

# RELIGION IN PUBLIC EDUCATION IN IRELAND<sup>1</sup>

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## *Introduction*

The Irish education system is a crucible for social and political comment as well as controversy.<sup>3</sup> The role of religion and religious groups in education is a dominant theme of that debate, as is the challenge of according each citizen rights afforded by Articles 42 and 44 of *Bunreacht na hÉireann*.<sup>4</sup> This has been referred to as ‘a dormant crisis in waiting.’<sup>5</sup> The religious institutions are wrestling with the issues also.<sup>6</sup>

## *Religion and Education: A Cauldron of Debate*

The contemporary reality is remote from the vision put forward by Lord Stanley in 1831. He envisaged a system of national education in Ireland, which endeavoured ‘...to unite in one system children of different creeds.’<sup>7</sup> Today, the established educational framework is predominantly denominational in character. At the same time there are new religious groups (not exclusively Christian) either seeking their own schools or more multi-denominational schools. There is also a small, but vocal, group calling for a universal secular system of education.<sup>8</sup> Others seek diversification of the numbers of patrons (religious and non-religious)

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<sup>1</sup> This paper will deal solely with the Republic of Ireland. The paper follows the *Grille Thématique* of the Consortium including the request to deal only with education prior to third level. For detailed reading on the subject of the law, children, education and religion in Ireland see J. Coolahan, *Irish Education: History and Structure* (1981, Institute of Public Administration, Dublin); D. Glendenning, *Religion, Education and the Law* (2008, Tottel, Dublin) Ch.9; D. Glendenning, *Education and the Law* (1999, Butterworths, Dublin); A. Hyland and K. Milne (Eds.) *Irish Educational Documents Vols. I and II* (1987, Church of Ireland College of Education, Dublin); and G. Shannon, *Child Law* (2005, Thomson Round Hall, Dublin).

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<sup>3</sup> See e.g. ‘Suburbs full of empty promise’ *Irish Times* 26th August 2006; ‘Is your child Catholic enough to get a place at school?’ *Irish Times* 5<sup>th</sup> May 2007; ‘Is denominational education suitable for 21<sup>st</sup> Century Ireland?’ *Irish Times* 4th April 2008; ‘Protestant Bishops fear cuts will close schools’ *Irish Independent* 1<sup>st</sup> November 2008.

<sup>4</sup> *Bunreacht na hÉireann* – the Constitution of Ireland: hereinafter ‘the Constitution’. See generally O. Doyle, ‘Article 44: Privileging the Rights of the Religious’ in E. Carolan, and O. Doyle (eds.) *The Irish Constitution: Governance and Values*. (2008, Thomson Round Hall, Dublin) 476-89.

<sup>5</sup> C. Hogan, ‘A Veiled Problem: Religion in Irish Schools’ (2005) 8 *TCLR* 5-31 at 29.

<sup>6</sup> See e.g. R. Clarke, ‘What do we want from Denominational Education?’ (2006) Vol. 29 no.3 *SEARCH: A Church of Ireland Journal* 228-33.

<sup>7</sup> ‘The Stanley Letter’ in A. Hyland and K. Milne (eds.) *Irish Educational Documents, Volumes I and II* (1987, Church of Ireland College of Education, Dublin) 98-103. See also A. Hyland, ‘The multi-denominational experience’ in ‘Report of the Constitution Review Group’ (1996, Government Publications, Dublin) 630-4.

<sup>8</sup> See e.g. A. Mawhinney, ‘The Opt-out Clause: Imperfect Protection for the Right to Freedom of Religion in

of schools.<sup>9</sup> All of this, however, subsists in active tension with the expectation that the wishes of the religious majority will be protected.<sup>10</sup>

### *The Irish Education System*

#### *Education in a Religious Society*

Ireland is predominantly a Roman Catholic country:<sup>11</sup> in 2006, 86.9% of the total population.<sup>12</sup> Much smaller, and with 3%, the second largest denomination is the Church of Ireland.<sup>13</sup> For the first time in a census, the third largest religious grouping was Muslims (.8%). Through net migration, all of the main Christian denominations had increased since the previous census in 2002. Between 1991 and the census of 2002 the number of newer Christian denominations in Ireland and in adherents of the world's other faiths had already grown.<sup>14</sup>

Only 6% of the population stated either that they had no religion, or did not state a religion. However, this group grew rapidly since the previous census and have, naturally, been vocal in their claim for space within the educational structures within the State.<sup>15</sup> Statistics alone indicate, however, only one level of reality. Modern Ireland is a complex society in the midst of flux and rapid change. The statistical snapshot does not expose the fact that patterns of religious affiliation and participation have changed enormously in recent decades. There is also considerable evidence that some, among all denominations, exercising parental choice, are not necessarily choosing the schools run by their own religious denomination for the education of their children.

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Schools' in [2006] *Education Law Journal* 102-15; also A. Mawhinney, 'Freedom of religion in the Irish primary school system: a failure to protect human rights?' in (2007) 27 no.3 *Legal Studies* 379-403; also E. Daly 'Religious freedom as a function of power relations: dubious claims on pluralism in the denominational schools debate' in (2009) Vol. 28 (3) *Irish Educational Studies* 235-51; also A. Mawhinney, *Freedom of Religion and Schools: the Case of Ireland* (2009, VDM Verlag Dr. Müller, Saarbrücken); also O. Doyle, 'Article 44: Privileging the Rights of the Religious' in E. Carolan and O. Doyle (eds.) *The Irish Constitution: Governance and Values* (2008, Thomson Round Hall, Dublin) 476-89.

<sup>9</sup> P. Colton 'Schools and the law: a patron's introspection' in (2009) Vol. 28 (3) *Irish Educational Studies* 253-77; 'Martin calls for school patronage change' on <http://www.rte.ie/news/2009/0616/education.html>; 'Martin welcomes plans to reduce Catholic Schools' in *Irish Times* 6<sup>th</sup> March 2010.

<sup>10</sup> 'Archbishop defends Catholic schools' in *Irish Times*, 22<sup>nd</sup> September 2007.

