

Ontario Human Rights Tribunal Sorgini case is settled

Background from Issue #117

CASE SUMMARY

On January 5, 2016, Claudia Sorgini filed an Application to the Human Rights Tribunal of Ontario, alleging discrimination based on creed within the Ontario Secondary Catholic School system, contrary to the Ontario *Human Rights Code*. St. Theresa's Catholic High School, the Simcoe Muskoka Catholic School Board, and the Ontario Catholic School Trustees' Association (OCSTA) are named as Respondents.

Ms. Sorgini, a non-Catholic former secondary student, is seeking remedies for the negative treatment she experienced after requesting an exemption from participating in her high school's religion courses and religious

activities. Under section 42 of the Ontario *Education Act*, Catholic schools are required to grant such an exemption upon receiving a request in writing. It is the Applicant's position that the *Code* also guarantees her right to be free from the imposition of Roman Catholic teachings and practices, as a student who does not personally identify as a member of the Roman Catholic faith.

In Ms. Sorgini's case, it was only after she obtained the assistance of legal counsel that St. Theresa's and the Board were prepared to grant the exemption from religious courses. Even then, the Respondents insisted that she still attend religious activities, such as masses and liturgies, and threatened that she would not be allowed to attend

activities such as prom, graduation, and the honours list breakfast if she continued to insist on an exemption from religious activities. Ms. Sorgini's parents were also banned from attending the school premises without notice and were advised to direct any future communications with the school through legal counsel (at their own expense).

In her Application, Ms. Sorgini alleges that the OCSTA engaged in a pattern of systemic discrimination against students who seek exemptions from religious courses and activities. She states that Catholic School Boards across the province have been directed by the OCSTA to stall and discourage students who make exemption requests, and in some cases students are simply denied outright. Where students do pursue these requests, they often face reprisal in the form of intimidation and adverse treatment, as in the case of Ms. Sorgini.

Ms. Sorgini seeks systemic remedies including province-wide changes to the policies and practices of Catholic School Boards surrounding requests for religious exemptions.

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Public Interest Remedies

Although the negotiations for settlement occurred in the Mediation process, and are therefore confidential, they included some "Public Interest Remedies" which are public.

The *Education Act* gives certain students who attend Catholic secondary schools in Ontario the right, on

written application, to be exempted from taking part in any program or course of study in religious education.

Also, since the parties recognize and acknowledge that the Ontario *Human Rights*

Code, RSO 1990, c H.19 protects the right of students to be free from discrimination on the ground of creed, which includes the right to be free from religious or creed-based pressure, the parties agreed, as follows:

1. The Respondent Simcoe Muskoka Catholic District School Board (the "Board") agrees to prepare and adopt a new procedure entitled "Simcoe Muskoka Catholic District School Board Practice and Process Procedure around Religious Exemptions" (the "Practice and Process Procedure"). The Practice and Process Procedure will be consistent with the *Education Act*, *Human Rights Code* and the Ontario Human Rights Commission *Policy on Preventing Discrimination Based on Creed*.
2. It is understood that the Respondent Ontario Catholic School Trustees' Association ("OCSTA") is an advisory body and has no authority to compel or direct Catholic school boards to adopt any policies or procedures. OCSTA agrees that once the Practice and Process Procedure is finalized by the Board, it will distribute the Practice and Process Procedure to all 29 Catholic school boards.
3. The Practice and Process Procedure will emphasize:
 - The statutory requirement to provide an exemption under subsection 42(13) of the *Education Act*.

It provides:

'[...] no person who is qualified to be a resident pupil in respect of a secondary school operated by a public board who attends a secondary school operated by a Roman Catholic board shall be required to take part in any program or course of study in religious education on written application to the Board of,

- (a) the parent or guardian of the person;
- (b) in the case of a person who is 16 or 17 years old who has withdrawn from parental control, the person himself or herself;
- (c) in the case of a person who is 18 years old or older, the person himself or herself.'

- To assist students, parents or guardians in making a written application for an exemption, - a standardized exemption application form shall be made available to students, with information requirements that are sufficient to determine the student's eligibility to the exemption under subsection 42(13) of the *Education Act*. The form will also include a general list of programs, activities or course(s) of study that are eligible for the exemption and which the student can select.

- Students have the right to request an exemption from any specific religious program, course or activity while retaining the right to participate in other religious programs, courses or activities.
- Upon receipt of the standardized form, the school will assess the student's eligibility for an exemption.
- Once the student's eligibility is confirmed, the exemption will be provided by the school without delay, pressure or other adverse treatment.

- Students who apply for the exemption will not be asked to provide any reasons for their request, nor attend any meeting with school or board officials as a precondition to the application being recognized and accepted.

