

Legal Context of Parent-Teacher Interactions in Canada

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Parents and teachers have well-known and well-established legal and ethical responsibilities for the children in their care. Research also regularly shows that teachers believe that parental support and involvement in their children's education are important contributors to student success in school. Indeed, government policies have recently encouraged this involvement in more formal ways, such as the establishment of school councils and the expansion of school choice rights for parents. However, during this same period, a disturbing trend in Canadian education has been an increase in complaints by teachers and teacher associations about parental harassment. The potential for tensions in the parent-teacher relationship is illustrated insightfully by Lawrence-Lightfoot (2003): "There is no more complex and tender geography than the borderlands between families and schools" (p. xi). While the law alone cannot change the geography of the parent-teacher relationship, perhaps it can at least mark out some paths and provide some guardrails to help make the journey safer and clearer for everyone involved.

The purpose of this paper is to explore and analyze theoretical and legal frameworks that govern the interactions between parents and teachers. It will begin with consideration of two theoretical frameworks presented by Magsino (1995) and Glenn (2002) outlining the legal rights and responsibilities of three key parties in educational decision-making. The paper will then discuss three typical areas of parent-teacher conflict as illustrations of the interplay of each party's legal rights and responsibilities: student discipline, teacher performance, and curriculum. The paper will describe some legal and policy approaches for the prevention and resolution of parent-teacher conflicts, concluding with some broader philosophical questions about their implications for public education.

Theoretical frameworks

Understanding the legal context of parent-teacher interactions requires consideration of the legal rights and responsibilities of other parties involved in educational decision-making in Canada. Parents and teachers are not the only players in the development and implementation of policies and practices in education. This section discusses the works of Magsino (1995) and Glenn (2002) as two interesting theoretical frameworks that illustrate the tensions and competing interests among key trios of educational stakeholders. While Magsino emphasized rights and

authority of three parties in educational decision-making, Glenn's focus was on their respective responsibilities in public education.

At the outset of this discussion, it is important to understand a key feature of education law and policy in Canada. By virtue of the *Constitution Act* (1867): "In and for each Province the Legislature may exclusively make Laws in relation to Education" (s. 93). As a result, the federal government has no legislative authority with respect to the public education system in each province, nor is there a federal department of education. Instead, each of the 10 provinces and three territories operates its own system of public education and each system is governed by a distinct legal and policy framework. Consequently, any discussion of the legal context of education issues in Canada must recognize the existence of inter-provincial variations of school laws and policies. For the purpose of this paper, there will be specific emphasis on the legal and regulatory provisions in three provinces, Ontario, Alberta, and New Brunswick, representing Central, Western, and Eastern Canada respectively.

Changing rights and authority of parents, children, and the state

Magsino (1995) presented a discussion of the tensions among three key parties in public education: the parent, the child, and the state. A useful way to visualize Magsino's framework is to draw a triangle and to label each vertex respectively as parent, child, and the state. Each vertex would then represent the legal rights and responsibilities of each of these three parties in educational matters, with the whole triangle representing the intersections and tensions existing among the rights and responsibilities of each party. We will consider the place of teachers in this triangular scheme in a moment. We will also consider the effect of recent government initiatives to institute school councils as a means of enhancing the legal authority of parents in school-level decision-making.

Beginning with a description of three theories of the family, Magsino (1995) showed that evolving views of the family coupled with changes in the law have resulted in greater involvement of the state in family matters. He cited 19th century legislative initiatives in Ontario such as compulsory school attendance (1874), child labour laws (1884), and child protection legislation (1893) as examples of government incursions into family life that significantly changed the relationship among parents, children, and the state. He noted that, with modern laws imposing duties on parents to maintain, protect, and educate their children, the power of the state with respect to child rearing has become an established fact. He explained the common law

principle of *parens patriae*, under which the government is empowered to act to protect and promote the welfare of those, such as children, unable to act in their own best interests. Magsino also pointed to the equality rights provisions in the *Canadian Charter of Rights and Freedoms* (1982), particularly those prohibiting age discrimination (s. 15), as evidence of the increasing legal recognition of children as rights holders independent of their parents. Magsino also noted the requirement in Article 5 of the United Nations *Convention on the Rights of the Child* (1990) for governments to respect the rights, responsibilities, and duties of parents to provide guidance and direction to their children in the exercise by their children of the rights conferred by the *Convention*.

In addition to *parens patriae*, Magsino (1995) described state *police power* as a second legal principle that has affected the relationship among parents, children, and the state. He defined police power as the authority of the state to pass laws intended to prevent harm to society and to promote peace, order, and societal well-being. Magsino considered provincial education statutes to be an illustration of police power, with schools seen as a means of promoting the welfare of society as a whole. Accordingly, provincial education laws typically require parents to send their children to school, for example, and these laws are justified by the societal benefits of education for all children.

Magsino (1995) pointed out that state supremacy in education is a comparatively recent phenomenon. This has particularly affected the role of teachers in the parent-child-state triangle described earlier. In the past, the dominant legal principle governing the role of teachers was known as *in loco parentis*. Standing in the place of parents, teachers exercised delegated parental authority such that the educational mandate of the schools was to fulfill the wishes and expectations of parents. However, Magsino argued that, with the rise of state authority in education, as in other family matters, the importance of the *in loco parentis* principle has waned. As schools and school systems have become larger and more complex, the role of teachers has become increasingly defined by statutory and regulatory requirements, rather than by direct reference to parental authority. The result is that teachers are increasingly viewed as agents of the state rather than in their traditional *in loco parentis* role. This has moved them from the parent to the state vertex of the parent-child-state triangle.

