PARENT:STATE RELATIONSHIPS IN CANADA:

LEGAL CASES AND SOME RELATED DOCUMENTS

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I - SUPREME COURT OF CANADA CASES
II - OTHER CANADIAN COURTS
III - SOME POLICIES & LAWS
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*HW NOTE - indicates my own comments

I - SUPREME COURT OF CANADA CASES

1 - R. v. Audet 1996
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1387/index.do?r=AAAAAQAFYXVkZXQAAAAAAQ

14 yr old girl had consensual sex with a teacher during summer vacation.
Para 41 - (paraphrase) **"parents delegate"** to teachers, "entrust" children to teachers

2 - A.C. v. Manitoba (Director of Child and Family Services) 2009
http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do

Minor had been taken by child services and given blood transfusion against her wishes. 14 yr old Jehovah's Witness girl was assessed by court for her maturity and understanding of long term implications of refusing blood transfusions. Court ruled state was ok to force the transfusion in this extreme case but was required to consult her. Her maturity needed to be assessed and her opinion was to be taken into consideration but was not to be the deciding factor - state had ignored this. Cost to be paid by gov't.

3 - 1995 B. (R.) *v.* Children's Aid Society of Metropolitan Toronto
http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1220/index.do

Infant of Jehovah's witness was taken by child services and given blood transfusion. Court stated that "liberty" in section 7 of Charter includes parental rights, but the extremity of this situation merited a very brief stint in protective state care.

"The 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. 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.** This recognition was based on the presumption that parents act in the best interest of their child. Although the

philosophy underlying state intervention has changed over time, most contemporary statutes

dealing with child protection matters, and in particular the Ontario Act, while focusing on t**he best interest of the child, favour minimal intervention**. In recent years, **courts have expressed some reluctance to interfere with parental rights, and state intervention has been tolerated only when necessity was demonstrated, thereby confirming that the parental interest in bringing up, nurturing and caring for a child, including medical care and moral upbringing, is an individual interest of fundamental importance to our society."**

4 - Kimberly Nixon v. Vancouver Rape Relief Society - and - British Columbia Human Rights Tribunal
http://scc-csc.lexum.com/scc-csc/scc-l-csc-a/en/item/11008/index.do
SCC refused the appeal upholding BC Crt of Appeal decision.
http://www.canlii.org/en/bc/bcca/doc/2005/2005bcca601/2005bcca601.html

A genetic male trans person sought to be a volunteer at the Rape Crisis Centre. VRR has a "woman-only" and "woman-only space" policy and refused. VRR's **right as a non-profit charitable org to DEFINE what "woman" is was upheld**. VRR defines "woman" for their programs as someone who has the life experience of growing up and being female.

5 - R v Jones 1986
http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/165/index.do

An Alberta preacher was educating his own and other children at his church and had not tried to certify the 'school' as required saying he did not acknowledge authority of state before God, and that the authorities would not consider an application for certification by him fairly as they did not have to follow court-like process.

Court ruled the state has a legitimate interest in the education of children and the requirement to certify the school was reasonable and not an infringement of religious freedom, and that"

"The court would no doubt intervene if, in exercising their functions, the school authorities sought to **impose arbitrary standards** or if they, in other respects, **acted in a manner that was fundamentally unfair. Such would be the case with the imposition of standards extraneous to educational policy under the Act or with a failure to examine the facts or to fairly consider the appellant's representations. »**

QUOTED FROM US CASE DEFINING LIBERTY : « While this Court has not attempted to define with exactness the liberty thus guaranteed,…. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, »

« While the Act makes no express reference to divine authority, **it defers to parental authority by allowing home instruction and instruction in private schools, thereby accommodating the State purpose to the preferences of individual parents. «**

«Liberty in s. 7 , the appellant claims, includes the right, as it does in the United States, to bring up his children in the manner he deems fit…. I find it unnecessary to deal with the appellant's contention regarding the meaning of liberty, because in my view, even assuming that liberty as used in s. 7 does include the right of parents to educate their children as they see fit, he has not been deprived of that liberty in a manner that violates s. 7 of the *Charter* «

6 - Amselem [HW NOTE: DEFINITION OF FREEDOM OF RELIGION]
http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do
Jewish residents of a condominium/apartment wanted to put up 'succoth'/tents on their balconies for a religious festival. Freedom of religion defined: "sincerely held belief" with "nexus to religion, to divine", court should not inquire about "religious dogma", Court only to determine individual's sincerity of belief and related practice regardless of specific sect's rules. Courts said allowing tents was required to accommodate religious freedom.

