



Christian  
Legal  
Fellowship

*Alliance des chrétiens en droit*

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Submission of Christian Legal Fellowship  
Ontario's Educational Reform and  
*Parents' Bill of Rights*

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## Introduction

Christian Legal Fellowship is grateful for the opportunity to participate in the Ontario government’s consultation on educational reform, and particularly, to provide feedback on the government’s proposal to develop a *Parents’ Bill of Rights*.

## About Christian Legal Fellowship

Christian Legal Fellowship (CLF) is a national charitable association representing over 700 lawyers, law students, professors, jurists, and others who support its work. Over nearly two decades, CLF has been granted intervener standing in almost 40 cases involving the *Charter* and human rights issues—including 13 at the Supreme Court of Canada.

CLF has appeared before Parliamentary committees and made representations to provincial governments on issues of conscience, religious freedom, inviolability of life, and human rights. CLF also has unique expertise in international law; it has Special Consultative Status with the Economic and Social Council of the United Nations and has participated in proceedings before international courts.

## What elements should be included in a Ministry of Education *Parents’ Bill of Rights*?

### *Parental rights are primary*

CLF welcomes the affirmation of parental rights in Ontario’s education system through a *Parents’ Bill of Rights*. Parental rights, especially the right to decide the moral education of one’s child, have long been recognized among the most fundamental principles under both Canadian and international law.

Canadian law recognizes the primacy of parents’ authority to make decisions for their children’s well-being and education: “the right of parents to care for their children and make decisions for their well-being, including decisions about education, is primary, and the state’s authority is secondary to that parental right.”<sup>1</sup>

This should be the starting point for any *Parents’ Bill of Rights*: a recognition that parents have paramount authority as it pertains to their children’s education, and that the authority of the state to educate children is delegated from, and secondary to, the parents’ prior authority.

This longstanding principle was recently affirmed by a majority of the Ontario Court of Appeal in [\*E.T. v Hamilton-Wentworth District School Board\*](#), a case in which CLF intervened as a friend of the court. The majority’s reasons provide a helpful summary of the current state of the law relating to parental rights in education:

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<sup>1</sup> [\*E.T. v Hamilton-Wentworth District School Board\*](#), 2017 ONCA 893, at para 65, per Lauwers and Miller J.J. [hereinafter “*E.T.*”].



- “The law is clear that the authority of the state to educate children is a delegated authority” (para 67)
- “The law recognizes the central role of parents in education, and their concomitant rights.” (para 68)
- “Those who administer the Province's educational requirements may not do so in a manner that unreasonably infringes on the right of the parents to teach their children in accordance with their religious convictions.” (para 99, citing the Supreme Court of Canada<sup>2</sup>)
- “[T]here are limits imposed by the *Charter* on a province’s power to use publicly funded education to inculcate children in beliefs that educational authorities have determined are necessary”, including the freedom of religion and conscience of parents (para 99)
- Exposure to ideas that differ from those of the students’ parents can be acceptable, but “acceptability depends on the purpose and effect of the challenged educational program, and also the age of the children involved.” (para 94)

These principles should guide the development of a *Parents’ Bill of Rights* in Ontario, as discussed further below.

### ***Freedom of religion and conscience***

Freedom of religion and conscience are guaranteed by the Charter, but a *Parents’ Bill of Rights* would be a helpful vehicle to highlight and reaffirm these fundamental rights, particularly in the public school context. Indeed, freedom of religion deserves particular attention and protection in the context of Ontario’s public education system, where the constitutional right to transmit one’s faith to one’s children may be especially vulnerable due to the “critical role” that teachers and schools play in “inculcating beliefs in school children.”<sup>3</sup>

The Supreme Court of Canada has affirmed that the Charter protects the right of parents to “seek moral and religious education for their children”<sup>4</sup> and that “the state may not discourage religious faith in the public education system.”<sup>5</sup> The Supreme Court has also been clear that parents’ “constitutional freedom [of religion] includes the right to educate and rear their child in tenets of their faith.”<sup>6</sup>

While religious freedom in education is often cited in support of parents’ rights to maintain separate religious schools or to homeschool, it is not limited to those contexts, and applies in the public school context as well. The Ontario Court of Appeal majority in *E.T.* noted several core principles of religious freedom which “apply with necessary modifications in the context of the parental right to a measure of control over the moral and religious education of their children. There is really no dispute about the existence of this parental right.”<sup>7</sup>

<sup>2</sup> *Ibid.*, at para 99, citing *R. v Jones* [1986] 2 S.C.R. 284, at para 25, per La Forest J. [hereinafter “*R. v Jones*”].

