

# Civil Rights In Public Education, Inc.

All human beings are born free and equal in dignity and rights  
UNIVERSAL DECLARATION OF HUMAN RIGHTS



Winter 2018

Issue Number 122

## We're on our way!



### First of all — THANKS

CRIFE head office was extremely pleased to note that our fund-raising effort returned such a healthy sum that we were able to designate \$45,000 to OPEN's use.

We kept a few thousand dollars to pay for website fees, the post office box, and mailings to those members

who do not have email.

Thank you for responding with such generous support.

**OPEN** raised a further \$20,000 on its own so that the resulting \$65,000 allowed us to get started by hiring a legal firm to look after our court challenge.

An ad campaign was launched in Toronto on Monday March 19, 2018 by retired dentist Dr. Richard G. L. Thain, a strong supporter of justice through human rights. The aim is to support **One Public Education Now (OPEN)**

The purpose of the ads - pictured above - is to garner support for a lawsuit by **OPEN** which has now been assigned to Dewart Gleason LLP. See pages 4 and 5.

The ads ran for two weeks in Toronto, on dozens of electronic billboards which reached both pedestrian and vehicular traffic.

Thain also participated in a demonstration on Parliament Hill on April 12th.

Ontario's politicians cannot hide from our issue forever. Through donations to **OPEN**, we will hopefully see them in court.

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## The early legal landscape

Any discussion of the separate school issue and what to do about it today must take into account the origin of separate schools, over 150 years ago. At that time Roman Catholic citizens represented a minority in Ontario (Upper Canada) whereas Protestants and other citizens represented minorities in Quebec (Lower Canada).

To accommodate this situation, each province introduced provisions to protect minority beliefs in the education of children.

In 1841, when Ontario and Quebec were joined together in a legislative union known as the United Province of Canada, the Day Act provided that "any number of Inhabitants of any Township or Parish professing a religious faith different from that of the majority of Inhabitants of such Township or Parish" may "dissent from the regulations" and set up their own school.

At a time when religious intolerance was widespread, provision for a religious minority to "dissent from the regulations" and therefore from the religious majority, was a solution that suited the time.

The intent, then, of the original legislation, was to establish social harmony by allowing antagonistic faith groups to separate in different schools. The original intent was not to elevate any one faith group into a position of privilege.

Despite the above, subsequent legislation made it easier to establish separate schools for Roman Catholics but more difficult to establish them for others.

For instance, the common legislature for the United Provinces alternated their sessions of government between Quebec City and Kingston. The sessions were usually in the winter while the fields of grain were dormant. When a legislative session was held in Quebec City, Ontario members who were farmers often left early to tend to their fields.

Legislators from Lower Canada (Quebec) were predominantly Roman Catholic and tended to ensure that their Roman Catholic citizens in Upper Canada (Ontario) received some support.

The Tache Act of 1855, **applied only to Ontario, but was introduced into the Legislature by a member from Quebec**, and was **passed on the strength of Quebec votes**.

This Tache bill dealt with such delicate questions as financial support of separate schools and the place of religion in education, and was "... *introduced into the Upper House, not by an Upper Canadian, but by a Lower Canadian, and when only 3 Upper Canadians members of the Legislative Council were in Quebec. And now it was introduced here, when most of the Upper Canada members had gone home, without knowing anything of it, and they were asked to legislate on this important subject . . .*"

The above, in italics, is a quote from "Church and State in Canadian Education" by C. B. Sissons, page 39.

Similarly, the Scott Act of 1863, which turned out to be the basis of today's separate schools, **applied only to Ontario, but was again passed on the strength of Quebec (Roman Catholic) votes**.

In large measure, this is the reason we have a Roman Catholic separate system in Ontario.

Ontario has never voted for separate schools, they were foisted on the province by Quebec legislators in the common government of Upper and Lower Canada before Confederation.

The other reason is that, apparently, Confederation in 1867 would not have been possible without a guarantee that Quebec would have a publicly-funded school system for Protestants only if Ontario had a similar school system for Roman Catholics.