<sup>11</sup> See generally J. H. Whyte, *Church and State in Modern Ireland 1923 - 1979* (2<sup>nd</sup> ed., 1980, Gill and MacMillan, Dublin), D. Keogh, *The Vatican, the Bishops and Irish Politics 1919-39* (2004, Cambridge University Press), D. Keogh, *Ireland and the Vatican: The Politics and Diplomacy of Church-State Relations 1922-1960* (1995, Cork University Press), D. Ó Corráin, *Rendering to God and Caesar: The Irish churches and the two states in Ireland, 1949-73* (2006, Manchester University Press).

<sup>12</sup> While the number of Roman Catholics had increased since the previous census in 2002, the overall increase in Ireland's population resulted in a small percentage decrease in the number of Roman Catholics as a proportion of the total.

<sup>13</sup> For a full analysis of the census figures in relation to the Church of Ireland see M. Macourt, *Counting the People of God? The Census of Population and the Church of Ireland* (2008, Church of Ireland Publishing, Dublin).

<sup>14</sup> For example, Orthodox, Evangelical, Pentecostal, Lutheran (increased in that period by 2815%, 362%, 1006% and 203% respectively); and Muslims, Hindus, Buddhists and adherents of other stated religions (increased by 394%, 225%, 295% and 306% respectively). Since then, between 2002 and 2006, the number of Orthodox Christians doubled.

<sup>15</sup> See e.g. 'New school model still tramples on the rights of the non-religious' *Irish Times* 14<sup>th</sup> April 2009.

This changing demography poses challenges. New minorities require accommodation both physically and ideologically within the existing structures.<sup>16</sup> The challenge is exacerbated by the dispersal of minority religious groups throughout the State: by way of illustration, the educational needs of the growing Muslim community can more easily be addressed in Dublin than throughout the rest of the State. By analogy, the principle of support for members of the Church of Ireland and of Protestant churches - communities also dispersed throughout the State - is, for example, well established since the introduction of free second-level education in Ireland in 1967.<sup>17</sup>

### *Education and Demography*<sup>18</sup>

The Census 2006 showed that Ireland had a total population of 4,239,848.<sup>19</sup> In 2008/2009,<sup>20</sup> the number of full-time students in educational institutions aided by the Department of Education and Skills (DOES)<sup>21</sup> was 979,360. This comprised 498,914 pupils at first level and 341,312 at second level. In the same year there were 31,349 teachers at first level. In the previous year there were 25,906 teachers at second level.

Parents of children in Ireland are required to cause their child (from the age of 6 years until, either they attain the age of 16 or have completed 3 years of post-primary education) to attend a recognised school on each school day.<sup>22</sup>

### *Types of School*

In 2008/2009 there were 4035 schools aided by the DOES, of which 3303 were first level (primary) schools and 732 were second level (post-primary) schools. At primary level the 3303 schools included 3175 National Schools (the principal type of school at that level) and 128 Special Schools. In addition, but not aided by the DOES, are private primary schools, of which there are approximately 45 in the State.<sup>23</sup>

The 732 schools at second level, in 2008/2009, comprised 388 voluntary secondary schools, 91 community or comprehensive schools (of those 91, 14 are comprehensive schools), and 253 vocational schools and community colleges. This categorisation needs to be elucidated.

Voluntary secondary schools are privately owned and managed: their trustees are generally church or religious communities, boards of governors, charitable trusts or, in some

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<sup>16</sup> See generally A. Hyland 'Patronage and our National Schools: can we claim to cherish our children equally?' in (2006) Vol. 29 No. 3 SEARCH: A Church of Ireland Journal, 207-15.

<sup>17</sup> See Reports of Dáil Éireann Volume 230 (26<sup>th</sup> October, 1967) para. 52 'Financing of Protestant Schools'; Volume 241 (23<sup>rd</sup> October 1969) paras. 295-7 'Secondary Education for Protestant Children'; Volume 321 (3<sup>rd</sup> June 1980) 'Protestant Schools'; and Volume 497 (26<sup>th</sup> November 1998) para. 187 'School Funding'.

<sup>18</sup> Statistics from the website of the Department of Education and Skills [www.education.ie](http://www.education.ie) accessed on 24<sup>th</sup> June, 2010.

<sup>19</sup> Central Statistics Office [www.cso.ie](http://www.cso.ie) accessed on 24<sup>th</sup> June, 2010.

<sup>20</sup> The most recently published figures from the Department of Education and Skills (as at 12<sup>th</sup> July 2010).

<sup>21</sup> In 2010 the Department of Education and Science was renamed the Department of Education and Skills.

<sup>22</sup> Education Welfare Act 2000 s.2 (1) and s.17(1) (This Act repealed the School Attendance Acts 1926 - 1967).

<sup>23</sup> Source [www.schooldays.ie](http://www schooldays.ie) accessed on 10<sup>th</sup> July 2010.

cases, individuals. They are of two types: fee-paying (where the State funds the costs of a quota of teachers but not running costs) and non-fee-paying (where the State also funds the costs of a quota of teachers and, in addition, these schools are eligible also for a range of grants and subsidies from the State). Historically, these schools were those of a more academic and grammar school model.

Vocational schools and community colleges are schools under the patronage of one of the thirty-three Vocational Education Committees (VECs) in Ireland.<sup>24</sup> The Vocational Education Act 1930 provided that vocational schools should engage in continuation education and in technical education.<sup>25</sup> Following the advent of community schools in the 1970s, the VECs established community colleges under VEC control and run on similar lines to the community schools. The State owns the schools and pays the full running costs. The boards of management of these are sub-committees of the local VEC.

In the 1960s community and comprehensive schools were established to provide a broader curriculum of both academic and practical subjects and open to all people in the community. They are emblematic of the merging of the academic and practical, as well as the voluntary and vocational, strands in the Irish education system as was often evidenced by the physical amalgamation of two or more schools.<sup>26</sup> They are managed by boards of management representing local interests in accordance with deeds of trusts or terms of reference which generally reflect a partnership with a religious nominating authority (e.g. a bishop or religious community) or the local Vocational Education Committee (VEC) in whom the school has been vested.

As an aside, it can be noted that in 2007/2008 there were 32 third level colleges in Ireland aided by the DOES: 7 universities, 15 in the technology sector, 7 teacher-training colleges and 3 others. The place of religion in these, at third level, is not the subject matter of this paper.

