

Civil Rights In Public Education, Inc.

All human beings are born free and equal in dignity and rights

UNIVERSAL DECLARATION OF HUMAN RIGHTS



Winter 2019

Issue Number 124

Temporary halt overcome. Our lawyers are now able to proceed.

Covering all bases

Our last newsletter, for Fall 2018, Issue #123, described our legal aims in general, and a reason for the delay in getting all items together. One major hurdle has now been overcome: to obtain one critical "expert witness".

Our legal counsel has to make the legal arguments; they have to establish a factual basis for their arguments. For example, one proposed argument is that the decision by Quebec in 1997 to stop funding Protestant, or any religious schools, is important because paragraphs 93(1)-(4) of the *Constitution Act, 1867* which preserve the sectarian religious rights which existed in 1867, was a Confederation bargain between Quebec and Ontario.

Therefore, we needed an expert, an "expert witness" in 19th century Ontario history, particularly in 19th century Ontario education, to give the relevant context and pro-

vide the court with the situation in regard to the political and educational environment which lead to paragraphs 93(1)-(4) of the Constitution.

We hope the Supreme Court of Canada will decide that because of Quebec's action, and other changes, the clauses in the Constitution saying Ontario is obliged to support separate schools have become void. But even if they do not rule that, there are additional arguments for which we need an expert witness in Ontario history.

One is that even if s.93(1) still guarantees separate schools the funding they received at Confederation, they are not entitled to funding at the same level as public schools, because at Confederation they received only about 66% of the funding per student of public schools.

Another is that at Confederation separate schools did not

teach beyond what is now Grade 10, and that therefore Section 93 (1) does not guarantee the right to public funding of separate schools for Grades 11 and 12.

Now have an expert witness

An expert witness is one who is knowledgeable about facts of relevance to particular points in a legal case.

OPEN has retained Professor Patricia Kmiec as an "expert witness". Professor Kmiec obtained her Ph.D. in the History of Education from University of Toronto in 2015 and teaches at Carleton University and the University of Ottawa. She has written articles and given presentations on education, and on the intersection of religion and education, in Upper Canada (Ontario) in the 19th century.

Her presentations include "Reconsidering the Origins of Popular Schooling in Upper Canada" at the Conference of the Canadian History of Education Association and she has a book under contract at McGill-Queens University Press on *Childhood, Religion, and Sunday School Education in Upper Canada*.

By Reva Landau, OPEN's founder, and Renton Patterson

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The ongoing need for support, the regular \$20 per year.

Last year our members raised \$45,000 which helped our partner, OPEN, to secure the services of a law firm, Dewart Gleason LLP. See pages 4 and 5 of CRIPE newsletter for Winter 2018, Issue Number 122.

As explained on page one of newsletter #123, there was a good bit of legal leg-work going on which included other issues as well as the search for the expert witness. Now that Dewart Gleason has secured the expert witness, a very important step in our lawsuit, the firm is in a position to prepare the arguments for our case to go before the courts. As they proceed to spent their time on our issue, the bills for their services will begin to pile up.

CRIPE has always paid its bills, and although we do not bear full responsibility for the whole cost of this operation, which could very well go over the \$100,000 mark, I'm sure we all don't want to see it falter in the early stages. When our "application" is finally filed, there will be a good round of publicity. At that point we expect to be listed on a legal "go fund me" site. Utilizing such a site, and the popular cause of eliminating public funds for the Roman Catholic separate school systems, we fully expect that the required funds will roll in.

In the meantime, CRIPE has always asked its supporters, once a year, to pay a fee of \$20 for ongoing expenses. The fact that a reliable core of members has done so in the past, is the reason we are still here, a full 32 years later. So, **Now is the time for the 2019 \$20 payment.**

But again, as in the past, we ask for donations to help cover the expenses of our latest initiative, this time the court case to end it all,

so if you have the resources,
by all means send whatever you feel you can afford.