This guarantee takes form in paragraph 2 of section 93 of the Constitution Act 1867, copied below.

**2. All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissident Schools of the Queen's Protestant and Roman Catholic subjects in Quebec.**

# Bill 30 and the Confederation Bargain

## Background

In 1984, the then Premier, Bill Davis, dictated his intention to provide full public funding to Roman Catholic high schools. There was no debate in the Legislature, his P.C. MPPs were informed of the Premier's position less than an hour before the provincial announcement. (Subsequent election defeats relegated the P.C. party to the basement for the next 10 years so the notorious Bill 30 was left to the willing Liberals to complete.)

In anticipation of a legal problem, the Liberal government asked for a legal reference. The Supreme Court upheld Bill 30 in its decision of June 25, 1987.

## The Supreme Court ruling

"The sole issue for the Court was whether Bill 30 was consistent with the Constitution of Canada."

This above statement from the Court's decision was followed by: "The basic compact of Confederation with respect to education was that rights and privileges already acquired by law at the time of Confederation would be preserved ..."

And in a later statement a majority of the judges: "...emphasized the pivotal role which s. 93 had played in the negotiations leading up to Confederation and concluded that 'provision for the rights of Protestants and Roman Catholics to separate schools [i.e. s. 93 of the Constitution of Canada] became part of 'a small bill of rights' as a basic compact of Confederation.'"

**Note that the "provision of the rights of Protestants...to separate schools ..." in Quebec was considered part of a "...basic compact of Confederation."**

The above statements, and others, **total twelve instances** in which the Confederation bargain was cited by the Court as being the reason that it ruled the Canadian Charter of Rights and Freedoms does not apply to the discriminatory Bill 30. Therefore full public funding for separate high schools was allowed.

## Court disregards Charter

On the basis of the Supreme Court's above reasoning, it set aside the 1982 Charter of Rights and Freedoms as a document not worthy of displacing one (s. 93) made 115 years earlier for another purpose, which today, has no relevance whatsoever.

## The broken "basic compact" changes everything

The fact that the Supreme Court threw out the Charter on the basis of s. 93 being a "...basic compact of Confederation." means that, since Quebec abolished its publicly-funded Protestant schools, officially, through a constitutional change in 1997, **there is no longer a "basic compact" to honour**, and we expect the Court to now rule that the Charter does apply.

The only sections of the Charter mentioned by the Court which it set aside are section "2(a) freedom of conscience and religion" and section "15. (1) Every individual is equal before and under

the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

## Common Law Principles are based on precedent

*Letter by John Clubine of Eto-bicoke printed in response to a Toronto Star article. June 2017.*

I am in agreement with Reva Landau (founder of One Public Education Now) that there should be one non-denominational, two-language public school system, and parent James Sutton, that there's no reason to stay the way we are.

Those who claim that public funding of Catholic schools is sacrosanct under the Constitution Act of 1867 need to be reminded that this act follows common-law principles, similar to that of the United Kingdom.

Common law is most certainly activist, in stating that it "does not consist of absolute, fixed and inflexible rules, but rather of broad and comprehensive principles based on justice, reason and common sense . . . its principles have been determined by the social needs of the community and have changed with changes in such needs . . . are susceptible of adaptations to new conditions, interests, relations and usages as the progress of society may require.

# OPEN Retains Legal Counsel for its Court Case

By OPEN Organizing  
Committee

One Public Education Now (OPEN) has retained Dewart Gleason LLP to apply for a legal declaration that the public funding of Ontario Catholic separate schools violates the Canadian *Charter of Rights and Freedoms* which prohibits discrimination on the basis of religion.

Dewart Gleason is a well-established law firm, with significant experience in litigation of constitutional (including *Charter of Rights*), civil liberties, and labour and employment matters.

From the Dewart Gleason website: "The lawyers at Dewart Gleason LLP share a commitment to equality and civil rights. We have acted for civil liberties groups and for individuals and communities who have been marginalized in society, challenging unconstitutional laws and practices, and pursuing meaningful change. We have taken on discrimination and abuse of civil rights in courts and tribunals, including the Supreme Court of Canada."

