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301-46 St. Clair Ave. E.
Toronto, ON
M4Y 1M9

Tel: (416) 466-8244
Fax: (416) 466-0091
ccrl@ccrl.ca

Parental Authority in Education: the International Context

Sean Murphy

Director, Western Canada
Catholic Civil Rights League

In late 2006 and early 2007 the Catholic Civil Rights League wrote to school district trustees in British Columbia to protest the Corren Agreement, particularly the provision that purported to prohibit parents from withdrawing their children from objectionable classes or lessons.¹ Among the considerations that the League drew to the attention of trustees were international agreements supported by Canada. By way of example, trustees were referred to Principle 7 of the *Declaration on the Rights of the Child* and Article 26 of the *Universal Declaration of Human Rights*.

While these references proved sufficient for the purposes of some school districts,² questions quite naturally arose about whether or not they had been taken out of context.³ Such questions provide an opportunity to demonstrate that the position of the League is consistent with the norms of the international community.

International documents

The *Declaration on the Rights of the Child*, which dates from 1959, is only one of a series of international instruments that touch upon the subject or deal with it directly. These include

- the *Geneva Declaration of the Rights of the Child* (1924)⁴
- the *Universal Declaration of Human Rights* (1948)⁵
- the *Declaration on the Rights of the Child* (1959)⁶
- the *Convention against Discrimination in Education* (1960)⁷
- the *International Covenant on Civil and Political Rights* (1966: in force 1976)⁸
- the *International Covenant on Economic, Social and Cultural Rights* (1966: in force 1976)⁹
- the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981)¹⁰
- the *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children . . .* (1986)¹¹
- the *Convention on the Rights of the Child* (1989: in force 1990)¹²

Parental Authority in Education: the International Context

While declarations do not have the legal force of covenants and conventions, the *Universal Declaration of Human Rights* and “other conventions and declarations in the field of human rights” set standards to which the international community should conform.¹³

Context

To keep the documents in context, two points need to be understood.

The first is that later agreements or declarations presume those signed earlier. Later statements repeat or develop principles found in the earlier documents, and sometimes add to them, but they do not replace or abolish them. For example, the 1989 *Convention on the Rights of the Child* refers to the 1924 and 1959 *Declarations* on the same subject. Thus, a correct understanding of the effect of these instruments must be consistent with all of them.

Second, just as some documents cannot be cited to contradict or overrule others, they cannot be used as an excuse to subvert or limit the freedoms or rights that they recognize; one article of a document cannot nullify another, or restrict other articles beyond what is expressly stated. Further, the documents cannot be used a pretext to overturn or restrict rights or freedoms “recognized or existing in any country in virtue of law, conventions, regulations or custom.”¹⁴

In Canada, law and custom recognize that the role of parents is “paramount”; the authority of schools and teachers does not depend upon their professional qualifications or official status, but is delegated to them from parents.¹⁵ Canadian parents are “constitutionally entitled” to raise their children within their own religious traditions until the child is of an age to make independent decisions about belief and practice.¹⁶

Relationship between children and parents

Even outside the context of education, a number of the documents clearly recognize the significance and priority of the relationship of children to their natural parents and blood relatives. Despite all of the failings and worst-case scenarios blamed upon parents by activists bent on subverting and destroying their authority, these international agreements insist that *parents* are charged with primary responsibility for the upbringing of their children- not the state, not state schools, not professional educators, and not teachers’ unions or special interest activists. The role of the state and other agencies is to support parents in discharging their responsibilities, not to supplant them.¹⁷

The natural family

When most of the documents in question were drafted and signed, homosexual conduct was a criminal offence in most countries and generally viewed as gravely immoral or at least undesirable. The conventions and declarations were not meant to change this, or to support the notion that a same-sex relationship could be the basis of either marriage or family. Nor can they be construed to promote or require the acceptance of homosexual conduct. Instead, they presume that the natural family consists of father, mother and their children, though they do not exclude the natural extension of the concept to include blood relatives.

