

The Unconstitutional Overreach: Alberta's Education Act and the Frozen Rights of 1901

Introduction

Alberta's education system stands distinct among Canadian provinces due to its unique constitutional entrenchment. Unlike other provinces where education generally falls under the provincial power outlined in Section 93 of the Constitution Act, 1867, Alberta's system is specifically governed by Section 17 of the Alberta Act of 1905. This pivotal section explicitly incorporated Chapters 29 and 30 of the 1901 North-West Territories (NWT) School Ordinances, effectively "freezing in time" a particular dual system of public and separate schools. This dual system was meticulously designed to protect not only religious rights but also the integrity and equity of a state-regulated public education system. Public funding of Charter and Private schools is a provincial policy choice, not a constitutional mandate like public and separate schools. If public and separate schools are experiencing overcrowding or anything that negatively impacts these two constitutionally entrenched systems, the charter and private funding could be deemed an unconstitutional overreach.

This report asserts that many, if not all, legislative changes to Alberta's Education Act since 1994 have fundamentally deviated from this constitutionally protected model, rendering them unconstitutional. These post-1994 shifts, particularly concerning funding centralization, governance, curriculum control, and the expansion of alternative schooling models such as charter and private schools, directly contravene the "frozen rights" established by the 1901 NWT Ordinances.

The subsequent sections will detail the historical context of education in the NWT, the precise constitutional entrenchment of the 1901 Ordinances, and supporting jurisprudence from the Supreme Court of Canada. The report will then demonstrate how recent legislative changes constitute an unconstitutional overreach, impacting various stakeholders and undermining the principle of universal, equitable public education. Finally, it will outline a viable path for judicial review to reclaim these fundamental constitutional rights.

The Historical and Constitutional Bedrock: A Compromise Frozen in Time

A. Education in the Northwest Territories Pre-1905: Evolution to a State-Regulated Dual System

The foundational elements of Alberta's education system were laid long before its provincial status. The Northwest Territories Act, 1875, served as an early legislative cornerstone, establishing state-sponsored education and granting the population of the

NWT rights to religious education akin to those afforded to Ontario residents upon Confederation. This Act empowered territorial officials to enact laws enabling Catholic or Protestant minorities to establish separate schools within any district. Subsequent laws in 1884 and 1885 formally structured the Territories' education system, comprising both "private and public schools". However, a crucial 1886 amendment restricted the establishment of new separate schools to existing school districts, thereby preventing their formation in newly created areas.

By 1901, the NWT School Ordinances had solidified a dual system of public and separate (Protestant or Catholic) schools. This period marked a significant transformation in the nature of these institutions. What might have initially been perceived as purely private, religiously-controlled schools evolved into a state-controlled public education model. The 1901 Ordinances standardized and regulated these schools, ensuring minimal religious instruction within a broader publicly oriented framework. This evolution is critical because it precisely defines what was constitutionally "frozen" in 1905: not a purely private system, but a state-regulated dual system with inherent public accountability. This historical development underscores that the "frozen rights" were intended to protect a publicly accountable dual system, rather than to facilitate the later expansion of truly private, less regulated, and publicly funded institutions that operate outside this established framework.

Central to understanding the "frozen rights" are the specific provisions of Chapter 29 of the 1901 NWT Ordinances. This chapter meticulously outlined the process for establishing a publicly funded school system. The process commenced with the creation of a formal school district, either public or separate, within a defined geographic area, with provisions for "Erection of district on order of commissioner" and "Petition for erection". Residents within these districts elected trustees responsible for overseeing the school's management and operation. These locally elected boards enjoyed significant operational autonomy, as indicated by the inclusion of "Election of trustees" and "Rights and liabilities of separate school districts" in Chapter 29.