### *A Denominational System: Patronage and Characteristic Spirit*

The Irish education system is overwhelmingly religious in character. At both primary and post-primary levels this is under-pinned by two legal principles articulated in the Education Act 1998: patronage and characteristic spirit.<sup>27</sup>

#### *Patronage*

In the colloquial sense a patron is a person who supports with money, gifts, endorsement or efforts a person or institution. Its etymology carries connotations of fatherhood, defence, protection and advocacy. A specific meaning, however, is given to the term 'patron' by section 8 of the Education Act 1998.

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<sup>24</sup> Hereinafter VEC.

<sup>25</sup> Vocational Education Act 1930, Ss.3 and 4.

<sup>26</sup> e.g. Ashton Comprehensive School, of which this writer is co-patron, was formed in the early 1970s following the amalgamation of Cork Grammar School and Rochelle School. Also, Mount Temple Comprehensive School in Dublin was formed in the 1970s as an amalgamation of Mountjoy School, the Hibernian Marine School and Bertrand and Rutland School.

<sup>27</sup> Education Act 1998 s.8 (patronage) and s.15(2)(b) (characteristic spirit).

In the case of a primary school the patron is the person who is recognised as such by the Minister for Education and Science.<sup>28</sup> In the case of post-primary schools, the relevant section of the Act is sequential: the patron is, in the first instance, either the trustees of the school or the board of governors; or where there are no such trustees or board, the patron is the owner of the school.<sup>29</sup> The name/s of the person/s deemed to be patron is/are to be entered by the Minister in a register kept for that purpose.<sup>30</sup> The register may be amended by the Minister on the application of a patron who is already registered as the patron of a school (or that person's successor).<sup>31</sup>

What is of primary interest in the current context is the over-arching governance of the patron. It is a function of the patron to nominate the trustees of a National School.<sup>32</sup> A patron may request that a school be accorded recognition for the purposes of the Education Act.<sup>33</sup> A patron appoints a board of management of a school.<sup>34</sup> (In doing so, in the case of Primary Schools, partnership is given effect, but the nominating patron retains a majority of representatives on the board).<sup>35</sup> A number of matters governing that appointment are determined, however, in consultation by the Minister with the partners in education: composition;<sup>36</sup> gender balance;<sup>37</sup> and the manner of the appointment of a board.<sup>38</sup> The patron, subject to the consent of the Minister and for good and valid reasons, may, in writing, remove a member of a board of management from office.<sup>39</sup> Similarly if satisfied that the functions of a board are not being effectively discharged, the patron may, according to agreed procedures, dissolve a board.<sup>40</sup>

The role of the patron is one of oversight, delegation and support. The board of management appointed by the patron manages the school *inter alia* 'on behalf of the patron'.<sup>41</sup> Consequently the board is

- to consult with and keep the patron informed of its decisions and proposals;<sup>42</sup>
- to seek the patron's agreement concerning the manner of publication of a variety of school policies: admission, participation, expulsion and suspension of students; the admission of students with disabilities of special education needs.<sup>43</sup>

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<sup>28</sup> Education Act 1998 s 8(1)(a). Note, the name of the Minister was changed in 2010 to 'Minister for Education and Skills'.

<sup>29</sup> Education Act 1998 s 8(1)(b)

<sup>30</sup> Education Act 1998 s 8(1)(a)

<sup>31</sup> Education Act 1998 s 8(3)

<sup>32</sup> *Boards of Management of National Schools: Constitution of Boards and Rules of Procedure* (2003, Department of Education and Science, Athlone).

<sup>33</sup> Education Act 1998 s 10(2)

<sup>34</sup> Education Act 1998 s 14(1)

<sup>35</sup> *Boards of Management of National Schools: Constitution of Boards and Rules of Procedure* (2008) Appendix C.

<sup>36</sup> Education Act 1998 s 14(1)

<sup>37</sup> Education Act 1998 s 14(5)

<sup>38</sup> Education Act 1998 s 14(6)

<sup>39</sup> Education Act 1998 s 16(1)(a) See also *Rules of Procedure* p 5 at 7(a)(iv)

<sup>40</sup> Education Act 1998 s 16(1)(b) See also *Rules of Procedure* p 5 at 7(a)(iv)

<sup>41</sup> Education Act 1998 s 15(1)

<sup>42</sup> Education Act 1998 s 15(2)(c)

<sup>43</sup> Education Act 1998 s 15(2)(d)

While patronage carries responsibilities, inherent in it is considerable authority and oversight.

### *Characteristic Spirit*

The concept of ‘characteristic spirit’ is key to the inculcation of a value system (religious outlook in the case of schools under religious patronage). According to the legislation, ‘characteristic spirit’ is ‘... determined by the cultural, educational, moral, religious, social, linguistic and spiritual values and traditions which inform and are characteristic of the objectives and conduct of the school...’<sup>44</sup> School boards of management are accountable to the patron for upholding the characteristic spirit of the school.<sup>45</sup> The patron is the arbiter of what the ethos is;<sup>46</sup> and provision is made for the resolution of disputes about ethos<sup>47</sup> and the removal, by the patron, subject to the Minister’s approval, of a trustee.<sup>48</sup>

Defining ‘characteristic spirit’ or ‘ethos’ is as elusive as the pursuit of any legal definition in Ireland, of the meaning of religion. The courts have acknowledged that religious denominations are to be free to describe and define themselves.<sup>49</sup> Nonetheless, where constitutional rights are at stake, the Supreme Court, in *Re Article 26 and the Employment Equality Bill 1996* made clear that ‘...the final decision on this question as well as the final decision on what is necessary to protect the ethos will rest with the court and the court in making its overall decision will be conscious of the need to reconcile the various constitutional rights involved.’<sup>50</sup>

The law embodies a number of provisions further to protect the characteristic spirit or ethos of a school. In *Greally v Minister for Education (No.2)*, Geoghegan J said that

The State could not adopt a funding scheme for secondary teachers which had the effect of destroying the denominational nature of schools requiring funding. I believe that this particular view is warranted by a reading of Article 42 of the Constitution as a whole.<sup>51</sup>

