

RELIGION, PUBLIC EDUCATION AND THE CHARTER: WHERE DO WE GO NOW?

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ABSTRACT. This paper examines what role, if any, religion should have in Canada's public schools. The basic argument is that discussion about religion, as well as the manifestation of religious belief, should be encouraged in our schools because there are good philosophical, pragmatic and educational reasons to justify this kind of activity. At the same time, the author readily acknowledges that any discussion about, or expression of, religion must respect the values and principles embodied in the *Canadian Charter of Rights and Freedoms* (1982). As the Supreme Court of Canada reminds us, all freedoms are subject to reasonable limits and both the rights and limits have their origins in these fundamental values and principles, which make up the Canadian polity.

RELIGION, ÉDUCATION PUBLIQUE ET LA CHARTE :
OÙ ALLONS NOUS MAINTENANT?

RÉSUMÉ. Cet article examine quel rôle, s'il y en a un, la religion devrait avoir dans les écoles publiques canadiennes. L'argument central est que les discussions à propos de la religion, de même que la manifestation de croyances religieuses, devraient être encouragée dans nos écoles parce qu'il existe de bonnes raisons philosophique, pragmatique, et éducative pour justifier ce genre d'activités. En même temps, l'auteur reconnaît aisément que toute discussion au sujet de la religion ou l'expression de celle-ci doit suivre les principes incarnés dans la *Charte canadienne des droits et libertés* (1982). Comme la Cour suprême du Canada nous le rappelle, toutes les libertés sont sujettes à des limites raisonnables et les deux, droits et limites, ont leurs origines dans ces valeurs et ces principes fondamentaux qui font la politique canadienne.

INTRODUCTION

In a series of three articles examining the interplay between religion and education in the context of Canadian schools, William F. Foster and William J. Smith (2002) conclude in their final article that the time has come "for a policy debate in each jurisdiction about the place which religion ought

to play in public education” (p. 260). At the same time, a majority of the Supreme Court of Canada in *Chamberlain v. Surrey School District No. 36* (2002) has recently acknowledged in a landmark decision affecting the rights and interests of gays and lesbians in our public schools that, “Religion is an integral aspect of people’s lives, and cannot be left at the boardroom door” (para. 19).

This paper examines what role, if any, religion should have in Canada’s public schools. The basic argument is that discussion about religion, as well as the manifestation of religious belief, should be encouraged in our schools because there are good philosophical, pragmatic and educational reasons to justify this kind of activity. At the same time, it is readily acknowledged that any discussion about, or expression of, religion must respect the values and principles embodied in the *Canadian Charter of Rights and Freedoms* (1982). As the Supreme Court of Canada reminds us, all freedoms are subject to reasonable limits and both the rights and limits have their origins in these fundamental values and principles, which make up the Canadian polity, and include:

[R]espect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance the participation of individuals and groups in society. (p. 225)¹

Although this approach is not without risk, it is contended that the risk is worth taking because the potential benefits which true dialogue promotes (tolerance, understanding, and compromise) outweigh the harm to be avoided (indoctrination and fundamentalism) by consigning religious expression to the purely private sphere. Moreover, it is proposed that the *Charter*, and its underlying values, serves as a reliable bulwark against harmful and unjustifiable manifestations of religion in our public schools.

Part one of the paper explains why some manifestations of religion should be banned from the school gates. Part two explains reasons why legitimate discussion about religion should be promoted in a public educational forum. In the final section, suggestions are offered as to how our schools may support respectful and responsible displays of religious belief. The discussion draws on relevant legal case law and secondary literature pertinent to the subject.

Paul Horwitz’s (1996) definition of religion informs the discussion in this paper. He claims that at the heart of religion is “a belief that is spiritual, supernatural or transcendent in nature, whether or not it is shared by anyone else, so long as it is sincerely held” (p. 10). It is acknowledged that religious belief can only be meaningful to the extent that it is protected by religious freedom. The definition of freedom of religion is thus adopted as articulated by the Supreme Court of Canada in *R. v. Big M Drug Mart Ltd.* (1985):

The essence of the concept of freedom of religion 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 religious belief by worship and practice or by teaching and dissemination. (pp. 336-337)

At the same time, it is recognized that freedom of religion is not a license to do whatever one wants. The court in *Big M* noted the need for restrictions in the following terms:

This freedom is not unlimited, however, and is restricted by the right of others to hold and to manifest beliefs and opinions of their own, and to be free from injury from the exercise of freedom of religion of others. (p. 337)

PART I – REASONS TO EXCLUDE RELIGION

Valid reasons exist to exclude some forms of religious belief and expression from entering our schools. This exclusion is warranted when the state, groups or individuals use religion, wittingly or unwittingly, to indoctrinate or to undermine the fundamental rights and freedoms of others.

Indoctrination

Indoctrination may take different forms. It may occur in blatant and subtle manifestations. In *Keegstra v. Board of Education of Lacombe No. 14* (1983), a Board of Reference upheld the board of education's decision to terminate James Keegstra's employment contract on the grounds of insubordination.² This case is an example of a patent attempt by a public high school teacher to indoctrinate his students into anti-semitic ways of thinking. In addition, it should be noted that strong and extremist religious beliefs motivated the teacher's actions.

Keegstra taught social studies to students in grades nine and twelve. In class, he presented his view of history founded on the belief in an international Jewish conspiracy. The teacher sincerely believed that Jews were responsible for undermining Christianity and Western civilization. In *R. v. Keegstra* (1990), the Supreme Court of Canada described the teachings in this way:

Mr. Keegstra's teachings attributed various evil qualities to Jews. He thus described Jews to his pupils as 'treacherous,' 'subversive,' 'sadistic,' 'money-loving,' 'power hungry' and 'child killers.' He taught his classes that Jewish people seek to destroy Christianity and are responsible for depressions, anarchy, chaos, wars and revolution. According to Mr. Keegstra, Jews 'created the Holocaust to gain sympathy' and, in contrast to the open and honest Christians, were said to be deceptive, secretive and inherently evil. (p. 714)

Following parental complaints, the superintendent of schools conducted an investigation of Keegstra's teaching practices. As a result, the teacher received oral and written warnings to change his approach by teaching the

prescribed curriculum. When he did not conform to the superintendent's directives, the board of education held a hearing and decided to fire Keegstra. A Board of Reference affirmed the termination. Keegstra's in-class racist opinions amounted to unjustifiable contractual violations. The teacher used methods contrary to the provincial curriculum and refused to remedy his ways after he had received a number of warnings.

In reaching its decision, the Board of Reference noted that Keegstra's approach precluded the teaching of social studies through critical inquiry:

While the appellant may have prefaced his presentation of the material by a general statement that these were only theories, I am satisfied that the students did not have before them any contrary views or any contrary source material which may have led them to conclude that the theories being presented were in error. This lack of opposing views and opposing source materials, combined with the appellant's assertion of his personal belief based upon research of the accuracy or correctness of the information, led to the acceptance by the students of the information as historically accurate and as fact. This is clear from the evidence of Paul Maddox who testified that he and his fellow students believed the appellant and did not question the accuracy or truth of the information and facts presented to them. (pp. 280-281)

Interestingly, the Board of Reference did not use the word *indoctrination* in its judgment. Nonetheless, Keegstra's actions exhibited the hallmarks of the concept. The fanaticism, the close mindedness and the refusal to engage in critical thinking all reflected the badges of indoctrination.³ Most disturbingly, the teacher's worldview was anchored in sincerely held religious beliefs. The case illustrates how one teacher's religious views can be used for nefarious purposes to lure students into a warped and harmful way of thinking.