7 - Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General) 2004
http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2115/index.do
Child protective services sought to revoke the provision in the criminal code that allows for 'spanking'. Court rejected the effort, saying it would create excessive interference by the state in the family sphere, but established limits to 'spanking' (age, method).

8 - Chamberlain v Surrey School District
http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2030/index.do
James Chamberlain, kindergarten teacher, sought permission to have 3 books which portrayed same sex couples as 'resources' that could be optionally used in schools.

Court ruled that "highest morality" in BC School Act means "the Charter", and that "secular" in the BC School Act means (paraphrase) "no preferential treatment for any worldview/sect" and that (paraphrase) "religiously informed belief/opinion could not be excluded from public debate." Court ruled the Surrey School Board had erred in applying its' policies and had not considered **"ALL"** families as required by School Act (or board policy?) in its decision to reject the books and asked the School Board to re-do their decision using proper interpretation.

"The *School Act*'s insistence on secularism and non-discrimination lies at the heart of this case. The Act's **requirement of secularism in s. 76 does not preclude decisions motivated in whole or in part by religious considerations**, provided they are otherwise within the Board's powers. But the Board must act in a way that promotes respect and tolerance for **all the diverse groups** that it represents and serves.

The Board's decision is unreasonable because the process through which it was made took the Board outside its mandate under the *School Act.* First, the Board violated the principles of secularism and tolerance in s. 76 of the Act. Instead of proceeding on the basis of **respect for all types of families**, the Board proceeded on an **exclusionary philosophy**, acting on the concern of certain parents about the morality of same-sex relationships, without considering the interest of same-sex parented families and the children who belong to them in receiving **equal recognition and respect in the school system**. Second, the Board departed from its own regulation with respect to how decisions on supplementary resources should be made, which required it to consider the relevance of the proposed material to curriculum objectives and the needs of children of same-sex parented families. Third, the Board applied the wrong criteria. It failed to consider the curriculum's goal that children at the K-1 level be able to discuss their family models [this is not now in the BC K curriculum], and that all children be made aware of the diversity of family models in our society. Instead, the Board applied a criterion of necessity, which was inconsistent with the function of supplementary resources in enriching children's experience through the use of extra materials of local relevance. The Board erred in relying on concerns about cognitive dissonance and age-appropriateness which were **foreclosed by the curriculum** in this case. In the result, the question of whether to approve the books is remanded to the Board.""

"The Board was authorized to approve or not to approve books for classroom use. But its authority is limited by the requirements in s. 76 of the *School Act* to conduct schools on "strictly secular and non-sectarian principles" and to inculcate "the highest morality" while avoiding the teaching of any "religious dogma or creed". **The words "secular" and "non-sectarian" in the Act imply that no single conception of morality can be allowed to deny or exclude opposed points of view.** Disagreement with the practices and beliefs of others, while certainly permissible and perhaps inevitable in a pluralist society, does not justify denying others the opportunity for their views to be represented, or refusing to acknowledge their existence. Whatever the personal views of the Board members might have been, their responsibility to carry out their public duties in accordance with strictly secular and non-sectarian principles included an obligation to **avoid making policy decisions on the basis of exclusionary beliefs**. Section 76 does not prohibit decisions about schools governance that are informed by religious belief. The section is aimed at fostering tolerance and diversity of views, not at shutting religion out of the arena. It does not limit in any way the freedom of parents and Board members to adhere to a religious doctrine that condemns homosexuality but it does prohibit the translation of such doctrine into policy decisions by the Board, **to the extent that they reflect a denial of the validity of other points of view."**

HW NOTE:
a - the right to home school and private school is not provided with equal funding. This impacts their "substantive equality" and autonomy, and inhibits their freedom of belief, religion,

association, assembly, expression.

"120 What of the interaction between what is parentally determined to be in the "best interests" of their children and the *Charter* ? In *Young*, *supra*, L'Heureux-Dubé J. stated that custodial **parents have a duty to ensure, protect and promote the "best interests" of their children. With regard to the content of that duty, L'Heureux-Dubé J. claimed, at p. 38: "That duty includes the sole and primary responsibility to oversee all aspects of day to day life and long-term well-being, as well as major decisions with regard to education, religion, health and well-being."** This is consonant with the more general discussion above about the privileged parental role in the upbringing of their children, whether rooted in ss. 2 (*a*) or 7 of the *Charter* ."

