

## lawmatters

J. Paul R. Howard

# Tolerance in the School System:

## Should Teachers Be Held to One Standard and Their Teaching Tools to Another?



I look forward to reading the other articles in this issue because, while not an educator myself, I would be surprised if pedagogical thought did not hold that in terms of the science of learning, it is important to consider not only *what* is being taught, but also *who* is doing the teaching. Textbooks, curriculum content and other “tools of the teaching trade” are important, of course. But surely we also recognize that teachers themselves, in terms of their conduct, their beliefs, and their whole personalities, materially impact the learning process as well. And if we are agreed that society has an interest in ensuring that both teachers and their teaching tools are appropriate for student learning, then should not both questions be measured using the same standard? I wonder whether the Supreme Court of Canada thinks so.

On December 20, 2002, the Supreme Court released its decision in *Chamberlain v. Surrey School District No. 36*,<sup>1</sup> the controversial case in which the Surrey school board passed a resolution

declining to approve three books, each of which depicted same-sex parented families, for possible use in the board's kindergarten and grade one classrooms. The board was confronted with considerable parental concern in the community over the books' portrayal of families in which both parents were either women or men. In declining to approve the books, the board, as found by the chambers judge, was motivated by significant concern that parents in the district would “consider the books incompatible or inconsistent with their religious views on the subject of same-sex relationships.” As summarized by the Court, the board also felt that “children at the K-1 level should not be exposed to ideas that might conflict with the beliefs of their parents; that children of this age were too young to learn about same-sex parented families; and that the material was not necessary to achieve the learning outcomes in the curriculum.” As a result, the board's resolution declined to approve the three books as supplementary learning resources that, at the discretion of the classroom teacher, could be used in the family life education curriculum taught in K-1 classrooms.

The majority of the Supreme Court held that the board's failure to approve the books was unreasonable because its decision-making process was inconsistent with the scheme of the B.C. *School Act*. The Court characterized the statute as requiring a school system of tolerance, where all schools in the province “must

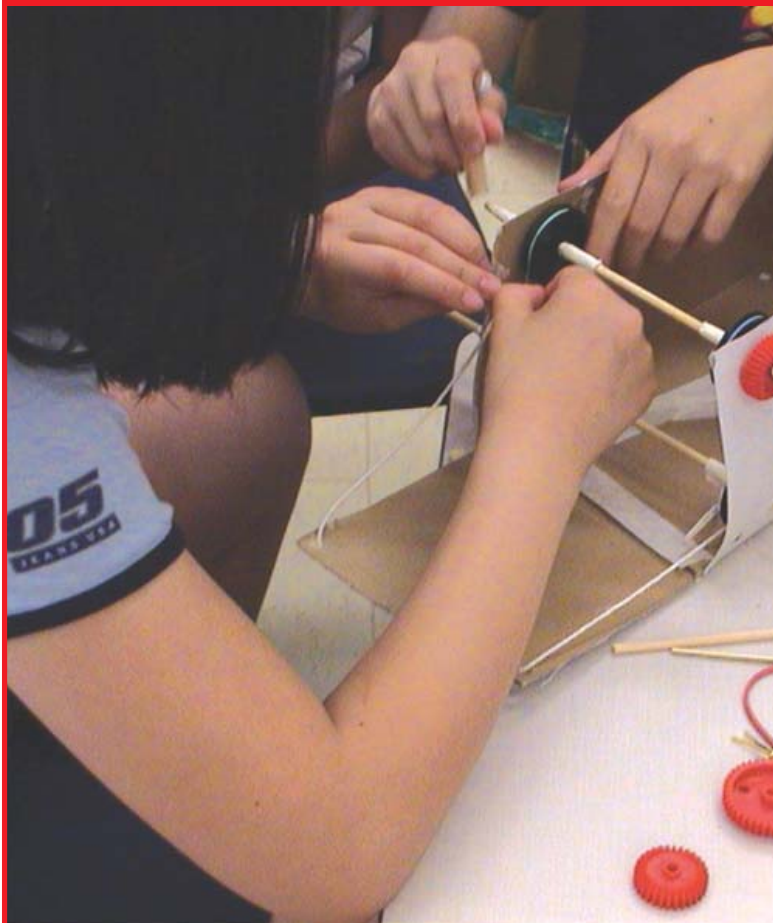
be conducted on strictly secular and non-sectarian principles.” To be lawfully authorized under this statutory scheme, the Court reasoned, decisions made by a school board must “promote respect and tolerance for all the diverse groups that [the board] represents and serves.”

