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The Evangelical Fellowship *of* Canada

Hands Up!: Identifying Parents' Rights in the Education System

**A Discussion Paper on Understanding the Rights and Responsibilities of Parents,
Children, Education Institutions and Government**

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1. Introduction

Parents and children may face a number of challenges when seeking accommodation or recognition of faith-based concerns in the classroom. Teachers or administrators may not be sufficiently familiar with a specific faith group in order to offer students reasonable accommodation. Certain schools or school boards may be hostile or fearful of certain religious groups and their beliefs and would prefer to exclude all faith-based expressions, arguing that their place is limited to the home or place of worship.

In other circumstances, when school boards or provincial governments seek to teach about a variety of religions, there is concern that such an approach will lead to misrepresentations by insufficiently trained teachers or instruction suggesting the relativism of all beliefs. Most importantly – and sometimes lost in the commotion – these tensions, challenges and legal battles take their toll on the children.

At the time of writing, there is nation-wide discussion and debate on this very issue. In Ontario, the *Health and Physical Education Curriculum* for grades 1-8 which was scheduled for implementation in September 2010 was pulled because of parental concern. The curriculum included sexual content that many parents felt was either age inappropriate or morally wrong.¹

In Québec, a new *Ethics and Religious Culture* curriculum has been mandated across the province's public school system. Though many who participated in the preparation of the curriculum hoped it would present various religious beliefs in an even-handed way,² others are concerned that it will teach children that all religious beliefs are relative, and none are true.³

In Alberta, amendments made by Bill 44 to the *Alberta Human Rights Act* came into effect in September 2010. The amendments give parents the right to be notified if any potentially offensive material, as determined by the parents, will be taught to their children. If uncomfortable with the material, parents may exempt their children from attending those classes.⁴

The purpose of this guide is to draw attention to these challenges while informing parents, children and the government of their rights and responsibilities.

2. Biblical Principles

Scripture expresses that the ancient Israelites gave a central role in education to parents. In fact, parents are instructed to “teach [God’s laws and decrees] to your children, talking about them when you sit at home and when you walk along the road, when you lie down and when you get up” (Deuteronomy 11:19, *NIV*).

¹ Lou Iacobelli, “Ministry of Education Propaganda is Back,” *Catholic Insight* (July 5, 2010). Available: http://catholicinsight.com/online/church/education/printer_1010.shtml. Accessed September 9, 2010.

² The Protestant Partnership in Education, *The Position on the Ethics and Religious Culture (ERC) Program* (Montreal, 2008).

³ Coalition for Freedom in Education, *6 Reasons for Exemption* (Powerpoint presentation). French version available: <http://www.coalition-cle.org/media/PresentationPowerPoint15breve.ppt>.

⁴ Ken Dickerson, “Bill 44: Alberta Government’s Human Rights Amendments Spark Religious Controversy, but Leave Free Speech Untouched,” *Centre for Constitutional Studies* (April 29, 2009). Available: <http://www.law.ualberta.ca/centres/ccs/news/?id=264>. Accessed September 9, 2010.

In the New Testament, Jesus presented Himself as the Good Teacher when He rebuked those who tried to keep the children from coming to Him, and described the Kingdom of Heaven as belonging to those who demonstrate a childlike faith (Matthew 19.13-14; Luke 18.15-17). The early church continued to place a high importance on the role of parents in educating their children, assigning parents the responsibility to ensure that children are “brought up in the Lord” (Ephesians 6.4).

Given that these principles remain relevant today, parents are encouraged to give consideration to matters of their children’s education, particularly in the public school system.

3. Children’s Education in Canada

Historically, as the early Canadian population was roughly divided between French Catholics and English Protestants, the education system was also divided along these lines with each denomination providing schooling for their respective churchgoers.⁵ It was this arrangement, as part of the broader French-English and Catholic-Protestant compromise upheld in Confederation, which was enshrined in section 93 of the *Constitution Act, 1867* (formerly known as the *British North America Act*).

As immigration and other population trends, particularly outside of Québec, altered and diversified the landscape, legal challenges under the *Canadian Charter of Rights and Freedoms* and subsequent legislation resulted in the Protestant system becoming a “non-religious” public system.⁶ Today, education in Canada is regulated provincially, with the public school curriculum decided by each province’s Ministry of Education. The transition to and the subsequent prominence of a non-religious, public, government-regulated school system in Canadian society poses both benefits and difficulties for Christian parents considering how to best raise and care for their children. Specifically, this involves two areas of both concern and engagement:

- The nature of religious education in public schools,
- The rights and autonomy of religion-based private schools (i.e. schools that do not receive government funding).

With limited exception (most notably in limited parts of Alberta, Ontario, British Columbia, Manitoba and Saskatchewan) public funding is not available for denominational education.⁷

Until 1998, Québec had public funding available for denominational schools, but that changed when the Québec system was restructured from public/denominational to a language based English/French system. When the system restructured, Québec removed public funding from denominational schools.⁸

⁵ The Evangelical Fellowship of Canada, *Withering Rights: Religious Freedom in Canada* (Markham, ON: Faith Today Publications, 2004), 22.

⁶ Ibid.

⁷ William J. Smith, William F. Foster, “Religion and Education in Canada: Part III - An Analysis of Provincial Legislation,” *Education and Law Journal* 11 (2001): 245.

⁸ *Withering Rights*, p 22.

4. Religious Freedom in Canada: Constitutional and Legal Frameworks

International Law

Regardless of provincial jurisdiction on education, parental rights concerning education are internationally recognized as being prior to state interests. *The Universal Declaration of Human Rights*, to which Canada is a party, states that,

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children [our emphasis].⁹

Therefore, recognition of a parent's right to choose their children's education honours the inherent dignity and equal and inalienable rights of the human person.¹⁰

Additionally, the United Nation's *International Covenant on Civil and Political Rights*, which was signed and ratified by Canada, states that,

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions¹¹ [our emphasis].

The fact that Canada is a party to or has acceded to the above-mentioned human rights legislation communicates that government recognizes parents' vested interest in the education of their children.

While the *Universal Declaration* states that elementary education is compulsory, the content of such education remains unspecified. Further, it does not suggest that the state has a sole or even primary claim on the content of education. In fact, it suggests otherwise when it explicitly states that "[p]arents have a prior right to choose the kind of education" that their child receives [our emphasis].¹²

Canadian Law

Naturally, religious freedom has also been examined within the Canadian legal context. Of particular interest for parents with religious belief is section 2 of the Canadian *Charter of Rights and Freedoms* (the *Charter*) (an integral part of Canada's Constitution):

⁹ United Nations, *Universal Declaration of Human Rights* (hereafter: *UDHR*): art. 26 s. 1-3.

¹⁰ *UDHR*, Preamble.

¹¹ United Nations, *International Covenant on Civil and Political Rights*, art. 18 s. 4.

¹² *UDHR*, art. 26 s. 3.

Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.¹³

The courts have defined the scope of these constitutionally identified and guaranteed freedoms and continue to do so.

The first case that the Supreme Court of Canada (SCC) decided concerning religious freedom under the *Charter* involved a business, not a religious organization or a school¹⁴. The business, Big M. Drug Mart, was charged with violating *The Lord's Day Act*, a federal act which required businesses to remain closed on Sunday. The court took the opportunity to set out the meaning of religious freedom under the *Charter*.