A cornerstone of the 1901 framework was its funding mechanism. Public and separate schools were primarily financed through property taxes levied within the school district, a system designed to ensure universal accessibility without the need to charge fees to parents or students. Chapter 29 explicitly stipulated: "No fees shall be charged by the board of any district on account of the attendance at its school of any child whose parent or lawful guardian is a ratepayer of the district." Separate schools, in particular, were granted the "inviolable" right to requisition taxes directly from their ratepayer base. The emphasis on the "ratepayer" in the context of funding and the right of separate schools to requisition taxes directly from their ratepayer base highlights a

fundamental principle: local funding tied directly to local accountability. The definition of "resident ratepayer" in Chapter 29 further solidifies this direct link. This arrangement ensured that those funding the schools had a direct say in their governance and that education was universally accessible to children within that ratepayer base without additional fees. The subsequent shift away from this model fundamentally alters the relationship between citizens and their local schools. The concept of the "ratepayer" is not merely a funding mechanism; it represents the democratic foundation of the education system. Centralizing funding and removing local taxation rights sever this foundational democratic link, transforming school boards from accountable local bodies to primarily provincial delegates, thereby undermining a core "frozen right."

B. The Northwest School Crisis of 1905 and the Alberta Act: *Forging the Constitutional Compromise.* The formation of Alberta and Saskatchewan in 1905 ignited the "Northwest School Crisis," a contentious political debate centred on the continuation of denominational protections within the new provinces. Prime Minister Wilfrid Laurier's initial proposal to align school administration with the British North America Act (1867), mirroring the dual systems of Ontario and Quebec, faced vehement opposition. This resistance emanated from a broad spectrum of the NWT population, including members of the Legislative Assembly, the press, and the western clergy. Clifford Sifton, then Minister of the Interior, resigned in protest over the issue, compelling Laurier to retract his proposal and revert the schools clause to its 1892 form.

The "Northwest School Crisis" was more than a mere debate over educational structure or funding; it represented a profound clash over federal versus provincial authority, religious freedoms, and the nascent cultural identities (English versus French, Protestant versus Catholic) within the emerging provinces. Laurier's initial attempt to apply Section 93(1) of the Constitution Act, 1867, generally, and the intense opposition that led to Sifton's resignation, underscore the high stakes and the deep-seated nature of the conflict. The eventual compromise, which involved the specific incorporation of the 1901 Ordinances, was a direct political necessity to achieve provincialization. This demonstrates a deliberate choice to entrench a specific, pre-existing model rather than a general, flexible principle. The intensity of this crisis highlights that the 1905 entrenchment was a fixed solution to a specific problem, designed to prevent future provincial governments from unilaterally altering the delicate balance achieved in 1901. This reinforces the "frozen rights" interpretation, signifying a constitutional commitment that transcends ordinary provincial legislative power.

To resolve this impasse, the Laurier government brokered a compromise: instead of applying the general education framework of Section 93(1) of the Constitution Act, 1867, Section 17 of the Alberta Act explicitly incorporated the 1901 NWT School

Ordinances. This substitution was not arbitrary; it was a deliberate act to protect the specific hybrid, state-regulated education system that had evolved by 1901. The clear intention was to constitutionally bind the new province to the educational landscape of 1901, ensuring centralized control, regulated religious instruction, and equitable treatment of public and separate schools. This entrenchment specifically aimed to prevent future provincial governments from fundamentally altering this structure, particularly by diverting public funds to entities outside the defined dual system, such as private and charter schools.

Sec 17 2. "In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29 or any Act passed in amendment thereto, or in discrimination against schools of any class described in the said chapter 29."

C. The "Frozen Rights" Doctrine in Alberta Education: Interpretation and Scope

The legal consensus, consistently affirmed by the Supreme Court of Canada, is that Section 17 "froze in time" the rights and structures of the education system as they existed in 1905. This interpretation signifies that Alberta's constitutional framework for education represents a fixed commitment to the 1901 educational model, rather than a flexible, evolving principle. This includes the detailed mechanisms for school governance and funding, such as the right to levy assessments. Further reinforcing this rigidity, Section 17(2) of the Alberta Act explicitly mandates "no discrimination against schools of any class described in Chapter 29" in the appropriation and distribution of funds, thereby protecting both public and separate schools against unequal funding. Significantly, this constitutional entrenchment did not extend to private institutions; its purpose was to protect public, accessible, and state-regulated education, not to subsidize a fragmented educational market.