Make your cheque payable to CRIPE
And mail to: CRIPE, Box 491, Pembroke ON K8A 6X7

Liberal MPP Nathalie Des Rosiers refused to respond

BACKGROUND:

I have arranged to receive email postings from each of Ontario's four main political parties. These messages come out frequently to (1) bolster the party, (2) denigrate the opposition, and (3) to ask for a donation.

The following came from the Ontario Liberal party under the name of Nathalie Des Rosiers, Liberal MPP for Ottawa-Vanier, and contains statements at which I took offence.

*"Renton -
We are a human rights nation.
The Charter protects our basic rights and freedoms and our right to equality and non-discrimination on the basis of religion, sex, gender identity, ability and race.*

It's critical that we protect those rights.

* * *

Equality and freedom of expression are some of the most fundamental values that you and I share, Renton."

* * *

Thank you for protecting our democracy and fighting for what's right. I look forward to working even harder with you in the new year.

*Nathalie Des Rosiers
MPP, Ottawa Vanier
Ontario Liberal Party"*

All underlining is added

Portions of the message that I left out merely praised the Liberal Party, and then, of course, asked for a donation.

MY REACTION

"Nathalie Des Rosiers
MPP, Ottawa-Vanier
Ontario Liberal Party

"Thank you for your communication of December 13th in which you extolled the Ontario Liberal Party's position on human rights. While the aims you expressed are laudable, your wording is a bit disingenuous due to the fact that Canada / Ontario, in 1999, was censured by the United Nations Human Rights Committee for a violation of the International Covenant on Civil and Political Rights. The violation is because of Article 26. The reason is that successive governments of Ontario have supported, and presently support, the discriminatory public funding of the Roman Catholic separate school systems. Article 26 states that all persons are equal before the law, and forbids discrimination on any ground, including religion.

"In addition, you stated to me, in your communication addressed to me that: *"The Charter protects our basic rights and freedoms and our right to equality and non-discrimination on the basis of religion,"* In view of the discriminatory funding of the Roman Catholic separate

school systems, this statement is not true.

* * *

"I, and our members of Civil Rights In Public Education, look forward to a reply from you for either a retraction of your misleading statements, a justification for making them, or a statement to indicate that you will work with us, and within your party, to remove religious discrimination from the citizens of Ontario.

"I look forward to your reply with interest.

"Sincerely, Renton Patterson
President, Civil Rights In Public Education, Inc.
<http://www.CRIPEweb.org>"

On January 14th I phoned Des Rosiers office to ask about an answer. I was told that there was no record of my email being received. I therefore re-sent my message, and indicated that since my email of Dec. 16th was not received, I would also send a letter by Canada Post.

Almost immediately I was advised that my email had been found, and received a message back which said:

*"Hello,
On behalf of MPP Nathalie Des Rosiers, I would like to thank you for bringing forward your concerns.*

The information will be

Continued on page 5, column 2

Separate schooling and making sense of Canada's identities

From the Canadian Bar Association's NATIONAL magazine.

By Omar Ha-Redeye, a lawyer and legal editor. 18 June, 2018

<http://www.nationalmagazine.ca/en-ca/articles/law/in-depth/separate-schooling-and-making-sense-of-canada%e2%80%99s-id>

Canada had at its outset two founding peoples, legally and constitutionally speaking, which makes it unique among the world's nation-states. It's a narrative, of course, that discounts the foundational role played by this country's Indigenous Peoples. More on that later.

To ensure British and French identities would both continue as part of the Canadian Compact, section 93 of the *Constitution Act* enshrined public funding for separate schools for Protestants and Catholics – though only where such schools existed before a province entered into Confederation.

Much has changed since 1867. The case for separate schooling is increasingly being challenged as both secular groups and religious minorities gain influence across Canada. Many provinces have renegotiated their relationships with separate schools.

Manitoba was the first to embrace change, and began withdrawing full public support for separate schools beginning in the 1890s amid the political crisis surrounding the Manitoba Schools Question. Quebec had separate Protestant and Catholic school boards until 1997, when it replaced them with a secular, linguistically based school system – a delayed outcome of the province's Quiet Revolution against the Catholic

state.