Thus, the *Universal Declaration of Human Rights* asserts that the family, founded upon the marriage of men and women, “is the natural and fundamental group unit of society” and “entitled to protection by society and the State.”¹⁸ This theme is repeated in the *International Covenant on Economic, Social and Cultural Rights*, which emphasizes that the family should receive “the widest possible protection and assistance . . . particularly for its establishment and while it is responsible for the care and education of dependent children.”¹⁹ Children without families deserve “particular care”

Parental Authority in Education: the International Context

by society and the state,²⁰ and children who cannot live with their parents are to be provided with families by foster arrangements or adoption, even adoption across national boundaries,²¹ priority being given to placement with blood relatives.²² High priority must be given to “family and child welfare.”²³

One sees here the recognition of the fundamental bond between child and family and acknowledgement that the natural family is the most suitable environment for the upbringing of a child. The fullest treatment of this theme is found in the *Convention on the Rights of the Child* (1989), which again affirms that the family is “the fundamental group of society”, adding that it is “the natural environment” especially suited for the “growth and well-being” of children. “The child,” states the *Convention*, “for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.”²⁴ The child’s family and home, grouped by the *Convention* with “privacy, correspondence, honour and reputation,” are to be protected against “arbitrary or unlawful interference.”²⁵

Communities of faith and culture

After the family and extended family, but still prior to the state and its educational institutions, one encounters cultural communities, often with strong religious ties, and communities whose members, influenced by common religious beliefs, can develop characteristics of a distinct culture. Children are kindred first to their parents and families and, through them, become members of these broader communities. Parents, extended families, and cultural and religious communities teach children how to responsibly exercise their freedoms and discharge their responsibilities. This is explicitly acknowledged by the *Convention on the Rights of the Child*:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.²⁶

Children of ethnic, religious, and linguistic minorities and indigenous groups “shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.”²⁷

Protection from exploitation

It is not surprising that a common concern in the documents is the importance of providing “special safeguards and care”²⁸ for children so that they can be “protected against every form of exploitation.”²⁹ It is acknowledged that children’s freedom to receive and exchange information is limited by the need to protect them from “injurious” information and material, bearing in mind the “primary responsibility” of parents for this, and the obligation of the state to assist them.³⁰ In this regard, respect for “the right of the child to freedom of thought, conscience and religion” is balanced by recognition of the authority of parents to direct the child in the exercise of this freedom “in a manner consistent with the evolving capacities of the child.”³¹

Economic or social exploitation of children is forbidden,³² as are “all forms of sexual exploitation and sexual abuse” including “inducement . . . to engage in any unlawful sexual activity.”³³ As noted previously, homosexual conduct was among the forms of unlawful sexual activity in many countries when the documents were drafted, and conduct that expresses some forms of “sexual orientation”

Parental Authority in Education: the International Context

(the focus of the Corren Agreement) continues to be illegal in Canada.³⁴

The applicability of these provisions to the revised curriculum cannot be assessed until the proposed changes have been published. At the moment, however, the least that can be said is that they support the authority of parents who might choose to withdraw their children from objectionable classes or lessons, and suggest that the state's responsibility is to respect and even facilitate the exercise of that authority.

Parental authority in education

The *Universal Declaration of Human Rights* acknowledges that the fundamental freedoms of thought, conscience and religion include “freedom to change . . . religion or belief, and freedom, either alone or in community with others and in public or private, to manifest . . . religion or belief in teaching, practice, worship and observance.”³⁵ With respect to the exercise of these fundamental freedoms by parents, the *Declaration* states simply that parents “have a prior right to choose the kind of education that shall be given to their children.”³⁶

These basic statements are developed further in subsequent declarations and conventions. The *Convention against Discrimination in Education* states that it is *not* a form of discrimination to establish and maintain denominational and independent schools that offer “an education which is in keeping with the wishes of the pupil's parents or legal guardians.”³⁷ On the contrary:

It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities. . . and, secondly, to ensure . . . the religious and moral education of the children in conformity with their own convictions; no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction.³⁸

The same principle is reiterated in the *International Covenant on Civil and Political Rights*,³⁹ and even more fully developed in a later Declaration:

The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.⁴⁰

Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.⁴¹

In the event that a child is taken into adoptive or foster care, those responsible for the child must respect the parents' “expressed wishes or of any other proof of their wishes in the matter of religion or belief.”⁴²