In the majority's view, however, the resolution of the board violated the principles of secularism and tolerance required by the *School 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.” Thus, the majority decided the case on the basis of the board's decision being unauthorized by the statute, deferring for another day consideration of the *Charter* arguments presented. In the result, the impugned resolution was quashed, and the question of whether the books should be approved was remanded to the school board for reconsideration.

Justices Gonthier and Bastarache dissented from the majority's reasoning in a judgment that was clearly more deferential to the views expressed by democratically-elected trustees and the rights of parents “to make decisions they deem necessary to ensure the well-being and moral education of their children.”

For the dissent, the board's resolution

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vated by parental concerns for its age-appropriateness or its “morality-appropriateness”, is unlawful without, really, any concrete evidence that the failure to approve the books would foster discrimination or intolerance in the public school system, and in the face of evidence that suggests the same subject-matter could be addressed a year or a few years later in the curriculum. The conclusion that there should be one standard for assessing the suitability of teachers and a different standard for assessing teaching materials is unsettling – made all the more so by the curious failure of the majority in *Chamberlain* to address at all its reasoning in the *Trinity Western* case the year previous (except for a single passing reference, and even that on a procedural point). I may not know much about the science of learning, but I do know that trying to understand seemingly inconsistent decisions would be a whole lot easier if the Court would at least talk about them. 🗣️

1 *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86 (released December 20, 2002). Chief Justice McLachlin wrote the judgment for the majority, concurred in by LHeureux-Dubé, Iacobucci, Major, Binnie and Arbour JJ. Mr. Justice LeBel wrote a separate judgment concurring in the result. Messrs. Justice Gonthier and Bastarache dissented.

2 *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772. The majority judgment was written, jointly, by Messrs. Justice Iacobucci and Bastarache, with whom McLachlin C.J.C. and Gonthier, Major, Binnie, Arbour and LeBel JJ. concurred. Mme. Justice LHeureux-Dubé delivered a dissenting judgment.

3 J. Paul R. Howard, “The Long Arm of Human Rights Law: Can We Legislate Beliefs?” *Education Canada* 41 (Fall 2001), no. 3: 36-37.

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## Implications

Practitioners should never expect or look for formulae and pat answers in the findings of the science of learning. Even when researchers have extreme confidence in their findings, research, as we have said, is always conducted in abstract and general contexts that inhibit direct and mechanical application. Very often, however, the results of science are less than certain. Thus, in addition to dealing with abstractions and generalities, practitioners must also deal with doubt and with results that are hedged in varieties of ways. Often such nuance is not made evident in the secondary sources of science translators, and, even when it is, it is not always accurately interpreted by readers and listeners.

We have an abiding concern that there remains in education a widespread hope for quick fixes and the expectation that educational research will provide certainty of results and directness of applicability. Such hopes and expectations are in vain. It is not just that there is not enough research funding, or that researchers are too far removed from practice. These might both be legitimate complaints. Yet, even if they were addressed adequately, there would still remain the inevitability of scientific results that are less than certain and always circumscribed, and the difficult tasks of interpreting those results for use in particular situations. If it chose, the media could play a significant role in the public understanding of scientific information. Such a role would require a communication of scientific results that promotes their accurate interpretation and useful application. 🗣️

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