School reform and improvement efforts have led to much restructuring in education, particularly since the late 1990s. Bauch and Goldring (1998) described the restructuring efforts

that have led to mechanisms to change the traditional relationship between parents and teachers. A recent area of legislative change has been the widespread requirement for the creation of school councils. This appears to be an effort by government to enhance the legal authority of parents in school-level decisions. Accordingly, provincial laws and policies typically require these councils to include majority representation by the parents of children in each school and to have an advisory role in a variety of school-based decisions. The most significant function of school councils is to provide advice and recommendations to the school principal and the school board. The Ontario *School Councils* (2000) regulation summarizes their function in this way: “A school council’s primary means of achieving its purpose is by making recommendations in accordance with this Regulation to the principal of the school and the board that established the council” (s. 2(2)). This regulation includes a broader statement: “A school council may make recommendations to the principal of the school or to the board that established the council on any matter” (s. 20). Similarly, the Alberta *School Act* (2000) provides that school councils may “advise the principal and the board respecting any matter relating to the school” (s. 22(3)(a)). These provisions provide wide scope for the areas in which school councils can be consulted and provide advice and recommendations to principals and school boards. School boards and principals in Ontario are specifically required to consult with school councils with respect to the development and implementation of policies and guidelines related to pupil achievement, accountability to parents, school improvement plans, and pupil dress codes. Furthermore, Ontario school boards and principals are required to respond to every recommendation made by school councils. These legal provisions give parents, through their participation in school councils, the right and authority to play a role in the improvement of student learning and in the accountability of schools to parents, the community, and the general public.

Responsibilities of families, government, and educators

In contrast to Magsino’s (1995) model, Glenn (2002), writing about the American context for a European audience, set out a different triad for his analysis: families, government, and educators. Unlike Magsino, whose emphasis was on the changes in the respective authority and rights of parents, children, and the state, Glenn chose to focus on the *responsibilities* of families, government, and educators. Glenn’s framework also differed from Magsino’s analysis with its identification of educators as a third player, separate from families and government.

Glenn (2002) began with a description of campaigns in the Midwestern United States in the 1920s over proposed state legislation requiring all school-aged children to attend public rather than religious schools. Proponents of these changes argued that abolishing Roman Catholic, Lutheran, and Dutch Calvinist schools would eliminate suspicion and bitterness among people of different religious beliefs. Opponents of the proposed legislation, afraid that their schools would be outlawed as had happened earlier in Oregon, campaigned under the slogan, “Whose is the child?” This question eventually reached the U.S. Supreme Court, which responded decisively: “The child is not the mere creature of the state” (*Pierce v. Society of Sisters*, 1925, p. 535). In the words of the Supreme Court, “those who nurture him [the child] and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations” (p. 535). The Court criticized as contrary to fundamental liberty state laws that attempted to standardize its children by forcing them to accept teaching only from public school teachers. Glenn pointed out that this statement has been reiterated in various international covenants and in the constitutions of various European countries. As noted earlier, the United Nations *Convention on the Rights of the Child* (1990) requires governments to respect the rights and duties of parents to guide their children (Article 5). Similarly, the *Universal Declaration of Human Rights* (1948) states: “Parents have a prior right to choose the kind of education that shall be given to their children” (Article 26(3)). Glenn commented that this view had not always been self-evident. He cited Danton and others from the radical phase of the French Revolution and Plato over 2000 years earlier, who each had argued that children *did* belong to the state rather than to their parents.

Glenn (2002) described the second major point made by the U.S. Supreme Court in *Pierce v. Society of Sisters* (1925). The Court affirmed the state’s authority to regulate education and schools by ensuring that all children receive some schooling and by setting standards in such areas as teacher quality and curriculum content. Thus, Glenn observed that the role of education law and policy study is to explore the tensions that exist between two competing principles: the authority of the state to ensure appropriate education for all children and the limits on that authority deriving from the prior rights of parents. He described two extreme views, neither helpful to reaching a reasonable accommodation of the two points made by the U.S. Supreme Court. According to Glenn, there are the Libertarians who, on one hand, want the state to abandon its role in education, and then there are the Statists who insist that the government

should liberate children from their parents, especially if those parents want to pass on their religious beliefs. He then commented that working out this balance had become complicated in recent years by the rise of the third player in his triad, whom he described as “the organized and self-conscious educational profession, which increasingly does not see itself as the mere agent of either the family that provides its pupils or the government that pays its salary” (p. 10). Glenn went on to observe that conflict among these three players, families, government, and educators, may be the result of a lack of clarity about their respective roles.

Glenn (2002) chose explicitly to focus his subsequent analysis on the responsibilities, rather than rights, of his three players. For families, Glenn described their responsibility to ensure that their children receive a good education. While the norm in industrialized countries has been to entrust their children’s education to professional educators, Glenn pointed to the rise in home schooling in the United States and to Article 26(3) of the *Universal Declaration of Human Rights* (1948) to affirm that parents might properly exercise this responsibility through the right of school choice. He described parental decisions on school choice as based on the expected advantages for their children and the beliefs and values that they want reinforced by their children’s schools.

For government, Glenn (2002) believed their responsibility in education to be based on self-protection through its need for a population with a common minimum of instruction for civic participation and economic progress. More recently, according to Glenn, the state has looked to schooling as a means to reduce social class differences or to bring the marginalized into the mainstream. He cited those who have argued in favour of state intervention in families to achieve social justice. For example, Glenn cited Plato’s argument: “A certain understanding of justice would best be served by taking children away from their parents, so that no parent would be able to give special advantages to his or her child” (p. 11). Glenn pointed out that this claim, while persistently made in the name of social justice, runs counter to well-established human rights principles.

In describing the responsibilities of educators, Glenn (2002) emphasized the need to stand for a vision of education that gives shape and coherence to everything that happens through the school day. To carry out these responsibilities, educators require both professional and personal qualities to meet the requirements of government and families. Glenn described the professional qualities as subject mastery and understanding of the teaching and learning process

and the personal qualities as those that evoke trust and emulation. Arguing for each school to have a distinctive character to inform its curriculum emphases and its selection of staff, Glenn commented that this would not diminish the responsibilities of parents to choose wisely for their children or for government to be specific about curriculum and teaching standards so that no student is disadvantaged for choosing inadequate schools.

In accordance with Glenn's (2002) preceding arguments, there has been some movement in Canada towards enhanced parental choice in education. Notably, Alberta parents have the explicit legal right to enroll their children in any school operated by any school board, subject only to resource and facility availability: "A board shall enroll a resident student of the board or of another board in the school operated by the board that is requested by the parent of the student if, in the opinion of the board asked to enroll the student, there are sufficient resources and facilities available to accommodate the student" (*School Act*, 2000, s. 45(3)). In addition, Alberta school boards are authorized to offer a wide range of alternative programs, including those that emphasize a particular language, culture, religion, or teaching philosophy (s. 21(1)). Moreover provincial regulations provide detailed provisions governing charter, private, and home schooling. Particularly significant to parental choice are provisions allowing for government funding to support these schooling alternatives.