Indoctrination may manifest itself in more subtle ways. In *Canadian Civil Liberties Assn. v. Ontario (Minister of Education)* (1990), the Canadian Civil Liberties Association and a group of parents challenged the constitutionality of a curriculum requirement, as well as the overarching provincial regulatory framework, forcing public school students to take two periods of religious instruction per week. The relevant legislation also had an exemption from religious instruction for students whose parents opposed their participation.⁴ Initially, the curriculum was exclusively Christian. Later, the school board changed it to add sections reflecting other religions. The Ontario Court of Appeal framed the issue in these terms:

The crucial issue in this appeal is whether the purpose and effects of the regulation and the curriculum are to indoctrinate school children in Ontario in the Christian faith. If so, the rights to freedom of conscience and religion under s. 2 (a) of the *Canadian Charter of Rights and Freedoms* and the equality rights guaranteed under s. 15 of the Charter may be infringed. On the other hand, it is conceded that education designed to teach about religion and to foster moral values without indoctrination in a particular

faith would not be a breach of the Charter. It is indoctrination in a particular religious faith that is alleged to be offensive. (p. 4)⁵

The Court ruled that both the regulatory framework and the curriculum provided for religious indoctrination in the Christian faith and that allowing other religions to provide for the same kind of indoctrination did not solve the problem.

In response to this decision, the Ontario Ministry of Education issued a policy memorandum and amended relevant regulations dealing with religion in schools. The Ministry memorandum stated that henceforth Ontario public schools and programs, including programs in education about religion, under the jurisdiction of boards of education (except s. 93 boards) had to meet two conditions; a) they must not be indoctrinational; and b) they must not give primacy to any particular religious faith. In *Bal v. Ontario (Attorney General)* (1994), Judge Winkler highlighted the non-denominational nature of public education: "The public school is secular, it does not present the opportunity for education in any particular denomination or faith. The objective is to promote non-denominational education" (p. 130).

In our public schools, indoctrination along religious lines is wrong because it fails to treat individuals with the respect and the dignity to which they are entitled as self-regulating and autonomous human beings. Hence, it is incumbent upon the state and others (whether communities or individuals) to ensure that individuals have the opportunity and space to make fundamental choices about what constitutes a good life, including whether to embrace or reject beliefs of a religious nature.

Violating the rights of others

Any religious expression that undermines the rights of others (most notably, the rights of minorities) also has no place in the nation's public classrooms. As the Supreme Court of Canada stated in *R. v. Big M Drug Mart* (1985): "Freedom of religion is subject to such limitations as are necessary to protect public safety, order, health or morals and *the fundamental rights and freedoms of others*" (p. 337, emphasis added). The *Ross v. New Brunswick School District No. 15* (1996) decision illustrates powerfully how the religious expression of an individual teacher may undermine the equality rights and interests of certain minority groups.

Malcolm Ross taught elementary mathematics in Magnetic Hill, New Brunswick. While off-duty, he published various writings including: *Web of Deceit*, *The Real Holocaust (The attack on unborn children and life itself)*, *Spectre of power and Christianity vs. Judeo-Christianity (The battle for truth)*. He also sent three letters to New Brunswick newspapers and made one public television appearance to defend his controversial views. Like James Keegstra, in Alberta, he argued that Western Christian civilization is being undermined

and destroyed by an “International Jewish Conspiracy.” The following passage from one of Ross’ letters captures his thinking: “My whole purpose in writing and publishing is to exult Jesus Christ and to inform Christians about the great Satanic movement which is trying to destroy our Christian faith and civilization” (p. 24).⁶

Public concern about Ross’ views prompted the school board to commence disciplinary action. A concerned Jewish parent even filed a complaint with the New Brunswick Human Rights Commission, alleging that the school board’s inability to discipline Ross effectively constituted discrimination against the parent’s children and other Jewish students because of their religion or ancestry. Ultimately, a Board of Inquiry issued an order removing Ross from the classroom and placing expressive restrictions on his ability to engage in anti-Semitic speech. Ross challenged this order on the grounds that it violated his constitutionally protected fundamental freedoms, namely, freedom of expression and freedom of religion.

Our highest Court summed up Ross’ freedom of religion argument in these terms:

In arguing that the order does infringe his freedom of religion, the respondent submits that the Act is being used as a sword to punish individuals for expressing their discriminating religious beliefs. He maintains that ‘[a]ll of the invective and hyperbole about anti-Semitism is really a smoke screen for imposing an officially sanctioned religious belief on society as a whole which is not the function of courts or Human Rights Tribunals in a free society.’ In this case, the respondent’s freedom of religion is manifested in his writings, statements and publications. These, he argues, constitute ‘thoroughly honest religious statement[s],’ and adds that it is not the role of this Court to decide what any particular religion believes. (para. 70)

A unanimous Supreme Court of Canada rejected the teacher’s arguments. The Court stated that freedom of religion can not be used to undermine the dignity and equality of others, values upon which the *Charter* is grounded:

In relation to freedom of religion, any religious belief that denigrates and defames the religious beliefs of others erodes the very basis of the guarantee in s. 2(a) – a basis that guarantees that every individual is free to hold and to manifest the beliefs dictated by one’s conscience. The respondent’s religious views serve to deny Jews respect for dignity and equality said to be among the fundamental guiding values of a court undertaking a s. 1 analysis. (para. 94)

Our highest court also ruled that the purpose of the order removing the teacher from the classroom was to promote equal opportunity that was unhindered by discriminatory practices based on race or religion and that this constituted a *pressing and substantial* objective. In reaching this decision, the Court considered a number of factors including: the harmful nature of hate

propaganda, the international community's commitment to the elimination of discrimination, and ss. 15 and 27⁷ of the *Charter* which embrace, respectively, the values of equality and multiculturalism. The Court then concluded:

[A]ll the above factors are relevant in assessing the importance of the objective of the impugned Order. In the first place, they assert the fundamental commitment of the international community to the eradication of discrimination in general. Secondly, they acknowledge the pernicious effects associated with hate propaganda, and more specifically, anti-Semitic messages, that undermine basic democratic values and are antithetical to the "core" values of the Charter. The Board's Order asserts a commitment to the eradication of discrimination in the provision of educational services to the public. Based upon the jurisprudence, Canada's international obligations and the values constitutionally entrenched, the objective of the impugned Order is clearly "pressing and substantial." (para. 98)

Similarly, in *Kempling v. British Columbia College of Teachers* (2004), Justice Holmes of the British Columbia Supreme Court has recently ruled that homophobic teacher speech will not be tolerated in the public school context. In this case, Mr. Kempling associated homosexuality with "immorality, abnormality, perversion, and promiscuity" in letters he wrote to the local newspaper and defended these views as a valid expression of his religious beliefs. In these letters, Kempling also identified himself as a teacher and a mental health professional. Holmes J. described his writings as "discriminatory" and "defamatory." He also upheld the teacher's one-month suspension by the British Columbia College of Teachers who ruled that Kempling's conduct was unprofessional because it undermined the values of respect and inclusion owed to all members of the educational community, including gays and lesbians. Drawing on the Supreme Court of Canada's decision in *Ross* (1996), Holmes J. rejected Kempling's claims that his constitutionally protected rights to freedom of expression and freedom of religion under the *Charter of Rights & Freedoms* had been violated.

In sum, hateful and discriminatory religious expression, which is anathema to the *Charter* values of equality and accommodation, has no legitimate place inside our public schools.

PART II – REASONS TO INCLUDE RELIGION

This section of the paper begins with a consideration of the judicial meaning of the word *secular* in the context of our public schools. The discussion serves as introduction for the primary focus of the section, being an examination of the rationales offered to include religion in our public schools. These rationales are philosophical, pragmatic and educational.

What does secular mean?

A relatively recent case (2002) in British Columbia forced the courts to consider the meaning of the word *secular* in a landmark decision known as *Chamberlain v. Surrey School District No. 36* (2002). This case arose out of the proper interpretation to be given to the following provisions of the BC School Act (1996), which say:

- 76 (1) All schools must be conducted on strictly secular and non-sectarian principles.
- (2) The highest morality must be inculcated, but no religion, dogma or creed is to be taught in a school or Provincial school.