Ideals of the United Nations

The declarations and conventions being considered here are the products of maturing philosophical and moral outlooks that have been shaped by the world's great religious traditions. Thus, it is not surprising that their recognition of the need to raise children in a spirit of peace, friendship, universal

Parental Authority in Education: the International Context

brotherhood, equality, dignity, freedom, understanding, tolerance, and respect for freedom of religion and belief⁴³ are consonant with religious teaching.⁴⁴

Since these goals are proclaimed simultaneously with affirmations of the primordial importance of the natural family and deference to parental authority in education, they can hardly be understood to justify the suppression of that authority in state schools. On the contrary: the logic of the documents indicates that “the best interests” of children⁴⁵ *are served by* the reasonable exercise of parental authority in their education.

Those who want to compel children to attend lessons or classes that their parents find morally objectionable will not find support for their policies in these documents. Indeed: it is difficult to see how children could be taught tolerance and respect for freedom of religion and belief if these very freedoms are trampled upon by a school district or teachers' union bent on enforcing the terms of the Corren Agreement.⁴⁶

Notes

1. *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.

(<http://www.ccr1.ca/Documents/2006-04-28CorrenAgreement.pdf>). For an overview, see *The Corren Agreement* (<http://www.ccr1.ca/index.php?id=4835>)

2. For example, Abbotsford School District Trustees affirmed their support for Principle 7 of the *UN Declaration of the Rights of the Child* (1959), which states: “The best interest of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.” Baker, Rochelle, “Trustees ensure rights of parents a priority.” *Abbotsford News*, 22 February, 2007

3. Don Johannson, President of the Abbotsford Local of the BC Teachers’ Federation, objected to the affirmation. In an interview published in *Xtra West*, he complained that the trustees had responded to pressure from “a special interest group.” He stated that he planned to introduce a motion that the board affirm its support for all ten principles in the *Declaration*, not just Principle 7. Barsotti, Natasha, “The curriculum battleground: The conservative threat to gay-friendly classrooms.” *Xtra West*, 15 March, 2007

(http://www.xtra.ca/public/viewstory.aspx?AFF_TYPE=4&STORY_ID=2771&PUB_TEMPLATE_ID=2) Accessed 2007-03-20.

4. Adopted Sept. 26, 1924, League of Nations O.J. Spec. Supp. 21, at 43 (1924). UN Office of the High Commission for Human Rights,

(<http://www1.umn.edu/humanrts/instree/childrights.html>) Accessed 2007-04-04.

5. Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December, 1948. UN Office of the High Commission for Human Rights,

(<http://www.unhchr.ch/udhr/lang/eng.htm>) Accessed 2007-04-05.

6. Proclaimed by General Assembly resolution 1386(XIV) of 20 November 1959. UN Office of the High Commission for Human Rights, (<http://www.unhchr.ch/html/menu3/b/25.htm>)

Parental Authority in Education: the International Context

Accessed 2007-04-05

7. Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 14 December, 1960. UN Office of the High Commission for Human Rights, (http://www.unhchr.ch/html/menu3/b/d_c_educ.htm) Accessed 2007-04-07

8. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 23 March 1976, in accordance with Article 49. UN Office of the High Commission for Human Rights, (http://www.unhchr.ch/html/menu3/b/a_ccpr.htm) Accessed 2007-04-04

9. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. Entry into force 3 January 1976, in accordance with article 27. UN Office of the High Commission for Human Rights, (http://www.unhchr.ch/html/menu3/b/a_cescr.htm) Accessed 2007-04-06

10. Proclaimed by General Assembly resolution 36/55 of 25 November, 1981. UN Office of the High Commission for Human Rights (http://www.unhchr.ch/html/menu3/b/d_intole.htm) Accessed 2007-04-07

11. “. . . with special reference to Foster Placement and Adoption Nationally and Internationally.” Adopted by General Assembly resolution 41/85 of 3 December 1986 the General Assembly. UN Office of the High Commission for Human Rights, (<http://www.unhchr.ch/html/menu3/b/27.htm>) Accessed 2007-04-05.

12. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November, 1989. Entry into force 2 September 1990, in accordance with article 49. Canada ratified the convention on 31 December, 1991. UN Office of the High Commission for Human Rights (<http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm>) Accessed 2007-04-07.