The essence of the concept...is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest belief by worship and practice or by teaching and dissemination¹⁵.

This positive definition of religious freedom, namely the right to pursue and express religious beliefs, is helpful and robust, one that evangelicals can generally appreciate for both Christians and those of other faiths. The court went on to identify some of the limitations on religious freedom as well:

Freedom can primarily be characterized by the absence of coercion or constraint.

Freedom means that, subject to such limitations as are necessary to protect public safety, order, health or morals or the fundamental rights and freedom of others, no one is to be forced to act in a way contrary to his beliefs or conscience.

What may appear good and true to a majoritarian religious group, or the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view. The *Charter* safeguards religious minorities from the threat of "the tyranny of the majority"¹⁶.

Equally protected, and for the same reasons, are expressions and manifestations of religious non-belief and refusals to participate in religious practice¹⁷.

The court made it clear that the state is not in the position of supporting a particular religious view over others. The *Act* was viewed as coercive because it forced business owners, regardless of their religious views, to conform to "the Lord's day." This decision

¹³ Canada, *Canadian Charter of Rights and Freedoms*, s. 2.

¹⁴ *R. v. Big M. Drug Mart*. [1985] 1 S.C.R. 295.

¹⁵ *Ibid.*, para. 336.

¹⁶ *Ibid.*, para. 336-337.

¹⁷ *Ibid.*, para. 347.

has been somewhat problematic however as, in addition to defining freedom of religion, it sowed the seeds for an interpretation of s. 2(a) of the *Charter* to also include the concept of “freedom *from* religion.”

Later, in *Syndicat Northcrest v. Amselem*, the SCC further defined freedom of religion in regard to religious expression.¹⁸ The Court determined that beliefs need not be justified by their holder: it is sufficient that a Canadian sincerely hold those beliefs in order to qualify for potential protection of those beliefs and expression resulting from those beliefs.

To summarize up to this point, our Court’s past decisions and the basic principles underlying freedom of religion support the view that freedom of religion consists of the freedom to undertake practices and harbour beliefs, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials.¹⁹

Most recently, in the 2009 *Alberta v. Hutterian Brethren of Wilson Colony* decision, the SCC clarified the collective dimension of section 2(a) of the *Charter*. As such, the religious freedom of groups, ministries and organizations is recognized at law in addition to the religious freedom of individuals. Justice Lebel explained, on a point on which there was consensus of the court,

...[freedom of religion] includes a right to manifest one’s belief or lack of belief, or to express disagreement with the beliefs of others. It also incorporates a right to establish and maintain a community of faith that shares a common understanding of the nature of the human person, of the universe, and of their relationships with a Supreme Being...²⁰

The rulings in *Big M*, *Syndicat Northcrest* and *Hutterian Brethren* express the reality that our contemporary context has made the expression of religious views (an expression that includes the raising of children) more complicated. These rulings describe and embody both the opportunities and challenges that the 21st century liberal democratic society and its pluralistic and multicultural public sphere pose to such expression.

5. Religious Freedom in Relation to Children’s Education

Debate concerning religious freedom in the framework of education is understandable in this context. Despite the compromise on denominational education at Confederation, religious education has been one of the most controversial legal battlefields in Canadian history, particularly because change in the institutional and legal structure of our education system has not harmonized well with the changing societal make-up. What was once a “Catholic versus Protestant” tension (with educational institutions set-up accordingly) has become a “private” or “faith based public” versus “non-religious” tension, with the institutions struggling to come to a peaceable solution.

¹⁸ *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551.

¹⁹ *Ibid.*, para. 46.

²⁰ *Alberta v. Hutterian Brethren of Wilson Colony*, [2009] 2 S.C.R. 567, para 181.

Despite the fact that members of religious communities, denominations and congregations pay taxes and engage in Canadian life and society generally, Christian teachings have steadily been removed from the public school systems. In fact, some provinces have amended their constitutional requirements to discontinue funding of denominational schools.

A key decision in the courts was the Ontario Court of Appeal ruling in the *Elgin County* decision, which required a school to remove a religious component from its curriculum or have its public funding removed, since this religious component of the curriculum was considered by the Court to amount to indoctrination.²¹

Despite the interpretation of *Elgin County* by some public school boards, students are still constitutionally free to participate in both public and more private student clubs and activities and are not required to *completely* separate their religious life from the school that they attend. Christians, for example, are still constitutionally allowed to bring their Bibles to class, hold Bible studies and pray freely in school on public school campuses. These rights are not absolute in their scope; for example, a student cannot be permitted to cause distractions in class and should not expect opportunity to lead a class in prayer.

6. Parental Right to Educate

Home Schooling and Parents' Right to Educate

Canadian parents are generally permitted to home school their children, though they must comply with provincial administrative requirements or risk investigation by their ministry of education.

This requirement to comply with provincial administrative regulations was the subject matter of the SCC decision in *R. v. Jones*.²² Thomas Jones, an Alberta pastor, operated a small school out of the basement of his church for his own and approximately 20 other children. This would have been acceptable under Alberta's *School Act* had the provincial Department of Education inspected and approved of the school, an inspection that would only be conducted upon Jones' request. Jones argued that such a request would constitute a violation of his God-given right to educate his children and therefore any such requirement to request permission from the state violated his freedom of religion.

Rather than question the sincerity of Jones' belief, the court struck down Jones' argument on the basis that Jones' freedom was only infringed upon to the extent necessary by law to ensure the proper education of children. The Court stated that "[The *Education Act*] provides alternatives and allows for instruction at home or elsewhere, so long as that instruction is certified to be efficient."²³

While the SCC recognized parents' prior right to choose what kind of education their child receives, they also affirmed that the province has administrative claim to ensure that parents are meeting the requirement to provide sufficient instruction.

For example, the Ontario Ministry of Education may choose to investigate parents who home school their children "if there are reasonable grounds to suspect that the child is

²¹ *Canadian Civil Liberties Association v. Ontario (Minister of Education)* (1990), 71 O.R. (2d) 341 (Ont. C.A.). (Otherwise known as *Elgin County*).

²² *R. v. Jones*, [1986] 2 S.C.R. 286.

²³ *Ibid.*, p. 3 (part of majority ruling).

not receiving satisfactory instruction at home.”²⁴ During such an investigation, the Ministry will seek to find out the plan for educating the child in order to ensure literacy and numeracy and also to assess how the child’s achievement will be tested. Unfortunately, “satisfactory instruction” is not well defined, leaving parents who choose alternative curriculum uncertain as to whether the curriculum will satisfy the province.

If parents find themselves under investigation, they are allowed to have representatives from home schooling support organizations present to assist them. Such an investigation may be an intimidating experience with the potential result that home schooling may no longer be an option. Resource/support organizations like the Home School Legal Defence Association will be able to give advice and guidance to assist parents and students in preparing for an investigation so that parents are able to demonstrate that their children are receiving a satisfactory level of education at home.

Public School and Parents’ Right to Educate

Another area of consideration is the content of curriculums in public schools and the rights of religious parents, in regard to their children as students in such schools, to both contribute to the formation of course curriculums and/or to exempt students from content that is deemed offensive or inappropriate.

The Corren Agreement, British Columbia, 2006

One of the more recent challenges touching on parents’ right to choose the kind of education that their children receive did not involve either a student or a parent but a same-sex couple in British Columbia.

