

# Civil Rights In Public Education, Inc.

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



Spring 2014

Issue Number 113

## Confirmed by a court decision, Roman Catholic high schools must obey the law.

Section 42(13) of the Ontario Education Act allows any pupil who is qualified to attend a public secondary school, to attend a Roman Catholic separate secondary school and be exempt from taking part “...in any program or course of study in religious education on written application to the Board...”

Almost every student or parent who has approached a Roman Catholic secondary school to obtain such an exemption has been subject to delay after delay reaching into months on end. Many have given up in frustration. (See CRIPE newsletter #110, for Winter 2013.)

Although such an exemption must, by law, be granted, the Ministry of Education has refused to back up parents/students who have tried to use the provisions in

sections 42 (11) & (13). Even regional education officers have stonewalled inquirers through statements that are clearly untrue. The fact that these education officers, in different regions of the province, all tell the same story, leads one to suspect that a plan was crafted, either by the government, or the bureaucracy under it, to give misleading information to the public in order to safeguard illegal exposure to religious dogma to persons attending a publicly-funded secondary school.

The presumed reason for rejection is because some body of the government in power wishes to protect the separate school system. Why? Ask your MPP. If too many students were granted an exemption from religious programs and courses in religious

education, then the natural question to ask is “Why do we have two essentially identical school systems, one of which discriminates against prospective students and teachers on the basis of their religion and which exists on public dollars at the financial cost of an EXTRA ANNUAL billion dollar cost?”

### The problem

Under a system where the law is not obeyed, most separate boards, after some persistent hounding, would allow exemptions from a “course of study in religious education” as an exemption they could stomach, but they put their foot down when it came to liturgies (mass) and religious retreats which they refused to acknowledge might come under the heading of “program”.

### Enter—the four protagonists

As a result, the four persons as described in CRIPE newsletter #110, Peter Jones, Kyle Naylor, Oliver Erazo, and Terry Prodanyk, after much consultation among themselves, decided that enough was enough. Oliver Erazo was going to take this issue to court for a clarification of the meaning and application of section 42(13). But

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court would cost money, and although Oliver had contacted a lawyer, Nathaniel Erskine-Smith, who would do the legal work for nothing (pro bono), there were costs for disbursements and the risk that, if unsuccessful, he could be liable for the costs of the other side—a significant financial risk.

### **CRIFE to the rescue**

CRIFE was very interested in this issue because it could mean the beginning of the end of the publicly-funded separate secondary school system. CRIFE membership fees, plus donations, allowed us to forward an amount to Oliver to cover the immediate out-of-pocket court costs, plus a guarantee for any further expenses. With dollars and an agreement in hand, Oliver proceeded with the court case. Heard by three judges on October 13, 2013, the decision was released on April 4, 2014.

### **We won**

The application for a judicial review for relief from the required participation in any Roman Catholic *program or course of study in religious education* centred on to what the word “program” referred.

As far as the Catholic school was concerned, a “program” did not mean a Roman Catholic mass or religious retreat. But this same word, to Oliver Erazo and the others, meant “mass” and “religious retreats”. See “DECISION”.

Since individual Roman Catholic high schools fought exemptions so strongly, supported by the government and regional education officers, we felt that they must consider the granting of exemptions a death knell for the separate system. This strengthened our resolve to pursue

## DECISION

### *This application*

[1] This application for judicial review is brought by the applicant, Oliver Erazo, and his son, Jonathan, for the following relief;

- a) **A declaration that Roman Catholic liturgies and religious retreats are programs in religious education and, pursuant to section 42(13) of the *Education Act*, R.S.O. 1990, c. E.2, (the “Act”), the respondent cannot require Jonathan to attend such programs;**
- b) In the alternative, a declaration that **the respondent's policy of mandatory attendance at liturgies and religious retreats is a violation of section 2(a) of the Canadian Charter of Rights and Freedoms;**
- c) **An order directing the respondent to provide alternative arrangements for Jonathan during the time period of any liturgy or religious retreat.**

Further comments by the judge:

(The following paragraph refers to the term “program” .)

[26] In my view, the planned liturgies and retreats that are the subject of this appeal may correctly be viewed, either separately or together, as falling within this definition. They are series of events, somewhat different from each other in some ways, but having as their central purpose the provision of religious experiences and education to the students who attend them. The various hypothetical examples of “programs” referred to by the respondent do not advance the respondent's arguments that planned series of liturgies and retreats are excluded from the definition. The definition proposed by the respondent is unduly narrow and does not take into account the context in which the liturgies and retreats take place.