The exemption may apply to religious programs, courses or activities with a substantial component of religious content. For example, exempted students may not be required to participate in prayer and liturgical activities, nor required to attend at religious observances. Schools should produce a list of religious programs, courses or activities to which the exemption may apply, and the list should accompany the standardized form. Students, parents or guardians may also question whether other courses, programs or activities are religious education for the purposes of subsection 42(13) of the *Education Act*.

- Students with exemptions shall be given the opportunity to take alternative course or program offerings to the extent reasonably possible in line with ordinary course selection procedures. The school will work with the student to provide information to assist him or her in making an informed decision.
 - Students with exemptions from religious courses and activities must be treated with dignity and respect.
4. The Board shall share a draft of the new Practice and Process Procedure with the Ontario Human Rights Commission within three months of this settlement, along with the Public Interest Remedies document, and will provide the Commission with an opportunity to make comments on the draft Procedure if it wishes to do so.
 5. The Board shall finalize and adopt the Practice and Process Procedure within six months of the date of this settlement and shall provide a copy to the Applicant.
 6. Within 30 days of the Board adopting the Practice and Process Procedure, OCSTA shall send a memo to Chairpersons and Directors of Education of all Catholic District School Boards in Ontario, attaching copy of the Practice and Process Procedure, advising school boards of the settlement under the *Human Rights Code* and recommending that all boards develop and implement similar procedures or policies.
 7. The Respondents, Simcoe Muskoka Catholic District School Board and St. Theresa's High School, shall make the Practice and Process Procedure available and publicly accessible on their websites.”

So now, to acknowledge the heroes in this saga.

They are: Peter Jones who first alerted us to the exemption provisions in the Education Act.

Oliver Erazo who wished to follow up on this opening—went to court over it, and won.

Kyle Naylor who took it upon himself to set up a website to expose the truth and to help others get exemptions. It was Kyle’s work which led to the Sorgini family contact and the successful Ontario Human Rights Tribunal settlement and the resulting Public Interest Remedies.

Bravo: The whole province thanks you.

STUDENTS SHOULD BE FREE FROM RELIGIOUS COERCION

June 13, 2017

The Canadian Civil Liberties Association welcomes the acknowledgement by two Catholic educational bodies that certain students in Catholic schools have the right to opt out of religious programs, courses and activities, free from religious or creed-based pressure.

In Public Interest Remedies agreed to as a term of settlement, the Ontario Catholic School Trustees' Association and Simcoe Muskoka Catholic District Board have agreed to acknowledge that students who meet the requirements for a religious exemption under Ontario's *Education Act* have the right to opt out of religious prayers and programming, based on their right to be free from discrimination on the ground of creed.

The settlement arose out of a recent human rights complaint in which a young woman had sought, with her parents' consent, an exemption from religious courses and liturgies at a Catholic

high school. The complaint – *Sorgini v Simcoe Muskoka Catholic District School Board, St. Theresa's Catholic High School, and Ontario Catholic School Trustee Association (Sorgini)* – was filed with the Human Rights Tribunal of Ontario.

CCLA intervened in *Sorgini* to argue that separate schools' obligations under the *Ontario Human Rights Code* (the *Code*) and *Education Act* (the *Act*) must be properly interpreted in light of values in the *Canadian Charter of Rights and Freedoms* (the *Charter*). Because individuals have a right under both the *Charter* and the *Code* to be free from religious coercion and indoctrination, separate school boards have a positive duty to provide an exemption to any program or course of study in religious education to any eligible person who seeks such an exemption.

Simply put, students who are eligible for an exemp-

tion from religious content should not be forced to pay a price – in the form of undue obstacles, stigma, or any other adverse treatment – for having sought and obtained an exemption.

Despite this positive step, CCLA has concerns that students' right to be free from religious coercion is not adequately protected under the *Education Act*. For instance, the Act requires that students who are seeking certain exemptions must have parental consent, be free of parental control, or be 18 or older.

Nonetheless, the adoption of school policies that protect eligible students' right to seek and obtain religious exemptions without fear of adverse treatment would be a step in the right direction. We urge all Catholic school boards to ensure that this right is provided, as required by law.

The CCLA was represented by Stuart Svonkin of Chernos Flaherty Svonkin LLP.

OPEN

One Public Education Now Terrific response to announcement

You were introduced to OPEN on the front page of the last newsletter: Winter 2017 Issue #119. CRIPE also shared website space with a landing page that allows persons to select the OPEN side or the CRIPE side when going to www.cripeweb.org. This arrangement has worked well and so it will continue.

