

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)**

BETWEEN:

STEPHANIE JACKSON

Applicant

-and-

**TORONTO CATHOLIC DISTRICT SCHOOL BOARD and
JOSEPH COMPER, PRINCIPAL of SACRED HEART CATHOLIC SCHOOL**

Respondents

**FACTUM OF THE INTERVENER
CANADIAN FOUNDATION FOR CHILDREN, YOUTH AND THE LAW**

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PART I - FACTS

1. The Canadian Foundation for Children, Youth and the Law (the “Foundation”) is a provincially incorporated charitable organization constituted for the purpose of promoting the rights of children and youth and their recognition as vulnerable individuals under the law. The Foundation has considerable expertise and experience in legal representation, advocacy, and policy and community development on behalf of children and youth in the public education system and more particularly with respect to school discipline matters.
2. The Foundation relies upon the facts as presented by the parties, and except where noted below, takes no position where the facts are in dispute.

PART II- THE ISSUES AND THE LAW

Issues to be Addressed by the Intervener

3. The Foundation will restrict its submissions to the following issues:
 - a) Were Andre Allen's s.7 *Charter* rights to liberty and security of the person infringed by the expulsion?
 - b) If so, was the infringement in accordance with the principles of fundamental justice?
 - c) If s.7 was infringed, can the infringement be saved under s.1 of the *Charter*?

Standard of Review

4. The Foundation submits that the approach to the review of the decision to expel Andre Allen should follow the approach of the Supreme Court in *Multani v. Commission scolaire Marguerite-Bourgeoys*.¹ The Foundation bases this approach on the submission that Andre's right to education, protected under s.7 of the *Charter* as a security and/or liberty interest, is infringed by his expulsion from school. Thus, the approach to a review of the Respondents' decisions is a constitutional one. Alternatively, as an administrative law decision, since the Respondents' actions breached the student's rights under s.7 of the *Charter*, the minimum standard of review is one of correctness.

Children as Rights Holders

5. Although the Applicant in this matter is the mother of Andre Allen, the legal issues in this case must be premised on the fact that children and youth hold rights as individuals in and of themselves, not at the discretion, or through the benevolence, of their parents or those standing in their place.² There is no single specific age at which children become legally

¹ [2006] SCC 6, at paras. 20-23

² *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241 at pp. 278-79

able to exercise all their rights. Children's rights in Canada are based upon varying notions of inherent entitlement, actual and presumed capacity. However, in most civil contexts where children's direct interests are being affected, they are granted standing at the ages of 12, 14, or at the latest, 16.³ Furthermore, there is general acceptance that children, as persons and individuals, have *Charter* rights.⁴ In this case, as in the case of *Multani v. Commission scolaire Marguerite-Bourgeoys*,⁵ it is presumed that the parent is asserting these rights on behalf of her child.

Application of the *Charter* to School Board Decisions

6. The Supreme Court held in *Multani* that there was no question that the *Charter* applies to the decision of a school board despite the decision's individual nature, the board being a creature of statute from which it derives all its power.⁶ In the present case, as in *Multani*, the constitutionality of the *decision* of the Toronto Catholic District School Board (the "Board") is in issue, in that the Applicant alleges that the expulsion by the Respondents infringed her son, Andre's rights under s.7 of the *Charter*.

Application of the UN *Convention on the Rights of the Child* & Other International Law

7. The Supreme Court of Canada has noted "the important role of international human rights law as an aid in interpreting domestic law" and that it "is also a critical influence on the interpretation of the scope of the rights included in the *Charter*"⁷. The development of

³ *Child and Family Services Act*, R.S.O. 1990, c.C.11.; *Family Law Act*, R.S.O. 1990, c.F.3, s.33(2)

⁴ *Eaton, supra*, note 4, at pp. 278-79; *R. v. M. (C.)* (1995), 98 C.C.C. (3d) 481 (Ont. C.A.); *Baker v. Canada, (Ministry of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at 860-862