This array of choices places a great deal of responsibility on the shoulders of Alberta families in making decisions about their children's education. While proponents of Glenn's (2002) model would welcome this opportunity for families to exercise their legitimate responsibility to make the appropriate choices for their children's education, others might have concerns about the range and multiplicity of these choices. For example, Taylor and Woollard (2003) described the "risky business" facing families trying to choose the appropriate high school education for their children in Edmonton. These expanded choice provisions can also affect the nature of parent-teacher interactions, particularly where parents are seen as educational clients or consumers. It is for this reason that Kachur (1999) used the term "parentocracy" in contrast to democracy to describe the emerging philosophy in Alberta, as well as in Britain, the United States, and elsewhere. He described parentocracy as a move towards a market-driven approach to education. A significant critique of this philosophy stems from the belief that public schools serve the public interest in the broadest sense, not just the private interests of parents. To put it another way, society as a whole has an interest in, and benefits from, a successful public

school system. Indeed, the Supreme Court of Canada affirmed the importance of education to society in a decision given in a compulsory attendance case that arose in Alberta in the 1980s:

Whether one views it from an economic, social, cultural or civic point of view, the education of the young is critically important in our society. From an early period, the provinces have responded to this interest by developing schemes for compulsory education. Education is today a matter of prime concern to government everywhere.... Indeed, in modern society, education has far-reaching implications beyond the province, not only at the national, but also at the international level. (*R. v. Jones*, 1986, para. 22)

In Kachur's words, "as the market re-regulates education, consumer *choice* ironically brings less citizen *voice*" (p. 118). He argued that democratic participation is stifled in a system when society is reduced to "a collection of atomized consumers whose freedom consists in making consumer choices based on unequal purchasing-power" (p. 118). He also suggested that this emerging quasi-market would affect the professionalism of teachers, who would no longer see themselves as public servants promoting the public good, but rather as selling products to the highest bidder (p. 116). Kachur and others with similar concerns would argue that excessive encouragement of parental choice in the school system may not allow public schools to achieve the goals of social cohesion, equal opportunity, and democratic values that are often associated with the purposes of public education. This evolution in philosophy would undoubtedly affect the tone and context of parent-teacher interactions.

Glenn's (2002) efforts to resolve the tension among the responsibilities of families, government, and educators led him to cite the ethical arguments of Aristotle. According to Aristotle, there are three dispositions: excess, defect, and mean. He described the first two, excess and defect, as vices, and the third, mean, as a virtue. Using this reasoning, Glenn argued that education law and policy scholars must be concerned with the restraints that right reason places on all three parties. These restraints would avoid the temptation of doing too much, or not enough, for children who must finally learn to judge and to do for themselves. Glenn concluded his paper with an analogy similar to the geographical reference of Lawrence-Lightfoot (2003) cited at the outset of this paper:

I would like to suggest that we [education law and policy scholars] can best understand ourselves as frontier guards where the respective responsibilities of families, of government, and of educators touch and sometimes come into conflict.... [O]ur

characteristic stance should be to maintain the balance among them by understanding the central responsibilities—the virtues—of each and also how each may err by excess or by insufficiency. (p. 13)

In matters of parent-teacher interaction, Glenn would argue that both parents and teachers must understand and meet their respective responsibilities, and not exceed them by taking on those of other parties, in order to serve the best interests of children. In the next section, we will exercise our role as frontier guards as we examine the application of Glenn's model as well as that of Magsino (1995) to three typical areas of parent-teacher conflict.

Three areas of parent-teacher conflict

With the preceding discussion in mind, we now consider the respective rights and responsibilities of education stakeholders in relation to three typical areas of parent-teacher conflicts: student discipline, teacher performance, and curriculum. Each of these areas of conflict will be illustrated by consideration of a typical scenario and analyzed with respect to the theoretical frameworks set out by Magsino (1995) and Glenn (2002) and to relevant legal and ethical principles governing the interaction between parents and teachers.

Student discipline

Teachers have a well-established responsibility to maintain order and discipline in their classrooms and schools. For example, in Ontario, it is the duty of every teacher “to maintain, under the direction of the principal, proper order and discipline in the teacher's classroom and while on duty in the school and on the school ground” (*Education Act*, 1990, s. 264(1)(e)). However, in carrying out this responsibility, teachers may face opposition from parents. Consider the following situation:

A student is accused of misconduct on a school bus. Upon receiving a report from the bus driver of the student's horseplay during a bus trip, the vice-principal decides to suspend the student's bus privileges for three days. His parents object to the vice-principal's decision and file an appeal with the school board.

In this scenario, the vice-principal responded to student misconduct occurring on a school bus. Provincial legislation typically states that school disciplinary authority extends beyond the classroom and school property to include school-sponsored activities that may occur off school property, including transportation to and from school. For example, in Ontario, provincial regulations state: “Every pupil is responsible for his or her conduct to the principal of the school

that the pupil attends ... while travelling on a school bus that is owned by a board or on a bus or school bus that is under contract to a board” (*Operation of Schools—General*, 1990, s. 23(4)(c)). Similarly, in Alberta, a principal may suspend a student “from riding in a school bus” (*School Act*, 2000, s. 24(3)(c)). In this scenario, the vice-principal was acting within his statutory authority and in accordance with the school board’s legal responsibility to ensure the safety of all students riding on school buses.

