CHAPTER 8

Law’s Entanglements: Resolving Questions of Religion and Education

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Introduction

Religion and education is a broad category that encompasses religious literacy, responses to religious diversity in schools (at both teacher and other employee and student levels), curriculum development, religious schools, and so on. This cornucopia of issues is matched by the complex interweaving of issues of power, authority, national values and the creation of a country. As with other Western democracies, religion and education have had a long, interwoven history in Canada. At the time of confederation in 1867, Canada’s Constitution Act defined publicly-funded education as a provincial responsibility and provided legal safeguards in several provinces for “separate” schools—a parallel system of religiously-based educational institutions distinct from secular public schools—separate in the sense that curricula were grounded in the principles and values of either Roman Catholic or Protestant faith traditions (Canadian Constitution Acts 1867–1982; see also Langley 1951). The legal protection and support of separate schools responded to the religious and political realities of Canada during the 1900s and acknowledged parental agency as central to decisions regarding faith-based or secular education (Wilson 2012). Although the constitutional right to state-funded “denominational, separate or dissentient schools” was

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2 For research on religion and education in Australia, see Byrne (2014), Halafoff (2013), and Maddox (2014). For Europe and the United Kingdom, see Arweck and Jackson (2013), Dinham and Jackson (2012), Evans (2008), Guest et al. (2013) and Jackson (2002, 2004, 2010, 2011). See also Jackson, Miedema, Weisse, and Willaime (2007) for a large-scale, multi-year exploration of religion and education across eight European countries known as the REDco project.
reaffirmed in 1982 by the *Canadian Charter of Rights and Freedoms*, provisions for freedom of religion therein have likewise been called upon to protect the rights of non-Christian students (*Canadian Constitution Acts* 1867–1982; Seljak 2005).  

The evolving dynamic of religious pluralism in Canada positions the issues of religion, education and faith-based schools at the forefront of political debate (D’Souza 2012), while simultaneously interrogating the role of parents, teachers, and schools in transmitting core Canadian values⁴ such as equality and respect to future generations. This complex intertwining of religion and education in Canada has arrived at an important crossroads, where public discourse around the responsibilities of parents vis-à-vis the state is sometimes muddled with broader issues of religion, secularity, and the public sphere. In a move to divest confessional religion from education, Quebec was the first Canadian province to address the issue through the removal of religious instruction from all public primary and secondary schools, also sometimes described as deconfessionalisation (Leroux 2007). In 2008, a new curriculum

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3 In addition to the Charter’s s. 2(a)’s “freedom of conscience and religion” tenet, others have also been used in cases involving religion. For the discussion at hand, the most pertinent sections along with s. 2(a) include the s. 15 equality rights and the s. 1 balancing provision to the Charter. S. 15 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”—sexual orientation has been read into these equality rights as well. S. 1 places limits on the freedoms contained in the Charter stating: “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.” Even when cases do not specifically deal with the Charter, there is some kind of magic cloud that is named ‘Charter values’. The Charter and the idea that there are ‘Charter values’ has infiltrated court rooms and the entirety of talk about rights. There is a notion that even if the Charter is not directly applicable, somehow Charter values are something to be thought about as decisions are made. Finally, in addition to these sections in the Charter that deal with issues involving religion and the cloud of Charter values, the preamble which may or may not relate to legal rights in the Charter, names both “the supremacy of God” and “the rule of law” as guiding principles (See Ryder’s discussion of this in his 2005 article).

⁴ Sayer defines values as “‘sedimented’ valuations that have become attitudes or dispositions, which we come to regard as justified” (2011, 25). They are both backward and forward looking, are acquired by both ‘passive osmosis’ and reflection, and they are both evaluative tools and themselves continuously being evaluated (2011, 26–27). Finally, Sayer notes that “although it is common to regard values as personal and subjective, especially in liberal society with its undersocialized view of the individual, they owe much to prevailing social values” (2011, 27).