[27] This interpretation is consistent with the evident purpose of section 42 (13) which is to give relief to students who may respect many Catholic principles and observances but do not wish to participate in Catholic, or perhaps any, form of worship, even at a minimal level of participation. For some of them, that might well require a betrayal of their own principles. No Catholic school system that is required by law to admit non-Catholic students should have the right to require such participation from their students and, because of section 42(13), the respondent does not.

[28] It follows that the applicants were entitled, according to law, to the exemption claimed for Jonathan upon making the requisite application even without the acquiescence of the respondent.

Three judges heard the arguments: Matlow J, Maranger J. and Roccamo Toscano J. at Brampton on October 13, 2013.

it. And if exemptions have the effect of increasing the enrollment of RC high schools to the detriment of the public schools, then this will spur public school boards and public teacher organizations to either join the fight, or

more actively engage in an action to bring justice and equality to Ontario’s education system.

The elimination of government-sponsored religious discrimination would mean total victory.

# Convention on the Rights of the Child

## Concluding observations on the second periodic report of the Holy See

The following three paragraphs are from Wikipedia

The United Nations **Convention on the Rights of the Child** (commonly abbreviated as the **CRC**, **CROC**, or **UNCRC**) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any human being under the age of eighteen, unless the age of majority is attained earlier under a state's own domestic legislation.

Nations that ratify this convention are bound to it by international law. Compliance is monitored by the UN Committee on the Rights of the Child, which is composed of members from countries around the world.

Governments of countries that have ratified the Convention are required to report to, and appear before, the United Nations Committee on the Rights of the Child periodically to be examined on their progress with regards to the advancement of the implementation of the Convention and the status of child rights in their country.

### Ratification

Canada signed on to the Convention on May 28, 1990 and ratified it on December 13, 1991. The Holy See signed and ratified the Convention on April 20, 1990.

The "Holy See" is the body of the Roman Catholic Church which has authority over its clergy.

The Holy See made a first re-

port, as required, and the U.N. Committee on the Rights of the Child made its "concluding observations" about the report for further consideration by the Holy See. The second periodic report of the Holy See was only made after the considerable delay of **fourteen years.**

### CRIFE's interest

Civil Rights in Public Education, Inc. has a quarrel with our provincial politicians in that they have succumbed to lobbying pressures from the Roman Catholic church to continue to support the Roman Catholic separate school system with our tax dollars.

We have nothing against the Roman Catholic church, as such, but, as evidenced by the report of the U.N. Committee on the Rights of the Child, it appears to be an organization with a poor reputation regarding children. This means that we taxpayers are supporting not only the RC separate school system, but the church teachings and practices that go along with it.

The rebuke of the U.N. Committee in its **16-page report with a full 77 "...areas of concern and recommendations"** is summarized in the following text to highlight another reason why Ontario taxpayers should not be supporting the Roman Catholic church through our forced support of the Roman Catholic separate school system.

### Selected quotations from the UN Report

8. The Committee...reminds the Holy See that by ratifying the Convention, it has committed itself to implementing the Convention not only on the territory of the Vatican City State but also as the supreme power of the Catholic Church through individuals and institutions placed under its authority.

13. The Committee is concerned that some of the rules of Canon Law are not in conformity with the provisions of the Convention, in particular to those relating to children's rights to be protected against discrimination, violence and all forms of sexual exploitation and sexual abuse.

19. The Committee is... concerned that the Holy See has not established a mechanism to monitor respect for and compliance with children's rights by individuals and institutions of a religious nature under the authority of the Holy See. including all Catholic schools, as well as in the Vatican City State.

22. The Committee recommends that the Holy See strengthen its efforts to make all the provisions of the Convention widely known, particularly to children and their families, through, inter alia, developing and implementing specific long-term awareness-raising programmes, and including the provisions of the Convention into school curricula at all levels of the Catholic education system using appropriate material created specifically for children.

24. The Committee urges the Holy See to provide systematic training on the provisions of the Convention to all members of the clergy as well as Catholic orders and institutions working with and/or for children, and to include mandatory modules on children's rights in the teachers' training programmes as well as in seminaries.

26. The Committee recommends that the Holy See bring all its laws and regulations, as well as its policies and practices, in conformity with article 2 of the Convention and promptly abolish the discriminatory classification of children born out of wedlock as illegitimate children.

28. The Committee...urges the Holy See to take active measures to remove from Catholic schools textbooks all gender stereotyping which may limit the development of the talents and abilities of boys and girls and undermine their educational and life opportunities.