In 1997, Peter and Murray Corren filed a human rights complaint alleging that British Columbia’s Ministry of Education was engaging in discrimination on the ground of sexual orientation in the design of its curriculum.²⁵

The Correns contended that the Ministry of Education’s curriculum was discriminatory because it did not explicitly account for different sexualities as part of the diversity within the curriculum. Additionally, the Correns argued that there was a lack of recognition for positive homosexual role models by the curriculum. The BC Human Rights Tribunal did not schedule a hearing date until 2006, however prior to the hearing the Government of British Columbia entered into resolution of the complaint resulting in the Settlement Agreement between Peter and Murray Corren and the Ministry of Education.²⁶

Key components of the agreement include:

- Kindergarten to Grade 12 curriculum has been and is being revised to ensure “respect for diversity with respect to sexual orientation.”
- A Grade 12 Social Justice elective course was developed.

²⁴ Ontario Ministry of Education, “Policy/Program Memorandum No. 131,” June 17, 2002. Available: <http://www.edu.gov.on.ca/extra/eng/ppm/131.html>. Accessed: July 12, 2010

²⁵ “Settlement Agreement between Murray Corren and Peter Corren (Complainants) and Her Majesty the Queen in Right of the Province of British Columbia, as Represented by the Ministry of Education (Respondent),” 28 April, 2006. Available:

http://www.llbc.leg.bc.ca/public/pubdocs/bcdocs/405645/corren_agreement.pdf

²⁶ Ibid.

- According to the agreement, parents are not allowed to withdraw their children from classes that they find morally objectionable or offensive or otherwise unsuitable for the children (which they were permitted to do under guidelines in place prior to the Corren agreement).
- The Correns were granted a position as consultants and overseers of curriculum development to ensure compliance with the agreement.²⁷

Furthermore, the Ministry of Education committed to draft new “internal review guidelines” for its curriculum writers. This means that as the curriculum is revisited and edited, these guidelines are to be consulted “from the perspective of inclusion and respect for diversity with respect to sexual orientation and other grounds of discrimination, and an over-arching concern for social justice.”²⁸ It is important for parents to be aware that the amendment to the *Opting for Alternative Delivery Policy* is a guideline for school boards but school boards are required to determine application of the policy. This is different from curriculum requirements that mandate implementation by school boards.

Of note is that the Corren settlement agreement did not preclude other groups, including religious groups, and ethnic minorities from engaging in the curriculum development process. As a result, the Evangelical Fellowship of Canada and several other groups, including parent groups, have had opportunity for input into the curriculum development process in an effort to ensure classroom accommodation for all students without discrimination on any of the prohibited grounds identified in the British Columbia *Human Rights Code* and the Canadian *Charter of Rights and Freedoms*.

Making Space, Giving Voice – British Columbia, 2008

As a result of the Corren Agreement and other discussions that took place in British Columbia, a set of new guidelines entitled *Making Space, Giving Voice* was published in 2008.²⁹ The recommendations in the guidelines make provision for accommodating the concerns of several identifiable groups, but do evidence the most significant input having come from experienced teachers/curriculum developers in the gay community.

It is important to recognize that as guidelines, they are optional, and a school board, school administrator or teacher may choose to follow the guidelines at his or her own discretion. Equally important for parents is to request that particular guidelines that may be of interest to them in the education of their children be brought to the attention of educators. It is also valuable to note that within content with which we would disagree, these guidelines offer the opportunity to constructively teach children and adolescents to have compassion and empathy for those who are in different circumstances than themselves. Christian parents will likely want to reinforce with educators that the compassion and empathy intended for students on the various identified grounds of human rights legislation is also to be extended in regard to their child(ren)’s religious beliefs and worldview context.

Parents are encouraged to be mindful of the age appropriateness of classroom materials being used to teach in accordance with the *Making Space, Giving Voice* guidelines and that they may require educators to do the same.

²⁷ Ibid., s. 1.B.

²⁸ Ibid., s. 2.A.

²⁹ British Columbia. *Making Space, Giving Voice: Teaching for Diversity and Social Justice Throughout the K-12 Curriculum*. 2008.

Bill 44, Alberta 2009

In 2009 the province of Alberta, through Bill 44, amended the *Alberta Human Rights Act* to include “sexual orientation” as an additional prohibited ground for discrimination and at the same time include a provision which requires that parents be advised when children are being taught about religion, sexuality or sexual orientation. If a parent objects to the material, their child may be excused from that class.³⁰

Bill 44 expresses recognition of parents’ rights by giving them the discretion to choose what kind of education their child will receive on a class by class basis independent from the overall education environment and support the concept that parents be able to raise their children in conformity with their own convictions.

Conclusions

It is important that parents make the effort to become familiar with their rights in the jurisdiction in which their child is being educated, and if need be, take action that supports their child(ren)’s education within the context that parents decide is appropriate for meeting provincial education standards. It is also valuable to be aware of trends in other jurisdictions that might impact the ability to decide on educational choices.

7. Religion in Public Schools

Due to its Protestant denominational origins, Christian education was, at one time, an integral component of the public school curriculum. An average school day for many would include at minimum reciting of the Lord’s Prayer and singing the national anthem, alongside a required Bible teaching.

In the *Zylberberg* decision of 1988, the Ontario Court of Appeal struck down the use of the Lord’s Prayer as a regulation within Ontario public schools.³¹ Following this, in the *Elgin County* decision of 1990 the same court struck down the requirement for religious instruction from the curriculum.³²

As a result, what had previously been a predominantly Christian school system became a theoretically non-religious one. This did not have the consequence of completely removing religion from the public school curriculum altogether; however the rulings considerably qualified what was appropriate and inappropriate curriculum for public school boards in the province of Ontario.³³

To a great extent, other provinces similarly removed religious content from their schools. In Newfoundland, however, the constitutional amendment that ended the denominational school system in 1998 specifically preserves religious instruction and religious observances in public schools where these are requested by parents. This appears to be a response to the *Zylberberg* and *Elgin County* decisions, which decisions will now be examined in a little more detail.

The Lord’s Prayer in Opening Exercises

The Ontario Court of Appeal struck down the use of the Lord’s Prayer in public schools in *Zylberberg v. Sudbury Board of Education (Director)*. The Court said that opening

³⁰ Dickerson.

³¹ *Zylberberg v. Sudbury Board of Education (Director)* (1988), 65 O.R. (2d) 641 (Ont. C.A.).

³² *Canadian Civil Liberties Association v. Ontario (Minister of Education)*.