The Board of Trustees of the Surrey School District passed a resolution in 1997, referred to as the “Three Books Resolution,” stating that the Board did not approve the use of three books depicting children with same-sex parents as “Recommended Learning Resources.”⁸

The issue arose against a background of considerable public acrimony and religious hostility toward homosexuality in Surrey. The petitioners, led by Mr. Chamberlain, a primary school teacher, applied under the *Judicial Review Procedure Act* (1996) for an order quashing the three books resolution and another on the basis that these resolutions infringed the *School Act* (1996) and the *Canadian Charter of Rights and Freedoms*. In British Columbia Supreme Court,⁹ the Chambers judge quashed the Three Books Resolution as being contrary to the above provisions of the *School Act*. Judge Saunders found as a fact that those who argued in favour of and voted for the resolution were significantly influenced by religious considerations.

Furthermore, she noted that opponents of the books objected to homosexual conduct because of its alleged immoral nature. Judge Saunders ruled that this was contrary to s. 76(1), which forbade the school board from implementing a decision made on religious views.¹⁰ In this regard, she stated: “Section 76 [of the School Act] is an example of legislated protection for freedom of religion, presuming the public school is a place independent of religious considerations” (para. 102). Not surprisingly, the judge interpreted the word *secular* in a very narrow manner: “In the education setting, the term secular excludes religion or religious belief” (para. 78).

In the literature, David M. Brown (2000) criticized Judge Saunderson’s restrictive interpretation of secular in these words:

Effectively the court is saying: a public body, even an elected public body, cannot listen or take into account concerns raised by citizens which may be motivated by, influenced by, or based upon religious beliefs. Any argument framed in a religious manner or advanced by people who are religiously motivated, cannot be listened to because public bodies must operate on secular principles. With one stroke of the pen, a judge has excluded from

the educational political process in British Columbia a significant portion of the electorate and constructed a new constitutional principle that religious persons are disqualified from participating in the debates of public, secular institutions. (p. 604)

The British Columbia Court of Appeal¹¹ rejected Judge Saunder's interpretation of "strictly secular" on two grounds. First, it was indefensible as a matter of principle. As Justice MacKenzie observed:

Can "strictly secular" in s. 76(1) of the School Act be interpreted as limited to moral positions devoid of religious influence? Are only those with a non-religiously informed conscience to be permitted to participate in decisions involving moral instruction of children in the public schools? . . . Simply to pose the questions in such terms can lead to only one answer in a truly free society. Moral positions must be accorded equal access to the public square without regard to religious influence. A religiously informed conscience should not be accorded any privilege, but neither should it be placed under a disability. (para. 28)

Second, he noted that adopting Judge Saunder's strict construction would lead to "immense practical difficulties":

How would it be determined that a moral position is advanced from a conscience influenced by religion or not? If the restriction were applied only where the religious conviction was publicly declared it would privilege convictions based on a conscience whose influences were concealed over one openly proclaimed. The alternative would be to require inquiry as to the source of a moral conviction, whether religious or otherwise. Both alternatives are offensive and indefensible. (para. 29)

Justice MacKenzie then went on to propose the following definition of "strictly secular":

In my opinion, "strictly secular" in the School Act can only mean pluralist in the sense that moral positions are to be accorded standing in the public square irrespective of whether the position flows out of a conscience that is religiously informed or not. The meaning of strictly secular is thus pluralist or inclusive in its widest sense. (para. 33)

In essence, the Court of Appeal refused to ban religion from the public square.

Weighing in on the proper interpretation of "secular," both the majority and minority judges of the Supreme Court of Canada¹² agreed that Judge Saunders' approach espousing a strict interpretation of the term was not tenable. For the majority, Chief Justice McLachlin stated: "[T]he requirement of secularism laid out in s. 76 does not prevent religious concerns from being among those matters of local and parental concern that influence educational policy." (para. 3). In support of this position, she added:

The Act's insistence on strict secularism does not mean that religious concerns have no place in the deliberations and decisions of the Board.

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. (para. 19)

Justice Gonthier, writing for the minority, refuted Judge Saunders' reasoning in this way:

In my view, Saunders J. below erred in her assumption that 'secular' effectively meant 'non-religious.' This is incorrect since nothing in the Charter, political or democratic theory, or a proper understanding of pluralism demands that atheistically based moral positions trump religiously based moral positions on matters of public policy. (para. 137)

It is important to note that the majority of the Supreme Court of Canada, although it rejected Judge Saunderson's narrow interpretation of *secular*, agreed with her decision to quash the school board's "Three Books Resolution" banning the use of materials depicting same-sex parented families. McLachlin CJ drew on the principles of administrative law to point out a number of errors underpinning the resolution. Most significantly, she noted that the school board resolution violated the principles of secularism and tolerance in s. 76 of the *School Act* (1996). Instead of proceeding on the basis of respect for all types of families, the Superintendent and the Board had proceeded "on an exclusionary philosophy." They had acted on the concern of certain parents about the morality of same-sex relationships. Thus, the school authorities failed to consider the interest of same-sex parented families and the children who belong to them in receiving equal recognition and respect in the school system.

The Board could not reject books simply because certain parents, for religious reasons, found the lawful relationships depicted in them controversial or objectionable. In this context, the Chief Justice stated that the demands of secularism placed certain restrictions on religion and its ability to influence school policy:

What secularism does rule out . . . is any attempt to use the religious views of one part of the community to exclude from consideration the values of other members of the community. A requirement of secularism implies that, although the Board is indeed free to address the religious concerns of parents, it must be sure to do so in a manner that gives equal recognition and respect to other members of the community. Religious views that deny equal recognition and respect to the members of a minority group cannot be used to exclude the concerns of the minority group. This is fair to both groups, as it ensures that each group is given as much recognition as it can consistently demand while giving the same recognition to others. (para. 19)

Consequently, the religious views of a few could not be used to justify public policy, which would undermine the equality rights and interests of gays and

lesbians in British Columbia's public schools. Furthermore, McLachlin CJ noted:

The School Act's emphasis on secularism reflects the fact that Canada is a diverse and multicultural society, bound together by the values of accommodation, tolerance and respect for diversity. These values are reflected in our Constitution's commitment to equality and minority rights, and are explicitly incorporated into the British Columbia public school system by the Preamble to the School Act and by the curriculum established by regulation under the Act. (para. 21)

Reasons to include religious discussion and expression in our schools

In *Chamberlain*, the majority of the Supreme Court of Canada noted that, "Religion is an integral aspect of people's lives, and cannot be left at the boardroom door." Although the Court does not expand on this, we suggest that there are sound philosophical, pragmatic and educational reasons to justify the inclusion of religious discussion and expression in our public schools.

From a *philosophical* perspective, it could be plausibly argued that human beings are, in large part, spiritual beings who are stirred or motivated by religious longings and a sense of the transcendent. Our search for meaning(s) is a fundamental part of who we are. It might even be posited that we are hard wired to engage in a quest for significance, which is an integral part of the human condition. As John O'Donohue (1999) notes: "Our quest for meaning, though often unacknowledged, is what secretly sustains our passion and guides our instinct and action. Our need to find meaning is urged upon us by our sense of life" (p. 92). For some of us, this search for truth(s) and meaning(s) plays out in our religious and spiritual practices. These practices include (to mention just a few) prayer, meditation, being part of a faith community, pursuing matters of social justice and talking to others about what religion and spirituality mean to us. For many people, this day-to-day expression of our religious or spiritual self is an essential part of what it means to be human. Those who take a very narrow or restrictive approach to secularism would suggest that any expression of the religious or spiritual self in the public educational context is inappropriate because it does not respect the lines of demarcation that should exist between church and state, the religious and the non religious. Assuming, however, that we have a spiritual nature, or alternatively that religion plays an important part in the lives of many Canadians, there is no good or logical reason to preclude the respectful and responsible discussion of religious questions within the school gates.

