Non-Catholics Can Be Catholic School Trustees in Yellowknife

On June 4, 2009, the Supreme Court of Canada denied leave to appeal a decision of the Northwest Territories Court of Appeal, with the result that non-Catholic trustees may sit on Catholic school boards.[1]

The Yellowknife Public Denominational District Educational Authority wished to disqualify two candidates for election to the Catholic school board, on the grounds that the candidates were not of the Catholic faith.[2]Debbie Euchner, in her capacity as Returning Officer, refused the school board's request. The school board felt that its members need to understand the unique philosophy and values of the Catholic faith.[3]

Euchner refused because the governing legislation for the school board did not refer to the Catholic faith as being a requirement for sitting on the school board. One of the candidates was an incumbent, running for her second term.[4] After Euchner denied the request for disqualification, the school board applied to the courts for a review of her decision.[5]

Full Rights to Denominational Schools in the Northwest Territories?

The case hinged on phrasing of the 1870 *Order of Her Majesty in Council Admitting Rupert's Land and the Northwest Territories into the Union*. According to Schedule, or table, of constitutional documents at the end of the *Constitution Act, 1982*, the Order is part of the Constitution of Canada.[6] The passage in dispute reads:

> *That the welfare of a sparse and widely scattered population of British subjects of European origin, already inhabiting these remote and unorganized territories, would be materially enhanced by the formation therein of political institutions bearing analogy, as far as circumstances will admit, to those which exist in the several provinces of this Dominion.[7]*

The vast area, which the Order referred to as Rupert's Land and the Northwest Territories, has since been divided into the three Prairie provinces (Manitoba in 1870, Alberta and Saskatchewan in 1905) and three territories (Yukon in 1905 and Nunavut in 1999, leaving the remaining land as the current Northwest Territories).[8]

The school board argued that the phrase "political institutions bearing analogy" included school boards. Accordingly, the Catholic school board in the Northwest Territories should have the same status as other Canadian religious school systems in provinces, under section 93 of the *Constitution Act, 1867*.[9] Section 93 protects the right to minority Catholic education.

The school board argued that school boards should be considered "political institutions," as

they served a legislative purpose through delegation. Section 93 thus required parliament to create school boards with the "broad features of the Quebec-Ontario denominational school model" in the territory.[10]

Court Finds N.W.T. Is Not Like Provinces

The Northwest Territories Court of Appeal found that denominational schools are not a constitutionally protected right in the Northwest Territories.[11] The court based this decision on five factors:

- Parliament did not intend to include school boards in "political institutions;"[12]
- the Order lacks specific wording to entrench denominational school rights;[13]
- the *Northwest Territories Act*, which includes denominational school rights, is not considered constitutional;[14]
- the history of discourse about denominational schools does not demonstrate that these rights were considered constitutional;[15] and
- rights to denominational schools are not clear and specific enough to be considered constitutionally entrenched, as it is unclear which provinces are analogous.[16]

After the school board lost at the Court of Appeal level, they applied for leave to appeal to the Supreme Court of Canada. A bench of three justices considered the application for leave to appeal. It denied the application on June 4th.[17]

As usual, the Court did not give any reasons for denying leave to appeal, so it is unclear if it endorses the entire analysis of the Northwest Territories Court of Appeal. However, the Supreme Court's decision makes the Court of Appeal's judgment the final word on the matter. The Supreme Court also ordered that the school board bear the legal costs of this appeal.[18]

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[1]*Yellowknife Public Denominational District Education Authority, et al. v. Debbie Euchner, in her capacity under the Local Elections Act, R.S.N.W.T. 1988, c. L-10, as returning officer of Yellowknife Public Denominational District Education Authority;* "SCC: Decisions-Judgements in Appeal and Leave to Appeal Applications" *Supreme Court of Canada* (4 June 2009); "SCC: Case Summary" *Supreme Court of Canada*(undated).

[2]*Yellowknife (Public Denominational District Education Authority) v. Euchner*, 2008 NWTCA 13 at para. 8.
[3]"Top court upholds decision to allow non-Catholics on Yellowknife school board" *CBC.ca* (5 June 2009).
[4]"Supreme Court ruling 'weight off my shoulders' for Yellowknife non-Catholic school trustee" *CBC.ca* (8 June 2009).
[5]*Supra* note 2 at para. 13.
[6]Section 52(2) provides: "The Constitution of Canada includes (a) the *Canada Act 1982*, included in this Act; (b) the Acts and orders referred to in the schedule; and (c) any amendment to any Act or order referred to in paragraph (a) or (b)."
[7]*Order of Her Majesty in Council Admitting Rupert's Land and the Northwest Territories into the Union*, 23 June 1870, reprinted in R.S.C. 1985, App. II, No. 9.
[8] Supra note 2 at paras. 33 and 35.
[9]*Ibid.* at para. 57.
[10]*Ibid*.
[11]*Ibid*. at para. 64.
[12]*Ibid.* at para. 78.
[13]*Ibid*. at para. 81.
[14]*Ibid*. at para 87
[15]*Ibid*. at para. 89
[16]*Ibid*. at paras. 102 and 103.
[17]*Supra* note 1.
[18]*Ibid*.