The concept of "frozen rights" inherently creates a tension with the idea of a "living tree" constitution, which generally allows for constitutional provisions to adapt to societal changes. While the Supreme Court of Canada has adopted a "living tree" approach in many areas of constitutional law, including Aboriginal rights, where it explicitly sought to avoid a "frozen rights" approach, it has explicitly affirmed the "frozen in time" interpretation for Alberta's education system. This suggests a unique constitutional rigidity for Alberta education, making it an exception to the general principle of constitutional evolution. The challenge for the courts, therefore, is to interpret these "frozen" 1901 Ordinances in the context of modern educational needs and structures, such as the emergence of charter schools and centralized funding. The

"no discrimination" clause in Section 17(2) becomes particularly critical in this context: it raises the question of whether "discrimination" extends to the diversion of funds to non-constitutionally protected entities, thereby prejudicially affecting the constitutionally protected public and separate schools, even if the direct funding amounts appear equal. This tension forms the core of the argument against post-1994 legislative changes. The province's actions are presented as attempts to evolve the system in ways that directly contradict its frozen constitutional foundation, necessitating a judicial examination of the limits of provincial plenary power when a specific constitutional compromise is in place. The argument is that the "frozen rights" are not merely a historical curiosity but a binding constraint on provincial legislative authority.

Judicial Precedent Affirming the Constitutional Connection

A. Supreme Court of Canada's Consistent Upholding of Section 17 and 1901 Ordinances The Supreme Court of Canada has consistently upheld the special constitutional status of Alberta's dual education system and its adherence to the 1901 Ordinances. Several key decisions illuminate the fixed and specific nature of this constitutional commitment.

The Public School Boards' Association of Alberta (PSBAA) v. Alberta (Attorney General) case arose in response to the Alberta government's 1994 amendments to the School Act, which the PSBAA argued undermined the constitutionally entrenched governance and funding structure of public schools established in the 1901 NWT School Ordinances, incorporated into the Alberta Act, 1905, via Section 17. The provincial government maintained that Section 17 only protected denominational (separate) school rights, and that public schools were a matter of provincial policy, not constitutional law. The Alberta courts agreed and struck down the PSBAA's claim **without a full trial**, holding that public school boards did not have the legal standing to assert constitutional rights. The Supreme Court of Canada declined to hear the case. Interestingly, the Court of Appeal said, "Section 17(1) freezes in time the rights and privileges of separate schools."

In Regina Public School District v. Gratton (1915), the Court articulated that *"Under **chapters 29 and 30**, the schools, whether public or separate, are the schools of all the rate payers and they are in every respect on a basis of absolute equality."* This early pronouncement underscores the universal and equitable nature of the constitutionally protected system. The case clarified that a corporation's failure to comply with a subsection regarding separate school notice resulted in the assessment being rated for public school purposes. While Public School Boards' Assn. rejected "mirror equality," Gratton (1915) affirms a fundamental equality in the constitutional

standing and purpose of public and separate schools as publicly funded institutions serving the community. The discussion in Gratton regarding corporate assessment for separate school purposes further emphasizes the direct link between ratepayers (including corporations) and the funding of both public and separate schools. This reinforces that the 1901 Ordinances established a system where both types of schools were integral to the public education framework and funded via local mechanisms. This "equality" refers to their shared constitutional status and purpose within the public system, not necessarily identical operational structures. This principle can be leveraged to argue that post-1994 changes, by fundamentally altering the funding and governance of public schools while preserving some autonomy for separate schools, disturb this historical "basis of absolute equality" in a manner that undermines the overall integrity of the dual system as constitutionally protected.

Reference re s.17 of the Alberta Act (1927), along with Jones, confirmed that Alberta's education laws are bound by ***Chapters 29 and 30 of the 1901 Ordinances***. This case represents an early and direct judicial interpretation of Alberta's unique constitutional provision for education. Its existence reinforces that the "*frozen rights*" interpretation is not a recent invention but has been judicially recognized for nearly a century, establishing a long-standing legal understanding of Alberta's educational framework. This case acts as a historical anchor for the "*frozen rights*" argument, demonstrating that the unique constitutional status of Alberta's education system was understood and affirmed by the highest court early in the province's history, predating many of the legislative changes now being challenged. It solidifies the notion that Section 17 is a specific, immutable constitutional directive.

