

# Education Letter

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*Students started in the 1980s to test the boundaries of their individual rights by challenging the established practices in schools, such as dress codes, school regulations against smoking, and school detention.*

## RIGHTS IN EDUCATION: Recent Developments

Continuing and widespread pre-occupation with rights has led socio-political observers, such as Michael Ignatieff, to highlight the phenomenon of a rights revolution in industrialized countries.

By Romulo F. Magsino, *University of Manitoba*

In *The Rights Revolution* (2000), Ignatieff notes that this revolution, which took off in the 1960s, is evident in the talk about rights of varied groups, such as women, aboriginal populations, gays and lesbians, children, and cultural minorities.

In Canada the rights revolution has been felt for several decades. The *Canadian Bill of Rights* (1960) and the federal and provincial human rights legislation embody the Canadian commitment to the rights of individuals in the country. This commitment was enshrined in, and given dynamic energy by, the Charter of Rights and Freedoms, which was officially adopted with the repatriation of the Canadian Constitution in 1982. Undoubtedly, the Charter focuses on the rights of individuals. Yet, as Patrick Monahan shows in his *Politics and the Constitution* (1987), it also saliently incorporates collective or group rights. One consequence, noted prominently in Alan Cairns' *Reconfigurations: Canadian Citizenship and Constitutional Change* (1995), is the generation of what he calls "constitutional minoritarianism". This Canadian development involves not only the realization by minority groups that they are important components in the constitutional life of the country, but also their political and legal pursuit of their rights. It is no accident that citizens' groups had prominent roles in the Meech Lake and Charlottetown Accord debacles, and that hundreds of Charter-related cases were lodged in the courts across the country during the first year of the arrival of the Charter.

Developments in education may be seen as part of the rights revolution in Canadian society. Not long after the arrival of the Charter, students started in the 1980s to test the boundaries of their individual rights by challenging the established practices in schools, such as dress codes (*Devereux v. Lambton County R.C. Board*, 1988), school regulations against smoking (*Mazerolle v. School District No. 7*, 1987), and school detention (*R. v. J.M.G.*, 1986). Though students lost in these cases, their appeal to the courts indicates their willingness to challenge the status quo based on the Charter.

More litigation in the late 1980s and thereafter focused on the rights of students and their parents as members of religious or cultural groups. Thus, members of religious minorities have sued school boards for imposing Christian religion on their children. In *Zylberberg v. Sudbury Board of Education* (1988), the Ontario Court of Appeal ruled that the Christianity-based religious exercises allowed by the Board in its schools violated the religious minority students' freedom of religion and conscience, protected by s. 2 of the Charter, and contravened its mandate in s. 27 that its

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*This first issue is devoted to human rights in education, a topic whose currency continues to influence our personal and professional lives.*

## Message from the Dean

The Office of the Dean and the Education Alumni Committee are pleased to introduce to you the Queen's Education Letter. This thematic bi-annual letter is one of our means to engage the community of educators and the public-at-large in a discussion of current educational issues by making accessible the ideas and research of prominent scholars on compelling topics. It is also a way to fulfill our social responsibility as a public institution and reach out to our alumni as an expression of our gratitude for their continuing support.

This first issue is devoted to human rights in education, a topic whose currency continues to influence our personal and professional lives. Two major Canadian scholars in the field, Dr. Romulo Magsino, former Dean of Education at the University of Manitoba, and Dr. Michael Manley Casimir, Acting Vice-President of Brock University, provide articles which yield a concise account of the current status of the theme. The *Letter* also includes a summary of recent work by two well known Spanish educators, Dr. Pauli Dávila and Dr. Luis Naya Garmendia, who approached the issue of children's rights within the context of international agreements, thus giving this issue an international flavour.

I hope this is a step toward an enriching dialogue with every one of you. Please, visit our website [www.educ.queensu.ca/alumni](http://www.educ.queensu.ca/alumni) and share your views including suggestions for next issues.

