



Education Equality in Ontario

P.O. Box 11117, Stn H, Ottawa, ON, K2H 7T8

Presentation to the Standing Committee on Justice Policy Public Hearings on Bill 107, Human Rights Code Amendment Act, 2006 Ottawa, Ontario, August 9, 2006

"[E]quality isn't just about being treated the same, and it isn't a mathematical equation waiting to be solved. Rather, it is about equal human dignity, and full membership in society. It is about promoting an equal sense of self-worth. It is about treating people with equal concern, equal respect, and equal consideration. These are the values that underlie equality. These are the values that are offended when we discriminate, consciously or not." The Honourable Madam Justice Claire L'Heureux-Dubé, Supreme Court of Canada, "A Conversation about Equality" (2000) *Denver Journal of International Law and Policy*.

Good morning. My name is Leonard Baak. I am president of Education Equality in Ontario and I appear here today with our chairman, Thomas Layer. Education Equality in Ontario is a non-governmental human rights organization and education advocacy group. We seek the elimination of religious discrimination and duplication in the Ontario school system through the establishment of a single publicly-funded school system for each official language (English and French).

Background:

Ontario's divided school system was born out of 19th century realities. Ontarians of the day could generally be categorized as being either Protestant or Roman Catholic¹, and neither group had much tolerance for the religious teachings of the other. The laws of the day accommodated that intolerance by allowing for the segregation of students between the public school system, which incorporated Protestant religious education, and a separate school system for Roman Catholics. To assuage fears of eventual assimilation into a distinctly Protestant public school system, that segregation became a constitutional "right" for the Roman Catholic minority at the time of Confederation. The Protestant/Catholic, French/English, and Irish/Anglo divisions in pre-Confederation Ontario society, together with the Protestant character of most public schools, were the reasons Roman Catholic separate schools were created. The original rationale for their existence is gone today. It is time to move on.

Present-Day Discrimination:

Today, the uniqueness of publicly-funded school choice and additional employment opportunities for the members of a single faith group constitutes discrimination that offends the equality guarantees of the human rights instruments to which Canada is a party.

Ontario separate schools enjoy an unfettered right to discriminate against non-Catholic Ontarians in admissions before grade nine². All Ontarians bear the same tax burden, but only Catholic Ontarians enjoy a right to publicly-funded school choice.

¹ At Confederation, Ontario's population was 82% "Protestant" and 17% Catholic.

² "...at the elementary level, only Roman Catholic parents or guardians have the right for their children to attend separate schools. [Education Act, s. 33(3), (4)]. The admission of others to Roman Catholic elementary schools is entirely at the discretion of the separate school board and by agreement with the parent or guardian concerned." -- Dave Costen, Director, Legal Services Branch, Ontario Ministry of Education, July 2005.

While on the outside that choice might appear to be a religious one, the fact is that three-quarters of families using publicly-funded Catholic schools today are “unchurched”³, some are openly atheist or agnostic, and more and more are not even Christian.

Most of the families choosing separate schools today are making a *secular* choice between two school systems based on secular factors such as facilities, standardized test scores, programs, location, and transportation. Religion is *seldom* the determining factor in making that choice⁴. Whether made for religious or secular reasons, that choice often ensures Ontario Catholics a higher quality of education than their non-Catholic neighbours. In some neighbourhoods the separate school will be the better one; in others, the public school. If the better school happens to be the separate school, only Catholics are assured access at the elementary level. That discrimination in choice between publicly-funded schools offering the provincial curriculum affects far more Ontarians than the discrimination in religious school funding. It affects millions. One’s faith should not allow one to access a better publicly-funded school than one’s neighbour.

The discrimination in religious school funding cannot be ignored either. Catholic parents genuinely desiring a religious education for their children receive a government subsidy of over \$8000 per child per year for that education, while parents of other faiths receive nothing. Given that the constitutional “obligation” used to excuse the funding of Catholic schools is largely illusory (more on that later), the exclusivity of funding for Catholics alone is indefensible. Fairness demands that we fund all religious schools *equally* or that we fund none.