At the same time, it is important to recognize that there exist a multiplicity of divergent voices and opinions on the subject of religion. This assumption about the transcendent is controversial and not everybody agrees with it. Atheists, materialists and some post-modernists, for example, would argue

strenuously that there is no such thing as transcendent truth or that God is a lie. They would have us believe that their narratives or versions of history and humanity are the right ones and consequently we should abandon our prejudices and superstitions, which must inevitably come from having a faith in the transcendent. Likewise, those opposed to religious belief may be committed to social justice and to a search for meaning that is grounded in the here and now. Nobody would suggest that these voices should be disentitled from engaging in policy discussions about how we run our public schools, including discussions with our students about what gives life meaning or purpose, simply because of their non religious perspective. It is arguable that the same rules of engagement and inclusiveness be applied to religious perspectives within the context of our public schools. Therefore, it is reasonable to reject the contention that moral views grounded in a religious perspective automatically are disqualified from the public square while those that are not are entitled to be heard. As Justice Gonthier of the Supreme Court of Canada observed:

[E]veryone has ‘belief’ or ‘faith’ in something, be it atheistic, agnostic or religious. To construe the “secular” as the realm of the “unbelief” is therefore erroneous. Given this, why, then, should the religiously informed conscience be placed at a public disadvantage or disqualification? To do so would be to distort liberal principles in an illiberal fashion and would provide only a feeble notion of pluralism. The key is that people will disagree about important issues, and such disagreement, where it does not imperil community living, must be capable of being accommodated at the core of a modern pluralism. (para. 137)

From a *pragmatic* perspective, religion seems to matter in the lives of people. In global terms, a significant proportion of the planet’s total population (close to 6.3 billion people) belongs to the world’s major faith traditions and the number and percentages of adherents¹³ breakdown accordingly. There are approximately two billion Christians (32.9%), 1.2 billion Muslims (19.9%), 840 million Hindus (13.3%), 370 million Buddhists (5.9%), 24 million Sikhs (0.4%), and 15 million Jews (0.2%).¹⁴ In percentages, the adherents of these major religions represent 72.6% of the world’s total population.

In Canada, according to the 2001 Census, the population by religious affiliation of the major religions is approximately as follows: Catholic – 12.8 million (43.2%), Protestant – 8.6million (29.2%), Muslim – 580 thousand (2%), Jewish – 330 thousand (1.1%), Buddhist – 300 thousand (1.0%), Hindu – 297 thousand (1.0%) and Sikh – 278 thousand (0.9%).¹⁵ In percentages, 82.6 % of Canadians indicated a religious affiliation in the 2001 Census.¹⁶ In Quebec, Jean-François Gaudreault-Desbiens (2002) reminds us that religious pluralism has become a reality in *la belle province* during the past few decades:

En l'espace de seulement quelques décennies, la société québécoise est passée de la quasi-hégémonie du crucifix, avec quelques *kippas* ici et là, au *hijab* et au *kirpan*. Pendant la même période, de multiples sectes sont apparues, alors que le taux de pratique religieuse chutait radicalement. Autrement dit, la société québécoise s'est pluralisée autant sur le plan religieux que sur d'autres plans. (p. 102)

It is important to acknowledge that the Census also tells us that about 4.8 million Canadians (16.2%) claim no religious affiliation. Furthermore, the numbers cited and the recent growth of religious pluralism in Quebec tell us nothing about the nature of Canadians' religious beliefs and practices, as well as their commitment to things religious. In the early 1990s, Reginald Bibby (1993) painted a grim prognosis of organized religion in Canada. A lack of interest in formal religion, a graying of Canada's religious communities, poor church attendance among young people and an inability to recruit new members led Bibby to decry: "There's little doubt that organized religion is in very serious shape, with its golden years apparently relegated to history" (p. 115). Yet, Bibby's (2002) more recent work suggests that there are signs of "spiritual restlessness" at play in Canada that reflect a renaissance of religion in our country:

After a few decades of slumber, there appears to be a stirring among the country's established churches – those same groups that Canadians have been so reluctant to abandon. There is also a stirring among large numbers of people outside the churches, who are pursuing answers about life and death and spiritual needs with more openness than at perhaps any time in our nation's history. Much more private and much less publicized is the fact that three in four people talk to God at least occasionally. Even more startling, two in four Canadians think they have actually experienced God's presence. And then there are those "haunting hints" of a Presence – the cry for wrongs to be made right, the sense that things are ultimately under control, life-giving hope and humour, the need for spiritual fulfillment. (p. 227)

If indeed a religious renaissance is underway in Canadian society and it touches something deep, meaningful and important in the lives of many Canadians, it strikes us as counter-intuitive to relegate religion to the strictly private realm and to suggest, consequently, that it has no place in our public schools. Furthermore, in practical terms, to prevent those whose opinions are religiously based from having their say about educational policy or expressing those views in our schools would silence and arguably disenfranchise a large segment of the school community.

There are also compelling *educational* reasons why discussion about religion and the reasonable manifestations of religious belief should be encouraged in our public schools.

FIRST, in some provinces, Ministries and Departments of Education now recognize that attending to the spiritual is part of educating the child.

In Saskatchewan, for instance, the provincial government (2002)¹⁷ has recognized that schools have the following function: “To educate children and youth – nurturing the development of the whole child, intellectually, socially, *spiritually*, emotionally and physically. . .” (p. 1, emphasis added). If the child has a spiritual dimension to his or her being, and we are genuinely interested in developing this part of his or her nature, then we must create the space and conditions under which this development may proceed. To limit arbitrarily discussions about religion to the home or purely private realm is simply inconsistent with the school’s underlying mission of educating the whole child.

SECOND, it is inherently anti-intellectual to suggest that we ban all discussions about religion or manifestations of religion in our schools. This suggests a close-mindedness or lack of imagination, which is anathema to a curious, inquisitive, caring and critical mind. Although we must be on guard to insure against indoctrination and other abuses arising from a reckless approach to religion, banning all discussion seems too extreme and fails to recognize the value that religion has in the lives of people. It is right to point out that religion can be misused by extremists who attempt to justify acts of torture, murder and other forms of horrific treatment such as the beheading of hostages that we have come to witness in recent months in Iraq and the Middle East. Closer to home, religion can also be used to manipulate people by making them feel guilty and worthless, by extracting money from unsuspecting persons through television evangelism while threatening them with eternal damnation should they fail to pledge. Yet, religion can inspire the best in people. The 20th century examples of Mother Theresa, Martin Luther King Jr., Mahatma Ghandi and Thich Nhat Hanh and their relentless and selfless contributions to social justice speak to the most compassionate and generous aspects of our humanity.

In essence, it is acknowledged that religion can bring out the best and the worst in people. Yet, this is true about the study of any discipline. We do not ban the study of science and technology in our schools even though these fields of study fuel the arms race, are used to develop weapons of mass destruction and can be used for other various and nefarious purposes. Likewise, we do not tell our students to avoid the study of economics and systems such as capitalism even though critics such as Ronald Wright (2004)¹⁸ remind us that at “the end of the twentieth century, the world’s three richest individuals (all of whom were Americans) had a combined wealth greater than that of the poorest forty-eight countries” (p. 128). From this perspective, rampant and unregulated capitalism is a highly exploitive and inherently unfair way of conducting our commercial affairs. Yet, we do not keep the study of the subject out of our classrooms. Similarly, we must not be afraid to talk about religion in our schools and we do a disservice to our students when we

demonize and marginalize religion by suggesting somehow that the world would be a better, safer and happier place if religion did not exist.