Warm regards,

Rosa Bruno-Jofré, Ph.D.  
Professor and Dean, Queen's University Faculty of Education

### Next Issue

Integrating Information Technology in Teaching and Learning

## A VIEW FROM EUROPE

# Childhood and Education Within the Framework of Human Rights

By Pauli Davila and Luis M. Naya

**W**orking from a general perspective of human rights, one which has been recognized in international treaties, the human rights of children, including the right to an education and their right to independence (which includes the right to protection and help)

are considered in this work published in Spain. These rights are analyzed from a general perspective, using the Universal Declaration of Human Rights (1948), the International Agreements on Civil, Political, Economic, Social and Cultural Rights (1966), and the UN Convention on the Rights of the Child (1989) Especially important for the right to education in Europe has been Article 13 of the International Agreements on Civil, Political, Economic, Social and Cultural Rights.

Instrumental in showing the evolution and interpretation of children's rights was Katarina Tomasevski (1998-2004), the first United Nations Rapporteur on the right to Education, who was influential in documenting the evolution and the interpretation of this right, using the four categories summarized in Article 13's 4A Approach (Availability, Accessibility, Acceptability, and Adaptability). Her work on this subject led to a new reading of this basic right and served as a basis for rendering an educational interpretation of the entire UN Convention on the Rights of the Child, rather than just on those which



"School's Out" Joanne Gervais

explicitly speak to education (Article 28 of the Convention concerns the right to education and Article 29 deals with the objectives of education). This then has caused the inclusion of other Articles which speak to civil liberties; justice for minors; the right to information; to play; to protection from violence; to protection for the handicapped, and for child labourers, and victims of exploitation. In particular, the UN Convention of the Rights of the Child can be seen as an instrument for educators to use in analyzing the rights of both boys and girls and in determining what violations these rights might suffer. As well, many educational activities and innovations run by schools, including education in diversity, linguistic integration, and the education of ethnic minorities find a reference framework in children's rights and in the more general environment of human rights.

(Above is an abbreviated, translated version of *Infancia y educacion en el marco de los derechos humanos* by Pauli Davila and Luis M. Naya originally published in *La Educacion y los derechos humanos*: San Sebastian: Erein, 2005. pp.91-135)

### Helpful Books for Adults and Children

Altman, Linda Jacobs. *Human Rights: Issues for a New Millennium*. Enslow Publishers, 2002.

Frankel, Marvin E. and Ellen Saideman. *Out of the Shadows of the Night: The Struggle for International Human Rights*. Delacourt, 1989.

Jacobs, William Jay. *Great Lives: Human Rights*. Scribner, 1992.

Kronenwetter, Michael. *Taking a Stand Against Human Rights Abuses*. Watts, 1990.

Kuklin, Susan. *Irrepressible Spirit: Conversations With Human Rights Activists*. Watts, 1996.

Marrin, Albert. *Sitting Bull and His World*. Dutton, 2000. Accorded a rare top rating in a book review by Horn Book.

## BOOK REVIEW

### Human Rights in Youth Sport: A Critical Review of Children's Rights in Competitive Sports

by Paulo David. New York: Routledge; Taylor and Francis Group, 2005. 338 p.

Reviewed by Sandra Casey

*...young athletes may be encouraged by parents and coaches to concentrate on the sport rather than on studies. The education of young elite athletes then becomes a casualty of the extreme training schedules that sometimes total 56 or more hours per week.*

The headlines are all too familiar: "Father Decks Son for Missing Goal", "Swimming Coach Sexually Assaults Swimmer", "Young Gymnast Critically Ill With Eating Disorder". The headlines hardly cover the extent of the abuse of children in the name of sports, however. Such abuse includes, in many cases, severe training methods, corporal punishment, the encouragement and open facilitation by coaches of eating disorders and substance abuse, psychological and emotional abuse from both parents and coaches, sexual abuse from coaches, parents, and other competitors in youth sport, bullying and hazing from other youth sport competitors, the separation of children from parents for prolonged periods in order to expedite training, and the outright trafficking and sale of young athletes. Paulo David documents these abuses in *Human Rights in Youth Sport: A Critical Review of Children's Rights in Competitive Sports* but then goes further and sets the abuse against a backdrop of the UN Convention on the Rights of the Child.