⁵ *Supra*, note 1

⁶ *Ibid.*, at para. 22

⁷ *Baker, supra*, note 4 at 861; see also *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76 at para. 32

international human rights “was an important influence leading to an entrenched guarantee of rights and freedoms in this country.”⁸ Accordingly, the values and principles reflected in international human rights law inform the context in which the *Charter* was enacted and in which its provisions must be read.⁹ “The Charter should generally be presumed to provide protection *at least as great* as that afforded by similar provisions in international human rights documents which Canada has ratified [emphasis added].”¹⁰

8. The most significant international convention regarding the rights of children is the United Nations *Convention on the Rights of the Child* (the “*UNCRC*”)¹¹. The *UNCRC* is the most widely ratified and accepted human rights treaty of all time.¹² The Foundation relies on the *UNCRC* directly, but states that it has been implicitly incorporated by the *Charter*. Therefore, in determining the rights of a child, the principles set out in the *UNCRC* are relevant and persuasive in *Charter* interpretation. Furthermore, the Supreme Court of Canada has increasingly recognized the *UNCRC* in other contexts where children’s rights are affected.¹³

Education as a Right in Canada

9. At the time of Confederation, common schools were open to all members of the community without distinction. As noted by Wilson, J. in *Reference Re Bill 30*, at that time it was assumed that publicly funded non-denominational schools would always be part of the

⁸ *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 S.C.R. 157 at p. 193-194, para. 57

⁹ *Baker*, *supra* note 4 at pp. 861-862, para. 70

¹⁰ *Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313 at 349 (emphasis added); see also *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038 at p. 1056

¹¹ *Convention on the Rights of the Child* U.N. Doc. A/RES/4425, 20 November 1989; entry into force September 2, 1990; in force for Canada December 13, 1991, Can. T.S. 1992

¹² Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties* (current to March 9, 2006)

¹³ *Baker*, *supra* note 4 at para. 69; *R. v. Sharpe*, [2001] 1 S.C.R. 45 at para. 19; *Winnipeg Child and Family Services v. K.L.W.*, [2000] 2 S.C.R. 519 at para. 7

political landscape, the security of funding of denominational schools resting with “the certainty that the Legislature would never cut off funding for the common schools.”¹⁴ It would be unthinkable for a province or territory to eliminate access to public education through legislation or otherwise. Canadian children have historically enjoyed free public education from primary school through secondary school.

10. The Supreme Court has described the existence of the common school in terms equivalent to the status of a constitutional norm.¹⁵ In essence, without a universally accessible public education system sections 23 and 93 of the Constitution would be rendered meaningless. In *Solski (Tutor of) v. Quebec (Attorney General)*,¹⁶ the Supreme Court held that s.23 was both “a social and collective right, and an individual and civil right.” The same can be said about public education more generally. Although the court in *Adler*,¹⁷ stated that education rights were not explicitly entrenched in the constitution, it is submitted that they form part of the unwritten constitutional principles upon which the constitution is founded.¹⁸

11. The pupil’s right to an education, and the scope of that right, are further entrenched in legislation, the *Charter* and broader human rights law. In Ontario, the *Education Act* provides that every person who is a qualified resident pupil has the right to attend school.¹⁹ This is the right of the pupil, not the parent or guardian of the pupil.²⁰ Section 8 of the

¹⁴ *Reference Re Bill 30, an Act to amend the Education Act (Ontario)*, [1987] 1 S.C.R. 1148, at para. 57

¹⁵ *Adler v. Ontario*, [1996] 3 S.C.R. 256, at para. 44 [Note: the *UNCRC* was not argued.]

¹⁶ [2005] 1 S.C.R. 201 at para. 33

¹⁷ *Adler*, *supra* note 15, at para. 47

¹⁸ *Reference re. Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 54

¹⁹ *Education Act*, R.S.O. 1990, c.E.2, s. 32

²⁰ *Wilkinson. v. Thomas et al.* [1928] 2 W.W.R. 700 (Sask. K.B.)