³³ *Ibid.*

exercises, as required by Ontario government regulations, infringed upon freedom of religion. Normal school opening exercises at the time consisted of singing the national anthem and reciting the Lord's Prayer. Parents could request that their children be excused from the classroom during these opening exercises and the school would make arrangements for the care of these children. Several Jewish and Muslim parents challenged these provisions.³⁴

The Court concluded that the regulations infringed upon the religious freedom of minorities because they permitted a single-faith Christian approach to opening exercises, even if exemptions were possible. Specifically, the exemption in question required students to make a religious statement and face possible ridicule from other students. This was found to have the effect of placing tremendous peer pressure on children to either conform (at least in what they said publicly) to the dominant belief system or be cut off from the social networks that the court found to be crucial to children's lives.³⁵

The court ruled that the regulations therefore had a religious purpose that infringed upon religious freedom in a manner similar to the *Big M Drug Mart* case, mentioned above. In this case, the court reinforced the point that public schools are not in a position to promote a particular religious or moral view. Instead, the state can only maintain an environment which is tolerant of all forms of religious diversity. As a result, religiously-based public regulations were considered unconstitutional. The *Zylberberg* case was followed in British Columbia in 1989³⁶ and in Manitoba in 1992.³⁷ The situation is somewhat different in Saskatchewan and Alberta.³⁸

Religious Instruction in Public Schools

While the *Ontario Court of Appeal* struck down religious opening exercises in *Zylberberg*, it struck down religious instruction in public schools in a case known as *Elgin County*.³⁹ The *Education Act* of Ontario had always provided for religious instruction for children as desired by parents or guardians.⁴⁰ The court found that the regulations for religious instruction offended section 2(a) of the *Charter* as they had a religious purpose because the religious instruction was not educational but indoctrinational. One of the problems with the curriculum was that it included occasional prayers. The Court stated that "In a programme that is purely educational, and not indoctrinational or devotional, there would be no place for prayer of any kind."⁴¹

Consequently, the Court set out guidelines for appropriate, non-indoctrinational religious education:

1. The school may sponsor the study of religion, but may not sponsor the practice of religion.
2. The school may expose students to all religious views, but may not impose any particular view.

³⁴ *Zylberberg v. Sudbury Board of Education (Director)*. Discussed in *Withering Rights*, 26.

³⁵ *Ibid.*, 24.

³⁶ *Russow v. British Columbia* (1989), 35 B.C.L.R (2d) 29 (B.C.S.C.).

³⁷ *Manitoba Ass'n for Rights and Liberties v. Manitoba* (1992), 82 M.R. (2d) 39 (Man. Q.B.).

³⁸ *Saskatchewan Act*, R.S.C. 1985, App. II, No. 21, s. 17; *Alberta Act*, R.S.C. 1985, App. II, No. 20, s. 17.

³⁹ *Canadian Civil Liberties Association v. Ontario (Minister of Education)*.

⁴⁰ *Withering Rights*, 26.

⁴¹ *Canadian Civil Liberties Association v. Ontario (Minister of Education)*, 372.

3. The school's approach to religion is one of instruction, not one of indoctrination.
4. The function of the school is to educate about all religions, not to convert to any one religion.
5. The school's approach is academic, not devotional.
6. The school should study what all people believe, but should not teach a student what to believe.
7. The school should strive for student awareness of all religions, but should not press for student acceptance of any one religion.
8. The school should seek to inform the student about various beliefs, but should not seek to conform him or her to any one belief.⁴²

These points were again restated in the 1994 publication entitled *Education about Religion in Ontario Public Schools*, as a guide for developing religious studies within public schools.⁴³

As a result, the guidelines directing religious education emphasized that the classroom instruction must be descriptive rather than prescriptive. These guidelines evidence that the philosophy of public education in Canada has profoundly changed over time.

Funding of Religiously-Based Schools

During the timeframe of these changes in Ontario's public system, the province continued to maintain a number of publicly-funded denominational schools within the education system. These schools were designated as public (in that they were publicly funded and regulated as mandated by the *Constitution*) but were operating specifically for certain religious denominations.

In *Bal v. Ontario (Attorney General)*, several parents challenged the policies and regulations mandated by the *Elgin County* ruling.⁴⁴ This case is of particular importance here because it engaged head-on with the societal and philosophical changes, and consequently with the tension between "religious", "non-religious" and "secularism."

Two of the alternative schools, that were in fact Christian schools, were required to terminate their religious component or lose their funding. The parents argued that the *Elgin County* decision did not restrict the government of Ontario from funding religiously-based schools.

The Court chose to formulate the issue in terms of requirements and expectations placed *upon* the state:

"Does the *Charter* give to the applicant parent the right to require the Minister of Education to provide and fund denominational religious schools for minority religious groups within the public school

⁴² *Canadian Civil Liberties Association v. Ontario (Minister of Education)*. Quoted in Ontario Ministry of Education, "Education About Religion in Ontario Public Elementary Schools," Available: <http://www.edu.gov.on.ca/eng/document/curricul/religion/religioe.html>. Accessed: September 10, 2010. Emphasis is in the original.

⁴³ Ontario Ministry of Education, "Education About Religion in Ontario Public Elementary Schools," Available: <http://www.edu.gov.on.ca/eng/document/curricul/religion/religioe.html>. Accessed: September 10, 2010.

⁴⁴ *Bal v. Ontario (Attorney General)* (1995), 21 O.R. (3d) 681 (Ont. Ct. (Gen. Div.))

system? Is it a *Charter* infringement for the government to fail to do so?”⁴⁵

The applicants argued that the state imposed non-denominationalism of the schools was coercive. “Secularism,” they argued, “is not neutral because the effect of the system is not value neutral when applied to minorities because it undermines their values.”⁴⁶

The Court did not agree:

“The public school system is now secular. Its goal is to educate, not indoctrinate. This is very different from the goal in place at the time that *Zylberberg* and *Elgin County* were decided. Secularism is not coercive, it is neutral.”⁴⁷

Even though the Court dismissed the criticism that secularism in itself is a non-neutral position, it reinforced the point that the state must maintain a position of neutrality. In doing so, it is not necessarily making a statement about the merits of secularism, but the position of the state with respect to religion, i.e. the state will not support a religious position or give priority to any one particular religion⁴⁸.

By posing the question before the court in terms of parents’ ability to require funding, the court transitioned the challenge from the ability of the government to fund alternative religious schools to a potential parent driven mandate for the government to fund religious schools. This question was not actually before the court, but had been previously addressed by the Supreme Court of Canada in *Adler v. Ontario*⁴⁹. In *Adler*, the court had found that absent a constitutional guarantee to denominational education, the province could not be forced to fund denominational schools.

Consequently, the public school system could not maintain its alternative school program which focused on specific religious groups.

Institutional and societal understandings have changed over time, and have been applied to the public education system in a fashion that has tended to discriminate against religion.

Ethics, Morality and World Religions in Curriculum

In September 2008, the *Ethics and Religious Culture* (ERC) program began implementation in all elementary and secondary schools across Québec. The program has two stated primary goals, “the recognition of others and the pursuit of the common good.”⁵⁰ In order to meet those objectives, the program intends to foster competency in

⁴⁵ Ibid. para 73.

⁴⁶ Ibid., para. 76.

⁴⁷ Ibid.

⁴⁸ Subsequent to the decision in *Bal*, the Supreme Court of Canada considered the concept of “secular” in the education context in *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86, [2002] 4 S.C.R. 710. In that case, the court unanimously agreed that the concept of “secular” in Canada is inclusive of the religious and the non-religious. Additional comment on the case is below. See also, Iain T. Benson, ‘Public schools’ should not mean ‘atheist schools’ at <http://life.nationalpost.com/2010/09/20/public-schools-should-not-mean-atheist-schools/>

⁴⁹ (1996), 140 D.L.R. (4th) 385 (S.C.C.).