In 1997, Quebec passed a unanimous resolution in the Quebec Parliament asking the federal government to amend the *Constitution Act, 1867* so that Quebec would no longer be obliged to fund separate schools in the province. Within

seven months, the Constitution was amended as requested, which broke the bargain made at Confederation on which the funding of separate schools was based. However, the three major Ontario political parties refuse to do what Quebec has done.

Though Forum Research polls show the majority of Ontario voters oppose public funding of separate schools, funding separate schools has been treated as if it was the weather - everybody talks about it, but people act as if nothing can be done about it. That is why OPEN launched a grassroots campaign to crowd-fund for a legal challenge which so far has raised over \$65,000.

Various developments since the Supreme Court of Canada's 1987 *Reference re Bill 30* decision - which found that the Charter did not apply to the funding of Ontario separate schools - justify asking the courts to re-examine these issues. These developments include Quebec's 1997 decision to no longer fund separate schools and the shifting legal landscape.

Public funding of one religion in Ontario has been condemned by the United Nations. But not only is it discriminatory, it wastes money. The Fed-

eration of Urban Neighbourhoods of Ontario<sup>1</sup> estimated over one billion dollars could be saved yearly in duplicate administrative costs, busing, etc. if Ontario had one public non-denominational, and two-language school system.

Separate schools can legally discriminate against non-Catholic teachers even though most of their operational funding, and all of their capital funding, comes from general provincial revenues. Less than 8% of their operational funding comes from residential property taxes of separate school supporters. For various reasons, separate schools receive about \$1,700 more per year per student than public schools from general provincial revenues, and \$350 to \$600 more per student per year from all sources.

To stop both discrimination and waste of funds, OPEN continues to crowd-fund at <https://open.cripeweb.org/aboutOpen.html>.

<sup>1</sup>See CRIPE newsletter #111 for Spring 2013 for two other independent, corroborating, calculations for the extra, annual cost to support the separate Roman Catholic school systems.

# Our legal team

Dewart Gleason LLP

<https://www.dgllp.ca/>

## APOLOGY

CRIPE apologizes for the delay in communication with you, our members, since our last, very successful, appeal for funds. Legal work on the case began in March and continues.

After asking for suggestions for suitable law firms, and talking to and discussing the proposed case with several law firms, OPEN has now retained Dewart Gleason LLP, a well-established law firm with significant litigation experience in constitutional (including *Charter of Rights*), civil liberties, and labour matters.

Once chosen, the lawyers have to do their own investigation of sources and law cases, contact proposed expert witnesses, develop their analysis and strategy, etc. before drafting, filing, and serving the “application” which then officially puts our case before the courts.

From the <https://www.dgllp.ca/> website: “With decades of experience in cases at every level of court and before dozens of administrative tribunals, our lawyers have the tools to resolve disputes efficiently and decisively, through strategic advocacy and effective negotiation, or when necessary, ferocious litigation.

“We provide scrappy, practical and effective representation for our clients.... Our work as lawyers reflects who we are: iconoclastic, forceful and effective.”

## Our lawyers

Content referenced from the Dewart Gleason website: <https://www.dgllp.ca/people/>

### Sean Dewart

Sean acts in regulatory and administrative matters concerning health professions, municipal and police accountability and labour relations. Sean was also the lead counsel on the "Jane Doe" case.

Sean represented the plaintiffs in a case where the court blocked the government’s attempt to unlawfully privatize a major Crown corporation, he successfully challenged a cruel welfare ‘reform’ law, and acted for a former head of state who was sued by a Prime Minister for supposed defamation.

### Tim Gleason

His expertise is eclectic. He has appeared in the Supreme Court of Canada, as well as in all levels of court in Ontario, on a wide range of civil, administrative, constitutional and labour matters.

Tim also acts for the regulator of the legal profession, the Law Society of Upper Canada, in administrative and civil proceedings.