In Newfoundland and Labrador, plummeting enrolment in denominational schools during the 1980s and 1990s began to make these schools unsustainable. In 1997, Term 17 was amended to create a uniform, publicly funded, non-denominational school system.

Alberta, Saskatchewan and Ontario still provide public funding for Catholic schools.

Last year, the Saskatchewan Queen's Bench scrutinized section 93 and found that changes in social norms since the Victorian era should inform our understanding of religious rights. Justice Donald Layh ruled that a constitutional guarantee for Catholic schools does not include public funding for non-Catholic students in Theodore, Saskatchewan. In re-examining section 93 and finding the practice to be discriminatory, Justice Layh noted that the "solemn pact" between Ontario and Quebec has effectively become a partner-less pact since 1997."

In response, the Saskatchewan government invoked the notwithstanding clause and is appealing that decision.

Now the spotlight is on Canada's largest and most diverse province, where the specialized treatment afforded to Catholic

schools still poses a quandary. Ontario's publicly funded schools were initially divided into Catholic and non-denominational Protestant schools. The latter were known as "public" schools, but were clearly Christian. This proved problematic to students of other faiths. Eventually, parents mounted a successful court challenge of the curriculum because of the predominantly Christian nature of the teachings. Christian values were replaced with Canadian values.

Today, Catholic schools in Ontario struggle with enrolment problems. Since funding is based on student population, they increasingly vie with public schools to attract students. Non-Catholic students in Ontario Catholic schools now exceed 8 per cent of students, with some schools busing students in to bolster their ranks.

As in Saskatchewan's case, it seems likely that enrolling non-Catholics in publicly funded Catholic schools is contrary to the spirit of the Canadian Compact. And although the Supreme Court has repeatedly upheld a "special status to particular classes of people" that creates a "privileged status on those religious minorities," using these funds to educate non-Catholics accentuates any discriminatory impacts on other Ca-

nadians.

Amid all of this, Ontario Catholic schools have attracted scrutiny for teaching creationism, opposing homosexuality, and banning any cooperation with groups that might support abortion. A 2014 Ontario Superior Court ruling put a stop to forced participation in religious programs, and a human rights complaint last year was only settled when the school agreed that students seeking religious exemptions should not be required to provide justifications.

Nobody is saying that Catholics – or anyone else – cannot hold their religious beliefs. But there are concerns about providing public funds to institutions that no longer share the same values as the broader public.

Finally, the role of the church and its schools in the cultural genocide of Indigenous peoples provides a compelling motivation to consider withdrawing funding for religious schools. Reconciliation can only truly occur alongside a complete decoupling of church and state, regardless of history.

The Truth and Reconciliation Commission report focused extensively on the role of the church and religious schooling as state instruments for cultural genocide. The two non-Indigenous founding peoples at Confederation entirely ignored and excluded Indigenous concerns and protection of their cultural and linguistic identities.

If public funds are to be used to help educate Canadians about ethnic heritages, it is the Indigenous contribution that should be prioritized above all else.

Continued from page 3

brought to the attention of the MPP and rest assured we will take the necessary action and follow up with you as soon as possible.

If you have any other questions regarding provincial issues, please don't hesitate to contact us.

*Sincerely, Sarah Rimbach
Special Assistant .*

I replied, indicating that I expected an answer in the next two weeks, no rush.

Not having received an answer, I sent the following email on February 8th.

Nathalie Des Rosiers, MPP

Attached is a copy of an email I sent to you on December 16th, 2018. That email of mine was prompted by one of the emails received from the Ontario Liberal Party, under your name, to those citizens interested in keeping in touch. Also attached is a copy of an email I sent out to members of Civil Rights In Public Education, Inc. (CRIPE). This one contained the essence of the original Liberal message so that all could read the hypocritical stance of the Ontario Liberal Party with respect to "... .. our right to equality and non-discrimination on the basis of religion"

A newsletter to the members of CRIPE, and others, is now in preparation. It will include the essence of the original Liberal email, plus my reply to you. If you have answers by then, good, they will be included. If not I will just speculate on the reasons for the Liberal Party's hypocritical

stance on human rights and the Charter. A reply to my email, by you, could be quite short in the form of ".... a retraction of your misleading statements, a justification for making them, or a statement to indicate that you will work to remove religious discrimination from the citizens of Ontario."