CRIPE is very pleased to welcome Reva Landau as a qualified person to head up a court challenge against the public funding of the Roman Catholic separate school system as stated on page one of CRIPE newsletter 119 for Winter 2017.

In an exclusive Toronto Star article, the Star wrote that: “The group wants to bring the issue to the forefront at a time when school closures are causing havoc in many regions, arguing that taxpayer-funded Catholic schools are no longer fair or affordable in a society of many religions and cultures.”

Refused “standing” in her previous attempt to launch a legal case, Reva Landau now has two plaintiffs who are directly affected by the outdated Ministry of Education regulations.

Adrienne Havercroft is a qualified teacher living in Hamilton

who claims that a publicly-funded Roman Catholic school board has hindered her search for full-time employment. Since Adrienne is of the “wrong” faith to obtain a job in a Roman Catholic publicly-funded school, she is effectively ineligible for one-third of the publicly-funded teaching jobs in her area.

Only teachers who are of the Roman Catholic faith, and can prove it through a document from a Roman Catholic priest, are eligible to be hired by a publicly-funded Roman Catholic school.

Adrienne is justifiably frustrated by the situation imposed upon her by the Ontario Education Act. Three provinces have recognized the dignity and worth of every individual and extricated themselves from 19th century religious bargains. These include Manitoba, Quebec, and Newfoundland & Labrador.

While some persons incorrectly believe that Roman Catholic ratepayers pay for the separate schools, it turns out that in the Hamilton area, only 7% of the board’s funding comes from municipal taxes designated for school purposes.

James Sutton of Markham is the

second plaintiff. His two sons have to travel by bus, one hour each way, to attend their French public school in Richmond Hill. There is a closer French-language option only 20 minutes away, but it is a Roman Catholic school—not suitable when one wants a secular education.

Sutton sees flocks of buses which deliver students to any of the four French or English, Roman Catholic or not, schools. This fragments communities and makes no sense. He believes that one public, secular, system would provide more spaces for everyone who would then be in neighbourhood schools. “There’s no reason to stay the way we are.”

Charles Pascal, a professor at University of Toronto’s Ontario Institute for Studies in Education calls separate-school funding “an anachronism”, and despite being enshrined in the constitution, it no longer has merit in a multicultural province.

Some persons argue that amalgamating school boards didn’t save money, but these boards were in different areas. Amalgamating school boards in the very same area is a much different situation.

Short Summary of OPEN's Legal Case

OPEN (One Public Education Now) wants to bring a legal case asking the Supreme Court to re-examine their 1987 *Reference re Bill 30* decision. The case would be an application under the *Charter of Rights* for a declaration that the Ontario *Education Act* sections covering funding of separate schools be declared void. If successful, public funding of Ontario Catholic Separate schools would be:

Completely abolished or

Greatly reduced so Grades 9-12 were no longer funded and funding for Grades 1-8 for Catholic Separate schools would be only around 63% of the funds public schools received.

Summary of Background:

Section 93 of *Constitution Act, 1867* (formerly known as *British North America Act, 1867*) gives the provinces control over education with the exceptions listed in s.93(1) to s.93(4). Section 93(2) **states whatever rights Ontario gives Catholic Separate schools must be given to Quebec Protestant and Catholic separate schools.** Section 93(1) says no provincial law can remove whatever rights separate schools had in Ontario or Quebec at Confederation (July 1, 1867).

In 1985, the Ontario provincial government extended funding to Catholic Separate schools to the end of high school (then Grade 13). Unsurprisingly, various groups objected. In the 1987 *Reference re Bill 30* decision, the Supreme Court said the *Charter of Rights and Freedoms* which guaranteed equal protection and benefit of the law without discrimination on the basis of religion **did not apply** to the funding of Ontario Catholic separate schools or their right to teach Catholicism.

They also ruled that in 1867, separate schools had taught the equivalent of high school, which overturned the long-standing *Tiny Separate-School Trustees v. The King* [aff'd [1928] A.C. 363].

Why We Think The Supreme Court could overturn its decision

In 1997, at the unanimous request of the Quebec Provincial Parliament, the *Constitutional Amendment, Quebec* was passed which stated s.93(1) to s.93(4) did not apply to Quebec. Quebec now has only one secular two-language public school system.

So our first argument would be that s.93(2) which says whatever rights Ontario gives Catholic separate schools must be given to Quebec Protestant and Catholic schools is now clearly unenforceable and void. The argument would be that all clauses s.93(1) to 93(4) are so intertwined they should all be declared void. Therefore, Ontario no longer has any constitutional obligation to fund Catholic Separate schools.