In addition to his professional liability and regulation practice, Tim acts for plaintiffs in a number of areas, including civil rights, employment, defamation and po-

lice and crown misconduct. He has a special interest in equality and civil rights, and has taken on difficult challenges on behalf of marginalized groups and individuals.

Tim is a senior member of the labour bar, recognized by his peers as a leading lawyer in the field. He has represented clients before courts and tribunals at every level, including the Supreme Court of Canada, and he has testified before the Finance Committee of Parliament. He is an adjunct professor at the University of Toronto Faculty of Law, where he teaches advanced labour law.

### Adrienne Lei

Adrienne is a founding member of Dewart Gleason, and she continues to be the key partner and leading authority in several areas of practice.

Adrienne practices in all areas of law at Dewart Gleason. She leads our immigration law group, and our construction law group, and she is key to our police accountability practice.

Adrienne has extensive trial and tribunal experience, and acted as lead counsel in the infamous G-20 police discipline proceedings on behalf of the Canadian Civil Liberties Association and several personal complainants.

# The mounting case for a single public-school system in Ontario

Source: SPON—Social Policy in Ontario, but originally from the Globe & Mail, Opinion, by Marcus Gee.

A separate, publicly funded Catholic school system is an anachronism in a multicultural 21st-century society. If that was not already plain to see, then recent reports about the Catholic system should make it so.

First, we learned that many Catholic school boards in Ontario are going out and actively recruiting non-Catholic kids. Reporting by The Globe and Mail's Caroline Alphonso showed that the boards are opening their doors to non-Catholics in order to boost enrollment and the per-student provincial grants that come with it. According to her analysis of school districts that provided full data, the number of non-Catholic students rose 18 per cent in the past four years and non-Catholics now make up 8 per cent of the student population in Catholic elementary schools.

School authorities went out of the way to thwart her investigation, and no wonder. Catholics schools are supposed to be for, well, Catholics. If anyone can get in, and more and more students are non-Catholic, what reason is there for maintaining a vast network of separate schools?

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**From CRIPE:** *Note that question. To raise that question is one*

*reason why CRIPE went after the Roman Catholic high schools to obey the law and allow exemptions from religious courses and programs.*

*Another reason for doing so was to wake up the public school boards to join the fight to defund Roman Catholic school systems. Public school boards are losing students and teacher unions are losing teachers. WAKE UP and fight! Not just meekly pronounce! Get behind **OPEN**. Do something!*

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 Now comes another straw for the camel's back. The latest story originates in the region of Halton, west of Toronto. Last month, the Catholic board there banned donations to groups that "publicly support, either directly or indirectly, abortion, contraception, sterilization, euthanasia, or embryonic stem-cell research."

That threatened to sideswipe any number of worthy causes, from women's shelters to umbrella groups, such as the United Way, that distribute money to other organizations. Students protested. Some charities complained. The Education Minister said she was concerned about a lack of community consultation.

The reason for the fuss is obvious. It isn't that anyone wants to stop people of faith from uphold-

ing their principles. If churches or church-going individuals want to deny donations to organizations that offend their beliefs, that of course is their right. The problem comes when those that are making these choices are the leaders of government-supported educational institutions that accept billions of dollars in public funds. Taxpayers begin to ask: Is this what I am paying for? Do I want my money going to those who are against something as basic as access to contraception or as important as stem-cell research? These are reasonable questions.

It was the same a few years ago when some Catholic boards tried to stop gay-straight alliances, student-run clubs that strive to make schools safe and accepting for LGBTQ youth; or last year, when Catholic-school authorities in Alberta (which also has publicly supported separate schools) complained about a sex-ed curriculum that was too permissive for their taste on issues such as homosexuality.

The contradictions of maintaining a government-backed religious-school system are piling up. How, to take another example, do Catholic school boards justify hiring only Catholic teachers

Continued —————>

while at the same time working overtime to recruit non-Catholic students? Is that not a form of discrimination—one that, by the way, denies jobs to many qualified teachers and denies talented teachers to many students?