Within recent years, and in an on-going process, the schools’ leases created pursuant to the Leases for Schools (Ireland) Act 1881<sup>52</sup> are the subject of Deeds of Variation. These deeds embody, in a legal instrument, the concept of characteristic spirit. For example, in such deeds for Church of Ireland schools, the trustees and boards of management undertake that they shall be familiar with the Church of Ireland ethos of the school; cause the school to be managed in accordance with that ethos and to that end ensure that, as far as possible, a majority of the students in the school will be members of the Church of Ireland (unless, in particular circumstances, the patron gives written consent to the contrary).<sup>53</sup>

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<sup>44</sup> Education Act 1998 s 15(2)(b)

<sup>45</sup> Education Act 1998 s. 15 (2)(b)

<sup>46</sup> Education Act 1998 s 3(a)

<sup>47</sup> Education Act 1998 s 3 (b) to (g)

<sup>48</sup> Education Act 1998 s 5

<sup>49</sup> *Re Article 26 and the Employment Equality Bill 1996* [1997] 2 I.R. 321 at 359. See also *McGrath and Ó Ruairc v Trustees of the College of Maynooth* [1979] I.L.R.M. 166.

<sup>50</sup> *Re Article 26 and the Employment Equality Bill 1996* [1997] 2 I.R. 321 at 356.

<sup>51</sup> *Greally v Minister for Education (No.2)* [1999] 1 I.R. 1 at 10-11, [1999] 2 ILRM 296 at 304-5.

<sup>52</sup> 44 & 45 Vic c 65

<sup>53</sup> Deed of Variation, s 2. There are analogous deeds for other patronage bodies, including the Roman Catholic Church.

These legal principles, allied with the prevailing pattern of religious adherence in Ireland, reinforce an education system dominated by religious groups: the majority of Irish schools are under the patronage of religious entities.<sup>54</sup>

### *The Anatomy of the Denominational System*

Of the State-aided primary schools c. 3,104 are under the patronage of Roman Catholic Bishops.<sup>55</sup> The others under religious patronage are: the Church of Ireland (176 schools); Presbyterian (16); Methodist (1); Jewish (1); and Moslem (2).<sup>56</sup> In addition there are other patronage bodies such as Educate Together (56) where the religious ethos is multi-denominational;<sup>57</sup> and *An Foras Pátrúnachta na Scoileanna Lán Ghaeilge* (51) whose Irish language schools may be either inter-denominational or multi-denominational in ethos.<sup>58</sup> The private primary schools are of many types, some denominational, others multi-denominational or non-denominational.

The profile of modern-day religious patronage is colloquially and simplistically, but mistakenly, portrayed as catholic schools and protestant schools. At second level, for example, not all the ‘protestant’ schools are of the same type, nor are they all under the patronage of the Church of Ireland.<sup>59</sup> Even among the Church of Ireland schools there are subtleties of emphasis, a fact not widely grasped.<sup>60</sup>

In more general terms, as already detailed above, at second-level there are three main types. First, there are secondary schools<sup>61</sup> (of which all but 24 of which are under the patronage of the Roman Catholic Church).<sup>62</sup> Second, the vocational schools and community colleges are State schools under the patronage of one of the thirty-three VECs in Ireland.<sup>63</sup> However, in a small number of these schools the VEC, as patron, takes account of a partnership agreement – such as a Deed of Trust or model agreement - with a local Christian

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<sup>54</sup> The Constitution Review Group referred to the ‘*de facto* denominational reality of the national school system’ as never having been legally enshrined, but as having been ‘recognised’ in successive editions of the *Rules for National Schools*. ‘Report of the Constitution Review Group’ (1996, Government Publications, Dublin) 338; concerning the denominational character of second-level schools see 340.

<sup>55</sup> *CPSMA Handbook* (2007, Catholic Primary Schools Management Association, Dublin) 5.

<sup>56</sup> Figures supplied by the Education Officer, Board of Education of the General Synod of the Church of Ireland.

<sup>57</sup> See [www.educatetogether.ie](http://www.educatetogether.ie) accessed on 24<sup>th</sup> June 2010. Educate Together defines ‘multi-denominational’ as including ‘...all denominations of all faiths.’

<sup>58</sup> This is a patronage body established in 1993 to promote education through immersion in the Irish language. See [www.foras.ie](http://www.foras.ie)

<sup>59</sup> Wesley College, Dublin (Methodist), St Andrew’s College, Dublin (Presbyterian), Newtown School Waterford and Drogheda Grammar School (Society of Friends), Villiers School, Limerick (the Board if nominated jointly by the Church of Ireland and the Presbyterian Church).

<sup>60</sup> Schools which refer to themselves as Church of Ireland Schools: (Midleton College, Wilson’s Hospital School, St Patrick’s Cathedral Grammar School, St Columba’s College, Alexandra College, King’s Hospital School); Schools under the patronage of the Incorporated Society for Promoting Protestant Schools in Ireland (Bandon Grammar School, Kilkenny College, Dundalk Grammar School and Sligo Grammar School); and a Church of Ireland Diocesan Secondary School (Wilson’s Hospital School).

<sup>61</sup> Known also as ‘voluntary secondary schools’. See Intermediate Education (Ireland) Act 1878 (41 & 42 Vict. c.66); Intermediate Education (Ireland) Act 1882 (45 & 46 Vict. c.69), and Educational Endowments (Ireland) Act 1885 (48 & 49 Vict. c.78).

<sup>62</sup> Of the 24, 21 are Protestant, 2 inter-denominational and 1 Jewish. [Debates Dáil Éireann Volume 666 (6<sup>th</sup> November 2008) ‘School Staffing’].

