted in cases where a dismissal or termination of employment is based on a *bona fide* denominational cause.

The courts have determined that the constitutionally protected right to establish separate schools necessarily includes the right to maintain the denominational character of the school. This includes the right to dismiss teachers for denominational causes (see for instance *Casagrande v. Hinton Roman Catholic Separate School District No. 155*). In arriving at this conclusion, the courts have examined what rights were available to separate schools as of 1867. As employers, the

trustees of schools had the power to hire and dismiss teachers. As school boards could dismiss for cause, then in the case of a denominational school, cause must be taken to include denominational cause. Serious departures from denominational standards by a teacher could not be isolated from his or her teaching duties (*Re Essex County Roman Catholic Separate School Board and Porter* (1978)).

The Supreme Court of Canada in the 1984 case of *Caldwell v. Stuart* recognized the special position of separate schools and held that the unique character and position of separate schools allowed for the imposition of rules requiring teacher to adhere to certain religious and moral standards, and permitted dismissal of a teacher for failing to adhere to those standards. The Court explained as follows:

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. The relationship of the teacher to the student enables the teacher to form the mind and attitudes of the student and the Church depends not so much on the usual form of academic instruction as on the teachers who, in imitation of Christ, are required to reveal the Christian message in their work and as well in all aspects of their behaviour. The teacher is expected to be an example consistent with the teaching of the Church, and must proclaim the Catholic philosophy by his or her conduct within and without the school.

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Ultimately, the Court determined that the denominational cause could constitute a *bona fide* qualification for employment of a teacher in a separate school, stating:

[...] The Board found that the Catholic school differed 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 role of the teacher in this respect is fundamental to the whole effort of the school, as much in its spiritual nature as in the academic. It is my opinion that objectively viewed, having in mind the special nature and objectives of the school, the requirement of religious conformance including the acceptance and observance of the Church's rules regarding marriage is reasonably necessary to assure the achievement of the objects of the school. It is my view that the *Etobicoke* test is thus met and that the requirement of conformance constitutes a *bona fide* qualification in respect of the occupation of a Catholic teacher employed in a Catholic school, the absence of which will deprive her of the protection of s. 8 of the *Human Rights Code*. It will be only in rare circumstances that such a factor as religious conformance can pass the test of *bona fide* qualification. In the case at bar, the special nature of the school and the unique role played by the teachers in the attaining of the school's legitimate objects are essential to the finding that religious conformance is a *bona fide* qualification.

As an aside, denominational cause in the human rights sphere is not restricted to teachers in Catholic separate school boards. For instance, in *Wild Rose School Division No. 66 and Central Alberta Assn. of Municipal and School Employees*, an Alberta Board of Arbitration dismissed a grievance alleging that two job postings by Drayton Christian School for teacher assistants were discriminatory contrary to the collective agreement. The job postings invited applications

from "persons able to work and live as positive Christian role models" and those who "will also be supportive of the educational creed and lifestyle expectations" of the School. The teachers assistants were required to spend a lot of time one on one with students and were often called to pray with the family. The School was consistent in its policy and the Board found that the postings and interview process were clear on what was required of prospective employees. Ultimately the Board found that the School had demonstrated that the religious requirements for teacher assistants were a *bona fide* occupation qualification on which the School was entitled to insist in advertising and selecting candidates.

Similarly, the Manitoba Board of Inquiry in *Schroen v. Steinbach Bible College* (1999) considered a complaint of discrimination by an accounting clerk alleging that the Steinbach Bible College ("SBC"). She alleged her employment was unreasonably terminated on the basis of her religious beliefs. SBC defended on the basis that her termination was based on a *bona fide* and reasonable requirement or qualification for employment. The Board considered the job duties of the accounting clerk at SBC, noting that it was generally understood and a basic premise at SBC that all employees would involve themselves and regularly attend Chapel prayer meetings, attend the school retreat, have students at their homes for group Bible study session, attend the school cafeteria to have meals with students and be available any time to discuss faith matters with students. All employees were "expected to



share in a faithful way with students espousing the Christian faith, as that was what SBC was all about." The Board found that the complainant had been hired not for any specific ability relating to the technical part of the job, but rather, for her friendliness and the perception that she would contribute to the SBC environment. The Board ultimately-

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dismissed the complaint, stating at para. 60:

The special nature of the College, and both the external and internal forces that the students would be subject to, which would impinge on their consciousness, should not be jeopardized

flexible so as to evolve as needed. The Catholicity clause in teacher contracts is broadly worded, based upon the practices and beliefs, principles of the Gospel and teachings of the Catholic Church, as interpreted from time to time in consultation with the Catholic Bishop. It is not intended to be static nor express in its limitations. This enables the Catholicity clause to both serve as evidence of the Catholic nature of the role for the purposes of triggering the constitutional protections, as well as creating the contractual elements as between the parties.



in the close, tight, focussed and interactive community that exists at SBC. Considering the unique role of an accounting clerk at SBC and that the unique culture of SBC including its philosophy, mission, faith, beliefs, ethics and the acceptance and observance of the Statement of Faith are reasonable and necessary to assure achievement of the religious objects of the College, it is my view that the Etobicoke test has been met. As a result, and under the circumstances of this case, the requirement that the accounting clerk be of the Mennonite faith to work at SBC constitutes a *bona fide* and reasonable requirement or qualification for that employment or occupation at SBC.

The constitutional protections afforded to the Catholic separate school boards are obviously rooted in history, but yet, the courts have made it clear that those rights are not frozen as at 1905. Instead, those rights are intended to evolve as educational practices and methods change. Therefore, the Catholicity clause itself must be

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