Jones v. Edmonton Catholic School District No. 7 (1976) further underscored the binding nature of Chapters 29 and 30 of the 1901 Ordinances, particularly concerning taxation rights and corporate assessment for separate school purposes. The Supreme Court held that a corporation's right to allocate assessment for separate school purposes, as per the Ordinance, was proportional to the shares held by Roman Catholic shareholders, and that a provision enabling challenge to this apportionment did not diminish the right to apportion. This case demonstrates the continued judicial enforcement of the specific, granular details of the 1901 Ordinances, particularly regarding the right of separate schools to a portion of corporate property taxes based on ratepayer affiliation. The fact that this right was still being litigated and affirmed in 1976, long after 1905, reinforces the "frozen" nature of these specific fiscal mechanisms, indicating they are not merely historical curiosities but enforceable constitutional rights. This stands in stark contrast to the abolition of public school boards' taxation rights in 1994, which represents a direct and fundamental alteration of

a "frozen" fiscal right. Jones provides strong evidence that the specific fiscal rights embedded in the 1901 Ordinances were active, enforceable constitutional rights, making the subsequent abolition of public school boards' taxation rights a prime target for constitutional challenge.

Mahe v. Alberta (1990), while primarily a Section 23 Charter case concerning minority language education rights, is relevant because it reaffirmed Alberta's modified adoption of Section 93, specifically quoting the substitution language from the NWT ordinances. The Court held that Section 23 of the Charter guarantees official-language minority parents the right to be represented on the school board or to have their own school board, to preserve and promote their language and culture. This decision did not interfere with denominational school rights under Section 29 of the Charter, as it addressed language, not religion. Mahe demonstrates how Charter rights interact with pre-existing constitutional structures. The Court's decision to grant Francophone parents governance rights, while acknowledging Alberta's unique Section 93, suggests that the constitutional framework is capable of accommodating evolving rights, but within the confines of its established historical compromises. The fact that it did not interfere with Section 29 denominational rights further emphasizes the distinct but protected nature of different educational rights within the overall constitutional scheme. This case reinforces that the Alberta Act's specific entrenchment is the operative constitutional text for education in Alberta. It strengthens the argument that while new rights can be recognized, they must operate within the established constitutional architecture, not override its fundamental "frozen" elements.

Finally, **Alder v. Ontario (1996)**, although concerning Ontario, provides foundational principles directly applicable to Alberta's unique constitutional position. The Court reiterated that Section 93 is a historic constitutional compromise, granting "plenary" power to provinces over education, and is largely immune from Charter challenges regarding denominational school funding. The majority held that Section 93 forms a "comprehensive code" regarding denominational school rights and cannot be expanded through Section 2(a) of the Charter. This means that groups whose educational rights are not explicitly guaranteed by the constitutional compromise (e.g., Jewish schools in Alder) have no claim to public funding. Alder is crucial for understanding the limits of Charter challenges to constitutionally entrenched education systems. The Supreme Court's strong affirmation of Section 93 as a "plenary" power and a "historical compromise" largely immune from Charter attack means that the specific, "frozen" nature of Alberta's Section 17 is highly defensible. This directly supports the argument that charter and private schools, not being part of the 1901 Ordinances' "frozen" system, have no constitutional claim to public funds. Their funding, therefore, is a

matter of provincial policy, but if this policy undermines or dilutes the constitutionally entrenched system, it could be argued to be unconstitutional. Alder provides a powerful legal weapon against the expansion of public funding to charter and private schools, suggesting that if these institutions fall outside the specific, constitutionally defined "publicly funded" categories of 1901 (public and separate schools), their funding is not constitutionally mandated and, if it negatively impacts the entrenched system, it could be deemed an unconstitutional overreach.

B. Synthesis of Case Law: The Fixed and Specific Nature of Alberta's Educational Constitution

The Supreme Court's consistent jurisprudence on Alberta's education system, particularly concerning Section 17 of the *Alberta Act* and the 1901 NWT School Ordinances, collectively supports the assertion of government overreach. Cases like *Reference re s.17 of the Alberta Act (1927)* firmly establish that Alberta's education framework is "frozen in time," meaning its specific structure, including local governance and taxation rights for public and separate schools, cannot be fundamentally altered by provincial policy.

Public School Boards' Assn. of Alberta v. Alberta (2000) acknowledged provincial plenary power and limited public school autonomy; it simultaneously affirmed the "frozen rights" for separate schools, creating an asymmetry that highlights how changes to public school funding and governance (e.g., loss of local taxation) deviate from the original 1901 balance.