<sup>63</sup> Hereinafter VEC.

denomination or denominations).<sup>64</sup> Third are the community schools (all of which operate under a model of co-patronage between the VEC and Roman Catholic patrons) and comprehensive schools (5 of which are under ‘Protestant’ patronage).<sup>65</sup>

Technically VEC schools and colleges are non-denominational. However, religious education is taught. They have chaplains funded by the State. Similarly community and comprehensive schools have chaplains funded by the State. This provision of chaplains by the State has been held to be constitutional.<sup>66</sup>

### *Religious Education and Practice in Irish Schools*

#### *Religion and Education in the Irish Constitution*<sup>67</sup>

The Constitution treats of education in the context of Articles 41 and 42 (the Family and Education) and parts of Article 44 (religion). The constitutional provisions relating to the family and to education have been described as having ‘a close mutual connection’.<sup>68</sup> It is widely acknowledged that this constitutional framework gestated from within the leadership and teaching of the Roman Catholic Church.<sup>69</sup> Indeed, the whole Constitution has been described as embodying ‘a pro-religion ethos’.<sup>70</sup>

In relation to the family and education the Constitution makes provision in Article 42:<sup>71</sup>

1. The State acknowledges that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.
2. Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State.
3. 1° The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.

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<sup>64</sup> See Vocational Education Act 1930

<sup>65</sup> Since 2004 the Protestant Comprehensive Schools have been in dispute with the Department of Education and Skills concerning the patronage of their schools. Successive officials assert the Minister for Education and Skills’ patronage and the Church of Ireland asserts its patronage in the case of four of the schools (the patronage of the fifth being claimed by the Donegal Protestant Board of Education). In December 2010, an historic breakthrough was made by one of the schools – Ashton School Cork – whereby the Minister for Education and Skills consented to that school being under the joint patronage of the Church of Ireland Bishop of Cork and the City of Cork Vocational Education Committee. It remains to be seen whether this can become a model for the other Protestant Comprehensive Schools to follow.

<sup>66</sup> *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81

<sup>67</sup> See generally G. Hogan and G. Whyte, *J.M. Kelly: The Irish Constitution* (4<sup>th</sup> ed., 2003 LexisNexis/Butterworths, Dublin) Chs. 7.6 and 7.8; and also J. Casey, *Constitutional Law in Ireland* (2000, Round Hall/Sweet & Maxwell, Dublin), Chs. 17 and 19.

<sup>68</sup> GW Hogan and GF Whyte *J.M. Kelly: The Irish Constitution* (4<sup>th</sup> edition, 2004, LexisNexis, Dublin) 1830 at 7.6.06.

<sup>69</sup> D. Keogh and A. McCarthy, *The Making of the Irish Constitution 1937* (2007, Mercier Press, Cork) 115. I. Bacik, ‘Future Directions of the Constitution’ in E. Carolan and O. Doyle (eds.) *The Irish Constitution: Governance and Values* (2008, Thomson Round Hall, Dublin) 135-43 at 140. See also Papal Encyclical of Pope Pius XI *Divini illius Magistri* 31<sup>st</sup> December 1929.

<sup>70</sup> I. Bacik, ‘Future Directions of the Constitution’ in E. Carolan and O. Doyle (eds.) *The Irish Constitution: Governance and Values* (2008, Thomson Round Hall, Dublin) 135-43 at 135.

<sup>71</sup> See also *Report of the Constitution Review Group* (1996, Government Publications, Dublin) 342-56.



2° The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.

4. The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

5. In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

Accordingly, the family is the primary and natural educator of the child.<sup>72</sup> Parents have the right to provide education in their homes or in private schools or in schools recognised or established by the State.<sup>73</sup> In *O'Sheil v Minister for Education*<sup>74</sup> Laffoy J upheld the primacy of parental choice. However, she also ruled that, in the case of primary education, there were some limits on the State's duty to support parental choice.

For its part, the State is to lay down a 'certain minimum' education (moral, intellectual and social – but there is no mention of religious education).<sup>75</sup> It is '... to provide for free primary education ...'<sup>76</sup> It is also to '... endeavour to supplement and give reasonable aid to private and corporate educational initiative...' giving '... due regard to the rights of parents, especially in the matter of religious and moral formation.'<sup>77</sup> The courts have held that the current denominational system is constitutional:<sup>78</sup> parents are free to choose to send their children to schools with a religious ethos and the State, for its part, may give assistance to them to do so.<sup>79</sup>

In *Quinn's Supermarket v Attorney-General*<sup>80</sup> Walsh J emphasised that our '... [c]onstitution reflects a firm conviction that we are a religious people.' For this reason (and because the educational system is, in the main, denominational) Article 42 also needs to be read in tandem with Article 44 which deals with religion. It states:

The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence, and shall respect and honour religion.

1° Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

2° The State guarantees not to endow any religion.

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<sup>72</sup> *Bunreacht na hÉireann* Article 42.1

<sup>73</sup> *Bunreacht na hÉireann* Article 42.2

<sup>74</sup> *O'Sheil v Minister for Education* [1999] 2 IR 321, [1999] 2 ILRM 241.

<sup>75</sup> *Bunreacht na hÉireann* Article 42.3.2. *Re Article 26 and the School Attendance Bill, 1942* [1943] I.R. 334; *O'Sheil v Minister for Education* [1999] 2 I.R. 321, [1999] 2 ILRM 241; and *DPP v Best* [2000] 2 I.R. 17, [2000] 2 ILRM 1.

<sup>76</sup> *Bunreacht na hÉireann* Article 42.4 (my emphasis). For the distinguishing of 'provide' and 'provide for' see *Crowley v Ireland* [1980] I.R. 102 per Kenny J at 127. For children with learning difficulties see: *O'Donoghue v Minister for Health* [1996] 2 IR 20 and *Sinnott v Minister for Education* [2001] 2 IR 545.

<sup>77</sup> *Bunreacht na hÉireann* 42.4

<sup>78</sup> Primary Schools: *Crowley v Ireland* [1980] IR 102; Post-Primary Schools: *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81.