<sup>3</sup> *E.T.*, *ibid.*, at paras 46, 64.

<sup>4</sup> *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12, at para 130.

<sup>5</sup> *Ibid.*, at para 112, citing *S.L. v Commission scolaire des Chênes*, 2012 SCC 7, at para 54.

<sup>6</sup> See *B. (R.) v Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315, at 434 [hereinafter “*Children’s Aid Society of Metropolitan Toronto*”].

<sup>7</sup> *E.T.*, *supra* note 1, at para 77. As the Court of Appeal for Ontario noted, the issue is not the existence of the right but the extent of its reach.



This right, while protected by the Charter, is a natural human right which long pre-date the Charter. For example, in a 1957 Quebec Court of Appeal decision, it was observed that “the right to give one’s children the religious education of one’s choice, like freedom of conscience, is anterior to positive law” and “if one considers natural law, first of all our laws, it is necessary to conclude that children who attend a school are not obliged to follow a religious teaching to which their father is opposed.”<sup>8</sup> Another judge in that case observed that it would “be contrary to natural law **as well as to the most elementary principles of our democratic institutions** that a father could not exercise the right or fulfil his obligation to instruct his children without renouncing his religious faith”.<sup>9</sup>

### *Liberty of parents and families*

In addition to religious freedom and conscience, the freedom of parents to make decisions about their children, including education, finds support in section 7 of the Charter, which protects the right to liberty. The Supreme Court has held that “[t]he right to nurture a child, to care for its development, and to make decisions for it in fundamental matters such as medical care, are part of the liberty interest of a parent.”<sup>10</sup>

In that case, the majority concluded that the Charter affords a “protected sphere of parental decision-making which is rooted in the presumption that parents should make important decisions affecting their children both because parents are more likely to appreciate the best interests of their children and because the state is ill-equipped to make such decisions itself.”<sup>11</sup>

Again, this aspect of parental authority is a natural right, which long pre-dates the Charter. As the Supreme Court of Canada has affirmed:

The common law has long recognized that parents are in the best position to take care of their children and make all the decisions necessary to ensure their well-being. In *Hepton v. Maat*, [1957] S.C.R. 606, our Court stated: “The view of the child’s welfare conceives it to lie, first, within the warmth and security of the home provided by his parents.” This recognition was based on the presumption that parents act in the best interest of their children.<sup>12</sup>

### *International law*

Canada’s long-standing recognition of parental rights in education are consistent with international human rights commitments. In fact, the right of parents to ensure the religious and moral education of

<sup>8</sup> *Chabot v School Commissioners of Lamorandière*, (1957) 12 DLR (2d) 796, per Pratte J., at 802.

<sup>9</sup> *Ibid.*, at 834, per Taschereau J. (emphasis added). Parental rights are also expressly protected in [Quebec’s Charter of Human Rights and Freedoms, chapter C-12, at s. 41](#): “Parents or the persons acting in their stead have a right to give their children a religious and moral education in keeping with their convictions and with proper regard for their children’s rights and interests.”

<sup>10</sup> *Children’s Aid Society of Metropolitan Toronto*, *supra* note 6, at 370 (per La Forest J. for the majority). See also *R. v Jones*, *supra* note 2, at paras 76-79, per Wilson J. (in dissent); *New Brunswick (Minister of Health and Community Services) v G. (J.)*, [1999] 3 S.C.R. 46, at 117-118, per L’Heureux-Dubé, Gonthier and McLachlin J.J. (concurring); *Chamberlain v Surrey School District No. 36*, 2002 SCC 86, at paras 106-108, per Gonthier and Bastarache J.J. (in dissent) [hereinafter “*Chamberlain*”].