In a related vein, there is nothing to suggest that the discussion of religion is inconsistent with one of the primary objectives of any liberal education system, namely, the promotion of critical thinking. H. Siegel (1988) offers a number of compelling reasons for accepting critical thinking as a fundamental educational ideal. Morality and respect for persons call for critical thinking:

This first consideration is simply that we are morally obliged to treat students (and everyone else) with respect. If we are to conduct our interpersonal affairs morally, we must recognize and honor the fact that we are dealing with other persons who as such deserve respect – that is, we must show *respect for persons*. This includes the recognition that other persons are of equal moral worth, which entails that we treat other persons in such a way that their moral worth is respected. (p. 56)

Self-sufficiency and preparation for adulthood justify critical thinking:

The second reason for taking critical thinking to be a worthy educational ideal has to do with education's generally recognized task of preparing students to become competent with respect to those abilities necessary for the successful management of adult life. We educate, at least in part, in order to prepare children for adulthood. . . . That is, we seek to render the child *self-sufficient*; to *empower* the student to control her destiny and to *create* her future, not submit to it. (p. 57)

Initiation into the rational traditions provides support for critical thinking:

If we can take education to involve significantly the initiation of students into the rational traditions, and such initiation consists in part in helping the student to appreciate the standards of rationality which govern the assessment of reasons (and so proper judgment) in each tradition, then we have a third reason for regarding critical thinking as an educational ideal. (pp. 59-60)

And, democracy itself requires critical thinking:

The fundamentality of reasoned procedures and critical talents and attitudes to democratic living is undeniable. Insofar as we are committed to democracy, then, that commitment affords yet another reason for regarding critical thinking as a fundamental educational ideal, for an education which takes as its central task the fostering of critical thinking is the education most suited for democratic life. (p. 61)

Siegel's four points reflect "liberal" values of equality, autonomy, self-responsibility, and democracy. Nonetheless, these values are consistent with a contemporary theory of pedagogy and are in large measure both assumed and embraced by our political society. In the school context, the responsible discussion of religion is consistent with the promotion of critical thinking and the accompanying values, which underlie it.

THIRD, schools are in a unique position to model civil and responsible religious discussion and expression. Kirk Makin (2004), the justice reporter for *The Globe & Mail*, recently outlined a number of priorities for Canada's Minister of Justice, Irwin Cotler. Priority five (of six) reads as follows: *Combatting hatred, discrimination and intolerance toward identifiable groups*. Makin then goes on to attribute the following words to our Justice Minister: "We have to create a constituency of consciousness that this is a country where there is no sanctuary for hatred and no refuge for bigotry. Groups have to speak up – Jews when Muslims are attacked; Muslims when Jews are attacked; Jews, Muslims when others are attacked" (p. A5).

How do we create this "constituency of consciousness" of which the Minister speaks? One way is by talking openly and responsibly about the reasons or explanations, which fuel the hatred, discrimination and intolerance toward identifiable groups, including religious groups. Surely, if we cannot talk about this in our schools, then where can we discuss the matter? Are not educators responsible for challenging the ignorance, stereotypes, prejudices and fears lurking in the human psyche and imagination? To ban religious expression from the classroom is to relegate it to the private realm where all kinds of misconceptions and distortions are likely to occur. To prohibit religious discussion in our schools eliminates a unique opportunity for our students to be exposed to other, more balanced views, which counter the fanaticism of extremists of all religious faiths whose message is carried in the media and on the Web. How will students be able to cope with fanatical messages of hate and violence associated with religion outside the school gates if they have not been exposed to the messages of love, compassion and caring which the best in our religious traditions have to offer?

In other words, schools have a leadership opportunity to create a dialogic community and to model respectful and responsible discussion in our school communities to promote tolerance, compromise, shared values and a common humanity. Schools should be the voice of reason and moderation. They should create avenues of interconnectedness and intersections for the expression of religious and non-religious points of view. If our schools and our teachers cannot model these universal principles of respect and consideration, then how can our students be expected to take their place in a multicultural, religiously diverse community upon completion of their studies? If students are not exposed to other ways of being, then how will they confront the difference they encounter outside the school walls? In other words, the schools should act as the forum or crucible where civil discussion occurs. In this sense, schools can be proactive by modeling appropriate behaviour rather than reacting to outbursts of religious intolerance as they occur in school settings or in society in general.

FOURTH, discussion about religion is consistent with citizenship education. In Quebec, the Ministry of Education's 1998 policy document entitled *A*

school for the future: Policy statement on Educational integration and Intercultural education states: “Citizenship education concerns both diversity . . . and the shared values and democratic institutions that make it possible for people to live together” (p. 8). In an increasingly complex and pluralistic world, students need to know that their brothers and sisters come from different religious and cultural backgrounds. If they are not confronted, in the best sense of the word, with this difference and an appreciation of the *other* in our schools, our students will have neither the skills nor the attitudinal dispositions to function as tolerant and fair-minded citizens in a rapidly shrinking world whose very survival depends on interdependence, good will and peace. If we do not understand those who are different from us, we may fear them or fail to take their needs and aspirations seriously. As future citizens, our students must realize that tolerance of religious difference, however, is not a form of ethical relativism, which means that anything goes. As Gaudreault-Desbiens (2002) states:

[L]a tolérance est . . . à la fois ouverture et fermeture. Elle est fondée sur l’acceptation, par principe, de la diversité des opinions, des valeurs, des croyances, mais elle refuse aussi, par principe encore, que tout puisse être toléré. La tolérance a donc des limites ; elle est contrainte par « l’indérogeabilité », si je peux me permettre d’inventer ce mot, de certains principes qui transcendent les particularités et définissent notre commune humanité. ‘La tolérance entend protéger notre diversité, mais en préservant aussi ce qui nous est commun.’ (p. 107)

Students must indeed learn that tolerance has its limits. Tolerance is not a synonym for accepting all types of behaviour. As Gaudreault-Desbiens notes, tolerance includes: “[D]isponibilité à la discussion dans une démarche de délibération qui ne pourra éviter l’évaluation des opinions et des choix en fonction de certains principes de vie et de rationalité” (p. 107). Students of different faith communities or of no particular faith allegiance must come to realize that in spite of religious and cultural differences, it is our shared humanity, which binds us collectively together. In other words, what counts is how, in concrete terms, one treats one’s fellow citizen. Do I treat her with respect and dignity? Do I resolve my differences with her peacefully? Am I capable of compromise and shared responsibility in my relations with my fellow citizens? My intentions and my actions may reflect a particular faith view (e.g. Muslim or Christian worldview) or no religious perspective at all. Ultimately, whether my civic behaviour is motivated by a religious or non-religious disposition is beside the point. What matters is whether we can get along, compromise, work out our differences without resorting to violence and intimidation and celebrate our commonalities as we live out our individual and collective lives.

PART III - HOW TO INCLUDE RELIGION

Including religion in our schools can take one of two forms. First, we can talk about it in our classes with our students. Second, we can allow students and teachers to express their religious beliefs in responsible and respectful ways.

In *Canadian Civil Liberties Assn. v. Ontario (Minister of Education)* (1990), the Ontario Court of Appeal suggested the following guidelines would help schools distinguish between indoctrination and education about religion:

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.
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. (p. 28)

The court acknowledged that while the test between indoctrination and education may be an "easy test to state," in some instances, the line between the two "can be difficult to draw." We also are aware of the power that comes with teaching. As Mark G. Yudof (1979) states: "The power to teach, inform, and lead is also the power to indoctrinate, distort judgment, and perpetuate the current regime" (p. 865). Public school teachers have a tremendous potential to sway their students' thoughts and actions, by virtue of their position of power, authority, and superior intellectual skills. In *Ross v. New Brunswick School District No. 15* (1996), the Supreme Court of Canada stated: "Teachers occupy positions of trust and confidence, and exert considerable influence over their students as a result of their positions" (p. 857).

Public school students are often intellectually and emotionally immature and unsophisticated. They may swallow uncritically the dishes on the academic menu that the teacher presents to them simply because they lack the life experience and critical faculties of an autonomous and independent minded adult. For many students, what the teacher says may be the only source of intellectual authority they receive on a controversial topic such

as religion and morality. In a match of wits, more often than not, students are likely to be the losers. Recognizing the inherent innocence, naivete, and vulnerability of young students, the Supreme Court of Canada in *Ross* (1996) declared: "Young children are especially vulnerable to the messages conveyed by their teachers. They are unlikely to distinguish between falsehoods and truth and more likely to accept derogatory views espoused by a teacher" (p. 873). Furthermore, in the classroom, teachers work with a captive audience composed of a majority of students who must attend school on a compulsory basis. Hence, the need for teachers to respect this vulnerability is important because classroom contact with students is direct, immediate, and often inescapable.

