

Public Section Press Release - April, 2017
Theodore Litigation

The Theodore Court case is intended to determine if the Government policy which provides public funding to Roman Catholic school divisions to provide a "faith-based" education to non-Catholic students is constitutional.

This policy has a significant, negative impact on public school divisions and the education of children in the Province. Those impacts include but are not limited to:

- Loss of students who would otherwise attend public schools, resulting in a loss of funding to provide educational programming and services to all students attending public schools.
- Diversion of significant capital funding, which should be used to provide educational facilities to all students in public schools, to the building of Catholic schools to accommodate a significant number of non-Catholic students.
- The creation of dual school systems - Public, inclusive, open to all students and Roman Catholic separate, for the members of the minority faith that established the school division and for everyone else.

Public school boards believe that the Government's interpretation of the mandate of separate Catholic schools is incorrect. Public school boards are of the view that the constitutional privileges for Catholic education are afforded only to the members of the Catholic community.

From the beginning of this dispute, which has dragged on for many years, Public School boards have always been concerned about cost. School trustees do not like to spend money on litigation and in that regard members of the Public Section tried on an ongoing basis to find the least expensive way to resolve what they regarded as a very important constitutional matter.

Public School Boards have pursued various avenues to secure a determination of the respective mandates of public and Catholic school boards.

In 2004-2005, the Government agreed that clarity was needed in regards to the respective mandates of public and Catholic school boards. The Government agreed to refer to the Court of Appeal, a number of questions intended to resolve the respective mandates of public and Catholic school boards. The Public Section supported a Constitutional reference as a faster, cheaper and less divisive approach to resolve this issue. This avenue was preferred by public school boards, and at least initially by the Government, as a non-confrontational way of securing a resolution to an important issue affecting the education of students in the Province.

The planned referral to the Court of Appeal was cancelled in the summer of 2005 by the Government as a result of a major lobbying campaign launched by Catholic school boards in the Province. Since then, public school boards have unsuccessfully asked every new Minister of Education to reinstitute the planned referral to the Court of the Appeal because it dealt with the important legal questions without having to deal with the full process of a trial - again faster, cheaper and less divisive.

As a result, the public school boards of the Province have had no choice but to pursue a more adversarial litigation process in the Court of Queen's bench to secure a resolution of the mandate issue. During this process, particularly at trial, the Government has taken a very strong position opposing public education and in support of the funding of non-Catholics students in Roman Catholic schools and has for years stalled and attempted to undermine any process to deal with this unresolved important issue.

It was our belief and expectation that it would be in the interests of the Government and the Province to secure authoritative guidance on the Constitutional parameters around the mandate of public and separate boards of education, the funding of separate school boards, and the scope of educational reform which the Government may undertake without impeding on denominational and *Charter* rights protected by the Constitution.

The importance of the issues in this case have been understood and acknowledged by successive governments. It should not have been left to boards of education to shoulder the costs of securing the answers to important social, constitutional and educational issues – which will have to be answered sooner or later. We thus urged the Government to assume leadership and fund the process by which all parties to the Theodore case agreed, years ago, that these questions would be answered. This initiative extends beyond its pivotal importance for public and separate education in Saskatchewan and includes broader areas of social policy and human rights. The Government of Saskatchewan has a fiduciary responsibility to ensure that the important questions in this litigation are resolved.

The court process is a good faith effort by public school boards to secure a resolution to an issue which impacts the education system as a whole. Public school boards continue to value and respect their relationship with Catholic school boards and their representatives.

In an increasingly diverse and multicultural province, the public school system offers the most promising potential for building a harmonious and tolerant society. It is the public school system in which all religious and non-religious beliefs are treated as equal. The public system has been created to fulfill certain missions that go beyond the purely academic purposes of schools: to provide universal access to free education, to guarantee equal opportunity for all children, to unify a diverse population, to prepare people for citizenship in a democratic society, to prepare people to become economically self sufficient, and to improve social conditions. Public school divisions are required by law or expected by society to carry out these purposes as a primary mission.

A public school system exists to nurture kids in the understanding that they live and will live together, regardless of race, religion, economic circumstances, intellect and many other differences. Public school education can and does teach about religion and spirituality. It takes care, however, to recognize that faith is personal to each person, and that it would be wrong for the institutions of the State to bring their weight to bear in promoting one faith over another.

School boards in Saskatchewan value and embrace the responsibility of serving the children and youth of our communities. It is imperative that rules and structures be defined to enable school boards to plan for the education challenges of the future and to focus without distraction on their students. It is important to define the mandates of the public and separate systems or move further along the path to two parallel public school systems.