9 - Moore v BC Education 2012
http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12680/index.do
http://www.ccdonline.ca/en/humanrights/litigation/Moore-Case-Key-Findings-9Nov2012
Boy with learning disability had his special public school educ program cut and went to private school. Importance of equal opportunity for "ALL" students stressed. Huge costs incurred to gov to address disability needs.

"Adequate special education is not a dispensable luxury," Judge Abella said for a 9-0 majority. "For those with severe learning disabilities, it is the ramp that provides access to the statutory commitment to education made to ***all* children** in British Columbia."

10 - Ross v. New Brunswick School District No. 15

http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1367/index.do\
A teacher made very public anti-Semitic comments in his off duty time. This went to court and to judicial review. **"Poisoned" school environment** was issue and how to deal with it. SCC upheld his being fired or given non-teaching position but not permanent ban.

"a reasonable inference is sufficient in this case to support a finding that R's continued employment impaired the educational environment generally in creating the "poisoned" environment. R's off-duty conduct impacted upon the educational environment in which he taught. _. R's off-duty conduct impacted upon the educational environment in which he taught. **Public school teachers assume a position of influence and trust over their students and must be seen to be impartial and tolerant.** By **their conduct, teachers, as "medium" of the educational message (the values, beliefs and knowledge sought to be transmitted by the school system), must be perceived as upholding that message. A teacher's conduct is evaluated on the basis of his or her position, rather than whether the conduct occurs within or outside the classroom. A school board has a duty to maintain a positive school environment for all persons served by it and it must be ever vigilant of anything that might interfere with this duty.** It is not sufficient for a school board to take a passive role. Here, the Board found that **the School Board failed to maintain a positive environment** and concluded that the School Board had discriminated in its

failure to take a **proactive approach to the controversy surrounding R, thus suggesting the acceptance of R's views and of a discriminatory learning environment.**

… This involves a close attention to context. Here, the educational context must be considered when **balancing R's freedom to make discriminatory statements against the right of the children in the School Board to be educated in a school system that is free from bias, prejudice and intolerance; relevant to this particular context is the vulnerability of young children to messages conveyed by their teachers.** The employment context is also relevant to the extent that the state, as employer, has a duty to ensure that the fulfilment of public functions is undertaken in a manner **that does not undermine public trust and confidence.** Teachers are also employees of a school board and a **teacher's freedoms must be balanced** against the school board's right to operate according to its own mandate. The anti-Semitism context is relevant as well because the Board's order was made to remedy the discrimination within the public school system that targeted Jews. In its order, the Board balanced R's freedoms against the ability of the School Board to provide a discrimination-free environment and against the interests of Jewish students; it may therefore be entitled to greater deference. An attenuated level of s. 1 justification is appropriate in this case in light of the nature of the rights allegedly infringed by the order. The expression sought to be protected is at best tenuously connected to the core values of freedom of expression. R's religious belief, which denigrates and defames the religious beliefs of others, erodes the very basis of the guarantee in s. 2 (*a*) of the *Charter* . **R's religious views serve to deny Jews respect for dignity and equality.**

… While the evidence did not establish a direct link between the poisoned educational environment and R's anti-Semitic views, it is sufficient that the **Board found it "reasonable to anticipate" that there was a causal relationship between R's conduct and the harm.** R's removal from his teaching position was thus necessary to ensure that **no influence of this kind is exerted by him upon his students and to ensure that the educational services are discrimination-free."**

HW NOTE: "Harm" evidence is in the thousands of students avoiding public schools, and the parents' opposition. This shows "eroded trust". Many teachers and politicians etc are taking a public stand highly critical of some parents'/children's beliefs. This shows "bias" in the system.

11 - Board of School Trustees of School District No. 44 (North Vancouver) v. Jubran and BC HRT 2005

http://scc-csc.lexum.com/scc-csc/scc-l-csc-a/en/item/12398/index.do

Appeal dismissed with costs to Jubran.

