Summary of the Saskatchewan Court of Appeal Decision – Good Spirit School Division v. Christ the Teacher, released March 25, 2020, for the unanimous five-member panel (Jackson, Ottenbreit, Caldwell, Whitmore and Schwann JJ.A.).

1. Good Spirit School Division did not have standing to bring this action because they are a governmental body and their *Charter* rights are not infringed. Their issue was economic, and as such "Good Spirit's *Charter* claim is a means to another end" [para. 49]. They were the wrong entity to assert *Charter* breaches: "only adherents of a non-minority faith, e.g., Muslims, could assert those rights, which they have not done. Good Spirit cannot possibly claim to be an advocate for this group."

2. The trial judge improperly relied on extraneous sources not tendered by the parties and on which the parties did not have an opportunity to make submissions. [para. 102]

3. "The constitutional deal made in 1905 is just that: a deal made by the majority to protect the minority that is enshrined and inviolable as part of the Constitution of Canada by virtue of the *Saskatchewan Act*. The only way to alter the deal is through constitutional amendment according to the protocols in place to do so (see Part V of the *Constitution Act, 1982*)." [para. 121]

   The trial judge erred by interpreting the constitution "to confine rights or privileges granted when the province was created in 1905" rather than "the question of determining what the *1901 Ordinances* meant or conferred moving forward in time." [para. 122]

   "… the trial judge did not give effect to the principle that separate school rights are also a *Charter* right, recognized as being preserved by s. 29 of that instrument, which protects 'rights or privileges guaranteed by or under the Constitution of Canada in respect of denominational, separate or dissentient schools.'" [para. 123]

4. Fairness and equity may result in separate schools receiving more funding than public schools, if that is necessary to preserve the right to denominational education. [para. 153]

5. The following statements of the trial judge ***were in error*** [at para. 146]:

   a. "any funding of Catholic schools is the protection of their right to remain *separate*" (emphasis in the original, *Trial Decision* at para 350) and separate schools "were created so that a minority faith could separate their children from the majority" (at para 357).

   b. "[t]he defendants must accept that 'unequal' and therefore 'unfair' treatment is inherent to separate school rights" (at para 356).

6. The plenary power per s. 93(3) of the Constitution Act, 1867 provides that "a province can legislate to *add* to the rights of denominational schools and may also amend or repeal any such laws" even where such additions are not necessary to the essential Catholicism of the schools. [para. 164]

7. "If there is any issue in this appeal that may be considered discriminatory, it is that the Government does not fund all religious schools fully [i.e. private religious schools], not that it funds the two public systems equally – but the issue of equal funding among religious schools was truly not before the Court of Queen's Bench in this case." [para. 179]

8. "One thing is certain. This case does not present the issue suggested by the trial judge. It is not about government legislation that permits a school to discriminate on the basis of race or gender or sexual orientation. It is indeed the antithesis of that. The Legislative Framework, in particular s. 142, requires the Government *not* to use its funding power to discriminate on the basis of religion between its two publicly funded school systems: any child is entitled to free public education in any publicly funded school in the division where he or she resides." [para. 186]

9. The following portions of the judgment appear to reflect our argument to the Court [at paras. 189. 191]:

> There was nothing legally incorrect with the appellants' relying on s. 93(1) and s. 93(3) in the alternative. …
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> The important point to be made, however, is that, if the right to funding for non-minority faith students did not exist prior to 1905, the only logical conclusion was that the right was granted after 1905.

And later [at para. 199]:

> With respect to the admission of non-Catholics to Catholic schools, according to the evidence, the Catholic belief system became more ecumenical after Vatican II. While we understand the trial judge's point, that without public funding it is probable that non-Catholic children will not attend Catholic schools, the ecumenism that results in admission is not linked to government funding.

10. The Court made the following holding and referred to the Ontario situation in a helpful manner [at paras. 193-94]:

> … it is clear from the evidence that the Legislative Framework provides for funding to separate and public boards on the same footing, i.e., primarily on the basis of enrollment, without discrimination on the basis of religion. This approach permits the funding of non-Catholic students in separate schools and the converse.
>
> According to the evidence, funding separate and public boards on the same basis constitutes a right or, at least, a privilege accorded to separate school supporters in a number of tangible and intangible ways. Just like the legislation in question in Ontario, this legislation bestows "additional new rights and privileges in response to changing conditions" (*Reference re Bill 30* at 1174)

11. "… in our respectful view, the trial judge appears to have overlooked that there are two public agencies at work in determining the validity of the Legislative Framework measured by the law pertaining to s. 93(3). The first agency is the Catholic school system that sets its own education policy in accordance with a Roman Catholic belief system (and the constraints imposed by regulatory systems) and the second agency is the Government that decides how its education will be dispensed. If the denominational aspects test applies to s. 93(3), the only issue that would count in this circumstance is whether Catholic doctrine embraces the inclusion of non-Catholic students in Catholic schools. On that issue, the evidence appears to be conclusive. It does." [para. 200]

12. Admitting and funding non-Catholics to attend publically funded Catholic schools does not infringe s. 2(a) (freedom of religion including religious neutrality) or s. 15 (non-discrimination) of the *Charter*. If it does, it is a reasonable limit justified per s. 1.

13. The appeal was allowed and the declaration of constitutional violation set aside. There is no new trial order; rather, Good Spirit's action is dismissed.

14. The costs order at trial is overturned, and no costs are ordered for trial. No costs are ordered on appeal.