Regina Public School District v. Gratton (1915) reinforces the foundational "equality" and ratepayer-based nature of both systems, which is undermined by centralization. Furthermore,

Jones v. Edmonton Catholic School District No. 7 (1976) demonstrates the enduring enforceability of specific 1901 fiscal rights, making the abolition of public school taxation a clear departure. Finally,

Alder v. Ontario (1996) implies that public funding for entities outside the constitutionally defined public and separate school systems (like charter and private schools) is not constitutionally mandated and, if it negatively impacts the entrenched system, constitutes an unconstitutional diversion of resources. Together, these rulings define the strict constitutional boundaries within which Alberta's education system must operate, making post-1994 legislative shifts that erode local control, alter funding mechanisms, or expand non-entrenched systems constitutionally suspect.

Unconstitutional Transformations: Post-1994 Shifts in the Alberta Education Act. Since 1994, Alberta has enacted several significant legislative changes that directly conflict with the "frozen in time" 1901 educational model. Under a strict "frozen rights" interpretation, these changes represent an unconstitutional overreach.

A. Centralization of Funding and Elimination of Public Taxation Rights

In 1994, the provincial government fundamentally altered the funding landscape by abolishing the right of public school boards to levy education property taxes. These revenues were instead directed to the provincial treasury, to be pooled into the Alberta School Foundation Fund (ASFF). The provincial government now unilaterally sets the mill rate and distributes funds to school boards via a formula. While separate schools retained a limited "opt-out" right to directly requisition taxes, even their autonomy is constrained by provincial allotments, and they are required to remit surpluses. The proportion of education operating costs covered by property tax has dramatically decreased from 51% in 1994-95 to approximately 30% in 2020-21, with the majority of funding now originating from provincial general revenues.

This centralization directly undermines the 1901 principle of local fiscal autonomy, where both public and separate school boards possessed the authority to levy property taxes on their respective supporters. The 1901 framework intended public schools to be fully funded through public revenue without the imposition of additional fees. The shift to a formula-based allocation significantly curtails local discretion over revenue generation and expenditure flexibility, marking a stark departure from the local financial self-determination implicit in 1905. The removal of public boards' right to levy taxes fundamentally alters a funding mechanism that was part of the "frozen rights." These funding changes are not merely about financial mechanics; they represent a fundamental shift in the locus of power from local communities to the provincial government. **By removing the right of public school boards to levy taxes, the direct accountability loop between local ratepayers and their elected school boards is severed.** School boards are reduced to mere recipients of provincial allocations, losing their capacity for local financial self-determination. Also limits and eliminates the ability to speak out or effect change (Don't bite the hand that feeds). This directly contradicts the spirit of the 1901 Ordinances, which envisioned locally established districts with elected trustees and tax-levying powers. The fact that separate schools retained a limited opt-out highlights the differential impact and the erosion of a foundational right for public schools, creating an imbalance not present in the original "frozen" equality. This centralization, while justified by the province as promoting equity, can be argued to violate the constitutional commitment to a locally accountable public education system. The "no fees" clause becomes particularly

vulnerable when local funding is removed, as schools are forced to assess fees to cover shortfalls, thereby undermining universal accessibility, while restricting and limiting innovation.

B. Expansion of Charter and Private Schools

Since 1994, Alberta has witnessed a significant expansion of alternative schooling models. Charter schools were introduced under new regulations within the School Act in 1994, receiving funding from the general provincial budget while operating outside the original dual system. Notably, Alberta remains the only Canadian province with a publicly funded charter school system. Legislative changes, such as Bill 8 in 2019, removed the previous cap on the number of charter schools. Furthermore, Bill 15 in 2020, known as the Choice in Education Act, allowed new charter school applications to bypass local public school board adjudication while granting 100% per-pupil funding, granting the Minister direct approval authority. Private schools also receive partial (70%) public funding.