Education Act provides that every pupil identified as exceptional is entitled to appropriate educational programs and services.²¹

12. The statutory right of children to public education is found in every provincial and territorial jurisdiction. In all jurisdictions it is phrased as a right or entitlement to attend school and/or access education programs and services,²² while in others it is also articulated as a school board obligation to provide education services.²³ Although the age entitlement varies somewhat, the impact of the various acts is to provide universal primary and secondary school education across Canada. But the right to an education in Canada is more fundamental than simply the statutory right to attend a school under the provisions of provincial legislation. For example, the Ontario Court of Appeal has recognized the establishment of a separate youth justice system historically as forming one of the principles of fundamental justice under section 7 of the *Charter*.²⁴

Education as an International Human Right

13. Canada has acknowledged the right of children to education as a human right through its ratification of the *U. N. Convention on the Rights of the Child*.²⁵ Similarly, the right to

²¹ *Supra*, at note 19, s. 8

²² *Education Act*, R.S.O. 1990, c.E.2, s.32(1); Alberta: *School Act*, R.S.A, 2000, c. S-3, s.8; British Columbia: *School Act*, R.S.B.C. 1996, c.412, s.2; Manitoba: *Public Schools Act*, C.C.S.M. c. P250, ss. 259(1), 58.9(2); Newfoundland & Labrador: *Schools Act, 1997*, S.N.L. 1997, c. S-12.2, ss. 3(1) & 4(1); Northwest Territories & Nunavut: *Education Act*, S.N.W.T. 1995, c.28, s. 5(1) & s. 7(1); Nova Scotia: *Education Act*, S.N.S. 1995-96, c.1, s. 5(2); P.E.I.: *School Act*, R.S.P.E.I. 1998, c.S-2.1, s. 68; Quebec: *Education Act*, R.S.Q. c. I-13.3, s.1; Sask.: *Education Act, 1995*, S.S. 1995, c.E-0.2, s.142(1); Yukon: *Education Act*, R.S.Y. 2002, c.61, s. 10

²³ Alberta: *School Act*, s. 45(1); Manitoba: *Public Schools Act*, s. 41; New Brunswick: *Education Act*, S.N.B. 1997, c. E-1.12, s.8(1)

²⁴ *R. v. D.B.*[2006] O.J. No. 1112 (C.A.)

²⁵ *Convention on the Rights of the Child*, Articles 28 and 29.

education is enshrined in the *Universal Declaration of Human Rights*²⁶ and the *International Covenant on Economic, Social and Cultural Rights*.²⁷ The Committee on Economic, Social and Cultural Rights commented,

Education is both a human right in itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth... But the importance of education is not just practical: a well-educated, enlightened and active mind, able to wander freely and widely, is one of the joys and rewards of human existence.²⁸

As one author has noted, “the right to education contributes in an important way to the essence of promoting human rights, *i.e.* living in dignity. Through its links with other rights, the right to education accentuates the unity and interdependence of all human rights.”²⁹

Education as a Right under Section 7 of the *Charter*

14. A child’s right to an education is so fundamental to his or her development as to be recognized under s.7 of the *Charter* as being essential to their “life, liberty and security of the person”. The Supreme Court of Canada has recognized a parent’s right to choose an education for their child and has acknowledged the fundamental importance of public education to the child and to Canadian society. In *R. v. Jones*, La Forest J., speaking for the majority, stated that whether viewed from “an economic, social, cultural or civic point of

²⁶ *Universal Declaration of Human Rights*, Article 26

²⁷ *International Covenant on Economic, Social and Cultural Rights*, U.N. Doc. RES/2200A, 16 December 1966; entry into force 3 January 1976; in force for Canada 19 May 1976; Article 14

²⁸ Committee on Economic, Social and Cultural Rights, E/C.12/1999/10 (*General Comments*) 8 December 1999 (retrieved from the United Nations Website – Treaty Database, May 11, 2006), para.

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²⁹ F. Coomans “Clarifying the Core Elements of the Right to Education”, *SIM Special* 1995 (18), 9-26

view, the education of the young is critically important in our society,”³⁰ while in *Ross v. New Brunswick School District No. 15*, he commented on the importance of education on young children to help “foster self-respect and acceptance by others.”³¹ In *R. v. Kind*, a Newfoundland court explicitly held that the “child’s right to education is included in the liberty guaranteed to it in s.7 of the *Charter*.”³² Interference with this right can have serious implications for an individual in society, impacting on the ability to participate in society and to develop a sense of self-worth.