Legislation also often sets out the principles underlying school discipline and the role of parents in such decisions. The common legal philosophy guiding the discipline of students by teachers is based on a parental standard. For example, an Ontario pupil is required to “accept such discipline as would be exercised by a kind, firm and judicious parent” (*Operation of Schools—General*, 1990, s. 23(1)(c)). This principle is consistent with the *in loco parentis* doctrine that has traditionally governed the teacher-student relationship. In Glenn’s (2002) model, both teachers and parents would have different, but related, responsibilities in this situation. Teachers, including principals and vice-principals, have the responsibility to provide a safe bus ride for all students, and to choose the methods to prevent and respond to cases of student misconduct on buses. However, as Magsino (1995) pointed out earlier, with the evolution of the role of teachers into agents of the state, the disciplinary options exercised by teachers are limited by statute, regulation, and policy to a greater extent than parents. In a case of school bus misconduct by a student as described here, school officials acting within their statutory authority are subject not only to the “kind, firm, and judicious parent” standard, but also to the requirement to respect such *Charter* (1982) principles as fundamental justice, equality rights, and freedom of expression.

Parents too have a role in the conduct of their children at school. For example, the New Brunswick *Education Act* (1997) states: “In support of ... the learning environment at the school, a parent is expected to ... have due care for the conduct of his or her child at school and while on the way to and from school” (s. 13(1)(e)). The responsibility of parents, in Glenn’s (2002) view, would include conversations with their children that communicate and reinforce proper school bus conduct, as well as appropriate participation with school officials in decision-making in cases such as this. In terms of parent-teacher interactions, the application of these principles means that teachers and principals may implement certain discipline measures, especially serious sanctions like suspensions, only by following required procedures, including the involvement of

parents. For example, if an Alberta student is suspended, the principal shall: “(a) forthwith inform the student’s parent of the suspension, (b) report in writing to the student’s parent all the circumstances respecting the suspension, and (c) if requested, provide an opportunity to meet with the student’s parent ... to discuss the reasonableness of the suspension” (*School Act*, 2000, s. 24(5)). Notice the specific right of the parent “to discuss the reasonableness of the suspension” with the principal and requirement of the principal to promptly and thoroughly inform the parent and to “provide an opportunity to meet” with the parent. In this case, we can see a clear effort by government to require and regulate the type of informed parent-teacher interaction that is to occur in the case of a student suspension. There are similar provisions in other provinces for informing parents and allowing them to discuss the decision with school officials, normally culminating in the formal right to appeal suspension decisions to the school board.

Teacher performance

Parent-teacher conflicts can arise when parents are not satisfied with the performance of their children’s teachers. Consider this scenario:

A mother believes that her older son’s teacher has treated him unfairly and has discouraged him throughout the school year. Concerned that her younger son will have this teacher in the coming year, she requests a meeting with the principal.

In such situations, principals can be caught in the middle of these conflicts. On one hand, parents expect principals and other school officials to act on their legitimate concerns about teacher performance, while, on the other, teachers rightfully expect that their performance will be evaluated by fellow professionals, including their principals, and not by the parents of their students. To this end, teacher-employer collective agreements normally include provisions related to performance evaluation of teachers and, if necessary, employer discipline of teachers in cases of unsatisfactory performance.

There is no question that teachers have a legal duty to teach their students in a diligent, competent, and effective manner. For example, the New Brunswick *Education Act* (1997) lists among the duties of teachers “identifying and implementing learning and evaluation strategies that foster a positive learning environment aimed at helping each pupil achieve prescribed learning outcomes” (s. 27(1)(b)). Similarly, in Ontario, teachers are required “(a) to teach diligently and faithfully the classes or subjects assigned to the teacher by the principal; [and] (b) to encourage the pupils in the pursuit of learning” (*Education Act*, 1990, s. 264(1)). In this

situation, the parent would argue that the teacher had failed to encourage her son in his pursuit of learning. Glenn (2002) would certainly concur that these duties are consistent with the responsibilities of professional educators. By extension, guidance and supervision of teachers in the performance of these duties would also be included in the responsibilities of educators, particularly principals and other senior educators. Accordingly, Ontario principals are required to “supervise the instruction in the school and advise and assist any teacher in co-operation with the teacher in charge of an organizational unit or program” (*Operation of Schools—General*, 1990, s. 11(3)(a)).

In Canada, most teachers in the public education system work in a unionized environment. This means that, as members of an association, a federation, or a union, teachers negotiate the terms and conditions of their employment collectively with their employer, usually a local school board or some agency of government. A standard provision in a teacher-employer collective agreement addresses the process and criteria for employer disciplinary action against a teacher for job-related performance. For example, in New Brunswick: “No teacher shall be disciplined, suspended, dismissed or assessed a financial penalty except for just cause” (New Brunswick Teachers’ Federation, 2004, Article 55.01(a)). A key component of the just cause requirement in labour law is that employer discipline can only be based on evidence contained in an employee’s official file: “In cases of discipline, suspension, dismissal or financial penalties under this Article, only those unfavourable notes, reports or letters in the teacher's personal record file may be used against the teacher” (Article 55.05). Another element of just cause principles is that employees must be informed of the contents of their official file and have access to it for the purpose of requesting the correction or removal of unfavourable items: “No unfavourable note, report or letter shall be filed in the teacher's personal record file prior to the teacher's being notified in writing and having access to said note, report or letter” (Article 55.04(a)). With respect to their teaching performance, New Brunswick teachers are entitled to prompt notification of perceived difficulties: “A teacher must be informed within a reasonable period of time of any problems or difficulties observed with respect to his/her performance” (Article 55.04(b)). If teachers disagree with an item in their file, they are entitled to use the grievance process contained in collective agreements to have such an item corrected or removed: “If the teacher considers that any note, report or letter is not justified, he/she may use the grievance procedures under this Agreement in order to seek to have it withdrawn from his/her

record or corrected” (Article 55.04(c)). The purpose of such provisions is to avoid any unfavourable surprises for teachers in the performance evaluation and employer discipline process.

With respect to the conversation described above between a parent and a principal concerning the performance of the teacher, the collective agreement provisions described above would require the principal to be careful about how to use the information provided by the parent. If the parent provides a written statement about the teacher’s performance, or if the principal writes a report on the conversation, and either written document is placed into the teacher’s official file, then the teacher must be informed of the report and must be granted access to this report. This would allow the teacher to respond to any concerns or complaints expressed by the parent, particularly if they were unjustified in some respects. On the other hand, if the principal simply listens to the parent’s concerns, and no written report is placed in the teacher’s file, then the principal and school board could not use the information provided by the parent in any subsequent discipline action taken against the teacher. Furthermore, if the principal makes no written report, but does have legitimate concerns about the teacher’s performance, the principal has a duty under the collective agreement to inform the teacher of these concerns. This would be especially important if the concerns persist and lead to further complaints from students, colleagues, or other parents.