One cannot forget the situation of Ontario’s non-Catholic teachers. One-third of the Ontario’s publicly-funded teaching positions, those in the separate system, are essentially closed to two-thirds of our citizens. In 1997, Ontario separate school boards won the absolute right to discriminate against non-Catholic teachers in hiring and promotion⁵; a right they appear to use to the fullest.

Our Supreme Court has stated that denominational school rights “make it impossible to treat all Canadians equally.”⁶ They were right. *Non-fundamental* denominational school rights render our *fundamental* equality rights ineffective by virtue of their constitutional status and their exclusive applicability to a single favoured group.

“Acceptable” vs. “Unacceptable” Discrimination:

The Canadian Charter of Rights recognizes the widely-accepted principle that discrimination by governments may sometimes be acceptable if it has as its object the amelioration of some disadvantage faced by an identifiable group⁷. Affirmative action programs are an example. Such “morally acceptable” discrimination should not be confused with the “morally *unacceptable*” variety; that which favours groups having no measurable disadvantage when compared to other groups.

³ 70-75% of the families using publicly-funded Catholic schools today are considered “unchurched” according to Fr. James T. Mulligan in *Catholic Education: Ensuring a Future*, Ottawa: Novalis, 2005.

⁴ According to September 2005 Vector Research poll conducted for the Ontario Secondary School Teachers’ Federation (OSSTF), only 14% of Catholic school parents indicated that “that the availability of religious instruction was the most important factor they considered when selecting a school.” From *An OSSTF Study on the Financial and Educational Implications of Implementing the Confederated School Board Model*, presented at the OSSTF Annual Meeting of the Provincial Assembly, March 2006.

⁵ *Re Daly et al. and Attorney General of Ontario; Ontario English Catholic Teachers’ Association et al. December 17, 1997.*

⁶ Wilson, J., REFERENCE RE BILL 30, AN ACT TO AMEND THE EDUCATION ACT (ONT.), 25 June 1987.

⁷ Canadian Charter of Rights and Freedoms, Section 15 (2).

The special educational privileges of Ontario Catholics are an example of “morally unacceptable” discrimination. As a group, they have no measurable disadvantage that might warrant preferential treatment. As the province’s largest religious group⁸, Ontario Catholics are arguably the least in need of special consideration or government largesse. The corollary of continuing to uphold their exclusive education rights is to demonstrate contempt for the fundamental equality rights of all other Ontarians.

International Condemnation:

In November 1999, the UN Human Rights Committee found Canada in violation of the equality provisions of the International Covenant on Civil and Political Rights by virtue of the discrimination in the Ontario school system⁹. They demanded that the situation be remedied by funding all religious education *equally* or by funding none. The Committee censured Canada again in November 2005 for failing to “adopt steps in order to eliminate discrimination on the basis of religion in the funding of schools in Ontario.”¹⁰ Not only was that discrimination not eliminated, but it was actually exacerbated in 2003, when the current Ontario Government eliminated public support for *all but* Roman Catholic religious education.

The religious discrimination in the Ontario school system also offends the equality provisions of the Universal Declaration of Human Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The education rights enumerated in the Convention on the Rights of the Child are also likely offended by the discriminatory manner in which those rights are given effect in Ontario. Canada is a party to all three of these instruments.

Bill 107: An Incomplete Reform

In August 2005, the Ontario Human Rights Commission (the “Commission”) undertook a review of the effectiveness of the Ontario human rights system using the Paris Principles for an effective human rights system. In its *Preliminary Comments on the Proposed Reforms to Ontario’s Human Rights System* (7 Mar 2006), the Commission reiterated the importance it placed on any new system’s consistency with the requirements of the Paris Principles endorsed by Canada. We submit to you that Ontario’s system has never been consistent with those principles and that Bill 107 brings it no closer to compliance.

As a “national institution” as defined in the Paris Principles, the Commission has failed “To promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation” (principle 3.b). By virtue of the discrimination in our school system, the Ontario Government openly violates the equality guarantees of several of the human rights instruments to which Canada is a party. To our knowledge, the Commission has never criticized the Government for those violations.

