

**To:** Ann Andrachuk, chair of the TCDSB; trustees Patrizia Bottoni, Nancy Crawford, Frank D’Amico, Jo-Ann Davis, John Del Grande, Tobias Enverga, Peter Jakovic, Angela Kennedy, Barbara Poplawski, Sal Piccininni, Maria Rizzo and Student Natalie Rizzo; Archbishop Thomas Collins, honorary director of education; Ann Perron, director of education

**From:** Dr. Robert T. Dixon, adjunct professor, St. Augustine’s University, Toronto

**Re:** the draft of the TCDSB’s Equity and Inclusive Education Policy

**Recommendation: In view of the fact that Regulations 7, 8, 9 in their present wording are inconsistent both with the TCDSB’s EIEP opening statement that it gives pre-eminence to the tenets of the Catholic faith and with the constitutionally-protected right of the TCDSB to provide a Catholic curriculum, it is recommended that the TCDSB amend Regulations 7, 8 and 9 as elaborated in Part IV, 15 to 21 of this brief.**

I. Introductory Remarks

1. I wish to comment on the board’s draft of its Equity and Inclusive Education Policy (EIEP). I believe that I am qualified to make observations on the draft policy because of extensive education and professional experience with Catholic education and since I have written affidavits for eight court cases, all of which involved separate schools’ constitutional rights and all of which were accepted by the Courts of Ontario and Canada. (See Appendix: Curriculum Vitae.)

II The EIEP and the Catholic Curriculum

2. The draft EIEP is a curriculum document since curriculum is “all those initiatives in which children engage under the auspices of the school” (The Report of the Provincial Committee on Aims and Objectives of Education in the Schools of Ontario, 1965) and since “it is the sum of all the activities, experiences and learning opportunities for which an institution takes responsibility.” (C. Coles, 2003). As well, Regulations 9 and 10 of the EIEP designate the TCDSB’s EIEP as a curriculum document: “The Board is committed to implementing an inclusive curriculum ...”(Regulation 9) and “to the principle that every person within the Catholic school community is entitled to a respectful, positive and Christ-centred school climate ...”(Regulation 10)

II Some Statements on the Catholic Curriculum by Catholic Authorities

3. “God, His truth, His life are integrated into the entire syllabus, curriculum and life of the school.” (Archbishop of Toronto Philip Pocock, quoted in Robert T. Dixon, *Catholic Education and Politics in Ontario*, Vol. IV, p. 378)
4. “Its [the Catholic school’s] task is fundamentally a synthesis of culture and faith, and a synthesis of faith and life; the first is reached by integrating all the different aspects of human knowledge through the subjects taught, in the light of the Gospel.”(Sacred Congregation for Catholic Education, *The Catholic School*,p. 13)

5. “The Catholic school finds its true justification in the mission of the Church; it is based on an educational philosophy in which faith, culture and life are brought into harmony. Through it, the local Church evangelizes, educates and contributes to the formation of a healthy and morally sound life-style among its members.” (Sacred Congregation for Catholic Education, *The Religious Dimension of Education in a Catholic School*, para. 34)
6. “From a Catholic perspective, the purpose of education is not only the transmission of knowledge, but also the formation of the whole person of the students through bringing them to personal integration of faith and life. Separate schools are responsible for imparting Christian doctrine in an organic and systematic way, in order to initiate students into the fullness of Christian life and to elicit in response a personal commitment to that way of life.” (Completion Office-Separate Schools, quoted in Dixon, *Catholic Education*, p. 214)
7. In short, the Catholic school is not simply different in degree from non-religious education. It is different in kind. The existence of an integrated Catholic curriculum (supported by history and recently by special government funding to the Institute for Catholic Education) testifies to the religious nature of Catholic education integrated across all disciplines.
8. It is obvious from the foregoing official statements that the TCDSB’s EIEP must be free from any doctrinal error and implemented in the schools in accordance with the teachings of the Magisterium and the *Catechism of the Catholic Church*.