44 (d) Amend Canon Law in order for child sexual abuse to be considered as crimes and not as "*delicts against the moral*" and repeal all provisions which may impose an obligation of silence on the victims and on all those that become aware of such crimes;

57 (c) Ensure the right of adolescents to have access to adequate information essential for their health and development and for their ability to participate meaningfully in society. In this respect, the Holy See should ensure that sexual and reproductive health education and prevention of HIV/AIDS is part of the mandatory curriculum of Catholic schools and targeted at adolescent girls and boys, with special attention to preventing early pregnancy and sexually transmitted infections;

63. The Committee recommends that the Holy See take all appropriate measures to ensure that the present recommendations are fully implemented by, inter alia, transmitting them to the Pope, the Curia, the Congregation for the Doctrine of the Faith, the Congregation for Catholic Education, the Catholic Health Care Institutions, the Pontifical Council for the Family as well as episcopal conferences of bishops, individuals and institutions functioning under the authority of the Holy See for appropriate consideration and further action.

[http://www.washingtonpost.com/world/europe/un-panel-blasts-vatican-handling-of-clergy-sex-abuse-church-teachings-on-gays-abortion/2014/02/05/2a6f1b26-8e75-11e3-84e1-27626c5ef5fb\\_story.html](http://www.washingtonpost.com/world/europe/un-panel-blasts-vatican-handling-of-clergy-sex-abuse-church-teachings-on-gays-abortion/2014/02/05/2a6f1b26-8e75-11e3-84e1-27626c5ef5fb_story.html)

## The ultimate insult

### Pope John Paul II day and an RC mass at Queen's Park

On April 2, 2014, Ontarians, or some Ontarians, marked the first Karol Wojtyła (aka Pope John Paul II) day in Ontario.

Bill 72, the Pope John Paul II Day Act, 2014 was passed in what appears to be unseemly haste; to avoid public consultation—or objections?

On May 30, 2013, Bill 72 was ordered referred to Standing Committee on Regulations and Private Bills. On March 17, 2014, Ms. Dipika Damerla, the member from Mississauga East–Cooksville, moved:

*An Act to proclaim Pope John Paul II Day to the Standing Committee on Regulations and Private Bills be discharged and that the order for third reading of Bill 72 be immediately called and the question put on the motion for third reading of the bill without debate or amendment.*

And then, on the first-ever Pope John Paul II Day in Ontario, April 2, 2014, Toronto's Cardinal Thomas Collins celebrated, for the first time, a Catholic Mass at Queen's Park. It was the first in the building's 154-year history.

At 7:30 in the morning, in the legislature's dining room, the Mass was attended by politicians of all three parties in company with Roman Catholic teachers and school board trustees. The purpose of the latter's attendance was to lobby the former.

In a short homily, Collins re-

minded those present that the Roman Catholic separate schools are "a gift to all the province," while praising politicians for their continued financial support of the public's tax dollars.

Talk among the trustees and teachers present was about daily newspaper editorials in the past year which have called for an end to public funding of the separate system.

Nancy Kirby, past president of the Ontario Catholic School Trustees' Association, said that continued public funding and political support would be the number one item on the Association's agenda as its officials and those from the Roman Catholic teachers' unions sat down with politicians to assure continued support. "We do this every couple of years just to remind them," Kirby said.

Ontario Premier Kathleen Wynne thinks Roman Catholics should not be worried about funding for their school system.

"There's no risk from our government in terms of the Catholic education system," Wynne told *The Catholic Register*. "We've said all along that we're going to continue to support the separate education system as it exists."

To unite the four publicly funded school systems, including the two French systems, into a single system is definitely not a topic for discussion in her government, said Wynne.

## Why Church and State Must Be Separate

By Benedict XVI (Joseph Cardinal Ratzinger)

Excerpts from “Theology and the Church’s Political Stance” in Cardinal Joseph Ratzinger’s “Church, Ecumenism and Politics: New Essays in Ecclesiology” (NY: crossroad, 1988). From: <http://www.lewrockwell.com/orig6/ratzinger2.html>

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[W]e must take a clearer look at the relationship of the Church to the political sphere. For this Christ’s words remain fundamental: “Render unto Caesar the things that are Caesar’s, and to God the things that are God’s” (Mt 22:21). This saying opened up a new section in the history of the relationship between politics and religion. Until then the general rule was that politics itself was the sacral. (sacred)

At the same time it must be said that it is precisely this separation of the authority of the state and sacral authority, the new dualism that this contains, that represents the origin and the permanent foundation of the western idea of freedom. From now on there were two societies related to each other but not identical with each other, neither of which had this character of totality. The state is no longer itself the bearer of a religious authority that reaches into the ultimate depths of conscience, but for its moral basis refers beyond itself to another community.