13. “The *Universal Declaration of Human Rights* states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.”

“The *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, . . . as well as other conventions and declarations in the field of human rights adopted under the auspices of the United Nations, the specialized agencies and the regional intergovernmental organizations, have created new standards and obligations to which States should conform.”

“The protection of the family and of the child remains the concern of the international community. Parents have a basic human right to determine freely and responsibly the number and the spacing of their children.” *Proclamation of Teheran*, International Conference on Human Rights, 13 May, 1968. UN Office of the High Commission for Human Rights (http://www.unhchr.ch/html/menu3/b/b_tehern.htm) Accessed 2007-04-06.

Parental Authority in Education: the International Context

14. *International Covenant on Economic, Social and Cultural Rights*, Article 5. See also *International Covenant on Civil and Political Rights*, Article 5; *Universal Declaration of Human Rights*, Article 30; *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, Article 8.

15. “The common law has long recognized that parents are in the best position to take care of their children and make all the decisions necessary to ensure their well-being providing they act in accordance with the best interests of their children. This Court has reiterated the paramount parental role by construing the nature of the authority schools and teachers have over children as a delegated authority. The notion of a school’s authority being delegated, if it allows parents to remove their children from the public school system, must also guarantee to parents the role of having input with regard to the values which their children will receive in school.” Gonthier and Bastarache JJ. (dissenting) in *Chamberlain v. Surrey School District No. 36*, [2002] 4 S.C.R. 710, 2002 SCC 86. (<http://scc.lexum.umontreal.ca/en/2002/2002scc86/2002scc86.html>). Accessed 2007-04-13. The majority of the court did not dispute these observations.

16. “The parents of Sheena are constitutionally entitled to manifest their beliefs and practise their religion, as is their daughter. That constitutional freedom includes the right to educate and rear their child in the tenets of their faith. In effect, until the child reaches an age where she can make an independent decision regarding her own religious beliefs, her parents may decide on her religion for her and raise her in accordance with that religion.” Iacobucci and Major JJ. in *B.(R.) v. Children's Aid Society of Metropolitan Toronto* [1995] 1 S.C.R. 434-435 (<http://scc.lexum.umontreal.ca/en/1995/1995rcs1-315/1995rcs1-315.html>) Accessed 2007-04-13

17. The *Declaration on the Rights of the Child* (1959) states that the child “shall, wherever possible, grow up in the care and under the responsibility of his parents,” adding that “a child of tender years shall not, save in exceptional circumstances, be separated from his mother.” (Principle 6)

This principle is reaffirmed in the preamble of the *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally*, which makes it the “first priority” that children should be cared for by their own parents (Article 3). If that is not possible, care by relatives should be considered, followed by a foster or adoptive family, and finally by an institution (Article 4). The order demonstrates the significance of the blood relationship. Adoption is intended to provide a permanent family for children who cannot be cared for by their own parents (Article 13).

The *Convention on the Rights of the Child* recognizes “the right to know and be cared for by his or her parents” (Article 7) and insists that children should not be separated from their parents against their will unless the child is abused or neglected or other exceptional circumstances exist (Article 9). “The primary responsibility for upbringing and development of the child” belongs to the parents - both of them (Article 18.1) - not to the state or to other agencies. Rather than supplanting the parents, the state is to give “appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities (Article 18.2, Article 27).

Parental Authority in Education: the International Context

The state has the authority to intervene to protect the child from neglect, injury or exploitation should parents fail in their responsibilities. See *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981), Article 5; *Convention on the Rights of the Child* (1989), Article 9.