<sup>79</sup> *Crowley v Ireland* [1980] I.R. 102; *Campaign to Separate Church and State Ltd v Minister for Education* [1998] 3 I.R. 321, [1998] 2 ILRM 81

<sup>80</sup> *Quinn's Supermarket v Attorney General* [1972] IR 1

- 3° The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.
- 4° Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.
- 5° Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.
- 6° The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

Although Article 44.1 has been interpreted as underpinning Christianity,<sup>81</sup> the courts have also made clear that the benefits are not confined to Christians.<sup>82</sup> According to Article 44, freedom to profess and practise one's religion is guaranteed, subject to public order and morality.<sup>83</sup> The autonomy of each religious denomination is guaranteed in relation to the management of its own affairs:<sup>84</sup> '...the primary aim of the constitutional guarantee is to give vitality, independence and freedom to religion.'<sup>85</sup> Restrictions are placed in principle, subject to certain exceptions, on State acquisition of the property of religious denominations and educational institutions.<sup>86</sup>

The State is precluded from endowing any religion.<sup>87</sup> It may not discriminate on the ground of religious profession, belief or status,<sup>88</sup> and where there is legislation providing State aid for schools under the management of different religious denominations it shall not discriminate between those schools.<sup>89</sup> The funding of a Roman Catholic Seminary (since it was part of the National University of Ireland),<sup>90</sup> the provision of chaplains in denominational schools<sup>91</sup> and the financial support of those denominational schools<sup>92</sup> have all been found to be constitutional and consonant with Article 44.2.2.

The current constitutional position was well-summarized in *Quinn's Supermarket v Attorney General* by Walsh J:

The effect of these various guarantees is that the State acknowledges that the homage of public worship is due to Almighty God. It promises to hold his name in reverence and to respect and honour religion. At the same time it guarantees freedom of conscience, the free profession and practice of religion and equality before the law to all citizens, be they Roman Catholics, Protestants, Jews, Muslims, agnostics or atheists. But Article 44.1 goes further and places the duty on the State to respect

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<sup>81</sup> *Norris v Attorney General* [1984] IR 36.

<sup>82</sup> *McGee v Attorney General* [1974] IR 284 and in *Norris v Attorney General* [1984] IR 36.

<sup>83</sup> *Bunreacht na hÉireann* Article 44.2.1

<sup>84</sup> *Bunreacht na hÉireann* Article 44.2.5

<sup>85</sup> Henchy, J in *McGrath and Ó Ruairc v Trustees of the College of Maynooth* [1979] I.L.R.M. 166 at 187

<sup>86</sup> *Bunreacht na hÉireann* Article 44.2.6

<sup>87</sup> *Bunreacht na hÉireann* Article 44.2.2

<sup>88</sup> *Bunreacht na hÉireann* Article 44.2.3

<sup>89</sup> *Bunreacht na hÉireann* Article 44.2.4

<sup>90</sup> *McGrath and Ó Ruairc v Trustees of Maynooth College*, [1979] ILRM 166

<sup>91</sup> *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81

<sup>92</sup> *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81

and honour religion as such. At the same time the State is not placed in the position of an arbiter of religious truth. Its only function is to protect public order and morality.<sup>93</sup>

Barrington J quoted this view with approval in *Corway v Independent Newspapers (Ireland) Ltd.*<sup>94</sup>

In *Campaign to Separate Church and State Ltd and Murphy v Minister for Education*<sup>95</sup> Keane J said that the constitutional prohibition on endowing religions ‘...was not designed to render unlawful the comprehensive system of aid to denominational education which had become so central a feature of the Irish schools system and the validity of which was expressly acknowledged by the Constitution.’ Barrington J said that

... the system of denominational education was well known to the framers of the Constitution. We know this because they refer to it. Article 44.2.4<sup>o</sup> prescribes that legislation providing State aid for schools shall not discriminate between schools under the managements of different religious denominations nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.<sup>96</sup>

### *Religious Education and Religious Instruction: Primary Schools*

In primary schools, the provision of a religious education curriculum is the responsibility of the patron. The Primary School Curriculum celebrates ‘the uniqueness of the child’, and ‘...is designed to nurture the child in all dimensions of his or her life—spiritual, moral, cognitive, emotional, imaginative, aesthetic, social and physical.’<sup>97</sup> Moreover, the importance that ‘the curriculum attributes to the child’s spiritual development is expressed through the breadth of learning experiences the curriculum offers, through the inclusion of religious education as one of the areas of the curriculum,...’ is emphasised.<sup>98</sup> The promotion of ‘tolerance and respect for diversity...’ is underscored.<sup>99</sup> In the case of religious education, the curriculum notes:

Since the Department of Education and Science, in the context of the Education Act (1998), recognises the rights of the different church authorities to design curricula in religious education at primary level and to supervise their teaching and implementation, a religious education curriculum is not included in these curriculum documents.<sup>100</sup>

Rule 68 of the Rules for National Schools lays down (albeit in what seem to us archaic terms) the regulation of religious instruction in primary schools:

Of all the parts of a school curriculum Religious Instruction is by far the most important, as its subject matter, God’s honour and service, includes the proper use of all man’s faculties, and affords the most powerful inducements to their proper use. Religious Instruction is, therefore, a fundamental part of the school course, and a religious spirit should inform and vivify the whole work of the school...<sup>101</sup>

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<sup>93</sup> *Quinn’s Supermarket v Attorney General* [1972] IR 1 at 23-4.

<sup>94</sup> *Corway v Independent Newspapers (Ireland) Ltd* [1999] 4 IR 484.

<sup>95</sup> *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321, [1998] 2 ILRM 81 at 88-9. See also *Bunreacht na hÉireann* Article 42.4

<sup>96</sup> *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321 at 356

<sup>97</sup> *Primary School Curriculum* (1999, Government Publications, Dublin) 6.

<sup>98</sup> *Primary School Curriculum* (1999, Government Publications, Dublin) 27.

<sup>99</sup> *Primary School Curriculum* (1999, Government Publications, Dublin) 28.

<sup>100</sup> *Primary School Curriculum* (1999, Government Publications, Dublin) 58.

<sup>101</sup> Rules for National Schools 1965 Rule 68

Section 9 of the Education Act 1998 states that one of the functions of a recognised school is to ‘...promote the moral, spiritual, social and personal development of students and provide health education for them, in consultation with their parents, having regard to the characteristic spirit of the school...’<sup>102</sup>

A board, in determining how much of the reasonable time allotted by the Minister ‘... for subjects relating to or arising from the characteristic spirit of the school ...’ requires the consent of the patron.<sup>103</sup> In the national curriculum for primary schools the section on religious education is blank: the individual religious authority is expected to determine the content.<sup>104</sup>

Rule 69 contains an opt-out clause: ‘[n]o pupil shall receive, or be present at, any religious instruction of which his parents or guardian disapprove.’ The periods of formal religious instruction are to be fixed so that pupils may be withdrawn.<sup>105</sup> That formal period is to be clearly indicated on the timetable.<sup>106</sup> Pupils of other religious outlooks are to be afforded the opportunity to be absent in order to receive instruction elsewhere.<sup>107</sup> The Board of Management’s consent is required for the presence of a visitor during formal religious instruction.<sup>108</sup> Although this right to opt-out or to seek alternative provision is designed to protect pupils, it is criticised by many as inadequate.<sup>109</sup> Moreover, with the advent of the new (as it was then) primary school curriculum in 1971, the integration of subjects - secular and religious - has been encouraged and so, religion and religious values in schools under religious patronage infuse the whole life of the school.