The Commission has similarly failed “To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation” (principle 3.c). Again, to our knowledge, the Commission has never taken any steps to encourage the Ontario Government to address their violation of fundamental equality rights within the context of our school system. To our knowledge, the Commission has also failed to comment on the reports that Canada is required to submit to the United Nations; reports which universally fail to acknowledge the discrimination in the Ontario school system.

If truly committed to the Paris Principles, the Commission must address its shortcomings with respect to its responsibilities as enumerated in those principles. It must break its silence and assert its independence in speaking out forcefully and relentlessly in opposition to the discrimination in the Ontario school system.

⁸ 34% of the Ontario population is Roman Catholic (Statistics Canada, 2001 Census).

⁹ See UN Human Rights Committee, *Communication N° 694/1996 : Canada*. 05/11/99.

¹⁰ See UN Human Rights Committee, *Concluding observations of the Human Rights Committee : Canada*. 02/11/2005.

If truly committed to the creation of an effective human rights system, the Ontario Government must ensure that Bill 107 encourages the Commission to live up its responsibilities as enumerated in the Paris Principles. To facilitate this, the Government must take the steps necessary to include the repeal of Section 19 (Separate School Rights Preserved)¹¹ of the Ontario Human Rights Code (the “Code”) in its Bill 107 reforms. Section 19 effectively absolves the Government and separate school boards from responsibility to uphold the Code provisions forbidding religious discrimination in services (Section 1) and employment (Section 5). The Government must also ensure that the Commission enjoys the necessary independence to fulfill its responsibilities without hindrance or interference of any kind.

The Way Forward:

The discrimination in the Ontario school system cannot be addressed affordably by extending comparable funding to non-Catholic religious groups. Additionally, such extended funding would only compound the duplication penalty borne by the Ontario taxpayer, further fragment our school system, and do nothing to address the discrimination in publicly-funded school choice affecting millions of Ontarians.

Instead, we believe that only one English language and one French language school system should enjoy full public funding in Ontario today. Furthermore, admission and employment in those public systems should be open to all Ontarians without discrimination.

A single publicly-funded school system for each official language would fully address the discrimination in the Ontario school system and fulfill Ontario’s domestic and international obligations to treat Ontarians of all faiths fairly and equitably.

Ontario could move towards a single publicly-funded school system with *or without* constitutional change. Section 43 of the Constitution Act, 1982 provides a mechanism through which constitutional change affecting one or more, but not all provinces (such as denominational school rights) can be accomplished through a bilateral amendment between the affected province(s) and the Parliament of Canada alone. Quebec and Newfoundland both eliminated denominational school rights through such an amendment¹² in the late 1990s. The Newfoundland amendment was obtained with blinding speed; being proclaimed just four months after being requested by the provincial legislature. Manitoba eliminated denominational schools unilaterally in 1890, despite a constitutional “obligation” to provide them virtually identical to Ontario’s.

Following the amendment of the Canadian constitution to recognize the fundamental equality of all Ontarians:

- 1) Revisions to the Education Act should be undertaken to remove exclusive entitlements with respect to publicly-funded school choice and publicly-funded religious education.
- 2) Revisions to the Human Rights Code should be undertaken to remove references to the preservation of separate school rights having constitutional origin.
- 3) A merger of Ontario’s public and separate school systems should be undertaken, resulting in a single publicly-funded school system for each official language.

¹¹ From the Ontario Human Rights Code: “Separate School Rights Preserved 19. (1) This Act shall not be construed to adversely affect any right or privilege respecting separate schools enjoyed by separate school boards or their supporters under the *Constitution Act, 1867* and the *Education Act*. R.S.O. 1990, c. H.19, s. 19 (1).”

¹² See Constitution Amendment, 1997 (Québec) and Constitutional Amendment, 1998 (Newfoundland Act).

Education Tax Credits:

Education Equality in Ontario is *neutral* on the virtues of education tax credits for families using public school alternatives, subject to the following conditions:

- 1) Any tax credit offered for public school alternatives must apply equally to all Ontarians; including Ontario Catholics. A tax credit good enough for some should be good enough for all. Education Equality in Ontario will vigorously oppose any education tax credit proposal that leaves Ontario Catholics with superior funding compared to families using other public school alternatives.
- 2) Any tax credit offered for public school alternatives must not discriminate between religious and non-religious alternatives.
- 3) Any tax credit offered for public school alternatives should be modest enough so as to not detract from the quality of education offered in the public school system or encourage an exodus from that system which would undermine the role of public schools in fostering greater tolerance and understanding between Ontarians of different backgrounds.