<sup>11</sup> *Children’s Aid Society of Metropolitan Toronto*, *supra* note 6, at 372 (per La Forest J. for the majority).

<sup>12</sup> *Ibid.*, at 370-371, per La Forest J. for the majority (page numbers omitted).



their children in conformity with their own convictions is specifically and repeatedly affirmed in numerous international instruments:

- “Parents have a prior right to choose the kind of education that shall be given to their children.” [[The Universal Declaration of Human Rights](#), Article 26(3)]
- “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” [[The Universal Declaration of Human Rights](#), Article 16]
- Canada has undertaken “to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.” [[International Covenant on Civil and Political Rights](#), Article 18(4), accession by Canada in 1976]<sup>13</sup>
- Parents “have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.” [[Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#), Article 5(1)]
- “Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents” and “shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.” [[Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#), Article 5(2)<sup>14</sup>]
- “The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.” [[Declaration of the Rights of the Child](#), Principle 7, at para 2]

### *Limits to parental rights*

Parental rights are not absolute, and must be exercised in a manner that respects the best interest of the child. However, as a starting point, the law has always *presumed* that parents will make decisions in the best interests of their children: “the common law has always, in the absence of demonstrated neglect or unsuitability, presumed that parents should make all significant choices affecting their children, and has afforded them a general liberty to do as they choose.”<sup>15</sup>

Parental rights are properly understood as generally consistent and intertwined—not in conflict—with the rights and interests of their children. While there may be cases in which parental decisions merit state intervention, they are the *exception*, not the rule. As the Supreme Court has explained:

<sup>13</sup> See also Article 2 of Protocol No. 1 of the [European Convention for the Protection of Human Rights and Fundamental Freedoms](#), at 34: “In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

<sup>14</sup> [Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief](#) was adopted on November 25, 1981 by the General Assembly, of which Canada was and remains a member. The Declaration also provides that, even in the case of a child who is not under the care either of his parents or of legal guardians, “due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.” (Article 5(4)).

<sup>15</sup> [Children’s Aid Society of Metropolitan Toronto](#), *supra* note 6, at 372. See also [Chamberlain](#), *supra* note 10 at paras 102-103 (per Gonthier and Bastarache JJ).



**[O]ur society presumes that parents will exercise their freedom of choice in a manner that does not offend the rights of their children.** If one considers the multitude of decisions parents make daily, it is clear that in practice, **state interference in order to balance the rights of parents and children will arise only in exceptional cases.** In fact, we must accept that parents can, at times, make decisions contrary to their children's wishes -- and rights -- as long as they do not exceed the threshold dictated by public policy, in its broad conception [...] However, the state can properly intervene in situations where parental conduct falls below the socially acceptable threshold. But in doing so, the state is limiting the constitutional rights of parents rather than vindicating the constitutional rights of children.<sup>16</sup>

A *Parents' Bill of Rights* should *presume* that parents are acting in their children's best interests, as Canadian law always has, although the presumption can be rebutted where evidence indicates otherwise (e.g. harm to the child's health, safety, or well-being). In those cases, it is the welfare of the child which justifies infringement of parental authority.<sup>17</sup>

### ***Recommendations for a Parents' Bill of Rights***

In keeping with the clear protections outlined in both the Charter, Canadian law, and international human rights instruments, a central principle of the *Parents' Bill of Rights* should be respect for the religious freedoms of individuals and families in the public school system, including the fundamental right of parents to ensure the religious and moral education of their children in conformity with their own convictions.

#### **This ought to, at minimum, include recognition of the following:**

- 1. Parents have paramount authority as it pertains to their children's education; the government's authority to educate children is delegated from, and secondary to, the parents' prior authority<sup>18</sup>**
- 2. The family is the fundamental building block of society, and the unit in which children are best supported, protected, and nurtured<sup>19</sup>**
- 3. Parents, not the government or its schools, are best positioned to make decisions in the best interests of their children (absent evidence to the contrary); therefore, family decisions relating to matters such as religion, healthcare, and education will be free from interference unless demonstrably justified<sup>20</sup>**

<sup>16</sup> *Ibid.*, at 373, per La Forest J. for the majority (emphasis added).