The expansion and public funding of these alternative models fundamentally conflict with the 1901 Ordinances. The Ordinances established a primary binary system of public and separate schools as the universal publicly funded education system. Charter and private schools do not adhere to the Chapter 29 framework for establishing districts and electing trustees accountable to the public. They operate outside the traditional public or separate school districts and lack public accountability through elected trustees. The constitutionally protected system was not designed to support multiple, parallel systems with public subsidies; as the Alberta government has often stated, "there is only one pot of education money", which ultimately comes from the same provincial revenue source. The significant expansion and public funding of these alternative models represent a fundamental diversification of the publicly funded education landscape, arguably diluting the "universal" nature and foundational support for the constitutionally entrenched public and separate school systems. The funding of charter and private schools directly from the "one pot of money" intended for public education (as defined by the 1901 Ordinances) constitutes a diversion of resources. The *Alder v. Ontario* case is highly relevant here: if Section 93 (and by extension Alberta's Section 17) is a "comprehensive code" for constitutionally mandated funding, then entities not explicitly covered by that code (like charter and private schools, which do not fit the public/separate district model of 1901) have no constitutional claim to public funds. Their funding, therefore, **is a matter of provincial policy, but if this policy undermines or dilutes the constitutionally entrenched system (e.g., by causing public school closures, service cuts, or overcrowding), it could be argued to be unconstitutional.** The removal of the cap on charter schools and

bypassing local board adjudication further exacerbates this by reducing public oversight and accountability, moving these schools further from the "public" and "accountable" nature of the 1901 system. **This is arguably the strongest point of a constitutional challenge. The argument is that the province, by funding non-constitutionally protected entities, is effectively diminishing the resources and scope of the constitutionally mandated public and separate school systems, thereby violating the "frozen rights" and the principle of universal, equitable access to that specific entrenched system.**

C. Provincialization of Governance

The 2019 Education Act fundamentally redefines the role of school boards, characterizing them as "delegates of provincial jurisdiction" and subjecting them to extensive ministerial oversight. This represents a significant erosion of local autonomy, as provincial control now extends to board composition, policy direction, and even trustee discipline, exemplified by measures like Bill 51. Bill 51, for instance, explicitly prohibits a public school board from removing an elected trustee for code of conduct violations. It also places the planning and construction of newly built schools under Alberta Infrastructure, with the Minister governing the process by regulation. These legislative changes systematically shift power from locally elected officials to a centralized provincial authority.

This provincialization directly contradicts the independent local governance model enshrined in the 1901 Ordinances, where ratepayer-initiated boards exercised operational control and accountability directly to their communities. The current legal interpretation fundamentally transforms boards from bodies holding inherent local power to merely exercising delegated provincial powers, making them primarily accountable upwards to the Minister rather than outwards to their local ratepayers. The original intent was for local communities to have substantive control over their schools. The extent of ministerial interference and specific legislative changes like Bill 51 indicate a level of centralization that goes beyond mere delegation. The original system allowed for local communities to establish districts and elect trustees to manage their schools; the current system reduces these boards to administrative arms of the province, diminishing their capacity for independent decision-making and responsiveness to local needs. This transformation of local democracy into centralized bureaucracy undermines the "local control" aspect of the "frozen rights," arguing that the original intent was for a system where local communities had significant agency over their schools, not merely to implement provincial directives. **This erosion of local democratic control can be argued to be a constitutional violation, as it alters the fundamental structure of governance entrenched in 1901.**

D. Provincial Control over Curriculum

Curriculum development, which once allowed for significant influence from local boards, is now entirely centralized under provincial control. The Minister holds the exclusive authority to prescribe and approve programs of study and may prohibit learning materials. Alberta is currently undertaking a multi-year, province-wide renewal of its K-12 curriculum, firmly under central provincial control. This shift represents a move from a more decentralized, locally responsive approach to a "one-size-fits-all" model.

This "one-size-fits-all" approach significantly departs from the 1901 structure, which allowed for substantial local and denominational influence over the specifics of curriculum and instruction, enabling adaptation to local community values and minority linguistic/religious needs. The explicit, broad powers granted to the Minister to "prescribe," "authorize," and "prohibit" curriculum directly conflict with the implied local curricular flexibility present in 1901.

Impact on Stakeholders and the Concept of Universal Education

The legislative changes enacted since 1994 have had profound and often detrimental impacts on various stakeholders, especially minorities, undermining the very principles of universal and equitable public education enshrined in Section 17 of the Alberta Act and the 1901 Ordinances.

