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Pupil Care, Pupil Control and the Quebec Teacher

Abstract

In their relations with students, teachers possess both legal rights and responsibilities. Written and unwritten law has determined that teachers have an obligation to protect those under their care from harm or injury. It has also established that teachers may inflict punishment upon misbehaving students, providing that such correction is reasonable under the circumstances.

Graduates of teacher education programs in the Province of Quebec leave university knowing something about classroom management, learning theory, child development, and other matters relating to their induction into the pedagogical world. There are, however, gaps in their knowledge. It is unlikely that they have been apprised of their legal rights and responsibilities toward pupils. To that end, this article seeks to correct the deficiency, that is, to make teachers aware of some of the written and unwritten laws that govern their relations with those under their care.

The rights and responsibilities of teachers toward their pupils have evolved from a wide range of legal sources. Quebec teachers are affected not only by the Education Act but by regulations of the Ministry of Education, Catholic and Protestant Committees of the Superior Council of Education, and local school boards. In addition to school law, civil and criminal law contributes to a definition of the rights and duties of teachers. The Quebec Civil Code contains provisions on pupil care and pupil correction, and the Criminal Code of Canada has a section on pupil punishment. The legal posture of the teacher is also shaped by case law, that is to say, judgments rendered by courts. Because written laws and regulations are usually couched

in general terms, it falls to the judicial branch of government to explain what they mean. For example, the Criminal Code stipulates that teachers may use reasonable force by way of pupil correction. But what is "reasonable" punishment? It is the responsibility of the courts to answer such questions.

Since this article centres on the Quebec teacher, it is befitting to say something about the province's unique system of law. Owing to its Gallic heritage, Quebec is the only Canadian province where a substantial part of the civil law is codified. The Civil Code of Lower Canada, in operation since 1866, is currently undergoing revision, to be replaced eventually by a new code known as the Civil Code of Quebec. The significance of the codified law system is that Quebec courts, while not ignoring jurisprudence, render decisions by applying a particular case to a fixed body of civil law. Elsewhere in Canada, where common law tradition prevails, court judgments are based on previous judicial rulings or precedent. Differences between the two legal traditions notwithstanding, courts across the land have arrived at strikingly similar conclusions in cases involving teachers. In other words, the strength of the codified law in Quebec has not resulted in the province's teachers being any more or less responsible or in any way different in their manner of dealings with pupils than teachers in the common law provinces.

Pupil care

In addition to their instructional duties, teachers everywhere have an obligation to protect those under their care from danger or harm. The obligation arises from the fact that teachers are entrusted with the supervision of youngsters, who themselves come to school not as volunteers but by compulsion of law. Teachers may be liable for pupil injury if it is found that they failed to provide an expected standard of care. As spelled out in Article 1054 of the Quebec Civil Code:

> He [every person] is responsible not only for the damage [meaning physical injury] caused by his own fault but also for that caused by the fault of persons under his care . . . Schoolmasters and artisans for the damage caused by their pupils or apprentices under their care.

Article 1054 is sometimes criticized for being too general, for not indicating the kind and amount of care teachers owe their pupils. But could it be otherwise? The murkiness of the provision is by design, in recognition of the fact that every school accident is unique and situational, that no comprehensive definition can be framed to cover all cases. As a result, the conscientious teacher must be satisfied with generalities rather than specifics

– a set of guidelines or principles of behaviour, most of which have evolved from court decisions.

The duty of care extends to all activities and events under the authority of the school. Thus in the first instance it applies to what transpires in classrooms, laboratories, shops, gymnasia, and hallways; but the obligation to supervise does not stop at the school door. Courts have ruled that teachers and school officials have a supervisory responsibility on playgrounds and athletic fields, and during field trips.