I look forward to your response.

Sincerely, Renton Patterson
President of CRIPE

From my previous experience with email communication with Des Rosiers office, I phoned the office. The answer was that the secretary, Sarah, could not find my email, and while on the phone she continued to look.

Miraculously, later the same day, I received the following email message: "Hello, I found the email! Our Outlook* was not working properly, sorry for the inconvenience."

*Referring to Microsoft's email program called "Outlook Express"

Did you ever get the feeling that you were ignored by someone? To ignore is to deny. I have, but I have come to expect it from politicians. After being on this issue since 1987, I have come to expect no answers and have no faith in most politicians. I have written letters, and have received some sort of satisfaction with doing so. But it is really of no use.

And that is why we are going to court!

Now go to page 8 for more on Ms. Des Rosiers

(In Ireland) Catholic church admits studying religion is a disadvantage, but wants the state to impose it anyway

<https://www.teachdontpreach.ie/2018/07/catholic-church-admits-studying-religion-is-a-disadvantage/>

The Catholic Church has acknowledged that studying religion in school, instead of other subjects, puts students at a disadvantage, and it is trying to insist that State-run schools make all students suffer that disadvantage.

This is revealed in an article in the Irish Times (See page 7 column 2) by Carl O'Brien, based on a letter obtained under the Freedom of Information Act.

The Catholic Bishops are trying to get the Minister for Education to withdraw a recent directive that enables students to opt out of studying religion in ETB second level schools. (ETB = Education and Training Boards)

That directive says that ETB schools have to ask parents and students, before the school sets the timetable, whether they want to study religion. It also says that ETB schools must provide an alternative timetabled curriculum subject for students who do not want to study religion.

In response, the Irish Episcopal Commission wrote to the Minister warning that students who opt out will receive an unfair advantage if they are allowed to take extra classes in examinable subjects, such as maths, Irish or English.

This is an extraordinary power-grab by the Catholic Bishops. Remember, this directive is not even about the majority of Irish schools that are run by the Catholic Church.

It is about the minority of State-run ETB second level schools, that are supposed to be the inclusive alternative to these denominational schools.

And the directive does not even remove Catholic religious instruction and worship from these State-run schools. It merely gives students the right to have a timetabled alternative to being indoctrinated into religion.

What the Bishops' letter says

The letter is signed by Bishop Brendan Leahy, chair of the Irish Episcopal Commission, and Bishop Brendan Kelly, chair of the group's council for education.

The Catholic Bishops say that "it is crucial that students are exposed to the religious interpretation of life." But it is clear that, where they are running the schools, what they mean is the Roman Catholic interpretation of life.

This is what they promote in the majority of schools that they run,

and they now want the State to impose it directly in the schools that the State itself runs.

Even the State course is not objective

The Bishops claim that religious education being taught in ETB schools is "not religious indoctrination" but a syllabus devised by the NCCA. (NCCA is undefined.)

But documents obtained by Atheist Ireland under the Freedom of Information Act have shown that the NCCA syllabus is not objective and was heavily influenced by the Catholic Church.

In addition, many ETB schools combine the State course with the guidelines for the faith formation and development of Catholic students, and do not tell parents that they are doing this.

Many ETB schools also made this course a core subject, which was never the intention of the Minister, the Department, or the NCCA.

One of the main aims of the State religion course is to contribute to the moral and spiritual development of all students through religion. It only acknowledges the nonreligious interpretation of life.

This disrespects the human right of parents to ensure that the education of their children is in conformity with their philosophical convictions.

Can you imagine how the Catholic Bishops would react if one of the main aims of the State curriculum was to contribute to the moral development of all students through atheism, while only acknowledging the religious interpretation of life?