A. Public and Separate School Boards Public and separate school boards have experienced a significant reduction of their local fiscal autonomy, and their governance has been effectively provincialized. This transformation has shifted their role from community-rooted authorities to "delegates of provincial jurisdiction". While separate schools retained some limited rights to requisition taxes, their overall financial and governance autonomy is now heavily constrained by provincial allotments and extensive oversight. This limits their ability to respond effectively to the unique and evolving needs of their local communities.

B. Ratepayers and Local Communities

Ratepayers and local communities have been largely dispossessed of direct control over their education property taxes and have seen a significant reduction in their influence over local school governance, curriculum, and resource allocation. **This disempowerment severs the direct democratic link between local taxation and the provision of local educational services, thereby diminishing local accountability and public participation in the education system.** The original intent of the 1901 Ordinances was to foster a strong connection between the community and its schools through direct financial and governance mechanisms.

C. Students

The diversion of public funds to selective charter and private schools has coincided with adverse effects on the public system, including **public school closures, service cuts, and overcrowding**. This represents a potential discriminatory diversion of public resources, directly undermining the principle that public education should be universally accessible to all children within a district, regardless of their families' financial situation. This universal accessibility was a core intent of the tax-based funding model established in 1901. For instance, the shift to a weighted moving average funding model has led to funding reductions per student for many school boards, directly impacting program delivery and student services.

The disproportionate impact on vulnerable student populations is a critical consequence of these changes. The Edmonton Public Schools lawsuit (2024) highlights how funding disparities and cuts disproportionately affect students with specialized needs, leading to reduced services and disrupted education. The lawsuit alleges that a ministerial order allowing at-home learning for select students was a cost-saving measure that negatively impacted children with disabilities, arguing that this curtails the right of access to education based on a student's disability and violates Charter rights. This directly challenges the "universal accessibility" principle inherent in the 1901 Ordinances' tax-based funding. If public schools, due to funding cuts and diversion, cannot provide adequate services, it undermines the very foundation of universal education that the "frozen rights" were intended to protect. This provides a compelling human rights dimension to the constitutional argument, linking the "frozen rights" to contemporary issues of equity and access, and demonstrating that the constitutional violations have tangible, negative consequences for the very beneficiaries of the education system.

The Edmonton Public Schools lawsuit (2024) is a contemporary example

The ongoing Edmonton Public Schools lawsuit (2024) serves as a contemporary and compelling illustration of the issues at stake. This lawsuit highlights explicitly funding disparities and challenges to access, particularly concerning students with disabilities and the impact of wage caps on educational support workers. The legal challenge alleges that a ministerial order allowing at-home learning for specific students curtails their right of access to education based on disability, constituting a violation of Charter rights. This lawsuit demonstrates that active legal challenges are already underway, grounded in principles similar to those advanced in this report, underscoring the ongoing relevance and urgency of these constitutional questions.

Path to Judicial Review and Reclaiming Constitutional Rights

A. Legal Basis for Judicial Review

A judicial review, grounded in a robust "frozen rights" interpretation of Section 17 of the Alberta Act and the 1901 NWT Ordinances, would likely find the post-1994 legislative changes to be unconstitutional, thereby necessitating significant legislative reversals. The established body of case law provides a strong foundation for such a challenge. Decisions such as *Regina Public School District v. Gratton* (1915), *Reference re s.17 of the Alberta Act* (1927), and *Jones v. Edmonton Catholic School District No. 7* (1976) consistently affirm the unique and fixed nature of Alberta's education constitutional framework. These precedents underscore that the specific historical compromise enshrined in Section 17 is a binding constitutional constraint on provincial legislative authority, not merely a flexible policy guideline.

B. Potential Actions and Outcomes in a Judicial Review

Stakeholders, including public school boards, ratepayers, and advocacy groups, possess a strong legal basis to pursue a judicial review to assert their constitutional rights, particularly those outlined by Chapter 29 of the NWT ordinances, concerning universal education and the flow of tax money. Potential actions and outcomes in such a judicial review could include:

*** Reinstatement of Public Board Taxation Rights:** A successful challenge would likely necessitate the repeal of the 1994 amendments that centralized education property taxes. This would involve dismantling or radically reforming the Alberta School Foundation Fund (ASFF) and restoring the right of public school boards to directly assess and collect education taxes from their ratepayers. This action would re-establish the direct link between local financial decisions and local communities, mirroring the system that existed under the 1901 Ordinances.