Where the Church itself becomes the state freedom becomes lost. But also when the Church is done away with as a public and publicly relevant authority, then too freedom is extinguished, because there the state once again claims completely for itself the justification of morality.

With this the fundamental task of the Church's political stance, as I understand it, has been defined; its aim must be to maintain this balance of a dual system as the foundation of freedom. Hence the Church must make claims and demands on public law and cannot simply retreat into the private sphere. Hence it must also take care on the other hand that Church and state remain separated and that belonging to the Church clearly retains its voluntary character.

Editor’s Note: (Underlining has been added.)

It appears from the foregoing that the action of Cardinal Thomas Collins in Ontario’s legislative building is in direct opposition to the statements above, by Pope Benedict XVI, with regard to the separation of church and state and the Roman Catholic mass conducted in the building of the Ontario Legislature.

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### **Small-town and rural leaders want reprieve from school closings**

Rural and small-town Ontario mayors want school closings halted pending a review of a widely-criticized process now in place to weed out doomed schools.

A recently-passed motion by Penetanguishene is gaining steam, which includes Southwestern Ontario, adding to the call for the Ministry to impose a school-closing moratorium. Civic leaders aim to make their concerns an issue in Ontario’s next election.

The Penetanguishene Mayor said he’d like to see school trustees, municipalities and the province talk after an election about how to address rural communities facing school closings.

The establishment of a single, secular, publicly funded school system, consisting of English and French language school boards, would mitigate against communities losing their local schools.

The elimination of the Roman Catholic separate school system would ensure that there would be enough students to populate at least one public school which would serve the educational needs of the community. Students who would normally attend either a separate or public school would attend the public school, or the most modern school converted into a public school.

This practical solution would maintain a local school, help minimizing long bus rides and save money that could be reinvested into education programs and services to benefit all students.

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## Update on OSSTF's Work Group to promote One Publicly Funded School System for Each Official Language

Our last newsletter, Fall 2013 Issue Number 112, included a major report on the Ontario Secondary School Teachers' Federation (OSSTF) annual meeting, which traditionally takes place during the March school break. That newsletter focused on one of the motions passed at that meeting which summarized the purpose of the MAC 203-13 Work Group which was formed. That motion was: *"Develop a multi-year action plan to create a public education campaign and lobby materials to promote the creation of one publicly funded school system for each official language..."*

This year's Annual Assembly included a 27-page report from the MAC 203-13 Work Group on progress during the past year. The "Introduction" included the statement that "...it is all but impossible for our members to hear about the government's focus on restructuring, modernization, and "efficiencies" without turning attention to the duplication inherent in the operation of parallel systems. Also, as Ontario's population becomes even more diverse, the elevation—through access to public funds—of one denominational system over all others is increasingly discordant." This statement expresses a situation that agrees with a majority of Ontarians.

**Editor's note:** From this point on, the excerpts from the report are quoted. Underlining has been added to emphasize the time lines.

### **What has been done?**

In year one of our work group, the communications and political action component consisted of the following work. Essentially, the CPA department began the task of publicizing our policy change to the membership who was not aware of the significant shift taken at AMPA.

The work group examined existing polling data to determine whether opinions have shifted on the merger of Ontario's school systems.

We determined that there have been at least five significant attempts to determine public opinion. They include:

\* Civil Rights in Public Education *School Referendum, 1997* which asked "Do you support a single school system where all children, regardless of their religious affiliation, attend the same schools where opportunities for religious education, not specific to a religious denomination, is provided?"

\* The OISE annual Survey of Educational Issues which is conducted by the University of Toronto Ontario Institute for Studies in Education. The most recent one being the 18<sup>th</sup> Survey 2012, asks a number of questions related to spending, faith based schools and views on public funding by religious orientation.

\* Vector Research has conducted at least two opinion polls (2005 and 2013), asking about a

unified school system and the merging of Ontario's school systems;

\* Finally Forum Research Inc. released the results of a random sampling of public opinion done in May of 2013, "showing that most disagree with Catholic school funding".

It would appear that public support has grown in Ontario to merge the two publicly funded school systems as evidenced by the polling and surveying done over the past 20 years. "While remaining a polarizing issue, there are distinct differences in the opinion of those who have school age children and those in the public who do not. Not surprisingly, the strongest support to maintain Catholic school funding comes from those parents and elected officials who have chosen to send their children to these schools. The findings appear to show that Catholic system respondents feel more intensely about the issue than those who support "merging" the systems.

Any further investigation on our part will need to consider that in some parts of the province nearly 80% of the households do NOT have either elementary or secondary age children in them. These non-parent members of the "public" appear to be opposed to religious school funding.