BC COurt of Appeal Jubran case

http://www.canlii.org/en/bc/bcca/doc/2005/2005bcca201/2005bcca201.html

Jubran was bullied for 5 years in high school including anti-homosexual slurs though neither he nor his bullies identified him as homosexual. Jubran criminally assaulted one attacker in school. School dealt with bullies but more would always appear. BC HRT said **School District was responsible for harassment/discrimination-free environment**. Schools became legally required to 'cover their legal asses" with 'codes of conduct' and 'programs' that feature BC Human right s

code categories. Supreme Crt of BC said no because he was not actually homosexual, Appeal Court upheld BC HRT. SCC upheld Appeal crt.

HW NOTE:
a - Schools can do REASONABLE MEASURES to keep students safe but in the end **REASONABLE MEASURES ARE INSUFFICIENT** and CANNOT GUARANTEE SAFETY OF STUDENT IN OR OUT OF SCHOOL - esp with CYBER BULLYING, allergies, disabilities and mental health issues.

Yet students have the right to security of person. NEED MORE WAYS TO ACCOMMODATE THIS RIGHT. The **School environment itself create the conditions of vulnerability to attack.**

b - BC HR Code does not cover many 'categories' that students are attacked/harassed with: 'slut', 'douche bag', 'jerk', 'idiot', 'ugly', 'loser', 'stupid', overweight/underweight, etc. Thus some kids are not protected.

c - Privacy Rights: students should not have to discuss/disclose their own or their family members' sexual/gender issues /identity or any other information to get protection from bullying.

d - Schools protect themselves from legal action by following these measures BUT students are not protected. Out of school and cyber-bullying are not schools' legal concern.

e - The inability of schools to admit their inability to protect students, and their lack of provision for accommodation to address, and their passive acceptance of forced attendance in the face of bullying and unsafety demonstrates that THIS IS NOT ABOUT SAFETY OF STUDENTS.

f - Does anyone know or care about what actually happened to Azmi Jubran? Where/how is he now? Why did no one allow him to stay out of school and have alternate delivery /accommodation? Did anyone tell his parents about home schooling options? Funding?

12 - Symes v. Canada 1993
https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1093/index.do

A lawyer mother hired a nanny and deducted the cost as a business expense and not as "child care expenses". SCC agreed that these are not business expenses, that child care expenses covers the issue.

HW NOTE: Child care consistently referred to as a "BURDEN": this seems to denigrate children.

HW NOTE: "Work" not defined, or not defined to include work of parental child care.

MAJORITY:"it is equally clear that the need which is met by child care expenses exists regardless of the appellant's business activity…. Finally, the appellant's decision to have children should not be viewed solely as a consumption, or personal, choice. "

“While it is clear that women disproportionately bear the burden of child care in society, it has not been shown that women disproportionately incur child care expenses. Although the appellant has overwhelmingly demonstrated how the issue of child care negatively affects women in employment terms, proof that women incur social costs is not sufficient proof that they incur child care expenses.”

“…it is equally clear that the need which is met by child care expenses on the facts of this case, namely, the care of the appellant's children, exists regardless of the appellant's business activity. The expenses were incurred to make her available to practise her profession rather than for any other purpose associated with the business itself…. a fourth point of analysis, I am uncomfortable with the suggestion that the appellant's decision to have children should be viewed solely as a consumption choice. I frankly admit that there is an element of public policy which feeds my discomfort. In *Brooks v. Canada Safeway Ltd.*, [1989] 1 S.C.R. 1219, Dickson C.J. stated (at p. 1243):

> That those who bear children and benefit society as a whole thereby should not be economically or socially disadvantaged seems to bespeak the obvious. It is only women who bear children; no man can become pregnant … it is unfair to impose all of the costs of pregnancy upon one half of the population.”

“Pregnancy and childbirth decisions are associated with a host of competing ethical, legal, religious, and socioeconomic influences, and to conclude that the decision to have children should -- in tax terms -- be characterized as an entirely personal choice, is to ignore these influences altogether. While it might be factually correct to regard this particular appellant's decision to have children as a personal choice, I suggest it is more appropriate to disregard any element of personal consumption which might be associated with it.”