All of these issues just underline how little sense it makes in 2018 to have a separate system of religious schools underwritten by public money. It is unequal: Jewish or Hindu or Muslim schools don't get government funding. How is that fair in a country that pats itself on the back for giving every citizen the same breaks regardless of background? It is expensive: running two giant school systems side by side - sometimes even two schools side by side, one Catholic, one public - does not come cheap. It is increasingly awkward: the values of Catholic authorities are bound to clash with changing views in the world outside the schoolyard, even if Catholic views themselves are evolving. By accepting the public dollar, Catholic schools open themselves to a scrutiny they would not get if they stood on their own.

Most of all, it is backward. The separate-school system stems from a long-ago compromise between French and English that has no relevance to a society made up of people from every corner of the planet professing every belief under the sun. The bishops of old would shake their mitred heads if they could see what Canada has become. It is time to embrace that new reality and wind up the separate school system.

*Amen*

## Letter to the NDP

From Malcolm Buchanan of  
the Hamilton NDP

You should find the attached article that was published in this Saturday's Globe and Mail of interest. It is entitled: "The mounting case for a single public school system in Ontario" by Marcus Gee.

*(See pages 6 and 7.)*

The Party cannot continue to ignore the current injustice of supporting public funding for the anachronistic separate school system. The Party cannot continue to "stick its head in the sand" if it believes in equality, inclusiveness and fairness.

Funding for Catholic schools will become an election issue despite all the main-stream parties' attempts to ignore it. The Halton Catholic School Boards decision to limit donations, generated by students and staff, only to charities that support the Board's religious dogma against abortion, stem cell research, family planning and MAID services, is disgusting.

Also, the continuing problem of the discriminatory hiring practices of publicly funded Catholic school boards who only hire teachers who are in good standing with their Catholic faith [Pastoral Letters are required]. All others need not apply. And yet the ONDP has never spoken out against this injustice leaving the real impression that the Party supports the discriminatory hiring proposals based upon religion. This will no doubt be raised in the provincial election.

The Party has a choice, either continue to deny reality and continue to lose elections, or join others to help defund the Roman Catholic school systems.

## Rhetoric, not substance

John Ivison, Ottawa Citizen 2018-01-06

"On the 31st anniversary of the introduction of the Canadian Charter of Rights and Freedoms, Justin Trudeau extolled the principles of 'democracy, equality and fairness' embodied in the Charter.

"It is our enduring responsibility as Canadians to ensure that these rights and freedoms are always upheld and preserved, never devalued or diminished," the prime minister said in an April 2013 statement."

*Fine words. But, as is so often the case, the government's actions have fallen short of its rhetoric.*

## Apologies, apologies

Floralove Katz Ottawa Citizen 2017-12-01

In modern times, the federal government has issued the following apologies:

- 1988, for the internment of Japanese Canadians during the Second World War;
- 2006, for the Chinese Head Tax, charged to Chinese people entering Canada (1885-1923);
- 2008, to the former students of Indian Residential Schools;
- 2016, for turning away South Asian immigrants aboard the Komagata Maru in 1914;
- 2017, to students of the Newfoundland and Labrador residential schools;
- 2017, to the LGBTQ community for actions by the federal government against thousands of people in the Canadian military and public service during the Cold War.

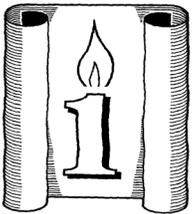
## It's our turn next

## 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.

## **Below is a quote from a decision of the Supreme Court of Canada in a case brought before the Court re Sunday closing laws by Big M Drug Mart Ltd. 1985-05-24**

### "Freedom of Religion"

"Freedom can primarily be characterized by the absence of coercion or constraint. If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free. One of the major purposes of the Charter is to protect, within reason, from compulsion or restraint. Coercion includes not only such blatant forms of compulsion as direct commands to act or refrain from acting on pain of sanction, coercion includes indirect forms of control which determine or limit alternative courses of conduct, available to others. Freedom in a broad sense embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations as are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others, no one is to be forced to act in a way contrary to his beliefs or his conscience.

"What may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The Charter safe-guards religious minorities from the threat of 'the tyranny of the majority'."

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.**