Author David estimates that, of those children and youth involved in competitive sports, 10 percent are victims of some form of human rights abuse and another 20 percent are at risk. These figures are not entirely reliable, the author admits, because few empirical studies of youth sports have been undertaken, and therefore hard data to support these figures is lacking. This lack of reliable data stems from several causes: Self-monitoring in the sports domain is nonexistent because sport is considered to be a private activity, there has been a slowness in acknowledging that young athletes have special requirements, and child labour laws do not govern competitive sports.

David finds that parents and coaches share the responsibility for the abuse of young athletes. Coaches are not tested for competence and often are motivated by the generous salaries available for successful coaches so that greed for money and fame leads them to push young athletes to extremes of training. Parents similarly may be motivated by the possibility of a financial payoff for the athletic success of their children and as well may have pride and self-esteem issues. Both coaches and parents apparently downplay the risks to children of peer violence and abuse.

The *UN Convention on the Rights of the Child* is silent on competitive sports and youth, although it does speak to a number of other pertinent issues, including the child's right to appropriate direction and guidance; the right to be protected from all forms of physical violence; the right to be protected from sexual and other forms of exploitation; the right to be protected from economic exploitation, including an appropriate regulation of the hours and conditions of employment; the right to rest and leisure; the right of children not to be separated from their parents; and the right to a free primary education.

The complete UN Convention on the Rights of the Child is included in an appendix to *Human Rights in Youth Sport*. Article 28 speaks to education, recognizing "the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity." However, young athletes may be encouraged by parents

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"So Sad" Joanne Gervais



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and coaches to concentrate on the sport rather than on studies. The education of young elite athletes then becomes a casualty of the extreme training schedules that sometimes total 56 or more hours per week.

The solution for some youths is to give a priority to training and drop out of school as soon as legally feasible, perhaps at 14 or 15 years of age but sometimes even earlier. As David notes today's young athletes start intensive training at an early age and are confronted with the challenge of having to succeed at school and in sport. The risk, of course, is that the pressure becomes excessive and some children will fail at both, dropping out of school at an early age but unable to make a living through sport (p.181).

Although sports are often considered to be both an essential component in cultural identity and a valuable tool in learning moral values, David asks readers to consider whether competitive sports as now practiced are a valuable educational tool or not.

As his solution to the abuses in youth sport and toward ensuring the rights of children partaking in youth sports, David offers and elaborates on ten fundamental principles (see column to the right) of a child-centred sport system (p. 237).

Although David's book mainly addresses elite and university-based sports, the principles listed above might also be used to assess school sports programmes. School coaches, principals, and classroom teachers need to be aware of potential abuses, including bullying by coaches and team members and over-zealous practice sessions which leave the young athlete too exhausted or with too little time for school work. The principle that "whatever is done should be in the best interests of the child or youth" should be foremost in every coach's mind.

Human Rights in Youth Sports is well-written and generally well-edited, except for one annoying reference to "systematic abuse" rather than "systemic abuse". There is an extensive bibliography.

## Related Reading

Bigelow, Bob, Tom Moroney & Linda Hall. *Just Let the Kids Play: How to Stop Other Adults from Ruining your Children's Fun and Success in Youth Sports*. Deerfield Beach, FL, 2001. 336 p.

A former National Basketball Association player, a newspaper columnist, and a writer and editor who is also a youth sports parent make the case for taking back youth sports from parents and coaches and letting kids be kids. They advocate placing the emphasis on playing rather than winning. Although written in a popular style, this is well worth reading for its many suggestions.

*The Child's Right To Play: A Global Approach*, edited by Rhonda L. Clements and Leah Florentino. Westport, CN: Praeger, 2004. 425 p. The various chapters stress the importance of play rather

than competitive sports, particularly with younger children. Many positive examples are cited.