<sup>17</sup> *Ibid.*, at 373 (emphasis in original).

<sup>18</sup> *E.T.*, *supra* note 1, at para 65: "the right of parents to care for their children and make decisions for their well-being, including decisions about education, is primary, and the state's authority is secondary to that parental right."

<sup>19</sup> "The view of the child's welfare conceives it to lie, first, within the warmth and security of the home provided by his parents", *Hepton v Maat*, [1957] S.C.R. 606, at 607; "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." (*Universal Declaration of Human Rights*, Article 16).

<sup>20</sup> *Children's Aid Society of Metropolitan Toronto*, *supra* note 6, at 372, per La Forest J. for the majority: "parents should make important decisions affecting their children both because parents are more likely to appreciate the best interests of their children and because the state is ill-equipped to make such decisions itself."

4. **The public education system will operate in a manner that does not undermine parents' ability to transmit religious faith to their children, and any concerns will be addressed by the provision of reasonable accommodation to the point of undue hardship<sup>21</sup>**
5. **Parents are entitled to be informed of what is being taught to their children, and afforded the right to:<sup>22</sup>**
  - a. **be notified, subject to applicable legislation, of any medical or health-related treatment provided to their children**
  - b. **access school curriculum, and to express concerns to their child(ren)'s educators and school board**
  - c. **access information about the nature and purpose of school approved programs (including guidance and counselling programs), clubs, and activities**
  - d. **opt out of activities or lessons they determine will be harmful to their child(ren), or which violate their religious beliefs**

## Other considerations

As a general matter, schools must maintain environments that are free of pressure or compulsion in matters of belief.<sup>23</sup> While respect and understanding for others and their different beliefs ought to be promoted, schools must be careful not to extend this to mandating student approval or celebration of views that contradict theirs or their family's beliefs. As Chief Justice McLachlin wrote for a majority of the Supreme Court:

[T]he demand for tolerance cannot be interpreted as the demand to approve of another person's beliefs or practices. When we ask people to be tolerant of others, we do not ask them to abandon their personal convictions.<sup>24</sup>

Supreme Court Justices Gonthier and Bastarache made a similar observation in that same case:

[I]t is a feeble notion of pluralism that transforms "tolerance" into "mandated approval or acceptance" [...] Language appealing to "respect", "tolerance", "recognition" or "dignity" [must] reflect a two-way street in the context of conflicting beliefs, as to do otherwise fails to appreciate and respect the dignity of each person involved in any disagreement, and runs the risk of escaping the collision of dignities by saying "pick one". But this cannot be the answer.<sup>25</sup>

Respect for others must not be premised on the proposition that "true acceptance of another person can only be achieved by embracing all of their self-understandings."<sup>26</sup> Students must not be compelled to participate in exercises to this end; attempts to indoctrinate students or pressure them to conform to the majority's norms, contrary to their beliefs, violate the Charter.<sup>27</sup>

<sup>21</sup> See, for example, paras 98, 100 of *E.T.*, *supra* note 1.

<sup>22</sup> Several of these recommendations are drawn from [ARPA Canada](#).

<sup>23</sup> Ontario Human Rights Commission, "[Policy statement on religious accommodation in schools](#)" (2017).

<sup>24</sup> *Chamberlain*, *supra* note 10, at para. 66.

<sup>25</sup> *Ibid.*, at paras 132, 134 (in dissent).

<sup>26</sup> *E.T.*, *supra* note 1, at para 92.

<sup>27</sup> *Zylberberg v Sudbury Board of Education (Director)*, 1988 CanLII 189, at para 39; *Canadian Civil Liberties Association v Ontario (Minister of Education)*, [1990] OJ No 104, at para 130.



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## Conclusion

In a pluralistic multicultural society such as Ontario's, it is imperative that all families can equally access and fully participate in public education. For public schools to be truly open, accepting, and inclusive of all pupils, they must accommodate the rights of parents and religious families to make decisions in accordance with their own convictions and the best interests of their children.