If the Supreme Court ruled s.93(1) was still valid, the second argument is that the 1987 Supreme Court decision placed great emphasis on what they called the "great compromise" of s.93. One main party to that compromise, Quebec, has now withdrawn. So at the very least the Supreme Court should rethink its ruling that the *Charter of Rights* did not apply at all to Ontario Separate schools. *If* the Charter of Rights applies, all Catholic separate schools are guaranteed is the rights they had in 1867, which we would argue is **only 63%** of the funding provided for public schools and no funding for high schools.

There are also other changes since 1987, such as scholarly books on high school education in nineteenth century Ontario, Supreme Court decisions on related areas, etc. that we think justify a re-examination of the ruling that the *Charter of Rights* does not apply to Ontario Separate schools as well as the ruling that high schools were funded in 1867. A previous case failed because the judge ruled the applicant did not have standing; the judge did not rule on the merits of the case. Our plaintiffs, a teacher and a parent, should get standing.

To keep going — we need money.

In the past we, CRIPE, have had few instances when we asked for, and needed, a substantial amount of cash. At those times our membership had always come through.

In the more recent past, we have not been as active, but still requested an annual donation of \$20. These \$20 donations (or membership fees) have added up.

Then, when we needed money to pay for the Erazo court case—which was a true breakthrough—our bank account paid the way.

Reminder, with the exception of a Post Office Box, head office has no expenses charged to CRIPE or OPEN. We have managed our funds responsibly.

The exemption file estimate (Sorgini case) was \$30,000 to \$60,000. The \$60,000 was if we could not negotiate a settlement during Mediation, and therefore had to go to a Human Rights Tribunal Hearing. It has cost us less than \$30,000 so far, but the deal was we would only pay 50% of the cost if we lost, but since we won, we owe the other 50%. Due to the fact that we had few expenses for several years, annual fees/donations have accumulated to the extent that we can handle the remaining legal fees.

CRIPE will support OPEN, and OPEN will eventually go to the Supreme Court which could cost over \$100,000. However, all CRIPE is asking for is a yearly donation of \$20 each. But larger donations will be thankfully received. Also, OPEN will soon engage in a crowdfunding operation.

With your support in the past we have come a long way, so we are counting on a yearly \$20 donation to reach our ultimate goal.

For CRIPE, send a cheque, payable to CRIPE, Box 491, Pembroke ON K8A 6X7

For OPEN, go to <https://open.cripeweb.org/aboutOpen.html> and click on Donate

Or mails a cheque to: OPEN
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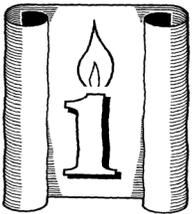
The world is changed by your example, not by your opinion.

WHO WE ARE

Civil Rights in Public Education, Inc. is an organization composed of citizens of differing backgrounds, living in more than 155 communities across Ontario, committed to one strong public education system, which offers neither privilege nor prejudice to anyone.

OUR AIMS ARE

- To serve as advocates for civil rights in public education so that the public is informed about the issue of publicly-funded separate schools.
- To hasten the day when Ontario's education policy recognizes the dignity and worth of all children, their right to equality, and their right to freedom from religious discrimination.



OUR LOGO

Our logo is composed of a background scroll representing the charters of rights which guarantee fundamental freedoms to all individuals; the numeral "1" signifies equality and social unity in one public education system for each official language; the flame above is the universal symbol for freedom.

OPEN's Spectacular Launch

During the first two days following the article in The Star, OPEN's email inbox had over 80 messages. Most expressed emotions such as joy, relief, happiness, and expressions such as "at last" or "about time". This has been very encouraging to the OPEN team, but not only that, we had NINE offers of help, from a graphic designer to writer, to lawyers, social media, or, to "help in any way". On top of that, in the first two days, there were 120 donations which totaled over \$5,500.

The media were kind to us because the public funding of the separate schools is always a topic of interest. There must have been dozens of newspapers who picked up the story, and no fewer than a dozen media requests for interviews—radio and TV

With the publicity generated by OPEN, and then CRIPE's Human Rights Tribunal settlement, we are the collective darlings of the majority of Ontario citizens.

So now we have to carry on and fill the boots we made for ourselves. Therefore, keep informed and spread the word.

A Thought to Consider

Governments have a responsibility not to keep laws in effect that are acknowledged to be harmful and morally wrong.

Ottawa Citizen editorial, 2012

To be added to the mailing list, send \$20.00 to
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ABOVE ALL WE MUST MAKE SURE THAT NO CITIZEN OF ONTARIO, NOW, OR EVER IN THE FUTURE, IS PRIVILEGED OR DISADVANTAGED PUBLICLY BECAUSE OF HIS/HER FAITH, OR ABSENCE OF FAITH.