“in general terms, I am of the view that child care expenses are unique”
“In *Proposals for Tax Reform* (1969) (E. J. Benson, Minister of Finance), the following approach to child care expenses is advocated (at p. 15):

2.7 We propose to permit deduction of the child care expenses that face many working parents today. The problem of adequately caring for children when both parents are working, or when there is only one parent in the family and she or he is working, is both a personal and a social one. We consider it desirable on social as well as economic grounds to permit a tax deduction for child care expenses, under carefully controlled terms, in addition to the general deduction for children.

2.9 This new deduction for child care costs would be a major reform. While it is not possible to make an accurate forecast of the number who would benefit from this new deduction, it seems likely to be several hundred thousand families. It would assist many mothers who work or want to work to provide or supplement the family income, but are discouraged by the cost of having their children cared for. [Emphasis added.]"

[HW note: what women WANT is core to the legislation.]

"The proposals do not specify the kind of "work" which is to be encouraged, and the language of s. 63 clearly addresses income from business."

"Section 15(1) guarantees more than formal equality; it guarantees that equality will be mainly concerned with "the impact of the law on the individual or the group concerned": *Andrews*, at p. 165. McIntyre J. stated (at p. 164) that equality

is a comparative concept, the condition of which may only be attained or discerned by comparison with the condition of others in the social and political setting in which the question arises. It must be recognized at once, however, that every difference in treatment between individuals under the law will not necessarily result in inequality and, as well, that identical treatment may frequently produce serious inequality. [Emphasis added.]

… the goal is to ensure that "a law expressed to bind all should not because of irrelevant personal differences have a more burdensome or less beneficial impact on one than another": *Andrews*, at p. 165."

"McIntyre J. stated (at p. 174):I would say then that discrimination may be described as a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on

such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society."

"In the same case, McIntyre J. came to the related conclusion that *animus* is irrelevant to discrimination. A finding of discrimination can be made even if there has been no intention to discriminate."

DISSENTING To conclude that s. 63 intends to limit the opportunity for a businesswoman to deduct child care expenses is antithetical to the whole purpose of the legislation, which was aimed at helping working women and their families bear the high cost of child care. … The fact that the government has provided that a deduction for child care expenses be available to all {NOTE ERROR - NOT 'ALL'} parents, including employed persons, who ordinarily enjoy very few deductions, indicates governmental recognition that child care is a legitimate expense of working parents, in particular mothers.

13 - SCC Young v Young - 1993

https://www.canlii.org/en/ca/scc/doc/1993/1993canlii34/1993canlii34.html

- concern about Jehovah's witness parenting by ex
- definition of "the best interests of the child" refined
- definition of "harm" to a child and "risk" refined
- review of "vagueness" in a law (HW NOTE: 'vagueness' in a law is contrary to principles of fundamental justice)
- expert testimony not always useful: "Expert testimony, while helpful in some circumstances, is often inconclusive and contradictory because such assessments are both speculative and may be affected by the professional values and biases of the assessors themselves. Experts are not always better placed than parents to assess the needs of the child. The person involved in day to day care may observe changes in the child that

could go unnoticed by anyone else and normally has the best vantage point from which to assess the interests of the child."

II - OTHER COURTS

1 - Chris Kempling v BCCT
http://www.courts.gov.bc.ca/jdb-txt/ca/05/03/2005bcca0327err1.htm

SCC denied application to appeal. Teacher/counsellor was reprimanded by BCCT for his statements critical of 'homosexuality' in media which was found to be "stereotypical." He fought based on freedom of expression and religion. Court said issue was importance of "**ensuring a tolerant and discrimination-free environment, and restoring and upholding the integrity of the school system."**[11] The Court determined that, as Kempling had not introduced evidence to identify his religion or establish its tenets, no violation of his right to freedom of religion could be established.

HW NOTE: The importance of a PUBLIC CONFIDENCE IN the PUB SCHOOL SYSTEM and non-DISRUPTED, INCLUSIVE SCHOOL ENVIRONMENT IS PARAMOUNT.

"Para 3 - …*Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 at para. 44, as indicative of the consequences to be inferred:

The reason why **off-the-job conduct may amount to misconduct is that a teacher holds a position of trust, confidence and responsibility.** If he or she acts in an improper way, on or off the job, there may be a **loss of public confidence in the teacher and in the public school system, a loss of respect by students for the teacher involved,** and other teachers generally, and there may be controversy within the school and within the community which disrupts the proper carrying on of the education system."