Bishops objected to previous NCCA course

The Bishops say that, even in these State-run ETB schools, they want students who opt out of religious education to be given a course in “religious heritage and values as well as ethics.”

They say that “such education is essential in respect of understanding our cultural heritage and in terms of harmony and understanding what is becoming a multicultural society.”

But when the NCCA tried to bring in such a course at primary level (a course that would teach objectively about Religions, Beliefs, and Ethics), the Catholic Bishops opposed that as well.

They said that: “These approaches require teachers to adopt and promote a pluralist approach to religion. This is an approach to religion that goes against the philosophical basis of Catholic religious education.”

Conclusion

The Catholic Bishops have again shown their disregard for the rights of atheist, minority faith, and secular parents and their children.

It is good that they have finally acknowledged that studying religion puts students at a disadvantage.

But the response should be to give all students the option of having that advantage, not to drag others back down into that disadvantage.

Pupils opting out of religion must not get extra tuition — bishops

From the Irish Times, by Carl O'Brien
July 17, 2018

Catholic bishops have called on the Minister for Education to withdraw an objective which allows students who opt out of religious instruction in State-run secondary schools to be timetabled for other subjects.

In correspondence with Richard Bruton, they have warned that students who receive tuition in an exam subject instead of religion will receive an **unfair advantage**.

As a result, bishops have proposed that such students who opt out of religion should instead be offered a course in “religious heritage and values as well as ethics”.

Until now, students who did not want to participate in religious instruction or worship were mostly required to sit at the back of the class or were in supervised study.

However, a circular issued earlier this year by Mr. Bruton requires that such students should be timetabled for alternative tuition throughout the school year rather than by supervised study or other activities.

The move will, potentially, affect thousands of students in almost 300 secondary schools run by Education and Training Boards (ETBs)

In response, the Irish Episcopal Commission warned that students who opt out will receive an **unfair advantage** if they are allowed to take extra classes in examinable subjects, such as maths, Irish or English.

The letter, released under the Freedom of Information Act, is signed by Bishop Brendan Leahy, chair of the Irish Episcopal Commission, and Bishop Brendan Kelly, chair of the group’s council for education.

* * *

“While we are respectful of the wishes of those who opt out of religious education ... we are equally clear that those who continue to take religious education should not be disadvantaged ...” (Bold type added)

Note from CRIPE: The situation recounted above is very close to that in Ontario, where RC high-school officials tried to force religious courses onto students.

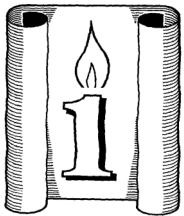
CRIFE destroyed this practice through the Sorgini case before the Ontario Human Rights Tribunal. See CRIPE Newsletter for Spring 2017, Issue #120

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.

More about Nathalie Des Rosiers - from Wikipedia

Nathalie Des Rosiers is a lawyer and a Liberal member of the Legislative Assembly of Ontario who was first elected in 2016. She was re-elected in the 2018 general election.

She was born in Montreal, studied law at the Université de Montréal and received a LLM from Harvard University. Des Rosiers practised law in London, Ontario with Lerner LLP. She also was a law professor at the University of Western Ontario. She then served as dean of the civil law section at the University of Ottawa. She was president of the Law Commission of Canada from 2004 to 2008. Des Rosiers served as general counsel for the Canadian Civil Liberties Association (CCLA) from 2009 to 2013

Des Rosiers was inducted into the Order of Ontario in 2012, and was inducted as a Member of the Order of Canada in 2013 for her work in civil rights and Francophone advocacy. She was named one of Canada's 25 most influential lawyers by *Canadian Lawyer* in 2011 and in 2012.

The fact that Des Rosiers served for five years as general counsel of the Canadian Civil Liberties Association is telling. In such a position she had to be (or was forced to be) a fighter for human rights and the Charter. Now, as a politician, human rights for everyone is off the radar. Apparently no leader, she sits and follows the party line to think, and vote, as she is told. Shame.

A Thought to Consider

**The essence of government is power;
and power,
lodged as it must be in human hands,
will ever be liable to abuse.**

James Madison

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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.**