Some may argue that even allowing the discussion of religion in the schools runs the risk of having one religion (read Christianity because it is still the dominant religion in Canada) displace, or lord it over, other religions. As Gaudreault-Desbiens (2002) reminds us:

Car si le sentiment religieux connote l'idée - positive - d'un appel à la transcendance, au dépassement de soi et à l'ouverture à l'Autre, il peut aussi devenir un formidable vecteur d'oppression ou d'exclusion sociale. . . . Toute religion propose à ses fidèles - ou leur impose - un régime de vérité révélée présenté comme supérieur aux autres. Cette inévitable dimension dogmatique pourra prendre plus ou moins de place selon les époques mais, toujours, elle sera présente. (p. 109)

Furthermore, how can we be sure that teachers are qualified or interested in mediating religious disputes should they arise in the classroom? Or that teachers with their own propensities (anti, pro or neutral) won't push their own personal agendas vis-à-vis religion? This danger is potentially present in all teaching where issues of substance are raised and divergent viewpoints are held. Nonetheless, it is important not to shy away from these questions simply because they are controversial. To do so, would be the death knell of all serious teaching.

Notwithstanding the potential risks associated with addressing controversial issues, such as religion, teachers are professionals and have the skills and aptitude to canvass such topics in a fair and reasoned manner. I have argued elsewhere¹⁹ that three primary pedagogical considerations require our teachers to cover polemic subjects in an even-handed and appropriate manner. These are: to avoid indoctrination, to promote critical thinking, and to advance equality. First, teachers must avoid indoctrination in teaching by striving for fairness and balance in the presentation of controversial materials or methods. In the literature, P. J. Byrne (1989) reminds us that academic speech attempts to transcend the personal biases²⁰ of the teachers:

The unique point is that academic speech can be more free than the speaker; that the speaker may be driven to conclusions by her respect for methodology and evidence that contradict her own preconceptions and

cherished assumptions. The scholar cannot argue merely for her political party, religion, class, race, or gender; she must acknowledge the hard resistance of the subject matter, the inadequacies of friends' arguments, and the force of those of her enemies. That is what scholars mean by disinterested argument – not indifference to the outcome, but insistence that commitment not weaken the rigor and honesty by which the argument is pursued. (p. 259)

Second, teachers must exercise self-restraint when employing controversial materials if they wish to instill the virtues of critical thinking in their students. Teachers who demonstrate a disproportionately strong bias in favour of certain views may preclude students from thinking about different or contrary perspectives, which they might have otherwise considered if the teaching had been more balanced. Even older and more mature students who hold opinions that differ from those of their teachers may feel reluctant to speak out in an atmosphere where teachers exert inordinate control and discourage students from expressing dissident beliefs. The refusal to present students with alternative viewpoints and the silencing of minority voices which run counter to teachers' discourse are both inimical to the values of a liberal education which argue in favour of helping learners to think critically and independently.

Third, in Ross (1996), the Supreme Court of Canada has endorsed, in strong and unambiguous language, the need for tolerance and fairness in the educational context as a means of promoting equality:

The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate. (p. 857)

In Ross, the teacher's racist attitudes caused fear in Jewish families (or minority groups) that he and the school (or school board) would not treat Jewish children fairly. Thus, controversial expression involving attacks on arbitrary personal characteristics such as religion, language, ethnic background, or sexual orientation may well create a hostile learning environment, which denies equal respect and equal educational opportunity to all students. Teachers who indoctrinate along religious lines may well silence minority students or dissenting viewpoints sympathetic to those students. Hence, the need to foster an open and respectful environment where minority students are valued is certainly a legitimate pedagogical concern. In sum, there exist appropriate checks and balances to ensure that the discussion about religion can take place in healthy, legitimate and rational ways.

Responsible and respectful manifestations of religious belief should also be encouraged in our schools as this has the potential to promote tolerance, diversity and respect for different ways of living in a democratic and pluralistic society.

In the early 1990s,²¹ a secondary school in Montreal informed one of its female students, a convert to Islam, that she was not allowed to wear the *hijab*, or Islamic veil. Arguably, the wearing of the *hijab* ran afoul of the school's dress code. The matter did not come before the courts because the student left her school and enrolled in another institution. Nonetheless, public awareness of the issue caused Quebec's human rights commission to publish a discussion paper on the subject in 1995.²² The Commission noted that the veil is "sometimes an instrumental part of a set of practices aimed at maintaining the subjugation of women and that, in some more extremist societies, women are actually forced to wear the veil." It refused, however, to advocate an outright ban of the *hijab* suggesting that this would violate the Quebec *Charter of Human Rights and Freedoms*.²³ In Quebec, the Commission stated that,

[w]e must assume that this choice is a way of expressing their religious affiliations and convictions. In our view, it would be insulting to the girls and women who wear the veil to suppose that their choice is not an enlightened one, or that they do so to protest against the right to equality. It would also be offensive to classify the veil as something to be banished, like the swastika for example, or to rob it of its originality by comparing it to a hat. (p. 17)

Giving a student the freedom to wear the *hijab* seems to be a legitimate way of respecting her *religious affiliations and convictions*. It may also educate other students and members of the school community about religious difference and the existence of religious minorities in their school. In addition, it may enable other students and members of the school community to co-exist peacefully and respectfully with those who wish to express their religious convictions in appropriate ways. At the same time, the right to wear the *hijab* or any other article of clothing is not an absolute right. Just as school boards must make reasonable accommodation to respect the religious beliefs of students, students themselves must be prepared to act responsibly in the larger school community. Hence, it is no surprise that the Commission asserted that restricting the use of the *hijab* could be defended where the wearing of the veil was designed to promote discrimination on the basis of sex. It also stated that safety reasons might justify restrictions on the donning of the veil.²⁴

In *Multani (tuteur de) c. Commission scolaire Marguerite-Bourgeoys* (2004),²⁵ the principal of a French language school in Montreal told a Khalsa Sikh student, Gurbaj Singh Multani, that he could not wear his *kirpan*, a ceremonial dagger, at school. Yet, Gurbaj's religious beliefs, and his status as a baptized orthodox Sikh, required him to wear the *kirpan* while attending school. The issue came to the fore when the *kirpan* accidentally fell from the boy's outer clothing while in the schoolyard. The school board later met with the family and agreed to allow Gurbaj to don the *kirpan* at school,

provided that the flap covering it in its sheath was sewn securely. Moreover, the school authorities were entitled to inspect the flap sealing the kirpan to ensure safety compliance with the wearing of the ceremonial dagger.

The school governing board²⁶ would not accept the compromise reached between the parties, alleging that the wearing of the *kirpan* violated the school's Rules and Regulations regarding dangerous and forbidden objects. The parents appealed this decision unsuccessfully to the school board, which oddly maintained the decision of the school governing board. The family then took the matter before the courts, seeking a declaratory judgment that Gurbaj had the right to wear the *kirpan* at school in conformity with his religious beliefs and his basic human rights, namely freedom of religion, as set out in the Quebec *Charter of Human Rights and Freedoms* and the *Canadian Charter of Rights and Freedoms*.