18. Article 16; See also *International Covenant on Civil and Political Rights*, Article 23
19. *International Covenant on Civil and Political Rights*, Article 10
20. *Declaration on the Rights of the Child* (1959), Principle 6
21. *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally*, Article 17
22. *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally*, Article 4
23. *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally*, Article 1
24. *Convention on the Rights of the Child* (1989), Preamble
25. *Convention on the Rights of the Child* (1989), Article 16
26. *Convention on the Rights of the Child* (1989), Article 5
27. *Convention on the Rights of the Child* (1989), Article 30. See also Article 29.1.c; *Declaration on the Rights of the Child* (1959), Principle 7
28. *Declaration on the Rights of the Child* (1959), Preamble; *Convention on the Rights of the Child* (1989), Preamble
29. *Geneva Declaration of the Rights of the Child* (1924), Article 4
30. *Convention on the Rights of the Child* (1989), Article 17(e)
31. *Convention on the Rights of the Child* (1989), Article 14
32. *International Covenant on Economic, Social and Cultural Rights* (1966), Article 10(3)
33. *Convention on the Rights of the Child* (1989), Article 34
34. Prostitution, exhibitionism and zoophilia or zoosexuality (beastiality) are among the among the forms of “sexual orientation” listed by *Wikipedia*. The source is not authoritative, but does indicate the possible range of meanings of the term and the tendency to expand it well beyond the

Parental Authority in Education: the International Context

homosexual and heterosexual. Note that prostitution and exhibitionism are not illegal in all circumstances in Canada. (http://en.wikipedia.org/wiki/Sexual_orientation) Accessed 2007-04-15.

35. *Universal Declaration of Human Rights* (1948), Article 18. See also *International Covenant on Civil and Political Rights* (1966), Article 18(1-3). “. . . religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed.” *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981), Preamble:. see also Article 1(1-3).

36. *Universal Declaration of Human Rights* (1948), Article 26 (3)

37. *Convention against Discrimination in Education* (1960), Article 2. See also *International Covenant on Economic, Social and Cultural Rights* (1966), Article 13(3-4)

38. *Convention against Discrimination in Education* (1960) Article 5(b). See also *International Covenant on Economic, Social and Cultural Rights* (1966), Article 13(3); *Convention on the Rights of the Child* (1989), Article 29(2)

39. *International Covenant on Civil and Political Rights* (1966), Article 18(4)

40. *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981), Article 5(1)

41. *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981), Article 5(2)

42. *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (1981), Article 5(4)

43. *Convention on the Rights of the Child* (1989), Preamble, Article 29d; *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, Article 5; *Convention against Discrimination in Education* (1960) Article 5

44. For example: *Catechism of the Catholic Church*, 2302-2317 (peace); 1939-1942 (friendship); 360-361 (universal brotherhood); 1934-1938 (equality); 27, 306-308, 1700, 1706, 1930 (human dignity); 1730-1748 (freedom); 2108-2109 (freedom of religion and belief); Vatican Council II, *Decree on the Apostolate of Lay People*, 14; *Decree on the Pastoral Office of Bishops in the Church*, 13; *The Church in the Modern World*, 23, 59, 61, 75; *Decree on Christian Education*, 5; *Declaration on the Relation of the Church to non-Christian Religions*, 3- 4; *Decree on Ecumenism*, 9 (understanding, tolerance).

45. *Declaration on the Rights of the Child* (1959), Principles 2, 7; *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, Article 5; *Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and*

Parental Authority in Education: the International Context

Internationally, Preamble, Articles 5, 9; *Convention on the Rights of the Child*, Articles 3, 9, 18

46. Conversely, the accommodation of objecting students and parents by arranging for ‘opting out’ and alternative delivery of curriculum ought to have the opposite effect. This was noted by Supreme Court of Canada Justices Gonthier and Bastarache in the ‘Surrey school book case.’ They noted “that some school boards, cognizant that such a parental desire to have their children ‘opted out’ of certain subject matter might arise, have mechanisms by which parents will be notified when sensitive or controversial subject matter is going to be raised. Such mechanisms are geared at respecting the constitutionally protected paramountcy of the parental role in the moral education of their children. Ultimately, as per *Adler, supra*, the ultimate parental response would be to remove children from the public school system. However, in my view, this should be seen as a last resort, and not as a natural alternative when there is an acceptable balance to be struck between local parental concerns and a broader program of tolerance. When such a balance is available, as in the case at bar, keeping the concerned children in the public school system can only further and strengthen the message of respect and tolerance that it wishes to inculcate.” *Chamberlain v. Surrey School District No. 36*, [2002] 4 S.C.R. 710, 2002 SCC 86. (<http://scc.lexum.umontreal.ca/en/2002/2002scc86/2002scc86.html>) Accessed 2007-04-13