Every year courts across Canada hear accident suits in which teachers and/or school officials are charged with negligence, of causing "damage" to their pupils. Negligence may be defined as the failure to perform, or the unsatisfactory performance of, a legal duty imposed by law. In other words, negligence may be equated with faulty supervision. An important point in law is that a teacher will be found liable for pupil injury only if a connection between the accident and the behaviour of the teacher can be firmly established. This is to observe that the occurrence of a school accident does not necessarily imply fault. The pupil who, while walking down the school corridor, trips over his own feet and sprains an ankle, is likely a victim of his own clumsiness. The accident was probably not due to any lack of supervision.

In judging school accident suits, courts have traditionally invoked the careful parent rule, asking whether the teacher watched over pupils in the manner of a prudent parent. The rule has its origins in a nineteenth century court case in England in which Lord Esher pronounced that "the schoolmaster was bound to take such care of his boys as a careful father would take of his boys, and there would be no better definition of the duty of a schoolmaster" (Williams, 1893). The Canadianization of the principle was spelled out by Justice Taschereau of the Supreme Court of Canada in 1961 when he explained that a teacher would not be held liable for an injury suffered by one of his pupils if he demonstrated that he took the proper precautions and if he acted as a good father would have acted in the circumstances (O'Brien, 1961).

The careful father doctrine has its Quebec parallel in the notion of the *bon père de famille*, which has been declared a presumption of Article 1054 of the Civil Code. In 1980 the Superior Court of Quebec was asked to rule whether a vocational education teacher was to blame for an accident in which one of his students lost four fingers in an electric saw. In holding the teacher partly responsible for the mishap, the court emphasized that

> l'obligation du maître est l'obligation normale de diligence du bon père de famille. Il doit apporter à la surveillance et à la supervision des travaux de ses élèves l'attention que porte le père de famille aux activités de ses enfants. (Lacroix, 1980)

Although the careful parent rule surfaces regularly in school accident suits, courts are not slaves to the principle, regarding it more as a guideline than as a rule to be applied rigidly. There is a practical reason for this stance. For while the responsibilities of parents and teachers are similar, they are not identical. It cannot be overlooked that teachers, unlike parents, have under their care not one or several but many youngsters. For this and other reasons, some critics contend that the careful parent rule has outlived its usefulness and recommend its abandonment by the courts (Mackay, 1984, pp. 114, 115).

Two implications flow from the careful parent rule. First, as with the prudent parent the reasonably careful teacher is one who anticipates the danger of certain situations and takes steps to protect those under his care. A Quebec court found an elementary school teacher at fault in a gymnasium accident, saying that she failed to take the necessary safety measures in a circumstance in which the danger was clearly *prévisible*. During a balancing routine on a three-foot high beam a nine-year old girl slipped and fell, striking her mouth on the beam. In ordering the teacher to pay $2,115 for the pupil's injury, the court said the teacher was negligent in not positioning herself next to the participants, in not installing a safety support above the beam, and in not placing the mat below the beam (Gioacchino Ciaramicoli, 1978). On the other hand, courts have never maintained that the good teacher must possesses the quality of divination, able to foresee all accidents. Rather they emphasize that the standard of care expected is that of a person who, in the manner of a prudent parent, takes reasonable and ordinary precautions in light of the circumstances.

Second, teachers are expected to exercise an active supervision over their pupils, failing which they may be liable for accidents that occur. In a 1974 case before the Quebec Superior Court an elementary school teacher was judged to blame for an accident in which an eight-year old boy lost the use of one eye in a fall on the school stairs, occasioned by the pushing and shoving of his classmates. At the time of the mishap the class was under the supervision of one of the pupils. In awarding the injured party's parents the sum of $41,000, the judge said the teacher committed a breach of duty by delegating his supervision to a pupil (Jacques de Grosbois, 1974). Several years later the same court ordered a teacher and his board to pay $50,000 to a boy who suffered a serious eye injury during an incident in a high school classroom. During religion class, and apparently to the indifference of the teacher, three boys had devoted their energies to throwing

pencils and other missiles at each other, stopping only when one of them was hit in the eye. The court declared that the teacher had acted negligently and irresponsibly in not halting an activity that was both dangerous to the welfare of the students and contrary to good classroom order (*La Presse*, 1980).