Elicksen, Debbie. *Positive Sports: Professional Athletes and Mentoring Youth*. Calgary, AB: Freelance Communications, 2003. 137 p.

Writer Elicksen makes a case for the benefits of competitive sport and then interviews athletes such as Jarome Iginla, Doug Gilmore, and Vince Carter about the impact of sport on their childhoods and about their continuing connections with youth sport.

*Sporting Bodies, Damaged Selves: Sociological Studies of Sports-Related Injury*, edited by Kevin Young. New York: Elsevier, 2005. 372 p. The emphasis here is on the physical impact on the young athlete of over-practice and other abuses.

## Ten Fundamental Principles of a Child-Centred Sport System

1. Equity, non-discrimination, fairness
2. Best interests of the child: children first
3. Evolving capacities of the child
4. Subject of rights; exercise of rights
5. Consultation, the child's opinion, informed participation
6. Appropriate direction and guidance
7. Mutual respect, support and responsibility
8. Highest attainable standards of health
9. Transparency, accountability, monitoring
10. Excellence

# THE EQUALITY RIGHTS OF THE CHILD

## The Challenge Ahead

Michael E. Manley-Casimir, *Brock University*

The patriation of the Constitution Act (1982) with its embedded *Charter of Rights and Freedoms* initiated a judicial revolution in governance in Canada. As Michael Ignatieff argues in *The Rights Revolution* (2000), the consequent spate of judicial activity has ushered Canada into a full-blown revolution in human rights such that "...Canada has become one of the most distinctive rights cultures in the world." (Ignatieff, 2000: 7) Canadian courts have become much more involved in resolving important matters of social policy than heretofore. Such judicial activism has attracted both affirmation and criticism respecting the new powers of constitutional adjudication accepted by the Courts. Those familiar with the impact of constitutional adjudication of educational matters in the U.S. prior to the patriation of the Charter surmised that once Canadian courts were 'seized of their purpose', an array of new constitutionally grounded decisions would occur affecting many aspects

of educational policy and practice. (Manley-Casimir & Sussel, 1986). This, of course, has happened. The judicial hand has reached into many educational spheres and has altered their contents in significant ways.

While judicial decisions have reached far in some areas of social change, e.g., recognizing the equality rights of same-sex couples to social benefits and to marriage, no similar recognition of the equality rights of the child and the child's educational entitlements has occurred. This is surprising because the Fourteenth Amendment to the U. S. Constitution served as the lever to end racial discrimination in U.S. schools and the language of the equality provisions of the Charter is arguably broader and more compelling than the

Fourteenth Amendment's single affirmation of the 'equal protection' of the law. The commitment in s. 15 to 'equal protection and benefit' of the law raises the prospect of radical judicial interpretation of the effects of educational policies on children and youth in terms of the educational benefit of those policies (Sussel & Manley-Casimir, 1987). Such interpretation has yet to happen.

As Milne points out (2004), the closest the Courts have come to recognizing the equality rights of students in education occurred in the Ontario Court of Appeal decision in *Eaton v. Brant (County) Board of Education* (1995). This case involved a challenge by Emily Eaton's parents to the decision of the school

board to move Emily from a full-time integrated placement to a special class. In examining the argument, Arbour J.A. analysed the applicability of the Charter's equality provisions to the case. Specifically, she sought to determine whether placement in a special class was discriminatory and hence unconstitutional. She concluded

that placement in a special class was a burden for Emily and hence was, indeed, discriminatory. In her reasoning, Arbour, J. A. clarified the nature of the right at stake: The constitutional right that is at issue in these proceedings is not the right to education but the right to equality. Access to public education cannot be governed by classifications based on prohibited grounds such as race, sex, religion (except where otherwise provided for in the Constitution) or physical or mental disability, if the classification creates a burden or denies a benefit. When that is the case, as it is here, the unequal treatment must find its justification in s.1. (at 61)

Madame Justice Arbour held that such unequal treatment ...continues on page 7

*"The constitutional right that is at issue in these proceedings is not the right to education but the right to equality."*