The integration of religion in the entire curriculum raises the question of how the rights of children of minority religious groups or their parents (as primary and natural educators) are to be protected, while at the same time protecting the rights of patrons within a system that is inherently denominational. However, in *Campaign to Separate Church and State Ltd v Minister for Education*, Barrington J emphasised that there is a difference between religious education and religious instruction:

The Constitution therefore distinguishes between religious ‘education’ and religious ‘instruction’ – the former being the much wider term. A child who attend a school run by a religious denomination different from his own may have a constitutional right not to attend religious instruction at that school but the Constitution cannot protect him from being influenced, to some degree, by the religious ‘ethos’ of the school. A religious denomination is not obliged to change the general atmosphere of its school merely to accommodate a child of a different religious persuasion who wishes to attend that school.<sup>110</sup>

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<sup>102</sup> Education Act 1998 s.9 (d)

<sup>103</sup> Education Act 1998 s 30(2)(d)

<sup>104</sup> In the case of schools under the patronage of the Roman Catholic Church *Alive O* is used. In the case of Church of Ireland and Protestant schools the R.E. curriculum is *Follow me*.

<sup>105</sup> Rules for National Schools 1965 Rule 69 (2)(b)

<sup>106</sup> Rules for National Schools 1965 Rule 69 (5)

<sup>107</sup> Rules for National Schools 1965 Rule 69 (3)

<sup>108</sup> Rules for National Schools 1965 Rule 69 (4)

<sup>109</sup> See A. Mawhinney, ‘The Opt-out Clause: Imperfect Protection for the Right to Freedom of Religion in Schools’ in [2006] *Education Law Journal* 102-15

<sup>110</sup> *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321 at 357-8

Moreover, one of the caveats in his judgment was that it is ‘...constitutionally impermissible for a chaplain [and presumably by extension any other person] to instruct a child in a religion other than its own without the knowledge and consent of its parents.’<sup>111</sup>

### *Religious Education and Religious Instruction: Second-level (Post-Primary) Schools*

At second level the study of Religious Education (R.E.) as an academic subject is optional and is not offered in all schools. R.E. was introduced on a phased basis as an optional examination subject (and a syllabus laid down) in 2000 at Junior Certificate level and was first examined as a Leaving Certificate Subject in 2005.<sup>112</sup> The courses are academic rather than catechetical. The stated aim of the junior certificate syllabus is ‘...to provide students with a framework for encountering and engaging with the variety of religious traditions in Ireland and elsewhere...[and] ... to promote and understanding and appreciation of why people believe, as well as tolerance and respect for the values and beliefs of all...’<sup>113</sup> The Leaving Certificate syllabus ‘...offers continuity and progression...’ from the Junior Certificate programme.<sup>114</sup>

Quite separate from the provision of R.E. as an academic and examinable subject, many second-level schools provide the subject in a generic form in fulfilment of their characteristic spirit or religious ethos. Where this is the case, the curriculum and extent of provision is a matter for a school’s patron. For example, the Roman Catholic Bishops in Ireland require second-level schools under their patronage to do two hours (three periods) of R.E. each week. The provision of an opt-out, protected by the Constitution, pertains at this level also.

The outworking of the praxis of R.E. in a number of contexts is insightful.

### *Religious Education: Roman Catholic Church*

The Roman Catholic Church’s approach to education is underpinned by the *Code of Canon Law*.<sup>115</sup> In 2007 the Irish Catholic Bishops’ Conference published *Catholic Primary Schools: A Policy for Provision into the Future*.<sup>116</sup> It sets out the approach of the Roman Catholic Church to education, including: the upholding of the primacy of parents’ rights in the education of their children; recognition of the primary responsibility of parents as educators; and committing itself to ‘... providing Catholic schools to cater for the needs of parents who wish their children to have a Catholic education.’<sup>117</sup> While acknowledging the new pluralism in Ireland and welcoming diversity and striving for inclusivity, the document states that ‘[t]he

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<sup>111</sup> G Hogan and G Whyte, *J M Kelly: The Irish Constitution* (4<sup>th</sup> Edition, 2003, LexisNexis Butterworths, Dublin) 2056 at 7.8.67.

<sup>112</sup> At second level Irish students sit State examinations after three years (Junior Certificate) and again at the conclusion of their second-level education either two or three years later (Leaving Certificate).

<sup>113</sup> Junior Certificate Religious Education Syllabus *Guidelines for Teachers 2* available at [www.education.ie](http://www.education.ie)

<sup>114</sup> Leaving Certificate Religious Education Syllabus available at [www.education.ie](http://www.education.ie)

<sup>115</sup> See *Code of Canon Law* Canons 747 and 794-803. The Canon Law in this area is based substantially on the ‘Declaration on Christian Education: *Gravissimum educationis*’ of Pope Paul VI proclaimed on 28th October 1965. See also generally S.A. Euart ‘Title III: Catholic Education’ in J.P. Beal, J.A. Coriden and T.J. Green, *New Commentary the Code of Canon Law* (2000, Paulist Press, Mahwah, New Jersey) 953- 71.