On the other hand, teachers are not expected to provide uninterrupted supervision – to watch over their pupils during every school moment – since a reasonably careful parent would not hesitate to leave his children unsupervised at times. The Supreme Court of Canada ruled in 1961 that teacher supervision does not have to be constant and continuous, but only has to be what is normal and reasonable in the circumstances. The issue in the case was whether or not a trade school teacher had acted irresponsibly in leaving his laboratory temporarily, during which time a student caused an electrical explosion which seriously injured one of his classmates. In overturning a decision of the Quebec Court of Appeal, the high court determined that the teacher was not at fault since his short absence was itself not a breach of supervision and that his presence in the laboratory would not have prevented the accident because it was not foreseeable (O'Brien, 1961). However, it should not be concluded from the preceding case that teachers can be lax in their responsibilities, that judicial authorities will turn a blind eye to the absence of supervision in pupil accident suits. Far from it. The Supreme Court was simply making a point, that not every school situation demands constant supervision. Indeed, an active supervision is very much the order of the day and teachers who ignore this obligation are flirting with trouble.

Few dangers exist in regular classrooms that give rise to pupil accidents. This is to observe that most pupil mishaps occur not in classrooms but in gymnasia and laboratories, and on playgrounds and during field trips. The reason is not hard to find. These activities dwell on the physical as opposed to the mental side of learning and hence the potential for harm or injury is greater. As a matter of fact, a review of Quebec jurisprudence during the last ten years or so reveals a relatively large number of legal suits involving physical education and vocational education teachers. Quite simply, the gym and the shop are breeding grounds for accidents, what with their potentially dangerous activities and sophisticated equipment. In deciding such cases, courts have asked themselves if the activity was suitable to the age and ability of the student, if the amount and quality of supervision was commensurate with the increased risk of the activity, and if the equipment used was in good working order.

In a 1984 Superior Court decision, a vocational education teacher and another school employee were held partly responsible for a severe hand injury suffered by a seventeen-year old on a mechanical circular saw. The court declared that while the teacher and his assistant had lectured their

students on the importance of security measures, they themselves had served as poor models by operating the saw without the safety guard in the presence of the students (Charlebois, 1984). A year earlier a physical education teacher was judged at fault for a trampoline accident in which a fifteen-year old girl injured her ankle. The court said the teacher erred in several respects: he had ignored a note from the girl's mother prohibiting her from performing on the trampoline because of an earlier fall; he had failed to lead his students through warm-up exercises; and he had greatly increased the danger level of the routine by placing two students on the trampoline at the same time (Paterson dite Leblond, 1983).

It is worth noting that some teachers who supervise out-of-school activities possess a greater degree of legal protection. Thanks to the theory of accepted risk, sports coaches and teachers who supervise playground games are generally immune from legal prosecution if someone is injured. This notion of jurisprudence says that those students who agree to participate in risk-involving games such as football, hockey, or basketball, waive their right to legal relief in instances of injury, unless gross incompetency or negligence is demonstrated. The doctrine of accepted risk was applied in a 1965 case, the court ruling that no fault was committed by the supervising teacher when a pupil suffered an eye injury in a snowball fight on the school playground. The court noted that the throwing of snowballs was a normal winter activity of Quebec boys, not a danger in itself and certainly less so than hockey and other sports (Lavallée, 1965).

In conclusion, teachers have a duty to protect those under their care from harm. This obligation is contained in both written and unwritten law. As we have seen, courts have traditionally ruled that the standard of care which teachers owe their pupils is akin to that of a prudent parent in similar circumstances. Teachers have no reason to relax in their responsibilities. A recent study suggests that courts are getting tougher on teachers and schools, and are requiring of them a higher standard of care than that of a careful parent (Rogers, 1981, p. 27).