The collective agreement provisions described above create a regime under which teachers have clearly defined rights, principals and school boards have many responsibilities, and parents appear to have a very limited role. Parents have the right to express concerns to school administration about teacher performance, but they must yield to educators (i.e., teacher unions and principals) and government (i.e., school boards) in the response to their concerns. Magsino (1995) would point to the role of teachers as agents of the state as justification for this process. He would argue that parents unhappy with the performance of the state (as delivered by teachers) have recourse to the state itself for redress, but not to teachers directly, since the teachers are acting on behalf of the state. By contrast, Glenn (2002) would point to the responsibility of educators to earn the trust of families and to the responsibility of parents not satisfied with the performance of teachers to make different schooling choices for their children.

Glenn (2002) did, however, point out that governments are responsible for the standards of teaching quality. This would include creating frameworks for teacher performance evaluation

based on the legally established duties of teachers and on desired student learning outcomes. For example, under the Alberta *School Act* (2000), the Minister of Education is authorized to make regulations “providing for and governing the means of dealing with allegations that a teacher is unskilled or incompetent in teaching, ... including ... regulations governing what constitutes unprofessional conduct or unskilled or incompetent teaching” (s. 94(1)(c)(i)). Accordingly, the Alberta Minister of Education has issued a statement on teaching quality standards (Alberta Education, 1997). Similarly, in Ontario, principals are required to conduct performance appraisals of teaching staff (*Operation of Schools—General*, 1990, s. 11(3)(g)), to provide written reports of these appraisals to school board officials at their request (s. 11(3)(i)), and to make recommendations to the school board with respect to “the demotion or dismissal of teachers whose work or attitude is unsatisfactory” (s. 11(3)(j)(ii)). Notice that elected school boards, acting within their statutory authority, are ultimately responsible for teacher employment, discipline, and dismissal decisions. As described by Magsino (1995), this is consistent with the role of teachers as agents of the state.

A significant change occurred in Ontario with the legal requirement effective September 2002 to include parental input in the teacher performance appraisal system: “Every board shall develop an annual written parent survey and pupil survey in consultation with the school councils and principals for the schools governed by the board, the special education advisory committee and those parents, pupils and teachers who are interested” (*Teacher Performance Appraisal*, 1999, s. 5(1)). The scope of the parental input appears to focus on parent-teacher communication: “A parent survey must ask for parental input on each teacher of each child of the parent and the parent’s level of satisfaction with communication between the parent and the teacher about the child’s learning and progress” (s. 5(2)). As part of the performance appraisal process, teachers are entitled to an opportunity “to review and respond to the principal in respect of the parental input, pupil input or both, within such period of time as the principal considers reasonable in the circumstances” (s. 4(2), para. 5). However, a significant feature of the parental input provided by this survey is the right of parents to confidentiality: “The principal shall, on the request of a parent or pupil, remove all words and names that would identify the parent or pupil from a document that contains input from the parent or pupil, including a parent survey and a pupil survey, before the document or a copy of the document is provided to a teacher” (s. 5 (5)). This provision would clearly violate provisions of teacher-employer collective

agreements described earlier, particularly since teachers would argue that they would not be able to properly defend themselves against unfavourable parental or pupil comments made through the surveys. It is important to note that parental input cannot be the sole source of information leading to an unsatisfactory performance evaluation or to employment termination: “Information obtained solely through documents recording parental input, pupil input or both shall not be the sole factor in a teacher receiving an unsatisfactory rating or in recommending or determining that a teacher’s employment should be terminated” (*Education Act*, 1990, s. 277.31(8)). It is noteworthy that a recent submission from a task force of Ontario educator organizations (representing teachers, principals, and supervisory officers) recently recommended to the Ontario Minister of Education that these provisions for the formal collection of parental and pupil input into teacher performance appraisal be eliminated (“Joint task force,” 2004). Clearly, with respect to Glenn’s (2002) view of the respective responsibilities of educators and parents, these educator groups perceive that parent involvement in formal teacher performance appraisal would exceed the scope of parental responsibilities.

Curriculum

The content or delivery of school curriculum can be a point of contention between parents and teachers. In particular, parents may object to certain topics being taught in the classroom or to the way in which various points of view are presented. Consider this scenario:

A father objects to allegedly pro-homosexual content in his son’s kindergarten class. He demands that the school inform him in advance of such discussions in class. He is arrested when he refuses to leave the school.

In this case, the parent objected to homosexuality being taught in a way that he perceived to conflict with his family’s values and beliefs. The conflict between the father and school officials is exacerbated by his refusal to leave school premises when directed to do so, thus causing a disturbance on school property. The legal issues and remedies related to this latter issue will be addressed in a later section of the paper. The core issue in this case concerns the respective rights and roles of parents and teachers in matters of curriculum choice and delivery.

According to Magsino’s (1995) view of teachers as agents of the state, teachers are authorized to deliver the curriculum and use materials as approved by provincial and school board authorities. For example, Alberta teachers are required to “(b) teach the courses of study and education programs that are prescribed, approved or authorized pursuant to this Act; [and]

(c) promote goals and standards applicable to the provision of education adopted or approved pursuant to this Act” (*School Act*, 2000, s. 18(1)). In this situation, if the teacher’s discussions of homosexuality were intended to promote such approved curricular goals as respect for diversity or to prevent harassment and discrimination, then the teacher would be legally authorized to conduct such lessons. Similarly, Glenn (2002) would point to the U.S. Supreme Court decision cited earlier (*Pierce v. Society of Sisters*, 1925) to support the argument that the state has a legitimate responsibility with respect to curriculum standards. This would certainly include lessons intended to promote concepts and attitudes consistent with democratic citizenship and civic engagement.