⁵⁰ Québec Ministry of Education, Leisure and Sport, “Ethics and Religious Culture: Program Orientations and Objectives.” Available: http://www.mels.gouv.qc.ca/sections/virage4/index_en.asp?page=ethique1. Accessed: September 10, 2010.

ethical questions, an understanding of the phenomenon of religion and engage in dialogue.⁵¹ As such, it provides a study of many world religions such as Judaism, Islam, Buddhism, Hinduism, Christianity, aboriginal spirituality and atheism.⁵²

The program was intended to be mandatory across both public and private schools, however in *Loyola High School v. Québec*, the Québec Superior Court overturned the requirement that the course be taught in private schools.⁵³

While the ERC course has received much press coverage as being controversial, among Protestants there are generally two perspectives on the course itself that reflect the differing perceptions held by Christians of the public school system.

On one hand is the Protestant Partnership in Education (representing most of Québec's Protestants), which is of the opinion that the ERC program "in theory" will be beneficial. While, the PPE also acknowledges the difficulties with the ERC, it is committed to helping make the ERC course work on the basis that Christians should "remain active and visible in the public sphere."⁵⁴

Specifically, the PPE disagrees with the "traditional, obsolete and old-fashioned" presentation of Protestantism.⁵⁵ Additionally, the PPE is concerned that "the contribution of English and French Protestantism to the social, economic and educational spheres is minimized..., [and that] certain facts concerning Protestant history are avoided or misrepresented."⁵⁶

While they certainly have concerns about the dangers of relativism, the PPE's approach is in fact to uphold diversity in order to protect the positive rights of Protestants to express their particular emphases of Protestant doctrine and evangelical life in the public sphere of a majority-Catholic Québécois society.⁵⁷

On the other hand is the Coalition for Freedom in Education, an ecumenical group (i.e. made up of both Catholics and Protestants), which views the ERC course as not being designed for the accommodation of students. Teachers are instructed to

intervene, and emphasize the aims of the program, in the event that an opinion that is expressed in class attacks a person's dignity or that actions that are suggested compromise the common good. Teachers strive to create an environment conducive to authentic dialogue between members of the community of learners that make up a class in order to encourage students' recognition of others and pursuit of the common good.⁵⁸

While there are certainly positive elements in this instruction, the concern here is that the ERC course appears to be intentionally undermining foundational beliefs, since there are alternative and divergent views of what "the common good" is. One of the authors of the curriculum even admitted that

⁵¹ Ibid.

⁵² Peter Kavanaugh, "Vatican attacks Québec's compulsory RE course," *The Tablet* (February 28, 2009).

⁵³ *Loyola High School v. Québec (Education, Leisure and Sport)*, 2010 QCCS 2631.

⁵⁴ The Protestant Partnership in Education, *The Position on the Ethics and Religious Culture (ERC) Program*. (Montreal, 2008), 4.

⁵⁵ The Protestant Partnership in Education, "Protestants not satisfied with ERC manuals," Available: <http://www.direction.ca/images/stories/education/pressrelease09.pdf>. Accessed: September 10, 2010.

⁵⁶ Ibid.

⁵⁷ *Position on the Ethics and Religious Culture (ERC) Program*, 3.

⁵⁸ Québec Ministry of Education, Leisure and Sport, *Ethics and Religious Culture Program* (2008), 306.

...students “must learn to shake up a too-solid identity” and experience ‘divergence and dissonance’ through ‘*le questionnement*.’⁵⁹

Some parents feel that the curriculum trivializes their and students’ own religion and moral values. The fact that there is little in common among various faiths seems to escape the curriculum writers in their effort to point to a “common good.” The common good, according to the curriculum writers,

refers to three main actions: the search, along with others, for common values; the promotion of projects that foster community life; and respect for democratic principles and ideals specific to Québec society. Thus the pursuit of the common good presupposes that people from different backgrounds can agree responsibly to take on challenges inherent to life in society.⁶⁰

It appears as though some key terms remain undefined in the curriculum such as “ideals specific to Québec society,” “common values,” and “responsibility.” This is unfortunate as it makes the full purpose of the *Ethics and Religious Culture Program* unclear. And, the resulting lack of clarity may be responsible for the divergent opinions within religious communities.

The course has already faced two significant legal challenges. Two Catholic parents, Suzanne Lavalée and Daniel Jutras, from Drummondville are continuing to challenge a school’s refusal to provide an exemption from the course for their child. They were unsuccessful in Québec’s Superior Court where the judge found that the right to religious freedom had not been violated because the course “provides an overall presentation of various religions without obliging the children to adhere to them.” The Court of Appeal of Québec refused to hear the appeal, and the family has applied for leave to appeal at the Supreme Court of Canada.⁶¹

In the other case, a private Catholic school named Loyola High School had sought permission to teach the program from a Catholic perspective, as it had a long history of teaching world religions to its students. The Ministry of Education refused and the school took legal action. In June 2010, the Québec Superior Court ruled that the Ministry had violated the school’s religious freedoms as protected by the Québec *Charter of Rights*. The judge went so far as to say that the Ministry’s decision assumed “a totalitarian character essentially equivalent to Galileo’s being ordered by the Inquisition to deny the Copernican universe.”⁶²

Ontario Equity Strategy

In Ontario, recent developments have exposed the ineffectiveness of putting forward a non-religious curriculum and merely allowing parents who disagree with the contents of the curriculum to exempt their students from the relevant classes. In April 2010, the Ministry of Education in Ontario withdrew its revised *Health and Physical Education* curriculum for grades 1-8 in response to parents’ negative reaction to some of the content.

⁵⁹ Catholic Insight Staff, “School battle in Québec: stalemate and victory,” *Catholic Insight*. Available: http://catholicinsight.com/online/church/education/article_1007.shtml. Accessed: September 10, 2010.

⁶⁰ *Ethics and Religious Culture Program*, 296.

⁶¹ Catholic Insight Staff, “School battle in Québec: stalemate and victory.”

⁶² Rory Leishman, “The school war in Québec,” *Catholic Insight*. September 3, 2010. Available: http://catholicinsight.com/online/church/education/article_1033.shtml. Accessed September 15, 2010.

There were three main concerns voiced in regard to this curriculum, which were both the cause of this negative parental response before the retraction and continue to be problematic for many Christian parents.

First, the content of the curriculum called for the active promotion of the homosexual lifestyle and the acceptance of gender confusion, proposing to expose children to sexual themes inappropriate for their age⁶³.

Second, the means by which the curriculum was developed and the process for its subsequent revision virtually excluded parental involvement. This runs contrary to prior court rulings (discussed above), and more immediately goes against the third goal of Ontario's *Equity and Inclusive Education Strategy*, that of "accountability and transparency."

Lastly, the only accommodation offered to parents in disagreement with the curriculum is that of exempting their children from class. This is clearly in contradiction to the *Zylberberg* ruling (as discussed above) as well as to the spirit and ethos of *Reach Every Student, Energizing Education in Ontario* and the *Equity and Inclusive Education Strategy*, as an identifiable subgroup of the student population will be excluded, face barriers and not see themselves reflected in the materials being taught – those students being children from social conservative homes. Rather than creating an environment of tolerance, respect and acceptance, this policy of exemption creates an environment of polarization and segregation of religious perspectives (note: everyone has a "religious perspective" because as stated by Justice Gonthier on behalf of the Supreme Court of Canada in *Chamberlain v. Surrey School District*, "everyone has 'belief' or 'faith' in something, be it atheistic, agnostic or religious")⁶⁴. The "exemption from class" proposal presented by the Ministry of Education is alienating to religious and social conservative students by pointing out differences and providing for their exclusion from the classroom rather than considering how those differences may be beneficial to the accommodation and discussion of various perspectives in the classroom.