Pupil control

Good order being a condition of effective instruction, schools are empowered to discipline pupils who fail to respect rules and regulations. School boards, administrators, and teachers have a wide range of disciplinary measures at their disposal, from the verbal rebuke to expulsion. Teachers and principals may suspend pupils for serious breaches of misbehaviour but only boards may expel pupils. Expulsion is the strongest penalty available to school authorities and is not frequently applied, if only because it flies in the face of compulsory education, which requires boards to care for the learning needs of youngsters until their sixteenth birthday. But some

youngsters, for whatever reason, cannot adjust to the ways of school life and if it is determined that their presence is detrimental to the welfare of the institution, they may justifiably be removed. The statutory authority to expel a pupil is lodged in Article 203 of the Education Act, which reads that one of the duties of board members is "to dismiss from the school any pupil who is habitually insubordinate or whose conduct is immoral either in word or deed."

The number of lawsuits touching on pupil suspension or expulsion has been few. If any conclusion can be drawn from the handful of cases, it is that the courts are reluctant to second guess the decisions of school officials in such matters, prepared to give them broad discretion in the exercise of their powers. In 1981 the Superior Court upheld the decision of a high school to suspend two boys for the publication of a newspaper judged unacceptable by school authorities. The court also ruled that the administration had acted within its authority in posing conditions for the reinstatement of the boys into the school (Godard, 1981). Several years earlier the same court refused to overturn a school board decision to expel a student who had set off a false alarm during school hours, causing the evacuation of the institution's 3,200 students. The court was impressed by the fact that the school administration had warned students on several occasions of the dangers of a false alarm and that such action was a prohibition of the Criminal Code (Edmond Courcelles, 1978).

The right of teachers and administrators to discipline pupils for wrongdoings has long been regarded as a delegation of parental authority. Known formally as the principle of *in loco parentis*, it is recognized in the Criminal Code and Quebec's Civil Code. Quebec teachers have a variety of disciplinary measures which they can call on to regulate pupil behaviour, including reprimands, withdrawal of privileges, assignment of additional schoolwork, detention, and corporal punishment. And while the last is certainly the most controversial penalty, we should not make light of non-physical punishments. It is frequently overlooked that verbal punishment can sometimes be a more traumatic experience to the pupil than physical correction. Teachers who routinely resort to coarse language, tongue lashings, insults, and sarcasm to keep their charges in order, are no less guilty of unprofessional behaviour than those who use force on children, for they commit psychological abuse. Unfortunately our laws do not recognize this fact. As far as can be determined, there is no law in Quebec that restrains teachers from heaping ridicule or inflicting other degrading punishments upon children. As for the courts, they have shown themselves reluctant to intervene in school discipline matters, save for that of physical punishment. Jurisprudence provides numerous examples of teachers being summoned to court to answer charges of assault against pupils; it offers no examples of teachers being summoned on charges of psychological abuse.

One of the most salutary developments in Quebec education in recent years has been the decline in school-sponsored corporal punishment. Just several decades ago the strap was a staple of elementary and secondary schools in the province, for it was widely believed that corporal punishment discouraged misbehaviour and motivated learning. The provincial Catholic and Protestant committees before 1964 and the Ministry of Education from that date had regulations governing the use of corporal punishment. To protect against arbitrary and unreasonable punishment, the regulations ordered that such discipline be administered solely by the school principal or his delegate and that it be inflicted by means of a rubber strap upon the hands only. In those instances when the teacher was authorized by the principal to strap an offending pupil, the punishment had to be carried out in the presence of the principal.

Fortunately, because there are better trained teachers armed with a more child-oriented pedagogy, the traditional link between instruction and chastisement has been, if not completely broken, strongly challenged. Gone are the days when Quebec school youngsters applied rosin to their hands to soften the sting of the ubiquitous strap (Gauthier, 1986). Gone too are the days when straps were displayed as "educational supplies" at the province's annual teacher conventions. Increasingly, schools and teachers have rallied to the view that physical punishment impedes rather than promotes learning. To their credit, some boards have banned corporal punishment in their schools, while others, influenced by changing social attitudes, have quietly dropped it. In January 1987 the Protestant School Board of Greater Montreal abolished corporal punishment on learning that in the preceding three years 16 of its 66 schools had used the strap. And although the Education Act does not prohibit corporal punishment, neither does it authorize it, as was the case until recently. From all indications the strap has gone the way of school uniforms, ink wells, and bolted-down desks.

