

Court reserves kindergarten decision

Decision promised soon

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The Alberta Court of Appeal reserved a decision Monday on whether the School Act gives elected school trustees the power to subsidize kindergarten classes with local taxpayers' dollars.

"We realize this is an issue of some time constraint," Chief Justice Catherine Fraser said. "We'll do our best to have a decision rendered as soon as possible."

The Edmonton Public School Board, which launched the appeal, will run out of money Feb. 9 to pay for kindergarten classes for 5,618 pre-schoolers. If it loses the appeal, the board will be forced to charge parents user fees or find the money elsewhere.

All Alberta school boards — forced to cut kindergarten hours, charge user fees or to find other money after the provincial government cut preschooler funding in half this year — will be affected by the decision.

The Edmonton public board originally decided to prop up a full-time kindergarten program as a stop-gap measure for 1994-95. It transferred \$3.5 million out of a new \$165-million funding scheme it gets from the provincial government called the Alberta School Foundation Fund.

However, a lower court ruled Aug. 30 that by doing so, trustees had exceeded their authority under the School Act.

In a decision that has far-reaching implications for all school boards, Court of Queen's Bench Justice Eileen Nash ruled the board was illegally spending \$3.5 million on kindergarten. She interpreted the act to say that new funding was earmarked for the education of Grade 1-12 students.

But lawyer Jim Redmond argued Monday that ruling must be reversed because Nash misinterpreted the act.

"There is nothing in the School Act that tells us that money can only be used for Grade 1-12."

In fact, a section of the act says the education minister must give the board its share of the fund to be used for education.

A section of the act says the board has the discretion to offer a kindergarten program and "schools board are elected to decide what kind of education

DID YOU KNOW?

- Kindergarten was first offered by school boards in Alberta starting in 1912 and ending in 1922.
- The pre-school classes were resurrected in the early '70s and fully funded in Alberta by the provincial government until this year, when funding was cut in half to help reduce the provincial deficit.
- It's not mandatory for students in Alberta to attend kindergarten, but 98 per cent of parents choose to send their children to kindergarten.
- School boards are not required, by law, to offer kindergarten, but may if they wish to.
- Besides Newfoundland, Alberta is the only other province to not fully fund kindergarten.

programs their community wants," Redmond said.

More importantly, in taking over setting and collecting taxes this year, the government this year decided to give school boards the same amount of money in the Albert School Foundation Fund that municipalities collected for them last year from taxpayers, Redmond said.

Historically, the board has always had the discretion to use taxpayers' money to fund any program it felt the community wanted, he said. It didn't matter if it was on mandatory Grade 1-12 courses, kindergarten or continuing education courses, he said.

But lawyer Shirish Chotalia, acting for the Learning Disabilities Association of Alberta, argued that Nash correctly interpreted the School Act.

It says children under age six are not resident students of the board and don't have the same rights and benefits that any student is given, she said.

The act also only says that private kindergarten operators may be regarded as a school, not public school operators, she said.

"If taken to its logical conclusion, the appellants would have us believe that trustees should be able to use taxpayers money...for karate or sewing lessons for continuing education students."