

The Right to Parental Educational Oversight: What It Is and What It Isn't

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In Canada and elsewhere in the world, the claim that parents have a right to oversight concerning the content to which their children are exposed in public schools is now routinely used as leverage by socially conservative individuals and organizations to try to prevent teachers and schools from conveying positive messaging about sexual and gender diversity (Mayo, 2021). In the face of both legislation and litigation, public schools are under increasing pressure to be “accountable” to parents’ alleged right to educational oversight, which frequently translates into a demand to provide students with opt-outs from content that parents object to for religious reasons.

Key to the 2023 electoral platform of the Manitoba Progressive Conservative, for instance, was a promise to “expand parental rights over what their children learn in school” (MacLean, 2023, para. 7). The party promised to introduce legislative measures to ensure that parents were better informed about the provincial curriculum and provide “advance notice about any presentations by people outside the school system” (MacLean, 2023, para. 7), the latter being a veiled reference to Drag Queen Story Hour, a popular educational activity in which drag artists read books aloud to children to promote inclusiveness and respect for sexual and gender diversity. In a similar spirit, the conservative government of Alberta went as far as attempting to enshrine an opt-out clause for sex education in the province’s Human Rights Act, suggesting that failure on the part of teachers and schools to respect exemptions for sex education constitutes a violation of parents’ basic human rights (Gereluk et al., 2015). The issue of parents’ right to educational oversight was also central to the 2002 *Chamberlain* ruling of the Supreme Court of Canada. In this case, the Court adjudicated a dispute between a primary school teacher, who wished to read to his class picture books that portrayed same-sex families in a positive light, and a school board, which refused to approve such material on the grounds that the content was inconsistent with many parents’ values.

The association of the legal concept of a parental right to educational oversight with religious and socially conservative movements seems to have led many educationalists on the left of the political spectrum to conclude that “parental rights” are nothing but a legal chimera invented by the political right to promote an anti-LGBTQ+ agenda (an example of this position can be found in Moore & Lopuck, 2025). Whether one likes it or not, the notion of parental rights does have legal traction, both in Canadian and international law. However, it is not the case that the right to parental educational oversight can be used to prevent educators from promoting the values of inclusiveness, diversity, and equality that are at the core of public schools’ mission.

Parental Rights in *Chamberlain v. Surrey School District No 36*

Canadian superior courts have recognized that parents and legal guardians in Canada have the right to educate their children in conformity with their deeply held religious and moral convictions. In *Chamberlain v. Surrey School District No 36* (2002), for example, according to the analysis presented in the dissenting opinion, and authored by Supreme Court Justice Gonthier, such control over children's upbringing and education is protected by two provisions of the *Charter*. First, a parent's right to freedom of religion and conscience, as guaranteed under Section 2(a), encompasses the right to educate one's child in religious matters. The parental right to control a child's religious and moral education is also protected, Justice Gonthier asserted, by Section 7 of the *Charter*, which states that "[e]veryone has the right to life, liberty, and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice." Drawing on Justice La Forest's analysis in *B. (R.) v. Children's Aid Society of Metropolitan Toronto* (1995), essentially, Justice Gonthier argued that the right to liberty entails a right to parental educational oversight over their children's moral and religious education because parents are better placed than the state is to make decisions about what is in children's best interest regarding religious and moral matters.

Article 18 of the International Covenant on Civic and Political Rights

Although a right to parental educational oversight has not been explicitly articulated in Canadian legislation, the International Covenant on Civil and Political Rights (ICCPR, 1966), ratified by Canada in 1976, formally recognizes the parental right to educate based on one's convictions. Article 18 of the ICCPR declares 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 convictions."

Crucially, this right to parental oversight regarding their children's religious and moral education is not to be understood a positive right requiring states to provide education that is consistent with parents' convictions. Rather, the purpose of recognizing this right is to protect the more basic rights of freedom of religion and conscience more broadly by preventing states from using mandatory public education as a tool to discriminate against citizens who hold certain religious or moral convictions (Bureau international des droits des enfants, 2009).

Given the controversial nature of religious content in secular public schools, it comes as no surprise that state initiatives to establish a system of mandatory religious instruction—as has been the case in educational jurisdictions as diverse as Switzerland, England and Wales, Norway, Turkey, South Africa, Singapore, Brandenburg, and Quebec (Gates, 2016)—have frequently been met with legal challenges by parents claiming such instruction is incompatible with their right to religious freedom, to equality before the state, to have a substantive say in their children's moral and religious education, or all three. Such regimes of mandatory religious education, including Quebec's recently discontinued Ethics and Religious Culture course have engendered a body of case law on the conditions under which states can impose mandatory religious education while respecting students' and their families' basic rights (for an overview, see Maxwell et al., 2023). The Human Rights Committee of the United Nations and the European Court of Human Rights have both recognized that the parental right to educational oversight, as that right is articulated in the ICCPR (1966), is one of the key rights at stake in these legal challenges (see *Folgerø v. Norway*, 2007; *Leirvåg v. Norway*, 2003; *Zengin v. Turkey*, 2007).