Conclusion:

Today we have outlined for you the need to change Ontario's Catholics-first-and-only policy with regard to publicly-funded school choice and religious school funding. It is time for a *religiously neutral* provincial government to establish the proper primacy of *fundamental* equality rights over *non-fundamental* denominational privilege. There should indeed be "one law for all Ontarians."¹³

A single school system is the only affordable way to fully and completely address the discrimination in publicly-funded school choice and religious school funding in our school system. From the equitable starting point of one system, the Ontario electorate can decide the issue of education tax credits for themselves in an election.

If this Government's commitment to human rights is genuine, it will address the glaring omission of justice for non-Catholic Ontarians in Bill 107. It will address the shortcomings of our human rights system as measured against the Paris Principles for an effective system. In the process, it will do its part to ensure that Canada lives up to its international obligations and that Ontario lives up to its obligations to its own citizens.

Thank you for giving us the opportunity to speak to you today. We would be happy to take your questions.

Sincerely,

Leonard Baak
President, Education Equality in Ontario
leonard@OneSchoolSystem.org

Thomas Layer
Chairman, Education Equality in Ontario
thomas@OneSchoolSystem.org

"...the Committee observes that the Covenant does not oblige States parties to fund schools which are established on a religious basis. However, if a State party chooses to provide public funding to religious

¹³ Ministry of the Attorney General, News Release, *MCGUINITY GOVERNMENT DECLARES ONE LAW FOR ALL ONTARIANS*, 15 Nov 2005.

schools, it should make this funding available without discrimination.” -- United Nations Human Rights Committee, *Communication N° 694/1996 : Canada*. 05/11/99.

“The Committee expresses concern about the State party’s responses relating to the Committee’s Views in the case *Waldman v. Canada* (Communication No. 694/1996, Views adopted on 3 November 1999), requesting that an effective remedy be granted to the author eliminating discrimination on the basis of religion in the distribution of subsidies to schools (arts. 2, 18 and 26).

The State party should adopt steps in order to eliminate discrimination on the basis of religion in the funding of schools in Ontario.”

-- United Nations Human Rights Committee, *Concluding observations of the Human Rights Committee : Canada*. 02/11/2005.

“I share the Prime Minister's hope that China will soon ratify the International Covenant on Civil and Political Rights. The Prime Minister raised these issues because they are important to all Canadians — and because the Government of Canada is responsible for the conduct of foreign policy at the state-to-state level. Respect for the basic rights of our citizens is something that is also very important to me and to my government.” -- Dalton McGuinty, Premier of Ontario, in an address to the Tsinghua University Law School, Beijing, China, 7 Nov 2005. Ironically, the Premier was suggesting that China should abide by the same human rights instrument that Ontario was censured for continuing to violate only five days before this address (see preceding quote).

"Finally, government is to see to it that equality of citizens before the law, which is itself an element of the common good, is never violated, whether openly or covertly, for religious reasons. Nor is there to be discrimination among citizens." -- Pope Paul VI, *DECLARATION ON RELIGIOUS FREEDOM*, 7 Dec 1965.

"...religious discrimination is an offence against the dignity of the human person; a contradiction to the sincere respect which is owed to other faiths, and an offence against charity." -- Canadian College of Catholic Bishops, *Eliminate Racial and Religious Discrimination: See Every Person as My Sister or Brother*, 21 Mar 2004.

"While the responsibility to comply with the obligations enshrined in international human rights instruments and to uphold universally agreed human rights standards falls upon states, involvement by informed citizen is key to pushing for states' compliance with human rights instruments." -- Bill Graham, Minister of Foreign Affairs of Canada, March 2004, in the preface to "*FOR THE RECORD 2003: The United Nations Human Rights System*".

A hyperlinked version of this document is available at:
<http://www.oneschoolsystem.org/documents/Bill107Presentation9Aug2006Web.pdf>.