Given the initial compromise agreement between the parties, the Quebec Superior Court (2002)²⁷ declared the decision of the school board to be null and void.²⁸ The Court ordered that Gurbaj be permitted to wear the *kirpan* to school provided:

- that the kirpan be worn underneath his clothes;
- that the scabbard containing the kirpan be made of wood, not metal, thereby eliminating its offensive character;
- that the kirpan be placed in its scabbard, wrapped in a secure manner . . . ;
- that school staff may, in a reasonable manner, verify that the above conditions are respected;
- that the plaintiff may not at any time withdraw the kirpan from its scabbard and that its loss must be reported immediately to school authorities;
- that the failure by the plaintiff to observe any of the conditions of this judgment shall cause him to lose the right to wear the kirpan at school. (para.).²⁹

Quebec's Court of Appeal (2004) overturned this decision. It had little difficulty holding that the school board's final decision to disallow the wearing of the kirpan violated Gurbaj's freedom of religion because the decision had the effect of prohibiting an act that was an important aspect of the practice of the student's religion. Nonetheless, the Court ruled that the restriction on Gurbaj's freedom of religion could be justified under s. 1 of the *Charter* as constituting a reasonable limit on his constitutional rights.³⁰ Uppermost in the Court's mind was a concern for a safety. In addition, Lemelin J. A. noted that case law upheld a ban on the kirpan aboard commercial aircraft and in the courtroom:

The uncontradicted evidence described an upsurge of violent incidents where dangerous objects were used. School staff have an important chal-

lenge to meet, namely, the obligation to provide an environment for learning and to combat this violence. I can not convince myself that the security requirements of schools are less than those required for the courts or airplanes. (para. 84)

Some academics have criticized the decision of the Court of Appeal and the role of Quebec's Attorney General in this case. I agree with the criticism. First, William J. Smith (2004) noted that an Ontario court³¹ has ruled that the wearing of the kirpan in school is justifiable, provided the student meet the stringent security conditions regarding the donning of the kirpan. In the Ontario case, these safety concerns are strikingly similar to those set out in the original agreement of compromise between Gurbaj and the school board. Moreover, Smith observes that there is no evidence anywhere that the kirpan has ever been used in a violent or threatening way in a Canadian school. He argues that the Court of Appeal's approach to the legal analysis reflects a fixation with hypotheticals rather than the best evidence available:

The failure to accommodate cannot be defended on the basis of possible or hypothetical problems, but only on the basis of demonstrable problems placed in evidence. This was the position adopted by the trial judge, but rejected by the Court of Appeal that accepted the hypothetical problems presented by the appellant school board. (p. 125)

Second, Jean-François Gaudreault-Desbiens (2002) underlined the importance of the Quebec Attorney-General's intervention, at the trial level in *Multani* (2002), in what seemed to be a consent judgment between the school board and the student. At this point, counsel for the Attorney-General uttered the following statement:

I have received a very precise mandate, to put the following position of the Attorney General before the Court: The Attorney General has zero-tolerance for knives in school, and that includes a kirpan. That is the only representation I have to make. (para. 5).³²

In his commentary of the trial decision, Gaudreault-Desbiens concurs with the compromise reached between the parties. Yet, he laments the regrettable message sent by the Quebec government, through the Attorney General, to the wider community about the state's conception of tolerance in a democratic and pluralist society: "[L]e Procureur général du Québec a envoyé un triste message quant à la conception qu'il se fait de la tolérance au sein d'une société québécoise libre, démocratique, mais aussi plurielle" (p. 101-102).

For the purposes of this article, the *Multani* case is an important one. The initial compromise reached between the student's family and the school board is a good one, forged on the anvil of compromise and reasonable accommodation. Thus, our highest Court should reinstate the decision of the trial court when it hears the appeal of this case.³³ Expression of one's reasonable and legitimate religious beliefs needs to be accommodated in our public schools to promote toleration and respect for diversity. Once again,

the accommodation flows both ways. Schools need to bend when it comes to zero tolerance policies when there are good reasons to do so. In this case, respecting the religious freedom of a Sikh student is a compelling reason to treat the *kirpan* differently from other objects, which can cause harm. At the same time, let us not forget that Gurbaj was subject to very extensive safety restrictions and conditions concerning the wearing of the object. He could not simply do as he wanted and thus had to make a number of concessions concerning the use of the *kirpan* while on school property. This compromise, between religious freedom of an individual and the security concerns of the collective, should be presented to our students and educators as an example to study and to celebrate in a religiously rich and culturally diverse world.

CONCLUSION

One might argue, like Bibby (2002), that a spirit of restlessness is blowing across our country in the form of a religious renaissance. Assuming this to be true, the cause of this movement is far from certain. As Bibby himself notes:

How much of this restlessness is strictly human and how much of it reflects the activity of the gods? Is it simply a matter of cultural and social and personal factors leading churches to experience a measure of rejuvenation, or are individuals being more compelled to reach out for something beyond themselves? (p. 227)

Establishing true causes in this regard might better be left to professors of religious studies, theologians and moral philosophers. What seems undisputed, however, is that many Canadians are keenly interested in addressing foundational questions about human existence, which relate to ultimate concerns of purpose and meaning.

This paper has argued that philosophical, pragmatic and educational reasons justify the inclusion of religion in our public schools. This inclusion may display itself in classroom discussions about religion or personal manifestations of religious belief through the wearing of objects such as a *hijab* or *kirpan*. Yet, one must regulate religious freedom through reason, responsibility and respect for others. The author is acutely aware that indoctrination and fundamentalism lurk dangerously behind some forms of religious expression. It is important to suggest, however, that the same fundamentalist zeal may animate a certain narrow interpretation of secularism which attempts to demonize and marginalize all religious belief, and consequently, to keep it beyond the school gates. All forms of fundamentalism should be rejected and for obvious reasons.

In the context of our public schools, *secular* should be interpreted widely and generously to accommodate positions that have their origins in both

religious and non-religious belief. Most important, the expression of this belief in the educational setting must respect the values and principles set out in the *Canadian Charter of Rights and Freedoms*. These include: respect for the inherent dignity of the human person, commitment to social justice and equality, accommodation of a wide variety of beliefs, and respect for cultural and group identity. These values may provide the best foundation upon which to build a civil and flourishing society.

Simply articulating these values will not make our problems go away. Real conflict and tension confront us continually. The recent *Multani* case involving the wearing of the *kirpan* highlights dramatically how *Charter* values may conflict with one another. On one hand, individual liberty and religious freedom are important. On the other hand, the safety and integrity of the larger school environment must also be guaranteed. Mediating these tensions in responsible, respectful, and creative ways should be of primary concern to today's educators. After all, schools are much more than places where students learn about skills and knowledge. As the majority of the Supreme Court of Canada stated in *Trinity Western University v. British Columbia College of Teacher* (2001): "Schools are meant to develop civic virtue and responsible citizenship, to educate in an environment free of bias, prejudice and intolerance" (p. 801). Promoting *civic virtue* and *responsible citizenship* is a hard slog because it involves the mediation of competing values and claims. It requires our best faith efforts as we seek reasonable compromise, forge consensus and seek some degree of social cohesion in a complex, turbulent and fragmented world. The tension between *self* and *other* is always to be negotiated. The tension between the religious and the non-religious is omnipresent. Yet, working through these tensions is necessary if we wish to build a tolerant society for all Canadians, whose religious and non-religious beliefs are diverse, conflicting and evolving.

Jurgen Habermas (2003) offers a useful distinction between two understandings of the concept of toleration. First, there is toleration of the outsider as a simple expression of the patronizing benevolence of a particular worldview that disagrees with another worldview but agrees to tolerate it under certain conditions. Second, there is toleration based on mutual recognition and mutual acceptance of divergent worldviews. Habermas maintains that the first view reflects the covert persistence of old prejudices and is, therefore, inconsistent with the liberal state. He argues that we should adopt the second view because it is premised on the reciprocal toleration of different religious doctrines that the liberal state requires.

In the context of the discussion about the role of religion in our public schools, some basic questions emerge in deciding where to go from here. First, do we want to take an inclusive and reasoned approach to religion that has the potential to offer points of intersection and convergence for radically different

worldviews? Second, if we go this route, and pursue toleration, what form of Habermasian toleration are we prepared to fight for? The first form appears to offer little hope as it may only mask deep-seated prejudices and fears. The second form, however, is more promising. It opens up new possibilities based on a common humanity. Mutual recognition and mutual acceptance suggest that, because of our differences, we can still somehow live together and be enriched, as both individuals and communities, in the living.