### Web Sites Of Interest

**Canadian Coalition for the Rights of Children**  
<http://rightsofchildren.ca>

**Human rights resources for teachers and parents, including sites related to Amnesty International and other useful sites**  
[http://www.amnesty.ca/resource\\_centre/teachers.plp](http://www.amnesty.ca/resource_centre/teachers.plp)

**The Kit: A Manual by Youth to Combat Racism Through Education**  
[http://www.unac.org/yfar/The\\_KIT.pdf](http://www.unac.org/yfar/The_KIT.pdf)

**Canadian Children's Rights Council**  
<http://canadiancrc.com/>

...continued from page 6 could not be justified under s. 1 because the Education Act of Ontario essentially put segregated and integrated placement on an equal footing, so the Act and its implementation failed a crucial aspect of the Oakes test that it “infringe constitutionally protected rights as little as possible.”

The Ontario Court of Appeal judgment was hailed as a landmark decision affirming the equality rights of children with special needs, and endorsing a normative if not presumptive recognition of integration for special needs students. The Supreme Court decision, however, reversed the decision of the Appeal Court, thereby dousing this initial enthusiasm with a shower of ice water. The Supreme Court (per Sopinka, J.) considered whether the decision of the Ontario Special Education Tribunal confirming the placement of Emily Eaton in a special class contrary to the wishes of her parents contravened the equality provisions of s.15(1) of the *Charter*. The Court held “...that the decision of the

Tribunal was based on what was in the best interests of the child and that in the circumstances no violation of s.15(1) of the Charter occurred.”(at 409-410)

The Supreme Court’s reluctance to affirm that children are independent rights bearers under the Charter recurs in the 2004 case involving the continuance of corporal punishment, *Canadian Foundation for Children, Youth & the Law v. Canada (Attorney General)*. Here the Supreme Court held, per McLachlin, C. J. that the most defensible stance with respect to the equality rights of children and youth is essentially to seek what is ‘in the best interests of the child.’ This can be achieved by “...a reasonable person acting on behalf of a child, who seriously considers and values the child’s views and developmental needs” (at §53). While as Milne points out the child’s right to life, liberty and security of the person is more accepted in the law, the claim of children and youth to equality has yet to be established in Canada.

## REFERENCES

### CASES

*Canadian Foundation for Children, Youth & the Law v. Canada (Attorney General)* [2004] 1. S.C.R. 76.

*Eaton v. Brant (County) Board of Education* (1995), 123 D.L.R. (4th) 43 (Ont. C.A.)

*Eaton v. Brant (County) Board of Education* [1997] 1. S.C.R. 241, 142 D.L.R. (4th) 385 (S.C.C. (“Eaton”))

### SECONDARY SOURCES

C. Milne, “The Limit of Children’s Rights under Section 7 of the *Charter*: Life, No Liberty and Minimal Security of the Person (2004) 17 N.J.C.L. 199.

M. Ignatieff, *The Rights Revolution* (Toronto: House of Anansi Press, 2000).

M.Manley-Casimir & T. Sussel, *Courts in the Classroom* (Calgary:Detselig, 1986)

T. Sussel and M. Manley-Casimir, “Special Education and the *Charter*: The Right to Equal Benefit of the Law” (1987) 2 C. J. L. S. 45.

Dr. Michael Manley-Casimir is a professor and Dean of the Faculty of Education at Brock University.

...continued from page 1 provisions shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. These provisions were also at play in *CCLA v. Ontario* (1990) in which the Court ordered the Elgin County School Board to cease offering the religious studies curriculum in its schools. Similarly, protection was given to members of religious minorities in cases in which clash of Charter provisions featured prominently. Thus, in *R. v. Keegstra* (1992) and in *Ross v. New Brunswick* (1996), the Supreme Court of Canada protected the right to religion and conscience of Jewish students who were subjected to hatred by James Keegstra and Malcolm Ross, respectively. Their right justified the imposition of the Criminal Code, which criminalizes hateful speech or expression against minorities in the country, notwithstanding appeals to freedom of speech and expression.