The foregoing is not intended to suggest that corporal punishment no longer occurs in Quebec schools. Rather it is to emphasize that formal or school-sponsored discipline has largely disappeared from the scene. This point aside, the fact remains that some teachers resort to corporal punishment, either because they regard such correction as effective or because they lose control of themselves in the heat of the moment. Sometimes they go too far in their punishment and are the target of legal action by angry parents. It is at this point that civil and criminal law take over since the Education Act and ministerial regulations are silent on the issue.

A point worth remembering is that while corporal punishment may be in disrepute as a method of regulating pupil behaviour, it continues to enjoy acceptance in federal and provincial law, provided that such correction is not excessive. Article 43 of the Criminal Code of Canada reads:

> Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

Article 651 of the revised Civil Code of Quebec says much the same thing but in fewer words: "The person having parental authority has a right to correct the child with moderation and within reason."

It is thus clear that teachers, in the capacity of substitute parents, may use force in disciplining pupils. What is less clear is the type and degree of punishment that may be inflicted. Because the law governing pupil correction is couched in general terms, it is the responsibility of the courts to distinguish between reasonable and unreasonable punishment. The courts have declared that it is not enough to say that corporal punishment must be reasonable; rather it must be reasonable in the circumstances. Thus there is a situational character to correction. In attempting to reach a decision in suits involving teachers, judges weigh such factors as the age and sex of the pupil, the offence which provoked the punishment, the type of punishment administered, and the instrument used.

If the strap was the standard instrument of formal correction in Quebec schools over the years, one reason is that it had the approval of judicial authorities. The courts have long maintained that the strap is a proper instrument of punishment since it is designed not to cause serious injury to the offender. At the same time they have come down hard against its abuse, and of teachers and principals who employed the strap with too much enthusiasm or for prolonged periods of time. The courts have also condemned other instruments of punishment and have warned teachers against kicking children or striking them with their fists.

Jurisprudence has also established that the punishment given must be commensurate with the offence. A provincial court recently ruled that a physical education teacher went too far in striking a child who refused to abide by an order to play soccer with her shoes off, saying that the use of force was neither necessary nor justifiable in the circumstances (Lavoie, 1979).

It is a principle of case law that punishment which causes or threatens to cause permanent injury to the pupil is excessive. Hence courts have usually ruled against teachers striking pupils upon the head or other sensitive parts of the body because of the danger of lasting injury. In 1952 a conviction of assault against an elementary school teacher who had disciplined two pupils by banging their knuckles on the corner of a desk was

upheld in the Quebec Court of Appeal. The court said the punishment was clearly unreasonable since "the covering over the bones on the back of the hand is very thin and the risk of permanent injury is correspondingly great" (Campeau, 1952). The court suggested that had the teacher struck the children on the palms of their hands or on their backsides, where there is abundant protection, the punishment would probably have been acceptable.

However, in a 1986 suit a Quebec court concluded that an elementary school teacher acted within the law when she struck an unruly pupil on the nose and mouth with an open hand inasmuch as the blow delivered caused no permanent damage and left no psychological scars (Ruest, 1968). Then in a 1976 decision the Quebec Provincial Court found a teacher guilty of immoderate punishment for having administered a handslap to the head of an inattentive pupil (Poupart, 1976). But in 1986 the Sessions Court dismissed an assault charge against a high school teacher who had struck a student on the ear with his hand. The presiding judge made two points: that the teacher's response was justified in light of the student's behaviour; and that the blow delivered was aimless, not directed specifically at his ear (*La Presse*, 1986).