15. The test established in *Mills v. The Queen* identified three criteria to establish the breach of the security of the person interest in s.7 of the Charter: stigmatization, loss of privacy and disruption of private life.³³ In *G.(J.)*³⁴, the Supreme Court affirmed that in order to establish an infringement of security of the person three criteria must be met:

1. The impugned state action must have a serious and profound effect on a person’s psychological integrity.
2. The effects of the state interference must be assessed objectively, with a view to their impact on the psychological integrity of a person of reasonable sensibility.
3. This need not rise to the level of nervous shock or psychiatric illness, but must be greater than ordinary stress or anxiety.³⁵

16. Expulsion from school for a disciplinary “infraction” involves both a profound, immediate social stigma,³⁶ through a form of banishment from his school, from his classmates, from his social structures, extracurricular activities and curriculum continuity, as

³⁰ *R. v. Jones*, [1986] 2 S.C.R. 284 at p.296

³¹ *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, at para. 82

³² *R. v. Kind*, [1984] N.J. No. 243

³³ [1986] 1 S.C.R. 863 at 919-20

³⁴ *New Brunswick (Minister of Health and Community Services) v. G.(J.) [J.G.]*, [1999] 3 S.C.R. 46

³⁵ *Ibid.*, 77-78

³⁶ W. Cassidy & M. Jackson. “The Need for Equality in Education: An Intersectionality Examination of Labeling and Zero Tolerance Practices” *McGill Journal of Education*, vol.40, no. 3, Winter 2005, pp. 445-466

well as a longer term stigma associated with the violent incident report and expulsion record filed in his Ontario Student Record. The disputed allegations upon which André's expulsion was based are serious and would otherwise constitute a criminal offence. The impact of labeling a young person as having a youth record was duly noted by the Supreme Court in *F.N.(Re)*³⁷ and is arguably analogous to the circumstances of being expelled from school based upon criminal allegations. The Applicant further states that the circumstances of the incident included Andre being questioned and driven home by police as well as information respecting his expulsion being broadcast over the school public address system. The impact that the incident would have on the psychological integrity of an 11 year old boy, viewed objectively, would undoubtedly be significant.

Nature of Andre Allen's s.7 Right

17. In determining the nature of the right to education enjoyed by a student, the particular circumstances of that student are relevant to the analysis. The Ontario Court of Appeal noted the special significance of a special education placement decision for exceptional students within the context of an exclusion from school for safety reasons and also noted that disciplinary measures for exceptional students must take into account individual circumstances.³⁸

18. The Respondents argue that section 7 was not engaged in this case because a parent does not have the right to dictate which school her child will attend and therefore cannot

³⁷ *F.N. (Re)* (2000), 188 D.L.R. (4th) 1 (S.C.C.), at para. 14

³⁸ *Bonnah (Litigation Guardian of) v. Ottawa-Carlton District School Board* (2003), 64 O.R. (3d) 454 (Ont. C.A.) at paras. 36-37

argue that her liberty interest is impacted through a lack of choice of school.³⁹ It is respectfully submitted that the cases relied upon do not address the particular circumstances experienced by Andre Allen in respect of his identification and placement as an exceptional pupil and the fact that he was facing expulsion from school and not the type of placement decision which is primarily for administrative reasons, such as the setting of school boundaries in *Titcher (Litigation Guardian of) v. Toronto District School Board*.⁴⁰ The Foundation does not contend that a school board cannot discipline a student through suspension or expulsion, only that such disciplinary actions impact on the security and/or liberty interests of students and thus must be done in accordance with the principles of fundamental justice.

Breach of the Principles of Fundamental Justice

19. The principles of fundamental justice are established by the test recently enunciated by the Supreme Court,⁴¹ which consists of three criteria:

1. It must be a legal principle; and
2. There must be sufficient consensus that the rule or principle is fundamental to the way in which the legal system ought fairly to operate (“fundamental to our societal notion of justice”); and
3. It must be identified with sufficient precision to yield manageable standard against which to measure deprivations of life, liberty or security of the person (“yields predictable results”).

20. In addition to our domestic law, we look to international law as evidence of the principles of fundamental justice.⁴² Arbour J., in her dissenting opinion, stated that “Canada’s

³⁹ Factum of Respondent Joseph Comper, paras. 74-76; Factum of Respondent Toronto Catholic District School Board, paras. 62-67

⁴⁰ [2002] O.J. No. 4047 (S.C.J.)