2 - BCTF v BCPSEA 2013
http://www.bcpsea.bc.ca/documents/Publications-@Issue/2013%20BCCA%20241%20British%20Columbia%20Teachers%20Federation%20v%20%20British%20Columbia%20%20%20%20.pdf

Appeal Crt ruled that it is OK for teachers to distribute BCTF political policy materials in parent-teacher interviews, post BCTF posters at school, and wear BCTF slogan buttons - these actions are allowable under CHARTER freedom of expression and do not compromise education BUT there is a need to further define or limit this freedom in future court cases so that EDUCATIONAL ENVIRONMENT is not harmed. The right of students to be educated in an environment FREE FROM BIAS was at issue.

*HW NOTE: It did this because it made an inappropriate analogy using a case related to advertising in elections: more-or-less equally powerful/well-funded groups were able to mount

that legal challenge. Now teachers are emboldened to discuss BCTF positions and issues with students in class time (eg about the job action 2010-2011 and strike 2014) in elementary and high school.

63 - "I see no reason why **students should receive less protection from the monopolization of the discourse of a societal issue than adults** who are subjected to a flood of discourse on an electoral issue by proponents of one side to that issue. In the **case of the students, the monopolization on the issue may deprive them of their right to be educated in a school system that is free from bias.**"

HW NOTE: the decision took no account or the POWER IMBALANCE between teachers and students and parents, ie that teachers have recourse to Union and professional org protection and funding for legal cases and their clients do not. Therefore quasi- "monopolization" is quite easy to effect.

Judge cited:
"[57] In *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, Mr. Justice La Forest described a school at 856 – 857 as:
... a **communication centre for a whole range of values** and aspirations of a society. In large part, it defines the values that transcend society through the educational medium. 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**. As the Board of Inquiry stated, a school board has a duty to **maintain a positive** school environment for **all** persons served by it."

HW NOTE "FEEL EQUALLY FREE"; "FEEL", "ALL": all students (and parents) do not feel equally free, despite the rules that indicate that they are 'equal'. This is why many leave the public school system at very significant cost.

"[58] One cannot argue with the proposition that open communication and debate about public, political issues is a hallmark of the free and democratic society that the *Charter* is designed to protect. But at 874 Mr. Justice La Forest also described:
... the right of the children in the **School Board "to be educated in a school system that is free from bias, prejudice and intolerance**", a right that is underscored by s. 5(1) of the [*Human Rights Act*, R.S.N.B. 1973, c. H-11] and entrenched in s. 15 of the *Charter*. [Emphasis added.]"

3 - 2005 BC Court of Appeal

British Columbia Public School Employers' Association v. British Columbia Teachers' Federation

http://www.courts.gov.bc.ca/jdb-txt/ca/05/03/2005bcca0393.htm

'Munroe'

Appeal Crt upheld Arbitrator Munroe's decision so teachers' won 'freedom of expression' right to post BCTF political posters where parents and student can see them, hand out BCTF brochures at parent-teacher mtgs, and discuss class size etc with parents at those mtgs.

HW NOTE: one judge of the 3 was opposed and disagreed that there was 'no harm' to learning environment or to trust is school system. There was no mention by any of the negative impact on parents and students' right to expression when teachers' express their views and no mention of the POWER IMBALANCE between 'clients' and teachers.

3 - British Columbia Teachers' Federation v. British Columbia, 2014
BCTF went to BC Appeal Court over contract issues and based argument successfully on Charter FREEDOM OF ASSOCIATION.
http://www.bcpsea.bc.ca/documents/Publications-@Issue/2013%20BCCA%20241%20British%20Columbia%20Teachers%20Federation%20v%20%20British%20Columbia%20%20%20%20.pdf.

HW NOTE: The BCTF and BCPSEA have huge financial resources to fight legal battles unlike parents and students (education system clients). There is almost no "freedom of association" in public schools for clients.

4 - **Inglis v. British Columbia (Minister of**

Public Safety), 2013 BCSC 2309

http://www.courts.gov.bc.ca/jdb-txt/SC/13/23/2013BCSC2309.htm
Imprisoned mums of babies and young children won the reestablishment of program to have babies with them in prison. Children's 'dn mothers' Charter rights to security or person, breastfeeding, attachment , international HR laws about children and parents, and "fundamental justice" were all factors in winning the case.