In short, educators are to be encouraged to recognize that parents are simply seeking to have their views included as part of a broader and well-rounded public education system. This is an on-going effort in Alberta, BC, Ontario and Québec, at the end of which it is hoped that a genuine understanding of religious freedom will ultimately hold sway.

Conclusions

In summary, the *Zylberberg* case began to apply the ruling in the *Big M* case to education by examining the dynamics of peer and institutional pressure in depriving students and parents the right to freedom of religion. This decision, which struck down the Lord's Prayer from use in public schools, reinforced the position that the public system cannot endorse or support any one particular religion above others. The *Elgin County* case qualified the school's position with respect to how religious education may be carried out within the public school, introducing the distinction between descriptive and prescriptive education and requiring publicly-funded schools to be confined to descriptive education only. *Bal v. Ontario* affirmed the decision in *Elgin County* and carried it one step further, namely connecting educational and descriptive religious

⁶³ Fr. Alphonse de Valk, "No To Ontario Premier McGuinty's Sex Education" *Lifesitenews.com*, June 22, 2010. Available: <http://www.lifesitenews.com/ldn/2010/jun/10062214.html>. Accessed: September 16, 2010.

⁶⁴ *Chamberlain v. Surrey School District*, para 137.

instruction to a position of supposed neutrality on the part of the public education system.

Québec's ERC course illustrates that the attempt to develop a religious curriculum from a non-religious perspective may be deemed to be too diverse and *non-religious* for some, and not diverse and *non-religious* enough for others. Ontario's Equity and Inclusiveness Strategy illustrates the need to learn the lessons from the past. Parents have a right to be involved in their children's education and not to have their opinions overridden or ignored because they may come from a religious foundation. It remains to be seen whether the Ontario Ministry of Education will be more inclusive of parents in its curriculum development.

Parents, in the last two decades, have faced a variety of challenges in terms of religious recognition or accommodation in public schools. However, as described below, school boards have a key role to play in the implementation of curriculums and the accommodation of religious beliefs in the process.

8. School Boards and Tolerance

As seen in the cases below, public school boards and ministries of education are required to walk a careful line between the *accommodation* of multiple religious claims and imposing the requirement to *recognize* and *promote* these different claims. The Supreme Court of Canada has made several clear statements as to where this line should be drawn when it comes to the issues of tolerance and exclusivism.

School Boards' Obligation to Provide a Welcoming Environment

The Supreme Court of Canada ruled in *Ross v. New Brunswick School District No. 15* that school boards have an obligation to provide a welcoming environment for all students.⁶⁵

Malcolm Ross was a teacher in Moncton, N.B. He was well known in the community for his views that the Holocaust was not as serious as Jews made out and that there was a worldwide Jewish conspiracy against Christians.

A Jewish parent of one of his students made a complaint to the New Brunswick Human Rights Commission on the basis that the Moncton District School Board had not taken sufficient steps to discipline Ross. The Human Rights Commission ruled that the complaint was valid and required the school board to remove Ross from the classroom. Ross asked the courts to review this decision on the basis that it infringed his religious freedom. His views on Jews and the Holocaust were based on his religious beliefs.

The Supreme Court of Canada upheld the Human Rights Commission ruling requiring that Ross be removed from the classroom. In its ruling, the Court stated that it agreed with the following principle, that

...a school board has a duty to maintain a positive school environment for all persons served by it and it must be ever vigilant of anything that might interfere with this duty.⁶⁶

The *Ross* ruling affirmed the responsibility of school boards to take positive steps to ensure that teachers, by their personal views, do not create a discriminatory

⁶⁵ *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825. Discussed in *Withering Rights*, 27-28.

⁶⁶ *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, para. 50.

environment. The application of the *Ross* decision also means that the school should be a welcoming, not discriminatory, environment for Christian students.

Schools Cannot Face Discrimination Due to Lifestyle Policies

The Supreme Court of Canada ruled in *Trinity Western University v. British Columbia College of Teachers* that a Christian university cannot be discriminated against on the basis of a lifestyle policy that prohibits, among other things, homosexual behaviour.⁶⁷

The court also made it clear that no “one right is... privileged at the expense of another.”⁶⁸ This means that, at least in theory, there is a level playing field among rights. Some observers had begun to think that religious freedom had become a subordinate right to other rights such as the right to equality protected under s. 15 of the *Charter*.

The case arose when the British Columbia College of Teachers (BCCT) refused to accredit a teacher education program at Trinity Western University (TWU), a private Christian university. Accreditation allows graduates from the program to be automatically licensed to teach in British Columbia public schools. The BCCT refused the application for accreditation in 1997 because of TWU’s community standards policy, whereby students must agree to refrain from certain activities that are “biblically condemned,” including sexual activity outside of marriage and homosexual activity while attending the university. The BCCT was of the view that this policy was discriminatory against homosexuals, making it “contrary to the public interest” to accredit the university’s program for training teachers.⁶⁹ TWU applied for judicial review of this decision. Ultimately, the *Supreme Court of Canada* ruled in favour of TWU and ordered the BCCT to approve the teacher education program.

As a preliminary issue, the Supreme Court ruled that the BCCT could and should address all aspects of the educational environment in considering public interest, part of its mandate in approving educational programs. However, religious views and practices can only be addressed as to whether or not they are discriminatory or at the very least a real impediment to the teaching abilities of the educator, not simply on the basis of whether or not they are religious views. The practical application of this ruling is that religious practices are not exempt from public scrutiny under the *Charter* guarantee of religious freedom, provided such scrutiny is conducted for the sake of teacher quality and the overall classroom environment.⁷⁰

The Court stated, “The freedom to hold beliefs is broader than the freedom to act on them.”⁷¹ This statement has the potential to be used to restrict the ability to follow religious practices. In the context of this case, it is clear that the Court meant that Christian teachers should be free to believe that homosexual behaviour is morally wrong but they are not free to discriminate against homosexual students in the classroom.⁷² The Court ruled that the community standards policy was not sufficient evidence to attribute intolerance against gays and lesbians. The Court concluded that “absent concrete evidence that training teachers at TWU fosters discrimination in the public

⁶⁷ *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772.

⁶⁸ *Ibid.*, para. 31.

⁶⁹ *Ibid.*, para. 48.

⁷⁰ *Ibid.*, para 63.

⁷¹ *Ibid.*, para. 36.

⁷² *Ibid.*, para 37.

schools of B.C., the freedom of individuals to adhere to certain religious beliefs while at TWU should be respected.”⁷³

Religious Parents’ Right to Participate in Decision-Making

In *Chamberlain v. Surrey School District No. 36*, the Supreme Court of Canada ruled that religious parents have a right to participate in the decision-making process about public school education and that the primary consideration is “tolerance and respect” for all groups in society.⁷⁴ The Court overturned a decision of the Surrey School Board refusing to approve books, for kindergarten and grade one students, which featured same-sex parents and sent the decision back to the school board for reconsideration. The school board had based its decision on the expressed religious concerns of religious parents that the messages contained in the books would conflict with what children were being taught at home about appropriate family forms and would inevitably raise issues about sexuality. The Court did not directly address the issue of accommodation for religious students if material taught in the classroom offends religious morality, however the Chief Justice stated that tolerance of diverse views was required in the public school classroom.