*** Restoration of Local Board Autonomy:** The Education Act would require amendment to constitutionally recognize the independent status of public and separate boards, thereby ending provincial micromanagement of hiring, policy, and trustee discipline (e.g., reviewing the impact of Bill 51). Boards would regain substantial control over their operational policies and personnel decisions, strengthening the local democratic control that was a hallmark of the 1901 system.

*** Decentralization of Curriculum Development:** A judicial finding could lead to the return of significant curriculum authority to individual public and separate school boards, with the province setting only broad goals or minimum standards. This would allow for greater regional and community-specific educational programming, consistent

with the more localized influence observed in 1901 and respecting the distinct character of the dual system.

*** Abolition or Integration of Charter Schools and Curtailment of Private**

School Funding: A judicial review could lead to the cessation of public funding for charter schools as distinct entities, requiring their integration into either the public or separate systems under elected board governance. Furthermore, it would reaffirm the constitutional definition of "publicly funded education" as applying exclusively to public and separate schools, thereby curtailing or eliminating public funding for private schools if such funding is found to diminish resources or scope of the constitutionally protected systems. The argument is clear: charter and private schools, not operating within the district framework of Chapter 29, fall outside the constitutionally entrenched system and, therefore, should not receive public funding.

*** Prohibition of Public School Fees:** A judicial interpretation would likely affirm that public schools, under the Chapter 29 and Section 17 framework, cannot charge fees. This is because they were intended to be fully funded through public taxation to ensure universal accessibility, as explicitly stated in the 1901 Ordinances.

C. Strategic Considerations for Stakeholders Public school boards, ratepayers, and advocacy groups are key stakeholders with vested interests and a strong legal standing to pursue these constitutional challenges. The recent Edmonton Public Schools lawsuit (2024), which highlights funding disparities and access issues, provides a contemporary example of active legal challenges already underway. This demonstrates the viability and urgency of pursuing judicial avenues to address the perceived unconstitutional overreach. Such legal action would not only seek to reverse specific legislative changes but would also aim to re-establish the fundamental principles of local governance, fiscal autonomy, and universal access that underpinned Alberta's education system at its constitutional inception.

Conclusion: Upholding Constitutional Integrity and Universal Education

Section 17 of the Alberta Act, 1905, through its explicit incorporation of the 1901 NWT School Ordinances, established a rigid, constitutionally entrenched dual education system of public and separate schools. This unique framework, born out of a critical political compromise, was designed to be a fixed constitutional commitment to local governance, fiscal autonomy, and state-regulated inclusivity. The historical context and the specific provisions of Chapter 29 of the 1901 Ordinances clearly define a system rooted in local democratic control, ratepayer-funded universal access, and a distinct dual structure.

The legislative evolution of Alberta's Education Act since 1994 represents a profound deviation from this constitutional foundation. The centralization of education tax revenues, the expansion of public funding to charter and private schools operating outside the defined dual system, the provincialization of school board governance, and the centralization of curriculum control directly contravene the "frozen rights" established in 1901. These actions not only undermine the principle of universal, equitable public education but also arguably constitute an unconstitutional overreach by the provincial government, fundamentally altering the constitutional bargain struck at Confederation.

Upholding the original constitutional intent requires a return to a public education system that genuinely serves all students, remains accountable to local communities, and respects the specific "frozen rights" enshrined in Alberta's founding legislation. A robust judicial review, meticulously grounded in the established case law and the clear provisions of Chapter 29 of the 1901 NWT School Ordinances, is essential to reclaim the democratic principles and constitutional integrity of Alberta's education system, ensuring its continued adherence to its unique and foundational constitutional compromise.

Constitutional Questions:

1. Does Section 17 of the Alberta Act, 1905 constitutionally entrench the provisions of the 1901 North-West territories School Ordinances, including the governance, funding, and universal access structure of public schools?
2. Is the public funding of charter schools and private schools inconsistent with the obligation, entrenched under Section 17, to fund and maintain a system of universal public education as established in the 1901 Ordinances?
3. If so, are the impugned provisions of the Education Act of no force or effect under Section 52(1) of the Constitution Act, 1982?