Despite the courts’ sympathy for religious minorities, students’ exercise of religious expression in schools has been litigated with mixed results. Thus, in *Pandori v. Peel Board of Education* (1990), the school board’s no-weapons policy, which prevented a Sikh boy from wearing a religious ceremonial dagger, called a kirpan, was cited by an Ontario court as a discriminatory practice under its human rights legislation. In contrast, however, the Quebec Court of Appeal in *Multani v. Commission scolaire Marguerite-Bourgeoys* (2004) overturned a lower court’s ruling, which allowed a Sikh student to wear the kirpan under certain conditions. ...continues on page 8

*Despite the courts’ sympathy for religious minorities, students’ exercise of religious expression in schools has been litigated with mixed results.*

## Queen's Education Letter

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...continued from page 7 The case has been appealed to the Supreme Court of Canada on the ground, among others, that the policy violates the right of every person to attend public school and express his or her religion without discrimination.

Muslim women's right to wear the *hijab*, a veil worn over the head, forehead, or face, may be expected to reach the Canadian courts in due course. The Quebec Human Rights Commission has ruled recently that private schools in the province must accommodate students' religious needs, including the wearing of *hijabs* (CBC News, June 16, 2005).

Claims based on equal rights to school funding for religious minorities have been litigated, thus far with negative results. In *Adler v. Ontario* (1996) and *Bal v. Ontario* (1997), coalitions of Christian and non-Christian minority religious groups claimed a violation of their freedom of conscience and religion and a denial of their right to equal benefit of the law. They insisted that they were subjected to unfair financial penalty, unlike the favoured Catholics, in sending their children to minority religious schools for which funding by government had been denied. Both constitutional challenges have failed.

The right of teachers to propagate their viewpoints based on religion has not been sustained, either. In the recent case of *Kempling v. BCCT* (2005), the right of the British Columbia College of Teachers to discipline Dr. Chris Kempling for his off-duty newspaper commentaries containing discriminatory statements about homosexuals was confirmed. The British Columbia Court of Appeal asserted that Kempling's editorials were not deserving of Charter protection because they were discriminatory and damaging to the integrity of the public school system (*Life Site News*, June 15, 2005).

That the courts are settled on sexual orientation as a constitutional ground for non-discrimination is clear from cases that have protected the rights of gays and lesbians in school systems. Thus, in *Hall v. Powers* (2002) the Ontario Superior Court recognized the historic disadvantage of homosexual persons, referred to what is generally known as the equality rights provision of the Charter (s.15), and then declared that the school principal unjustly discriminated against Marc Hall. The Court saw a violation of the provision because, unlike his heterosexual student peers, he was being prevented from bringing the date of his choice (a male partner) and to dance with him at the school prom. In *James Chamberlain, et.al., v. The Board of Trustees of School District # 36 (Surrey)*, the school board decision to ban from the classroom three children's books portraying children with same-sex parents was challenged by Chamberlain, a classroom teacher. The ban allegedly violated the Charter's provisions that guarantee equality and bar discrimination against gays and lesbians. While the court did not find it necessary to consider the impact of the Charter provisions in this case, it emphasized that the Board's decision was unreasonable because it allowed the religious values of a certain part of the community to trump the need to show equal respect for the values of other community members.

Undoubtedly the arrival of the Charter has unleashed individual and collective energies in the areas of politics and law. Canada, unlike the United States, may not have fully evolved into a litigious society, as Charter critics have anticipated. Nonetheless, it is reasonable to believe that litigation will proceed around the Charter issues, particularly in light of the continued failure of political processes to arrive at consensus in the face of increased religious and cultural diversity in the country.

### Joanne Gervais, Illustrator

Joanne Gervais is a Canadian artist known for her nostalgic children and sports theme paintings, colourful landscapes, sensitive portraits, and historical cityscapes.

For more information about Joanne Gervais' work visit [www.joannegervais.com](http://www.joannegervais.com)



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