### III Court Judgments on the Constitutionally Protected Catholic Curriculum of Ontario’s Roman Catholic Schools and Catholic Schools in General

9. Section 93(1) of the *Canada Act* states: “Nothing in any law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the union.” In judgments regarding separate school rights and privileges contained in the *Separate School Act* of 1863 and guaranteed by section 93(1), the Courts of Ontario and Canada have understandably treated section 93(1) with great care and respect. In fact, the Supreme Court of Canada in the case regarding the completion of the separate school system stated that, “... without an agreement and compact in relation to religious education ... there would have been no Confederation.” (*Reference: Re Bill 30* [1987] 1 S.C.R. 11148 at paras. 27 and 28) The Courts have agreed with the concept that the Catholic curriculum is an essential element of the Catholic school and, therefore, is protected under section 93(1). The following are some examples of statements in support of the constitutionally protected Catholic curriculum.
10. In a case involving the constitutional right to government-supported Catholic schools in Manitoba, the Court stated that, “Roman Catholic inhabitants of ... Ontario ... regarded it as essential that the education of their children should be in

- accordance with the teaching of their Church.” (*Brophy v. Attorney-General for Manitoba* [1895] A.C.202 at p. 214)
11. In the original case regarding separate school boards’ right to operate high schools with government grants and taxes, Chief Justice Anglin in the Supreme Court of Canada stated that, “religious instruction and influence should always accompany secular training.” (*Tiny Separate School Trustees v. The King* [1927] S.C.R. 637 at pp. 698-99)
  12. In a case involving the dismissal of a teacher in a Catholic school who had married a non-Catholic in a civil ceremony, Judge McIntyre stated that, “The religious or doctrinal aspect of the school **lies at its very heart and colours all its activities and programs.**” (emphasis added) (*Caldwell v. Stuart and St. Thomas Aquinas High School* [1984] 2 S.C.R. 603 at 624-25)
  13. In the case involving the constitutional right of separate school boards to prefer Catholics when hiring teachers for their Catholic high schools, Judge Sharpe stated, “Roman Catholics insisted upon the establishment of separate schools in which Catholic education would be delivered by Catholic teachers utilizing a Catholic curriculum. ... Teachers in separate schools were expected to link the ordinary subjects with religion in teaching. ... [There was] **a pervasive infusion of religion throughout the entire curriculum.**” (emphasis added) (*Daly v. Ontario (Attorney General)* [1997]) D.L.R. 154 at paras. 44, 45, 84)

#### IV Comments on the TCDSB’s EIEP

14. First of all, I would like to congratulate you, the trustees, for developing a succinct EIEP that begins with “it recognizes that all people are deserving of dignity and are created in the image of God” and that “any form of social or cultural discrimination is incompatible with Catholic moral principles” are laudable and consistent with both Ministry of Education guidelines and Catholic teaching. It is particularly noteworthy that the EIEP states that, “the Board ... **gives pre-eminence to the tenets of the Catholic faith.** (emphasis added) Thus, it is essential that the other parts of the opening statement and the Regulations of the EIEP are both consistent with that pre-eminence and with the constitutionally-protected right of the TCDSB to provide a Catholic curriculum. The amendments recommended below make this even clearer. For that reason that I support them.
15. Trustee Kennedy recommends an amendment which would add to the first paragraph “as found in the Catechism and other teachings of the Magisterium.” This is a desirable clarification which would prevent the teaching of Catholic writers and spokespersons whose ideas are not fully in accordance with official Catholic teaching.
16. Trustee Kennedy also recommends that “The Board will approve only clubs which have goals that are consistent with the Catholic faith and the Catholic Church's moral teaching.” This is a good recommendation provided that it does

- not infer that a Catholic school is obligated to establish any particular sort of club. Also, the matter of a club should likely be a separate Regulation worded carefully.
17. Trustee Del Grande recommends adding to Regulation 6 “where that voice is in accord with Catholic Faith and Catholic Church’s moral teaching.” This is an excellent addition. The TCDSB cannot expect that all of its students are sufficiently knowledgeable, faithful and mature with regard to the teachings of the Church to provide in-put on the school staff’s implementation of the EIEP. They are in the formation stage of their Catholic education.
  18. Trustee Del Grande also has concerns about Regulation 7: “The Board is committed to establishing and maintaining partnerships will all members of our diverse Catholic community so that their perspectives and experiences are recognized.” I agree that this Regulation is alarming as it is worded. There is some evidence that “There are “members of our **diverse** Catholic community” who may believe that they are propagating Catholic teaching but who, in fact, are not. Perhaps it would be better in this board policy to word the amendment positively rather than negatively, for example, by stating “provided their perspectives and experiences are consistent with and reinforce the Catholic Faith and the Catholic Church’s moral and religious teachings.” I suggest adding the words “and religious” since, for example, Quebec’s Commission Scolaire des Chênes makes an undesirable distinction between religious and moral teaching in the way others may seek to make an inappropriate distinction between creed and “ethics or morals.” From a properly Roman Catholic perspective ethics and morality are intimately involved with our religious beliefs and a wedge should not be driven between them as suggested. As for an approval process, this seems impractical if not impossible, given that the “partners” are all the teachers, priests, parents, and students that make up the TCDSB. Perhaps some reference could be made to organizations like the school council, student council, etc.
  19. Trustee Del Grande recommends that in Regulation 8 the word “values” be replaced by the “Catholic faith.” In addition, the word “values of” in Regulation 9 should be replaced by “Catholic principles regarding” as there has been much learned academic commentary that “values” is a confusing language for morality not best suited to a Catholic setting. Trustee Del Grande also recommends adding “Well [sic- should be While] all students should be able to see themselves reflected in the curriculum materials, this goal does not extend to recognition of personal conduct or a lifestyle that is not consistent with the teachings of the Catholic Church.” His two suggested amendments are desirable clarifications.
  20. Trustee Del Grande also recommends adding, “It is the expectation that the Catholic teacher will provide the Catholic context to ensure that no classroom instruction would undermine or contradict the teachings of the Catholic Church.” This sentence may be perceived by some to have a negative connotation out of place in an affirmative curriculum document. Furthermore, it is unnecessary. The