This puts the decision in somewhat of a conflict with *Ross* which had been decided by the Court at an earlier date, however the court went on to note that the requirement in the B.C. *Schools Act* that schools be run on a “strictly secular and non-sectarian basis”⁷⁵ does not mean that religious concerns are not relevant. In attempting to strike this balance, the Court explained that

...board members are entitled, and indeed required, to bring the views of the parents and communities they represent to the deliberation process. Because religion plays an important role in the life of many communities, these views will often be motivated by religious concerns. Religion is an integral aspect of people’s lives, and cannot be left at the boardroom door.⁷⁶

Religious Parents Participation in Curriculum Drafting

The outcome of the *Corren Settlement Agreement* (as described above) reinforced the requirement of school boards to provide an environment which is tolerant of diversity. The settlement agreement between the *BC Ministry of Education* and the Correns did not only address the texts used in class, as in the *Chamberlain* decision, but concerned the curriculum itself. The curriculum is to be tolerant of diversity.

While the settlement agreement limited some previous parental rights by amending the “Opting for Alternative Delivery Policy,” it also enabled other identifiable groups to have input that would lessen the likelihood of marginalization being caused in the classroom as a result of the curriculum.

The Ontario and Québec difficulties might have been more properly addressed by increased parental participation in the development of the curriculums in question. The courts of both law and public opinion are unsettled in regard to the curriculum issues in both of those provinces.

⁷³ *Ibid.*

⁷⁴ *Chamberlain v. Surrey School District No. 36*, [2002] 4 S.C.R. 710.

⁷⁵ R.S.B.C. 1996, c. 412. S. 26.

⁷⁶ *Chamberlain v. Surrey School District No. 36*, para. 19.

Conclusions

The above four cases reinforce the need to bear in mind section 26 (2) of the *Universal Declaration of Human Rights*:

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.⁷⁷

Accommodation and tolerance are two principles identified as important in the cases described above, although they focus on different aspects of education. *Ross* shows how the public conduct of a teacher could potentially poison the environment of the classroom (if that conduct is discriminatory). This principle was considered from a different perspective, affirmed and clarified in *Trinity Western University* where the court commented that “the freedom to hold beliefs is broader than the freedom to act on them.”⁷⁸

In *Chamberlain*, the court qualified how school boards are required to operate in a non-discriminatory fashion.

9. Rights of Religious Schools and Organizations

As the result of provisions in human rights legislation across the country, faith-based schools are permitted to selectively hire staff members who share their beliefs and lifestyle principles. These recognition clauses, applied to Christian schools for example, permit Christian schools to selectively hire co-religionists/similarly-minded staff who can advance these beliefs and biblical mission as part of their worldview in teaching classroom subjects. These provisions exist in human rights legislation in order to recognize the freedom of association⁷⁹ and religion of the members of these ministries, as well as the ministries’ collective religious freedoms (in similar fashion to an ethnic club giving preferential hiring to members of the ethnic community). However, and not surprisingly, these provisions have been challenged.

Right to Selective Hiring

The Supreme Court of Canada ruled in *Caldwell et al. v. Stuart et al.* that Roman Catholic schools have the right to hire teachers who are not simply confirmed members of the Roman Catholic Church but who are faithfully following the teachings of the Church.⁸⁰ In *Caldwell v. Stuart* the Court considered the complaint of a Catholic teacher whose contract had not been renewed because she had married a divorced man in a civil ceremony. (The Roman Catholic Church does not recognize civil divorce unless a religious annulment has been granted by Church authorities, and therefore would not recognize any subsequent remarriage, let alone one performed outside the Roman Catholic Church.) In order to prove a right to selectively hire only Catholic teachers, the school had to show that the grounds for selective hiring fell under “*bona fide*” or sincere qualifications. This means that the requirements to which employees are held are

⁷⁷ UDHR, art. 26 s. 2.

⁷⁸ *Trinity Western University v. British Columbia College of Teachers*, para. 36.

⁷⁹ *Canadian Charter of Rights and Freedoms*, s. 2(d).

⁸⁰ *Caldwell et al. v. Stuart et al.*, [1984] 2 S.C.R. 603.

necessary for the job and are applied fairly. The Catholic school that employed her argued that

... in a Roman Catholic school, because of its special nature, the *bona fide* qualification of a Catholic teacher includes the willingness of the teacher to observe the requirements and practices of the Church....⁸¹

The Court ruled that a teacher is in a unique position to inculcate Catholic values in the minds and lives of the students. It noted however, that “[i]t will be only in rare circumstances that such a factor as religious conformance can pass the test of *bona fide* qualification.”⁸²

Right to Hire Co-Religionist Support Staff

A Christian college was able to prove that it was a *bona fide* occupational requirement for a clerical staff person to be a member of the same religious denomination as the college in *Schroen v. Steinbach Bible College*.⁸³ The employee’s job application and name misled the College interviewer to believe that the employee was a member of a local Mennonite church. The college terminated the employee immediately on learning that she was a Mormon.

The college successfully argued before a board of inquiry that all staff were a vital part of the Christian community of the college and were expected to participate in modeling a Mennonite lifestyle and in counselling students. This is an important precedent for Christian schools and colleges where all staff are an integral part of the ministry. It is not only teachers (or faculty) that inculcate Christian values and mores; it is often also the administrative staff.

Broader Implications for the Special Employment Provisions

In the case of *Heintz v. Christian Horizons*, Ms. Heintz left her position of 5 years at Christian Horizons, an evangelical charity which serves individuals with exceptional needs, and filed a human rights complaint against the ministry.⁸⁴ While employed, Ms. Heintz had admitted to her employer that she was engaged in a lesbian relationship, which was contrary to the Statement of Faith and Lifestyle Policy she had signed upon her hiring and each year subsequent. Christian Horizons offered to provide Ms. Heintz with the opportunity to seek Christian counselling. She declined.

Section 24(1)(a) of the *Ontario Human Rights Code*, is a special employment provision for groups such as religious ministries that want to selectively hire co-religionists. This provision is an exemption from another section of the *Code* which ensures that individuals can seek employment without facing discrimination on certain grounds, including those of religion and sexual orientation. This special employment provision provides that religious organizations that primarily serve individuals of the same creed can preferentially hire individuals of that same belief. It was upon this section that Christian Horizons relied for the selective hiring of its staff members.

⁸¹ *Caldwell et al. v. Stuart et al.*, p. 618.

⁸² *Ibid.*, p. 625.

⁸³ *Schroen v. Steinbach Bible College*, (1999), 35 C.H.R.R. D/1 (Man. Bd. Adj.).

⁸⁴ *Heintz v. Christian Horizons*, 2008 H.R.T.O. 22 (CanLII), para. 190.

While the decision was initially heard at the Ontario Human Rights Tribunal, it was appealed to the Ontario Superior Court of Justice, Divisional Court. The Court released its decision in May 2010, reversing much of the Tribunal's rulings.

The Tribunal had found that Christian Horizons served primarily individuals with disabilities, regardless of their beliefs, rather than primarily serving its staff, founders and board members who were Christians seeking to serve God alongside other believers in the provision of ministry. Had the decision not been appealed, Christian Horizons would either have been required to change its status to a non-religious organization or serve other co-religionists exclusively rather than the broader community of those with disabilities. The Divisional Court stated that the Tribunal erred in its interpretation of s. 24(1)(a) and maintained that Christian Horizons had a right to exist as a religious organization which primarily served two groups; the ministry's staff and members as well as the individuals they were ministering to.