As can be appreciated from the preceding cases, the line between reasonable and unreasonable punishment is blurred, which effectively rules out an ironclad definition of acceptable correction. The best that can be offered by jurisprudence is a set of guidelines. Accordingly, courts have ruled that teachers are authorized to administer corporal punishment provided that such correction is not excessive or inconsistent with the gravity of the offence or given in malice, or delivered to a part of the body where permanent injury might be caused. Teachers who ignore these guidelines leave themselves open to legal action, including charges of assault, even though they enjoy a certain legal advantage. It is presumed their correction was reasonable, until proven otherwise. Courts continue to be guided by the words of an early jurist: "If there is any reasonable doubt whether the punishment was excessive, the school teacher should have the benefit of the doubt" (Reg, 1899).

No one knows for certain how widespread corporal punishment is in today's schools. Such information is hard to come by. Still, there is reason to believe that physical correction is a vanishing procedure. The evidence for this assertion points to the decreasing number of corporal punishment suits before the courts, the emergence of a classroom pedagogy that frowns on physical correction, and the evolution of a society more sensitive to the rights of children. A "hands off" policy in matters of discipline speaks well for school and society.

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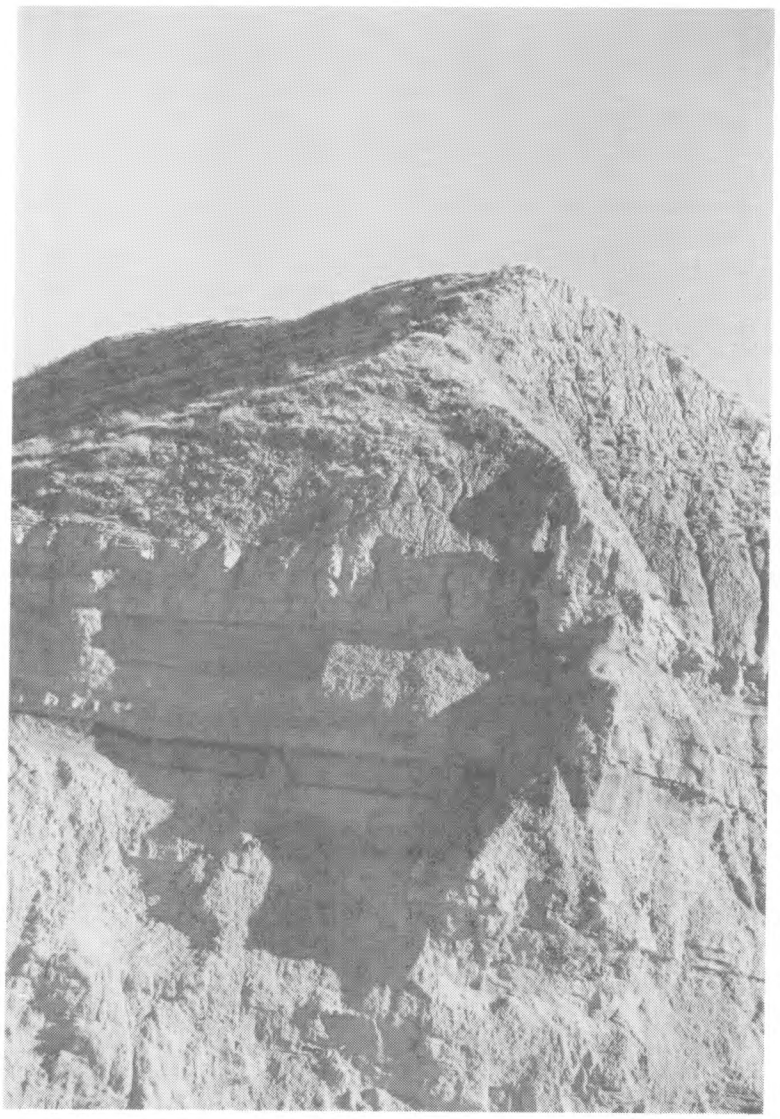

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