⁴¹ *Canadian Foundation, supra* note 7 at para. 8; *R. v. Malmo-Levine*, [2003] 3 S.C.R. 571 at para.

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⁴² *Suresh v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 3 at para. 60

international obligations with respect to the rights of the child must also inform the degree of protection that children are entitled to under s.7 of the *Charter*.”⁴³

21. The Foundation adopts the submissions made by the Applicant as to the requirements of procedural and substantive fairness that are encompassed in the basic principles of fundamental justice applicable in this instance. Students and their parents are generally not aware of the protections to which they should be entitled, and school boards may overlook these rights by focusing *instead* on school or community safety. It is imperative to ensure that principles of fundamental justice are protected when any individual is deprived of his right to an education.

22. Under s. 309 of the *Education Act*, the school board is empowered to establish policy for the conduct of the principal’s inquiry. Under s. 311 the powers and duties of the school board on an appeal of a principal’s expulsion are determined by the board’s own policy.⁴⁴ In fact, the policy of the Board, in respect of a hearing before it, would have addressed many of the procedural errors alleged by the Applicant. Thus, as in *Multani*,⁴⁵ there is no allegation that the Board did not act in accordance with its enabling legislation, only that it did not have a policy with respect to principal imposed expulsion appeals or did not follow its policy which should have conformed to the principles of fundamental justice.

23. In exclusion and discipline cases, because of the serious effect of a criminal allegation and its accompanying stigma, the courts have admonished tribunals not to rely on fragile or

⁴³ *Canadian Foundation*, *supra* note 7 at para. 186

⁴⁴ *Education Act*, s. 311 (3) [It is not clear whether or not the board had a policy; however, it is submitted that any such policy must conform to the principles of fairness and natural justice and must protect the student in accordance with the principles of fundamental justice. Given the effect of time on developing children, both fairness and principles of fundamental justice require the same degree of fairness with respect to evidence and the testing of evidence as is required by the CFSRB and the *SPPA*.]

⁴⁵ *Multani*, *supra*, note 1 at para. 23

suspect testimony but have “are required to “scrutinize that evidence with greater care if there are serious allegations to be established”.⁴⁶ Every administrative tribunal, including the principal in this case, has a duty to treat the parties that come before it in a procedurally fair manner. A high school principal holds even a higher duty of care when investigating, and acting on an incident involving a minor student who has a legal entitlement and perhaps a duty to attend school, where there is an even greater imbalance of power, and where one is taking away a right and an international obligation. In this regard the Foundation adopts the submissions of the Applicant regarding the requirement that issues of credibility be determined on the basis of *viva voce* evidence and in particular that the opportunity to cross examine was required in the circumstances in this case.⁴⁷

Section 1 justification

24. In *Multani*, the Supreme Court noted that once it is established that the school council’s decision constituted a limit prescribed by a rule of law, it must be justified in accordance with s.1.⁴⁸ Thus the Respondents must prove that the infringement of Andre’s rights under s.7 of the *Charter*, by interfering with his right to security of the person and/or liberty in contravention of the principles of fundamental justice is justified. In this regard, the Foundation adopts the submissions in paragraph 163 of the Applicant’s Factum and makes the following additional submissions.

25. Although the Board’s objective of maintaining a safe school environment would undoubtedly meet the first stage of the test, the denial of procedural fairness in respect of

⁴⁶ *Tsalamatas v. Wawanesa Mutual Insurance Co.* [1982], O.J. No. 181, O.C.A. at para. 7,8; *Mohammed v. York Fire and Casualty Insurance Co.* [2006] O.J. No. 547, O.C.A. at para 42.