As for parents, as this case illustrates, Magsino (1995) would point to their right to be informed about their children’s education, including the approved curricular goals and the methods to be used to achieve them. He would likely also support the father’s reference to such *Charter* (1982) rights as freedom of conscience and religion (s. 2(a)) if the father could show that his rights or those of his son were being infringed in some way by “the allegedly pro-homosexual content” in the kindergarten class. For example, in New Brunswick classrooms, teachers must not “interfere, or permit interference on the part of others, with the religious tenets of any pupil” (*School Administration Regulation*, 1997, s. 25(3)). If this situation were to arise in a European school, the father could similarly cite the *European Convention of Human Rights* (1950). According to Article 2 of *Protocol 1* (1952) of this Convention: “In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.” As cited earlier by Magsino, the father in this case could also refer to the international *Convention on the Rights of the Child* (1990) and argue that the state, and the teachers employed by the state, must respect his rights to “provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention” (Article 5). In this case, the fact that the child is in kindergarten would give the father the right and responsibility to object to the lessons on homosexuality on behalf of his son if either the father or son believed that there was interference with their religious tenets.

The difficulty for teachers and parents alike in curriculum discussions arises when there are legitimate differences of opinion in society over political, moral, and social issues, a situation

that is increasingly evident in a diverse and multicultural society. The Supreme Court of Canada had an opportunity to address the issue of parent-teacher disputes in curriculum matters in its decision in *Chamberlain v. Surrey School District No. 36* (2002). This case concerned a dispute faced by a British Columbia school board over requests to approve certain books depicting same-sex parented families for use in the kindergarten and Grade 1 program. Groups of parents, particularly those representing several faith groups, opposed the use of these books because of their alleged homosexual content. School administrators, including the superintendent, appeared to support the parents and recommended against approving these books. The school board agreed, but the Supreme Court ordered the board to reconsider its decision in spite of the parental opposition. In commenting on the requirements of British Columbia curriculum guidelines concerning parental involvement in the selection of books to support curriculum objectives, McLachlin C.J.C. observed:

The curriculum guidelines contemplate extensive parental involvement at the stage of selecting books for use in a particular classroom. And indeed, this seems to be the appropriate stage at which to tailor the materials chosen for use in a particular classroom to the unique needs that particular parents perceive their children to have. This is much more easily done by parents in consultation with their children's teachers than it is by a school board, which must decide whether a resource can become available to a large number of children in different situations. (para. 32)

In the case of the father objecting to the content of his son's kindergarten lessons, this ruling would suggest that it is appropriate for parents and teachers to have conversations on the materials and methods used to achieve approved curricular goals and for the father to expect that the unique needs of his child be considered in such discussions and the resulting decisions. However, parental views are not the exclusive factor in such decisions by schools. McLachlin C.J.C. went on to qualify the rights of parents in such discussions:

Moreover, although parental involvement is important, it cannot come at the expense of respect for the values and practices of all members of the school community. The requirement of secularism in s. 76 of the [British Columbia] *School Act*, the emphasis on tolerance in the preamble, and the insistence of the curriculum on increasing awareness of a broad array of family types, all show, in my view, that parental concerns must be accommodated in a way that respects diversity. Parental views, however important,

cannot override the imperative placed upon the British Columbia public schools to mirror the diversity of the community and teach tolerance and understanding of difference.
(para. 33)

Notice that achievement of provincially approved curricular goals, particularly those related to diversity and tolerance, takes priority over the views of individual parents or even groups of parents. With respect to Magsino's (1995) model, this ruling illustrates the Supreme Court's acknowledgement of the growth of the state's mandate in public education and the duty of teachers to fulfill the state's imperatives even in opposition to parents. Using Glenn's (2002) focus on responsibilities, we can observe in this ruling an effort to define the appropriate stage and scope for parental responsibility with respect to curriculum choices in their children's education.

Approaches for prevention and resolution of parent-teacher conflicts

The preceding discussion illustrates the complexity of the parent-teacher interactions and the tensions that exist in the analysis of the legal context of these interactions. As noted at the beginning of this paper, teachers and teacher associations have been increasingly concerned about reports of growing numbers of incidents of parental harassment of teachers. This section will list a variety of legal and policy approaches intended to facilitate the prevention and resolution of parent-teacher conflicts. These include measures for teacher education and certification, protocols and partnerships, and, where necessary, legal remedies. These measures reflect the efforts of a variety of stakeholders, including teacher associations, school boards, and provincial governments, to promote positive parent-teacher interactions in the best interests of children's education.

Teacher education and certification

One approach aimed at improving the quality of parent-teacher interactions relates to the education and certification of teachers. Faculties of education, teacher associations, and provincial certification agencies can be involved in promoting the necessary knowledge, skills, and attributes among pre-service teachers so that they can create and maintain effective and appropriate relationships with the parents of their students. For example, an important element of a B.Ed. program should be units or courses related to the legal rights and responsibilities of teachers and parents in the public school system. It is important that aspiring teachers be knowledgeable about these rights and responsibilities and have access to appropriate reference

materials and necessary guidance and support. There is evidence that many classroom teachers lack confidence in their knowledge of relevant school law (Leschied, Dickinson, & Lewis, 2000), while administrators who are confident in their knowledge of relevant laws and policies face fewer challenges to their decisions from parents and students (Brien, 2005). In addition to legal knowledge, teacher education students can benefit from instruction that encourages understanding of the needs and expectations of parents in their interactions with their children's teachers. For example, Levin, Nolan, Kerr, and Elliott (2005) have pointed out that when teachers contact parents because of student misbehaviour at school, these interactions are often characterized by negative reactions on the part of both teachers and parents. In their textbook designed for undergraduate teacher education courses, they provide suggestions for appropriate strategies for working effectively with parents and explanations to help students better understand the perspective of parents in their dealings with their children's teachers and schools.