In our response to the Ministry consultation on modernization and finding efficiencies OSSTF/

FEESO submitted that "any modernization of our school systems must at a minimum, include a respectful discussion about moving towards one public secular system in English and one in French."

Summer Leadership 2013 initiated our Education platform discussion in preparation for any provincial election called in this minority government situation. One of the demands in our consultation was the inclusion of moving to one public system in English and one in French. Overwhelmingly, local leaders thought that we should include this concept as a secondary theme.

Our current finalized education platform introduced the concept of two public secular systems at Lobby Day on December 5<sup>th</sup> and members were prepared with background notes and local examples supporting each of our platform planks. Despite our attempts to discuss a range of issues, media response focused almost entirely on this education governance issue. (Not surprisingly, the strongest resistance has come from the Catholic Trustees Associations and the leadership of OECTA.)

### **What is to be done?**

Over the next three months, (Jan-March) Public Education—Investing in Ontario will be distributed to all Directors and Chairs of Boards of Education. This will no doubt continue the discussion about each of the six demands we propose to the political parties in Ontario. We hope to reach out to the various stakeholders at the elementary, secondary and post-secondary level to debate our vision for a better public education system.

In preparation for any "All Candidates" meetings, a series of MPP and Trustee questions will be de-

signed by the CPA department to assist our local members in their election participation. In lobbying for our positions, OSSTF/FEESO may want to assist community organizations by circulating any petitions which complement our policy on the single school system.

Between May-August, the work group will also seek the support of a research company to assist us in determining the appropriate questions and messages we should use to influence public opinion. We acknowledge that this is a long term process however our Federation has committed itself to design a lobbying strategy and keep our members informed about our political action.

Questions to be polled will focus on *the reasons* parents choose to send their children to some schools and not others. We will determine if opinions are shifted when we propose the concept of improved educational outcomes through better enrolled and financed schools. We will explore the most effective messages to promote a single system and this will include focus group discussions which will inform our lobbying materials to be designed explicitly for our policy demand. Themes and slogans to advocate for the best public education system will be created and tested during these sessions.

From September to December 2014, the CPA department will engage in an ongoing effort to identify and cooperate with allies in this

initiative. The CPA department will also redouble its efforts to reach out to the new government elected at Queen's Park who ultimately have the authority to launch any re-examination of public school funding. An on line ad campaign and a possible media buy could be used to further publicize our message. Although this will be a slow moving political campaign, our promotion of this policy will assure that we are in a position to be leading opinion on how best to implement an amalgamation rather than react to any government imposed restructuring.

In January 2015, along with our allies in the labour and community movements, we could initiate a "Charter for Public Education campaign"—emphasizing the need to move to one public secular system. Supporters could be asked to sign onto the Charter as a way of symbolically building public opinion for this transformation. Building public opinion and public pressure will be key to moving any elected official in this direction.

### **Conclusion...**

As the cliché goes, "... Busing students past one half-empty school so they can be educated in another half-empty school only impoverishes the entire system". Our task will be to convince members of the public that one well-funded public education system in English and one in French give students the best opportunity to succeed.

CPA = Communications and Political Action

AMPA = Annual Meeting of the Provincial Assembly (OSSTF)

OISE = Ontario Institute for Studies in Education

OECTA = Ontario English Catholic Teachers' Association

For the publication *Public Education—Investing in Ontario*, Go to:

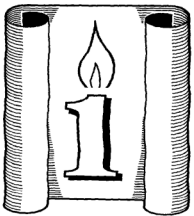
<http://www.osstf.on.ca/media/digital-publications/public-education/index.html>

**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.

**Religious Freedom Act**

**R.S.O. 1990, Chapter R.22**

**Consolidation Period:** From December 31, 1990 to the e-Laws currency date.

No amendments.

**Preamble**

Whereas the recognition of legal equality among all religious denominations is an admitted principle of Provincial legislation; And whereas, in the state and condition of this Province, to which such principle is peculiarly applicable, it is desirable that the same should receive the sanction of direct legislative authority, recognizing and declaring the same as a fundamental principle of the civil policy of this Province:

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**Free exercise of religious profession, etc., guaranteed**

**1.** The free exercise and enjoyment of religious profession and worship, without discrimination or preference, provided the same be not made an excuse for acts of licentiousness, or a justification of practices inconsistent with the peace and safety of the Province, is by the constitution and laws of this Province assured to all Her Majesty's subjects within the same. R.S.O. 1990, c. R.22, s. 1.

**A Thought to Consider**

**To live in a world where truth matters,  
and justice, however late, really happens,  
that world would be  
heaven enough for us all.**

Rubin (Hurricane) Carter

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.**