*Education Act* lists the duties of teachers which clearly convey that any teacher who does not follow the TCDSB's curriculum can be dismissed or at least disciplined and warned. There are numerous court cases upholding a school board's right to do so.

21. **I would like to draw special attention to Regulation 9. The phrase “freedom from discriminatory or harassing behaviour *based on religion*” (emphasis added). As worded, this in effect singles out religion as the cause of discrimination or harassment. This is neither fair nor accurate. I suggest that the phrase should be “freedom from discrimination or harassment”, period.**
22. As for trustee Kennedy's recommendation to add a lengthy addition to the EIEP's third paragraph and as to the other regulations of the EIEP, they seem reasonable and consistent with both Church teaching and Ministry policy. However, despite my extensive experience with court cases involving denominational rights, I am not a constitutional or human rights lawyer, and cannot, therefore, be confident that the rest of the EIEP and trustee Kennedy's suggested addition are sufficiently protective of separate school rights and privileges in connection with section 93(1) and are worded appropriately from a legal and constitutional point of view.

#### V Concluding Remarks

23. In May of this year, Iain T. Benson, a lawyer very experienced and knowledgeable in separate school constitutional rights and religious rights, argued in his written materials before the Supreme Court of Canada against the failure of the Quebec Commission scolaire des Chênes to grant the exemption request of parents to the Ethics and Religious Culture Course in a public school setting. Benson argued, and I agree, that the specific rules that govern publicly funded religious education must be different in relation to religious requirements than the setting for non-religious public education. The same distinction applies when the Ontario Ministry of Education considers the implementation of its inclusive equity policy by a public district school board and by a Catholic district school board which possesses a constitutionally protected Catholic curriculum.
24. **I respectfully urge that you, the trustees of the TCDSB, revise Regulations 7, 8 and 9 in accordance with the recommendations contained in Part IV, 15 to 21 of this brief.**

## 25. Appendix: Curriculum Vitae

- I received my elementary and secondary school education in Toronto's separate schools and De la Salle College "Oaklands." I possess the following degrees from the University of Toronto: BA, MEd, MA (English), MTS (theology), and EdD (philosophy and history).
- My doctoral thesis, written in 1974, was on the case for completion of the separate school system.
- I have spent most of my career in Ontario's Catholic school system as an elementary and secondary school teacher, as superintendent of education, and as a director of education.
- I have also taught school law for Niagara University to teachers pursuing an MEd and for the Catholic Community Delivery Organization to principals acquiring supervisory officer qualifications. Currently I am an adjunct professor at St. Augustine's University teaching "Issues in Catholic Education in Ontario."
- I am the author of *Catholic Education and Politics in Ontario*, Vol. IV and *We Remember, We Believe. A History of Toronto's Catholic Separate School Boards, 1841 to 1997*, as well as other books on Ontario Catholic education.
- I have written affidavits for eight court cases, all of which involved separate schools' constitutional rights and all of which were accepted by the Superior Court of Ontario and the Supreme Court of Canada. The two I found most notable were (1) my affidavit documenting that separate school boards were operating Catholic high schools with taxes and government grants before Confederation and therefore were constitutionally entitled to completion of the separate school system (*Reference re Bill 30, to amend the Education Act (Ont.)* [1987] 1 S.C.R. 1148), and (2) my affidavit on the history of the close relationship of the constitutionally guaranteed Catholic curriculum of Ontario's separate schools and the necessity of the separate school boards' power to prefer Catholics when employing teachers (*Daly v. Ontario (Attorney General)* [1997] D.L.R. 154).