Provincial certification regulations and agencies can also play a role in promoting among teachers the importance of appropriate relationships with parents. For example, in Alberta, holders of interim teaching certification are expected to demonstrate an understanding of "the importance of engaging parents, purposefully and meaningfully, in all aspects of teaching and learning" (Alberta Education, 1997, s. 1(2)(1)). In Ontario, as members of the Ontario College of Teachers, teachers are expected to know ways to "communicate and collaborate with parents and others involved in the education of students" (Ontario College of Teachers, 2004, p. 13). While such regulations and expectations alone are not sufficient to ensure that teachers meet them, they can affect the content of accredited teacher education programs. For example, as a condition of accreditation by the Ontario College of Teachers, a program of professional education is expected to be consistent with and reflect "the College's 'Standards of Practice for the Teaching Profession' and the 'Ethical Standards for the Teaching Profession (*Accreditation of Teacher Education Programs*, 2002, s. 9(1), para. 3(i)). This would require faculties of education or other providers of teacher education programs to ensure that they address with their students the issue of communication and collaboration with parents. These regulatory requirements also demonstrate the importance in the eyes of government agencies and professional organizations that teachers develop appropriate understandings, strategies, and attitudes with respect to their interactions with parents.

Protocols and partnerships

Another means by which education stakeholders attempt to improve parent-teacher interactions is through the design of appropriate protocols and partnerships. For example, an Alberta Teachers' Association (2004) publication contains a section that describes parents as partners. In particular, the following advice is offered to teachers: "The teacher can avoid possible conflicts and problems by ensuring that parents feel they are partners in their children's education" (p. 54). The section includes advice on regular communication with parents, shared problem-solving, and conflict resolution processes, concluding with the observation that the more that a teacher can do to achieve these things "the stronger the home/school partnership will become and the greater the positive impact on student learning and success" (p. 55). These comments are telling in that they suggest that teachers need to help parents perceive themselves as partners in their children's education and take the initiative to make the partnership work effectively and appropriately. The unspoken assumption underlying these statements is that many parents are unable or unwilling to see themselves as partners in their children's education, and this role ambiguity can lead to conflicts in their relationships with teachers.

When issues arise between parents and teachers, it is important that the relevant laws and policies set out or facilitate the creation of appropriate communication protocols. For example, every Ontario school council is required to create a by-law that "establishes a conflict resolution process for internal school council disputes" (*School Councils*, 2000, s. 15(2), para. 3) that is consistent with board policies. Similarly, the Ontario *Code of Conduct* (Ontario Ministry of Education, 2001) states that all school members, including parents, must "treat one another with dignity and respect at all times, especially when there is disagreement" (p. 8). Tymochenko and Keel (2006) have pointed out that, while the Ontario code requires that teachers hold everyone to the highest standard of respectful and responsible behaviour and act as role models by demonstrating respect for all students, staff, and parents (Ontario Ministry of Education, 2001, p. 5), it does not articulate any expectations for parent behaviour. By comparison, the New Brunswick *Education Act* (1997) contains several provisions concerning parent-teacher communications:

- A parent is expected to "communicate reasonably with school personnel employed at the school his or her child attends as required in the best interests of the child" (s. 13(1)(b)).
- A parent has a right to "reasonable consultation with the pupil's teacher or the principal of the

school the pupil attends with respect to the education of the pupil” (s. 13(2)).

- Both parents and school staff have a shared responsibility “to conduct themselves in a respectful manner and to follow established procedures when involved in communications concerning the pupil” (s. 13(3)).

Notice that the New Brunswick government has exercised its responsibility by assigning rights and responsibilities to teachers and parents in their interactions, with the focus at all times to be on the education and best interests of students.

Educators too can take the initiative in developing appropriate protocols for parent-teacher interactions. In Alberta, increasing concerns over parent-teacher conflicts prompted the Alberta Teachers’ Association to develop its *Healthy Interactions* program (Riewe & Fraser, 2004). Developed to provide a consistent and comprehensive approach to resolving parent concerns, the program is guided by four core components: an ethos of good faith, responding to needs, maintaining communication, and reaching resolution. The program operates through a joint agreement between a school district and the Alberta Teachers’ Association to ensure that all participants understand both the process and the underlying philosophy. Training sessions for teachers, administrators, and trustees help school districts implement the program and develop policies and practices to ensure that parental complaints are handled in a consistent manner. In response to concerns from their members, both the New Brunswick Teachers’ Association and the Alberta Teachers’ Association have issued brochures providing guidance to teachers facing harassment from parents and others. These brochures provide information to teachers concerning the definition of harassment, their rights and responsibilities under pertinent legislation and policies, and suggestions for appropriate strategies and responses.

Legal remedies

In many human interactions, where the parties involved are not in dispute, the legal aspects of the situation may go largely unnoticed. However, when people are unable to resolve disputes in a reasonable manner, in spite of appropriate training and established protocols, then the role of the law becomes more apparent. Such is the case with parent-teacher interactions. There has been growing concern, especially on the part of teachers and their professional associations, about the increased incidence of parental harassment of teachers. The program at recent conferences of the Canadian Association for the Practical Study of Law in Education (CAPSLE), a national association that involves a wide spectrum of people and organizations

interested in education and the law, has included many presentations on this topic, either from the point of view of teachers and school boards concerned about harassment by parents (e.g., Riewe & Fraser, 2004; Roher, 2003; Tymochenko & Keel, 2006) or from that of parents concerned about teachers and schools neglecting their concerns (e.g., Gram, 2004; Lauwers, 2005).

Tymochenko and Keel (2006), writing on behalf of a Toronto law firm that regularly represents school boards in disputes with parents, presented a thorough treatment of the legal remedies available in cases of parental harassment of teachers. Their point of view was evident from the opening sentences of their paper: “There is a shadow looming over education. While senior administrators struggle with education reform, front-line administrators are compelled to deal with an invidious threat to the peace and order of schools—*parental harassment*” (p. 419) (Emphasis in original). They described the sources of legal options available in the following categories: education legislation, trespass legislation, civil action, and criminal proceedings. Judson (2003), attempting to describe a balance of power between parents and teachers, included the option for parents of filing complaints with the Ontario or British Columbia Colleges of Teachers. Each of these options for finding legal remedies in cases of parent-teacher disputes has a mix of advantages and disadvantages for the parties involved.