⁴⁷ Applicant’s Factum, paras. 117-118

⁴⁸ *Ibid*, at para.42

expulsion proceedings cannot meet the remaining elements of the *Oakes* test.⁴⁹ The Respondents cannot demonstrate how refusing to afford students facing discipline the procedural protections asserted by the Applicant minimally impairs the rights of student to fair process in accordance with the principles of fundamental justice pursuant to s.7. Even in cases involving contractual rights in relation to private schools, courts have held that procedural fairness is required.⁵⁰

26. Relevant to the examination of minimal impairment is the approach taken by the Child and Family Services Review Board (“CFSRB”) which hears appeals of school expulsion decisions made by a school board (as opposed to those made by a principal).⁵¹ The CFSRB in establishing its own procedures has determined that it has the power to order a trial *de novo*.⁵² Further, it has required the calling of direct evidence rather than relying on hearsay evidence where serious allegations or credibility are at issue.⁵³ It is submitted that the approach taken by the CFSRB is a clear demonstration of the way in which the rights of a student to strict procedural fairness are minimally impaired.

27. It is also important to note that the context is one in which an important human right to education is seriously impacted. In this regard international law is relevant to the s.1 analysis. As Lamer C.J. stated in *Slaight*,

Given the dual function of s.1 identified in *Oakes*, Canada’s international human rights obligations should inform not only the interpretation of the content of the rights

⁴⁹ *R. v. Oakes*, [1986] 1 S.C.R. 103

⁵⁰ *Burke v. Yeshiva Biet Yitzchak of Hamilton* (1996), 90 O.A.C. 81 (Div. Ct.); *D.C. (Litigation Guardian of) v. Ridley College* (1996), 140 D.L.R. (4th) 696 (Ont. Gen. Div.)

⁵¹ S. Gleave, “The Child and Family Services Review Board: Creating New Challenges in Safe Schools Administration” (2006) Paper delivered at CAPSLE conference, May, 2006.

⁵² CFSRB, Rules of Procedure

⁵³ *Re F.L. and Waterloo Region District School Board*, decision released March 9, 2005 (Chair W. White) (CFSRB)

guaranteed by the *Charter* but also the interpretation of what can constitute pressing and substantial objectives which may justify restrictions upon those rights.⁵⁴

The Committee on the Rights of the Child has strongly commented upon the right of children and youth to be educated in an environment that is fully respectful of their rights and dignity. Education is to be “child-centred, child-friendly and empowering... The goal is to empower the child, through developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence.”⁵⁵The Committee has further stated that “[c]hildren do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child, enables the child to express his or her views freely...and to participate in school life.”⁵⁶

28. Children cannot be taught respect for rights unless such respect is modeled by members of the school community. Additionally, a school board's decision that denies a student's rights bears directly on the community's perception of what value is accorded to the rights of young people. The message that is conveyed to the community by the Board's decision is that the rights of youth do not matter. In *Ross*, La Forest J. stated:

A school is 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.⁵⁷

29. The Supreme Court has also stated that schools and school board officials, are not only subject to the *Charter*, but further have a vital role to play in the development in their

⁵⁴ *Slaight*, *supra* note 10 at pp. 1056-1057

⁵⁵ Committee on the Rights of the Child, (2001) *General Comment No. 1: The aims of education*, at para. 2

⁵⁶ *Ibid* at para. 8

⁵⁷ *Ross*, *supra*, at para. 42

students of a respect for the human rights of all people, including themselves. In *R. v. M. (M.R.)*, Cory J., for the majority of the Supreme Court of Canada, stated:

[S]chools have a duty to foster the respect of their students for the constitutional rights of all members of society. Learning respect for those rights is essential to our democratic society and should be part of the education of all students. ***These values are best taught by example and may be undermined if the students' rights are ignored by those in authority*** (emphasis added).⁵⁸

PART III – ORDER REQUESTED

30. The Foundation supports the Applicant's request for an order declaring that the Principal and the Board infringed Andre Allen's rights under the *Charter of Rights and Freedoms*.

All of which is respectfully submitted this 15th day of May, 2006.

**Cheryl Milne
Of counsel for the intervener
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Youth and the Law**

⁵⁸ *R. v. M. (M.R.)*, [1998] 3 S.C.R. 393 at para. 3

SCHEDULE A

LIST OF AUTHORITIES

Cases

- 1) *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] SCC 6
- 2) *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241
- 3) *R. v. M. (C.)* (1995), 98 C.C.C. (3d) 481 (Ont. C.A.)
- 4) *Baker v. Canada, (Ministry of Citizenship and Immigration)* [1999] 2 S.C.R. 817
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