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- Ontario (Human Rights Commission) v. Peel Board of Education* (1990), (sub nom. *Pandori v. Peel Board of Education*), 12 C.H.R.R. D/364 (Ont. H.R. Comm.); motion to quash refused (sub nom. *Peel Board of Education v. Ontario Human Rights Commission*) (1990), 72 O.R. (2d) 593 (Div. Ct.), affirmed (1991), 80 D.L.R. (4th) 475, leave to appeal to Ont. C.A. refused (1991), 3 O.R. (3d) 531 (C.A.)
- R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295
- R. v. Keegstra*, [1990] 3 S.C.R. 697, 61 C.C.C. (3d) 1
- R. v. Oakes*, [1986] 1 S.C. R. 103, 26 D.L.R. (4th) 200 (S.C.C.)
- Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, [1996] S.C.J. No. 40

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

Zylberberg v. Sudbury (Board of Education) (1988), 52 D.L.R. (4th) 577, 65 O.R. (2d) 641 (Ont. C.A.)

LIST OF LEGISLATION

FEDERAL STATUTES

Canadian Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act, 1982*, (U.K.), 1982, c. 11

Canada Act, c. 11 (U.K.)

Constitution Act, 1867, 30 & 31 Victoria, c. 3.

Criminal Code, R.S.C. 1985, c. C-46.

PROVINCIAL STATUTES

Charter of Human Rights and Freedoms, R.S.Q., c. C-12.

Judicial Review Procedure Act, R.S.B.C. 1996, c. 241

Loi de l'Instruction Publique, L.R.Q., c. C-1.

School Act, R.S.B.C., 1996, c. 412.

INTERNATIONAL

Universal Declaration of Human Rights, Un-GA Resolution 217/A(III), Dec. 10, 1948.

NOTES

1. See *R. v. Oakes* (1986).
2. In separate proceedings, the state also successfully prosecuted Keegstra under s.319(2) of the *Criminal Code of Canada* (1985) for wilfully promoting hatred against an identifiable group. See *R. v. Keegstra* (1990) where the Supreme Court of Canada determined that although s. 319(2) violates the free speech rights of individuals under s. 2(b) of the *Charter*, the law is still constitutional because it is a "reasonable limitation" under s.1 of the *Charter*.
3. From the perspective of critical thinking, teachers who indoctrinate fail to engage in the very qualities and characteristics that they are called on to model. In other words, uncritical thinking demonstrates an unfitness to teach and undermines the very tenets of openness and inquiry upon which good teaching ultimately rests. William Hare (1993) suggests that Keegstra fails to qualify as "an honest heretic" in the classroom because he subverted the critical approach to teaching:

The decisive point is that Keegstra cut the ground from under the feet of any opposition by making his theory *immune* to counter-evidence. Potential counter-evidence was taken as *further* evidence of the conspiracy portrayed as controlling the *sources* of evidence, namely textbooks, the media and so on. Conspiracies *can* occur, of course, and it is doctrinaire to dismiss such claims a priori. But to accept that one exists we need evidence, and refutation must

in principle be possible. By frustrating the falsification challenge, Keegstra revealed the disingenuous character of his teaching. (p. 379)

4. Parents were given one of three choices about their children's participation in the program: (a) take part; (b) opt for an alternate program taught in classes by clergy; or (c) opt out completely. The court rejected this approach and referred to its earlier decision in *Zylberberg v. Sudbury (Board of Education)* (1988). In *Zylberberg*, the Ontario Court of Appeal ruled that exemption provisions during Christian religious exercises such as the recitation of the Lord's Prayer amounted to an unjustifiable infringement of minority students' religious freedom under s. 2(a) of the *Canadian Charter of Rights and Freedoms*.
 5. This discussion did not apply to s. 93 schools (i.e. separate Protestant or Roman Catholic schools) in Ontario whose religious character and nature are protected under s. 93 of the *Constitution Act, 1867*.
 6. See *Attis v. Board of Education of District 15 et al.* (1993).
 7. Section 15(1) of the *Charter* states:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
- Section 27 of the *Charter* states:
- This Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians.
8. The Board issued no prohibition on the three books being available as library resources. The difference between a recommended learning resource and a library resource seemed to be that the former "is relevant to the learning outcomes and content of the course or courses" whereas the latter is intended to be merely "appropriate for the curriculum". [See *Chamberlain v Surrey School District No. 36* (2000) at, para 53]. The three books are: *Asha's Mum*, (1990) by R. Elwin & M. Paules, *Belinda's Bouquet*, (1991) by L. Newman, and *One Dad, Two Dads, Brown Dad, Blue Dads*, (1994) by J. Valentine. In *Asha's Mums*, the young Asha has a problem when she decides to go on a school outing with her classmates. She needs written authorization from her mother and father before she can go on the trip. Asha, however, has two mothers. Her parents visit the school and explain their family situation, which solves the problem. In *Belinda's Bouquet*, the school bus driver calls the young Belinda fat. Hurt by this comment, she recovers her self-esteem after being reassured by one of the two mothers of a school friend. And in *One Dad, Two Dads, Brown Dad, Blue Dads*, a young white girl asks a young black boy a series of questions about his two dads who have blue skin. These questions probe whether the dads work, cough and eat cookies. There is no mention of sex or sexuality in any of the three books.
 9. See *Chamberlain v. Surrey School District No. 36* (1998).
 10. Furthermore, she concluded that this interpretation was consistent with the guarantee of religious freedom expressed in s. 2(a) of the *Charter*.
 11. See *Chamberlain v. Surrey School District No. 36* (2000).
 12. See *Chamberlain v. Surrey School District No. 36* (2002).
 13. As defined in the *Universal Declaration of Human Rights* (1948), a person's religion is what he or she professes, confesses, or states that it is.
 14. See *Encyclopaedia Britannica* (2004), p. 280.
 15. See *Scott's Canadian Sourcebook* (2004), p. 6-2.
 16. In our statistics, we did not include the following groupings : Christian (includes those who report « Christian », « Apostolic », « Born-again Christian », and « Evangelical »

- 780 thousand (2.6%) and Christian Orthodox – 480 thousand (1.6%). See Scott's *Canadian Sourcebook* (2004), p. 6-2.

17. See *Securing Saskatchewan's future: Ensuring the wellbeing and educational success of Saskatchewan's children and youth. Provincial response – Role of the School Task Force Final Report*.
 18. Wright draws on the United Nations Development Report released September 9, 1998 for his statistics.
 19. See Paul T. Clarke's article *Canadian Teachers and Free Speech: A Constitutional Law Analysis* (1999). In particular, pp. 358-361.
 20. Bias may take many different expressive forms. The most common and unacceptable forms of bias include sexist, racist, and homophobic speech.
 21. See I. Block's newspaper article entitled, *Behind the Hijab Debate* (1994).
 22. See *Religious pluralism in Quebec: A social and ethical challenge*.
 23. A ban could also violate s. 2(a) of the *Canadian Charter of Rights and Freedoms*, which guarantees freedom of religion.
 24. As the commission noted, "for example, in physical education courses and during laboratory activities where the student may be required to handle dangerous products or materials."
 25. For a detailed, careful, and contextual analysis of the case, see William J. Smith's (2004) case comment, *Balancing Security and Human Rights: Quebec Schools Between Past and Future*.
 26. This body has delegated authority, under Quebec's school legislation (1998), to adopt school rules as proposed by the principal and developed in collaboration with school staff (see ss. 76, 77 of *Loi de l'Instruction Publique*).
 27. See *Multani (tuteur de) c. Commission scolaire Marguerite-Bourgeois* (2002).
 28. The Court offered four brief introductory phrases, which could be construed to justify its position:
 - considering that for the plaintiff, the wearing of the kirpan is based on a genuine religious belief and not a simple caprice;
 - considering that the evidence has not revealed any examples of violent incidents involving kirpans in any Quebec school;
 - considering the state of Canadian and American law on this issue;
 - considering that the school board has proposed measures of accommodation that have been accepted by the parties. *Ibid.*, para. 6.
- The judgment was written in French and for translation purposes, we are using Smith's (2004, p.113) English translation of that part of the judgment we have cited.
29. *Ibid.*, p. 112-113.
 30. Section 1 of the *Charter* states:

The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
 31. See *Ontario (Human Rights Commission) v. Peel Board of Education* (1990).
 32. Translation borrowed from Smith (2004, p. 112).
 33. The Supreme Court of Canada has agreed to hear the appeal of this case (2004).

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