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Class action to teach province a lesson

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Section 82(1) of the School Act states that a board must provide "free of charge" to every student of school age, resident in British Columbia and enrolled in an educational program in a public school, "instruction in an educational program sufficient to meet the general requirements for graduation" and "educational resource materials necessary to participate in the educational program".

Raised in the cradle of Canada's medicare democracy, B.C.'s rookie Minister of Education, Margaret MacDiarmid, may be surprised at the breadth of the job she inherited.

Not the least of her problems will be the lawsuits being strewn in her path from three different directions.

The first is a suit filed as a class action in the Supreme Court of British Columbia by North Vancouver solicitor James Poyner. The statement of claim seeks reimbursement for summer school fees billed to the plaintiff parent by Vancouver School District No. 39.

The parent paid those fees, unaware that former Education Minister Shirley Bond had declared them illegal in July 2007.

Traveling eastward, Saskatchewan-based Merchant Law Group has also filed a class action claim against the Regina school board to recover "inappropriate school fees" it asserts must be repaid to parents and students.

"The fees clearly contravene our Education Act," said lawyer Evatt Merchant. In this case, the charges are of a more general nature -- for course fees and resource materials.

Merchant went on to explain that the Saskatchewan suit is not likely to happen in isolation, because the group is examining how school-fee legislation is being enforced (or not) by school boards in other provinces -- including British Columbia.

News of the two class actions comes as music to the ears of professor John Young of Victoria. No stranger to the issue, the 85-year-old, five-term school trustee is a lifelong educator who twice has won the support of the B.C. Supreme Court in his attempts to enforce the terms of Sections 82 and 168 (2) (j) of the School Act.

In 1997, B.C. Supreme Court Justice Montague Drake ruled in his favour -- and against his own Victoria School District No. 61 -- by affirming that Section 82 (1.c) requires that all resource materials needed for a K-12 student to graduate from the official curriculum must be provided free of charge.

At the time, I applauded the decision but anticipated there would be push-back from government; it was not long in coming.

Young's school board and the Nisga'a Lisim government both opted to comply with the ruling; however, the board and the NDP government of the day then proceeded to cause much parental angst throughout B.C. by threatening: "This decision may well lead to cancellation of valuable programs because we can no longer afford to provide them."

Nevertheless, on Oct. 2, 2006, Supreme Court Justice Robert Johnston, in response to a second petition by Young, upheld the 1997 Drake opinion and extended it to encompass all school districts in the province.

Undaunted, the governance and legislation unit of Bond's ministry issued an order in spring 2007 allowing fees to be charged for paper and supplies and the rental of musical instruments.

By July 2007, Young had declared that, in his opinion, the ministry order was ultra vires, and noted on his website that the government had "twisted even more loopholes into our education law. . . . and school boards all over B.C. are scrambling to set up 'specialty academies' and extra equipment fees -- another end run around the spirit of the law."

It will be left to parents and the courts to decide whether there is substantive truth to the claim by government that academies were established merely to enable schools to attract students to their specialty programs.

North Vancouver Policy 706 acknowledges the legislation, which seems encouraging until we find that, for example, Seycove secondary has published a Supplementary Fees Rationale.

This document explains that fees can be charged for "otherwise unaffordable additional supplies and materials" for art courses; or to enable a more "professional experience" for theatre students; or to provide "boneless chicken breasts vs. bone and skin on chicken thighs" in its food courses.

A cynic might well suggest that, in these days of high taxes, high prices and tight budgets, it might be more useful for a student to learn how to make nutritious meals out of those chicken thighs.

And that leads to what must be the most important issue of all. . . .

For well over a year, media reports have told us that 25 per cent of B.C. children live in poverty and that for aboriginal children the rate is almost double that. Beyond the stark numbers, many more families could be described as the working poor.

Despite outward appearances, the North Shore is not immune to these circumstances; we just hide it better behind a façade of affluence.

So when it comes to equality of access to education, or to opportunity in the subjects and careers of choice, the legislative assurance that, "no student of school age, ordinarily resident in British Columbia shall be excluded from participation in an activity, course, or program because of financial hardship" is of little comfort.

In the first place, nothing in the mounds of loosely worded regulations seems to define what is meant by "hardship."

The statement begs the question: "What of the students who, on numerous occasions throughout their 12 years of schooling, face the acutely embarrassing need to mumble a shy, 'Don't want to take that course,' or 'Can't go on that field trip,' when the issue in reality is one of affordability?"

By now, we should know the likely outcome for those students: The few will overcome their beginnings and succeed in spite of them; too many others will be condemned to a life of resentment or retaliation against the hand that was dealt them.

For monetary reasons alone, it is the latter who should be of most concern to both government and society in general. The obvious corollaries of poverty and a lack of education are ill health, under-employment and, far too often, an increase in violence and crime.

In human and financial terms, any one of those conditions creates a burden to society. Taken together, that burden is unacceptable.

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I would be remiss if I did not give special mention to some of the best role models our children could hope for: the parents and students who allowed their names to stand as plaintiffs in these cases; and to John Young who, though well past retirement, remains determined to serve his community well as a school trustee, determined to put the rights of students above all else. Thank you.

-- Elizabeth James is a West Vancouver writer and editor.

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