Limits on Parental Rights in Canadian Case Law

While these considerations suggest that it is important for public school authorities to respect parents' right to educate their children according to their genuinely held religious and moral convictions, Canadian case law has asserted this right may not be used to subvert the need to uphold the equality rights of vulnerable groups, including those of sexual and gender minorities.

In *T. (E.) v. Hamilton-Wentworth District School Board* (2016), the applicant, E.T., the father of two elementary school students and a member of the Greek Orthodox Church, asserted that his Charter-protected religious obligations required him to shelter his children from what he saw as "false teachings" in the public-school curriculum. This included the discussion of homosexual and bisexual conduct in relationships and transgenderism, and the portrayal of these social phenomena as natural and healthy. The father wanted the Board to provide him with information in advance concerning specific curriculum areas being taught to his children. He also requested permission to withdraw his children from classes, lessons, or activities that conflicted with his religious beliefs. In the Ontario Superior Court of Justice's ruling in this case, Justice Reid acknowledged that the mandatory exposure to the impugned content did indeed infringe upon the father's religious freedom under Section 2(a) of the *Charter*. Ultimately, however, he concluded that the violation was a reasonable limit within the meaning of Section 1 of the *Charter*. Hamilton-Wentworth District School Board, Justice Reid observed, was operating under an Equity Policy based on Ministry directives. Specifically, the Ontario Ministry of Education *Policy/Program Memorandum 119* mandated all school boards in the province to develop, implement, and monitor an equity, diversity and inclusion education policy for the purpose of "identifying and removing discriminatory biases and systemic barriers to help ensure that all students feel welcomed and accepted in school life" (para. 45). Notably, the intent of this policy initiative was to ensure respect for students and their family's fundamental human rights as set out in the *Charter* and Ontario's *Human Rights Code*, legislation with which school boards were already required to comply pursuant to Ontario's *Education Act*. Speaking in favour of the parent's request for advance notice and exemptions was Hamilton-Wentworth District School Board's equity policy that included a religious accommodation guideline acknowledging an individual's right "to follow or not follow religious beliefs and practices, free from discriminatory or harassing behaviors" (para. 50) within its schools. However, and as Justice Reid highlighted, there were limits to what could be accommodated. The Board could not be reasonably expected to "accommodate religious values and beliefs that clearly conflict with mandated Ministry of Education and Board policies" (para. 54). In sum, the Court concluded that the father could not use his freedom of religion to undermine the equality rights of vulnerable sexual and gender minorities in the secular public school his children attended.

E.T. petitioned the Ontario Court of Appeal for a reversal of Justice Reid's decision. Speaking for a unanimous court, Justice Sharpe dismissed the appeal (*E.T. v. Hamilton-Wentworth District School Board*, 2017). Unlike Justice Reid, however, Justice Sharpe denied that there was concrete evidence of interference with the father's right to religious freedom. He acknowledged the father's sincere religious belief but remarked that it alone was insufficient to establish a breach of Section 2(a) of the *Charter* (para. 24). He noted that Supreme Court of Canada jurisprudence made it clear that exposing students who attend non-denominational public schools to ideas that challenge or even contradict sincerely held religious beliefs of parents did not lead to a violation of freedom of religion (para. 28). In a strongly worded statement, Justice Sharpe rejected E.T.'s appeal on the grounds that the father could not advance his religious beliefs to "insist that a non-denominational public school board restructure its inclusive and integrated program, designed to meet its statutory objective of ensuring a respectful and accepting climate for all children, so that he can ensure that his own children are not exposed to any views that he does not accept" (para. 40).

Conclusion

Being grounded in international law and having been taken seriously by Canadian and European superior courts, the right of parents to educate their children in accordance with their religious and moral convictions is no legal chimera. For teachers and school officials, what respecting this right means is making good-faith efforts, in teaching as well as in informal interactions with students and parents, not to act in ways that could be reasonably perceived as denigrating or disrespectful of their sincerely held religious beliefs and obligations. It also means making reasonable accommodations for those obligations and beliefs when they conflict with institutional policy, the curriculum, and school activities. But it does not mean that teachers and schools need to shy away from practices, policies, topics, and teaching material that uphold and affirm the basic rights to equality enshrined in the *Charter* and provincial human rights codes or working hard, as they rightly do, to ensure that schools are welcoming and inclusive places for all children and staff—including children and staff that contribute to the school's sexual and gender diversity—for fear of offending certain parents' religious or moral sensibilities.

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