5 - Johnstone v. Canada Border Services Agency 2013 - Can Human Rights Tribunal
Ruling that "child care" is part of "family status" protected ground that must be accommodated. A married mum who worked at the airport said she needed to have certain shifts to accommodate her child care needs, she won back pay.

http://decisions.chrt-tcdp.gc.ca/chrt-tcdp/decisions/en/item/73292/index.do?r=AAAAAQANZmFtaWx5IHN0YXR1cwE

6 - Hutchinson v BC - BC HRT decision upheld by BC Sup Crt 2005
http://www.courts.gov.bc.ca/jdb-txt/sc/05/14/2005bcsc1421err1.htm

Disabled woman cared for by her father were allowed to have him paid for her care - family status discrimination - no 'blanket prohibition' on hiring family members.

7 - Tax Court of Canada

Kwan v. The Queen 2018-09-11

2018 TCC 184
Parents deducted as child care expenses Chinese classes, chess class, etc. CRC said thisis not child care. Court said parents used these to provide care while they were working and CRC cannot define form of non-parental child care this is parents' discretion only.

QUOTES from the Judgement

- It is <u>not for the state to decide</u> who minds the Appellant's children as long as the expenses claimed are reasonable.

- The taxpayer is responsible for choosing...the child care services he or she wishes to use; the taxpayer makes this choice on <u>the basis of the child's needs, and this choice is an exercise of parental discretion.</u>

- A <u>parent alone has the right to decide</u> when a child 12 or older should stay home alone.

8- Kattenburg v. Canada (Attorney General)- Federal Court in Ontario - 2019
<u>https://decisions.fct-cf.gc.ca/fc-cf/decisions/en/item/419068/index.do</u>

Wines sold in Canada from the West Bank were labeled 'made in Isreal'. All agreed that the West Bank was not part of Isreal. Court ruled Canadians' Charter rights to freedom of expression including political and religious expression was violated due to the inaccurate label. "identifying Settlement Wines as being "Products of Israel" is **false, misleading and deceptive**. Moreover, as will be discussed further on in these reasons, labelling Settlement Wines as "Products of Israel" **interferes with the ability of Canadian consumers to make "well informed decisions and well informed and rational choices" in order to be able to "buy conscientiously**"….. Identifying Settlement Wines incorrectly as "Products of Israel" **inhibits the ability of such individuals to express their political views through their purchasing choices**, **thereby limiting their Charter-protected right to freedom of expression**…. [126] One peaceful way in which people can express their political views is through their purchasing decisions. To be able to express their views in this manner, however, **consumers have to be provided with accurate information** as to the source of the products in question….. These labels are thus **false, misleading and deceptive**."

HW NOTE: The federal, provincial, and municipal governments routinely refer to licensed daycare as "high quality", providing "the best start in life", etc. These 'labels' are false advertising because all reviews of daycare quality find it minimal to mediocre, not "high". This false advertising by the government interferes with parents' freedom of expression seen in their purchase of daycare services. In short, if the government did not actively deceive parents about the quality of the care, fewer parents would purchase or use it.

<u>III - OTHER POLICY & LAWS</u>

1 - STATISTICS CANADA

Does not allow minors to participate or be involved in surveys or studies (eg teacher responses about students) without written parental consent. Does not allow "passive consent" for data collection and research as BC does. (I have an email from Stats Can explaining this.)

2 - INFANT's ACT BC - Mature Minor consent|
http://www.bclaws.ca/civix/document/id/complete/statreg/96223_01#section17
Consent of infant to medical treatment

17 (1) In this section:

"health care" means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health related purpose, and includes a course of health care;

HW NOTE: this is so broadly defined it is nearly all inclusive.

"health care provider" includes a person licensed, certified or registered in British Columbia to provide health care.

HW NOTE: overly broadly defined esp due to above def of "health care".

(2) Subject to subsection (3), an infant may consent to health care whether or not that health care would, in the absence of consent, constitute a trespass to the infant's person, and if **an infant provides that consent, the consent is effective and it is not necessary to obtain a consent to the health care from the infant's parent or guardian.**

(3) A request for or consent, agreement or acquiescence to health care by an infant does not constitute consent to the health care for the purposes of subsection (2) unless the health care provider providing the health care

(a) has **explained to the infant and has been satisfied that the infant understands the nature and consequences and the reasonably foreseeable benefits and risks of the health care,** and

(b) has made reasonable efforts to determine and has concluded that **the health care is in the infant's best interests**.