Education legislation. Tymochenko and Keel (2006) provided a summary of applicable legislation from across Canada. They suggested that such provisions would be useful where the alleged harassment falls short of the threshold for civil or criminal action, but that they are not helpful for situations that occur beyond the school site. The Ontario *Education Act* (1990) contains several relevant provisions that are sometimes similar in other provinces:

- Parents have the right to visit their children’s schools: “A parent or guardian of a child attending a public school and a member of the board that operates the school may visit the school” (s. 50(1)).
- A principal has the duty “to refuse to admit to the school or classroom a person whose presence in the school or classroom would in the principal’s judgment be detrimental to the physical or mental well-being of the pupils” (s. 265(1)(m)).
- Causing a disturbance at a school is an offence: “Every person who wilfully interrupts or disquiets the proceedings of a school or class is guilty of an offence and on conviction is liable to a fine of not more than \$200” (s. 212(1)).

- Boards are required to create codes of conduct for all persons on school property: “Every board shall establish policies and guidelines with respect to the conduct of persons in schools within the board’s jurisdiction” (s. 302(1)).
- “The principal of a school may direct a person to leave the school premises if the principal believes that the person is prohibited by regulation or under a board policy from being there” (s. 305(4)).
- Under the *Access to School Premises* (2000) regulation made pursuant to the *Education Act*: “A person is not permitted to remain on school premises if his or her presence is detrimental to the safety or well-being of a person on the premises, in the judgment of the principal, a vice-principal or another person authorized by the board to make such a determination” (s. 3(1)).

Tymochenko and Keel have found that the power of the principal described in s. 265(1)(m) of the *Education Act* to refuse admission to persons who might be detrimental to the well-being of pupils to be the most effective and proactive of these provisions in cases of parents who have a record of previous incidents of harassment of teachers and other school staff. Taken together, these Ontario provisions give parents the rights to visit schools, but gives boards the duty to set out policies for proper conduct by all parties on school property, including parents, and charges principals with the right and responsibility for preventing access or refusing access to those whose presence is disruptive to the school or detrimental to others in the school.

Trespass legislation. Under the New Brunswick *Trespass Act* (1983), schools are specifically identified as a place where trespassing is not allowed: “No person shall trespass on ... the premises of a school, vocational school, university, college, trade school or other premises used for educational purposes ... with respect to which he has had notice from an authorized person not to trespass” (s. 2(1)(b)). Tymochenko and Keel (2006) described provincial trespass legislation as an option when provincial education legislation does not contain the exclusion and disturbance provisions described above. While the penalties for trespassing are not a significant deterrent and the processes involved in laying charges are sometimes inconvenient for schools, the police will respond to a school’s request for assistance if a trespasser causes a disturbance and refuses to leave the property. In the case described earlier of the father who refused to leave school property when he was not satisfied with the response of school officials to his complaint about his son’s kindergarten instruction, school officials could file trespass charges against him

and ask the police to assist in removing him from school property. This is certainly preferable to having teachers or other school staff attempt to do so.

Civil action. Tymochenko and Keel (2006) described various approaches available under civil law to remedy cases of harassment or defamation of school staff by parents. Their first suggestion, in cases where reference to communication protocols and codes of conduct does not correct a problem, was that the principal and a board administrator write a warning letter detailing the objectionable behaviour and setting out strict limits for further contact by the parent with the school. They particularly recommended against sending a “lawyer’s letter” in the first instance as a means of avoiding unnecessary escalation of the conflict. However, they pointed out that one or more warning letters would provide evidence that the board had acted reasonably should the matter end up before a judge in a civil action. If a school board can show that actions of a parent constitute harassment, particularly repeated actions that are threatening or harmful, or defamation, where false statements that target individuals cause measurable harm to their reputation, then courts may issue injunctions ordering the actions to cease and may also award damages. It is important to point out that the cost of launching civil actions is borne by the parties involved, which in the case of teachers would be their school boards.

Criminal proceedings. The law distinguishes between civil and criminal harassment (Tymochenko & Keel, 2006), with fear for one’s personal safety an essential component of criminal harassment. Therefore, if a parent were to threaten physical harm to a teacher as a result of some school-related dispute, then the teacher might have the option to pursue criminal charges. The advantage for school boards and teachers of choosing criminal over civil proceedings is that the cost is borne by the Crown rather than by the plaintiff. The major disadvantage of choosing this route, according to Tymochenko and Keel, is that the perspective and concerns of the victim can be lost as the process tends to focus instead on the rights of the accused. They recommended that school board counsel work with police and prosecutors to set appropriate and effective bail and probation conditions to prevent further harassment.

College of Teachers complaint. In Ontario and British Columbia, teachers in public schools must be members of the provincial College of Teachers, the professional regulatory body. Parents in those two provinces who are not able to have their concerns satisfied by a teacher, administrator, or school board have the right to file a complaint with the College of Teachers (Judson, 2003). In both provinces, when a complaint is filed, an investigation

committee will first determine whether the complaint is related to professional misconduct and whether the complaint is frivolous, vexatious, or an abuse of process (in Ontario) or the matter needs to be considered first by a school board or the police (in British Columbia). Teachers found guilty of professional misconduct by the College of Teachers may face a range of discipline consequences, independent of any employment, civil, or criminal sanctions. Judson expressed the concern of teachers that the Ontario College of Teachers, particularly in its early years, was not willing to dismiss complaints that were clearly unwarranted from the outset. On the other hand, parents who might believe that school boards and teacher unions are too protective of their employees and members would argue that they must have further recourse if their concerns are not adequately addressed at the local level. It is important to observe that, since both Colleges of Teachers are modeled on the self-regulating professions like law and medicine, the professional discipline mandate of the Colleges reflects an effort by educators themselves to promote and preserve a high level of professional conduct by their peers.

Conclusion

The preceding discussion illustrates the tensions found in the legal context of parent-teacher interactions. Here are some key philosophical questions that educators, families, government, policy analysts, and society as a whole must consider in light of this discussion of parent-teacher interactions:

1. Who has primary responsibility and authority for the education of children?
2. How do parent-teacher interactions reflect the diversity present in the school system?
3. How does the state reconcile competing philosophies through laws, policies, regulations, and governance structures, particularly with respect to parent-teacher interactions to best preserve and promote democracy?

While the law cannot answer all these questions, it will reflect some of the choices and principles that we as a society have decided to adopt.

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