The Supreme Court of Canada has previously established that the courts are not to enquire into the non-harmful practices of a religious person or group of co-religionists once it is established that those practices, or behavioural expectations, have a connection to the sincerely held beliefs of the individual or group. There is one aspect of the Divisional Court's decision that does not line up with the Supreme Court's position. The Divisional Court found that Christian Horizons could not justify that Ms. Heintz sexual orientation and compliance on this point with the policies of the ministry were required for the job she held. As the decision was not appealed further, it is appropriate to conclude that the Supreme Court of Canada is correct on this point and the *Heintz* decision's dissonance on the issue is confined to that case.

What appears to be required of religious organizations, including Christian schools, is a review and description of each position that verifies the lifestyle expectations of the particular faith community are required for the performance of the job, i.e. there must be an in practice faith component to require hiring of co-religionists. Of course, it is generally good operating procedure to have job descriptions that include the importance of (i) the shared faith and (ii) the practices that depend on that faith in those descriptions.⁸⁵

Faith Statements as Violations of Academic Freedom

In 2009, the Canadian Association of University Teachers (CAUT), began an unsolicited, arbitrary investigation of Christian post secondary institutions to determine whether those institutions' practices violated "academic freedom."

CAUT is a type of union which represents some Canadian teachers, librarians, researchers as well as other academic professionals. Part of its mandate is to investigate threats to academic freedom.⁸⁶

Trinity Western University was the first institution to be reviewed by CAUT. CAUT admits that it had not received any complaints about the university and though no TWU instructors are actual members of CAUT and while CAUT has no jurisdiction, regulatory or accreditation powers, CAUT initiated its investigation.⁸⁷

⁸⁵ Faye Sonier & Rick Hiemstra, "Heintz v. Christian Horizons: Stripping the Biblical Mission from Evangelical Christian Ministries" *Church and Faith Trends* volume 2, issue 2, January 2009.

⁸⁶ Erin Millar and Ben Coli, "Academic Freedom at Trinity Western?" *Macleans*, January 21, 2010.

⁸⁷ Charles Lewis, "Faith as a guide in higher learning" *National Post*, January 30, 2010.

CAUT's final report (an initial report was pulled from the internet due to the inflammatory nature of some of its content) on TWU found that the school failed to meet CAUT's standard of academic freedom because instructors are required to sign a statement of faith. As a result, CAUT put TWU on a blacklist of schools which allegedly violate academic freedom.⁸⁸

While CAUT holds that the "faith test" violates academic freedom, TWU held that the statement of faith upholds the school's founding charter, and TWU does not require its teaching staff to conform their scholarship to a solely Christian perspective.⁸⁹

CAUT's conclusion appears to disregard several facts. TWU is an accredited member of the Association of Universities and Colleges of Canada (AUCC), which requires its members to subscribe to the AUCC definition of academic freedom.⁹⁰ It is also the only Canadian university to receive the highest grade in the quality of education from *The Globe and Mail's* Canadian University Report for two years in a row,⁹¹ and was ranked #1 in Canada by *Maclean's* for "Enriching Educational Experience" in their National Survey of Student Engagement. It is a school that is highly regarded for excellence.

The investigation sparked a national debate; whether religious schools should be able to require staff to abide by a statement of faith or even research and study within the statement's confines. The debate demonstrated that there are some who believe that Christian schools should lose their accreditation or that such education could be harmful. That position is based on the premise that there is only one legitimate means of pursuing higher education, and that is in non-religious or non-sectarian institutions⁹² (a position with which the Supreme Court disagrees based on their 2001 ruling when TWU was given similar difficulty from the BC College of Teachers). Further, it ignores the rights that flow from the Canadian *Charter of Rights and Freedoms*, or the protection from discrimination on the basis of religion found in the various human rights codes and legislation.

Conclusions

In summary, religious institutions and organizations are permitted to preferentially hire employees who share the same faith and are willing to live in accordance with a lifestyle policy or statement of faith. The management of these institutions will, however, need to review job descriptions to ensure that the beliefs and lifestyle conformity are required for the positions. Religious organizations must continue to abide by applicable human rights and employment requirements.

10. Ways Parents Can Protect Their Rights

Parents can have a significant impact on policies, legislation and movements, in groups or individually.

⁸⁸ Canadian Association of University Teachers, *Report of an Inquiry on a Possible Faith Test at Trinity Western University (Langley, British Columbia)* (October 2009), 11.

⁸⁹ Lewis.

⁹⁰ Ibid.

⁹¹ Adrian McNair, "Clamping down on Canadian Christians" *National Post*, January 25, 2010.

⁹² John G. Stackhouse Jr., "CAUT versus Trinity Western" *University Affairs*, January 11, 2010. Available: <http://www.universityaffairs.ca/caut-versus-trinity-western.aspx>. Accessed September 15, 2010.

General Recommendations

Parents

It is important to know your rights and your child's rights in the school system.

You have the right to determine the kind of education your child will receive. Your child has the right to have his or her personal beliefs respected, but might not have them respected unless you intervene. There are serious issues where morality and philosophy are being taught in schools in a way that does not respect religious differences. Parents have the right to engage on these issues.

It is valuable to make the effort to establish a good working relationship with teachers and administrators. Ask that you be advised by the teacher if subject matter is coming up that may be of concern based on your beliefs and values. Keep in touch with your child about what is going on in school, especially as it regards moral and philosophical education or areas where you may feel that personal religious beliefs will not be respected in classroom instruction.

Some provinces have established a significant role for parent councils and similar parent bodies. This is a good place to get involved to help shape policy in the schools.

Students

As students, you should know your rights. You have the right to be respected in your school. And you have the right to a welcoming environment. This means that if your teacher mocks your religious beliefs, your teacher is wrong and you can challenge this to the administrators of the school (vice-principal, principal, etc) and/or to representatives from the school board (supervisors, superintendents, trustees, etc). You do not need to be angry or adversarial. It is important that you be respectful and that you stand up for your right to be respected in the school system.

Parents of minor students may be required to engage in order for students' rights to be recognized.

Everyone

Everyone has an interest in the education of children -- they are the future of Canada. Pray for students, parents and teachers. Pray that they will be able to find ways to have their religious beliefs and practices respected. Pray for greater inclusion of Christian education in the public school system, and greater support for private schools. Many Christians have felt excluded from the public education system yet for many the price of private schooling is prohibitively high. And pray for those who home-school. It is a challenge to teach your children, and yet it is a good way to instill Christian virtues and understanding of the world in which we live.

Facing a Potential Legal Challenge

Biblical Principles

Paul gives some general instruction in the book of Romans just prior to the famous passage about respecting civil authority in chapter 13. He instructs:

If it is possible, as much as depends on you, live peaceably with all men. (Rom. 12:18)

Do not be overcome by evil, but overcome evil with good. (Rom. 12:21)

Bless those who persecute you; bless and do not curse. (Rom 12:14)

However, Paul used the Roman legal process when appropriate. When he had been wronged as a Roman citizen, he appealed to Caesar. And God used this for good.

In Canada we have legal processes that are for the benefit of all in our society. We can use these processes to ensure that everyone in Canada enjoys religious freedom. It is not offensive to Canadian government authority to write a letter to a politician or even to start a legal action when appropriate.