HW NOTE:
a -The societal impact - harm to parent/child family relationships - of empowering minors - ie with letting it be known that you can just ignore your parents and get what you want - needs to be considered. Reena Virk was murdered by peers who told her she could get her parents out of her life and get a foster parent.

b - There is a lack of 'checks and balances' in application of this policy. All manner of 'health' related personnel have noticed it and are very loosely interpreting it with no oversight, paperwork, vigilance, eg school counsellors - who are not 'health care providers'.

c -Parents cannot afford the time and cost of law suits and do not know the law.

d - In all the concern for children's consent and empowerment, minors' wishes are easily overruled by authorities when they want to.

e - the infants is not provided with follow up by the health care provider - ie - their name, contact info, info regarding how to take legal action if something goes wrong as a result of their 'consent'.

f - there is no requirement to document the infant's ability to understand and foresee, or even to obtain their signature. There is no minimum amount of time a health care provider must spend to ascertain the maturity and knowledge of the infant.

g- there is no objective, recorded test to ascertain the minor's maturity or intelligence or comprehension , and the test is not kept on the record.

h- students and parents tell me that the procedure (detailed in the video below) was not applied to them at least in the case of vaccinations at schools.

3 - BC CENTRE FOR DISEASE CONTROL VIDEO ON PROCEDURE to USE TO OBTAIN MATURE MINOR CONSENT in school vaccine programs
http://www.bccdc.ca/imm-vac/ForHealthProfessionals/InformedConsentVideos/InformedConsentMatureMinor.htm
HW NOTE: this procedure is not being used though it is supposed to be according to parents and minors who have spoken to me. Health care providers do not take this much time to talk to infants in obtaining consent. They do not ask these questions. etc

4 - BC PARENTAL LIABILITY ACT
http://www.bclaws.ca/Recon/document/ID/freeside/00_01045_01
Parents have legal liability for their children's illegal behaviour.
ALL GOV'T TYPE CARE PROVIDERS ARE SPECIFICALLY EXEMPTED. See "Definitions" - parent - 'does not include' - f

HW NOTE: Liability = responsibility = need authority. Only parents have legal liability for child so only parents have authority over upbringing, with only justifiable limits.

IV - INTERNATIONAL HUMAN RIGHTS AGREEMENTS

1 - Article 26 - 3 of the **UN Declaration of Universal Human Rights**: parents have a "PRIOR RIGHT" to choose their children's education.

2 - see attached version of the **UN Convention on the Rights of the Child** with my highlights of parent-right/duty related and parent-honouring articles.

3 - see Declaration on the Authority of Parents in Children's Education - see especially the "supplement" which **quotes and LISTS INTERNATIONAL AGREEMENTS** upholding parental authority over education.

https://ccrl.ca/2011/09/declaration-on-the-authority-of-parents-and-guardians-in-the-education-of-their-children/

Or

https://ccrl.ca/doc/Declaration-Supplement-2011-07-06.pdf

V - ARTICLES

1 - This article has helpful sections on **parents and children's rights** in Canada
lawjournal.mcgill.ca/userfiles/other/6662744-1224869620_Sykes.pdf

2 - BC School Counsellors Association - article: "Ethical Dilemmas: OBTAINING CONSENT FROM CHILDREN" Fall 2009 http://www.nxtbook.com/nxtbooks/naylor/BCOT0309/index.php?startid=19#/18

Alternate link - easy to read

http://webcache.googleusercontent.com/search?q=cache:PfiZD-ebNjEJ:www.naylornetwork.com/bco-nwl/assets/ethical%2520dilemmas.pdf+&cd=2&hl=en&ct=clnk&gl=ca&client=firefox-a

"To my knowledge, **this has never been challenged in court, but I know there are cases where access to counselling services without parental knowledge has been an issue….**

Keep in mind that the above legal opinion applies to counsellors in private practice. As school counsellors, we are governed by BCTF Code of ethics, and our BCSCA code of ethics**. Best practice is to work with the child and family together**, involving all stakeholders in the counselling process. **If that is not possible, for example, in cases of suicidal ideation**, abuse or neglect, **most districts have protocols to follow** regarding the steps to be taken **regarding informing administration and parents."**