<sup>116</sup> *Catholic Primary Schools: A Policy for Provision into the Future* (2007, Veritas, Dublin)

<sup>117</sup> *Catholic Primary Schools: A Policy for Provision into the Future* (2007, Veritas, Dublin) 3 at par. 2.1

Catholic school seeks to support ... [the] religious, spiritual and moral formation ... [of the children]... and encourages them when they become adults to grow into mature faith.<sup>118</sup> Such religious education may include preparation for the sacraments.<sup>119</sup> To this end, the core resource for the teaching of religious education at primary level is *Alive-O*.<sup>120</sup>

### *Religious Education: Church of Ireland and Protestant Churches*

The Church of Ireland, the Presbyterian Church in Ireland and the Methodist Church in Ireland share a common religious education programme: *Follow Me*. Notably it was developed with the ecumenical assistance of the Roman Catholic Episcopal Commission on Catechetics and its publishers, *Veritas*.

The editor of *Follow Me* describes it as follows:

The aims of Religious Education are to enable children to develop a knowledge and understanding of the beliefs, worship and witness of the Christian faith and in particular of the Church of Ireland and other principal reformed traditions; to explore the biblical witness to God as Father, Son and Holy Spirit; to develop their own religious beliefs, values and practices through a process of personal search and discovery; to develop an awareness of and a sensitivity towards those of other faiths and none.

It can therefore be noted that the approach is that of Religious Education rather than Religious Instruction. Indeed there is no sacramental preparation in school. The approach is child centred and encourages individual responses from pupils rather than imposing beliefs. ... The teaching of the programme is not intended to compromise the beliefs of a teacher nor to require spiritual commitment of any particular form.

The Religious Education programme plays an important part in developing and supporting the school's ethos. Prayer, School Assemblies and Church Services are regularly found in the school's calendar and these may link in with the work completed in the Religious Education lesson. Crosses or other religious symbols may be displayed in schools and the rector/ minister is valued as a member of the school community.<sup>121</sup>

### *Religious Education: Islamic Community*

‘[T]he Muslim community in Ireland believes that the education of children, not only religious education, is primarily the duty of the community...’<sup>122</sup> The religious education programme ‘... covers a range of religious, social and moral issues from an Islamic perspective.’<sup>123</sup> The Qur'an, Deen and Arabic are taught by part-time Muslim teachers. A weekend school is provided for children who are not attending a Muslim school.<sup>124</sup>

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<sup>118</sup> *Catholic Primary Schools: A Policy for Provision into the Future* (2007, Veritas, Dublin) 3 at par. 3.1

<sup>119</sup> *Catholic Primary Schools: A Policy for Provision into the Future* (2007, Veritas, Dublin) 3 at par. 2.2

<sup>120</sup> *Alive-O* (Veritas, Dublin)

<sup>121</sup> Jacqui Wilkinson, editor of *Follow Me* (2002-2010, Board of Education of the General Synod of the Church of Ireland, Dublin)

<sup>122</sup> [www.islaminireland.com/education/mns](http://www.islaminireland.com/education/mns) accessed on 24th June 2010.

<sup>123</sup> [www.islaminireland.com/education/ndmns](http://www.islaminireland.com/education/ndmns) accessed on 24th June 2010.

<sup>124</sup> [http://www.islaminireland.com/education/alfalah\\_weekend\\_school.html](http://www.islaminireland.com/education/alfalah_weekend_school.html)

### *Religious Education: Jewish Community*

There is one Jewish Primary School in the State.<sup>125</sup> Its enrolment is multid denominational. Hebrew Studies are taught to Jewish pupils each day by a separate team of teachers. Roman Catholic pupils study R.E. before school.<sup>126</sup>

Stratford College is a voluntary secondary school founded by the Jewish Community in Dublin. It is committed to educating its students ‘... in an inclusive academic environment that promotes and is guided by Jewish ethics and values, while simultaneously teaching out Irish heritage.’<sup>127</sup> It is dedicated to ‘... instructing Jewish students in their religion while fostering mutual respect for all traditions.’<sup>128</sup> The College’s code of behaviour lays down that students ‘...should not bring ham/pork or shell fish into school.’<sup>129</sup> The College also follows the DOES curricula for Jewish Studies and Hebrew Studies.

### *Educate Together*

Educate Together schools are multi-denominational, and as a patronage body, this term has been defined as including ‘...all denominations of all faiths. Thus Educate Together schools are committed to the principle that all religious backgrounds should be equally respected in the operation of the school. Included in this definition are humanist, agnostic and atheistic viewpoints and a generic concept of “personal creed”.’<sup>130</sup> The time set aside in schools under religious patronage is used in Educate Together schools for its Ethical Education Curriculum known as *Learn Together*. The programme is divided into four strands: moral and spiritual development, justice and equality, belief systems and ethics and the environment. Local boards of management may authorise the use of the school by specific religious groups outside school hours for doctrinal instruction.

### *Religion within the Education Infrastructure*

#### *Choosing a School: enrolment*

Under the Equal Status Acts 2000 and 2004 derogations are given on the religious belief grounds to schools in relation to the admission of students of a different belief where those schools provide education in an environment which promotes certain religious values, and where such refusal is necessary to maintain the ethos of the school.<sup>131</sup>

Admission and enrolment is one of the most fraught areas of school life, particularly in rapidly growing suburban areas. Schools are required to have and to publish, with the agreement of the patron, the policy on admission to and participation in the school.<sup>132</sup> The

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<sup>125</sup> Stratford National School.

<sup>126</sup> [www.stratfordns.ie](http://www.stratfordns.ie) accessed on 24<sup>th</sup> June 2010.

<sup>127</sup> [www.stratfordcollege.ie](http://www.stratfordcollege.ie) Information for Parents and Students page 3

<sup>128</sup> [http://www.stratfordcollege.ie/downloads/school\\_policies/pastoral\\_care\\_policy.pdf](http://www.stratfordcollege.ie/downloads/school_policies/pastoral_care_policy.pdf) accessed on 10th July 2010.

<sup>129</sup> [www.stratfordcollege.ie](http://www.stratfordcollege.ie) Information for Parents and Students page 19

<sup>130</sup> [www.educatetogether.ie](http://www.educatetogether.ie) accessed on 10<sup>th</sup> July 2010.

<sup>131</sup> Equal Status Act 2000, s.7(3)(c)

<sup>132</sup> Education Act 1998 s.15(2)(d)

promotion of the right of parents to send their children to a school of the parents' choice is to be fulfilled 'having regard to the rights of patrons...' <sup>133</sup>

### *Recruitment of Teachers and other Staff*

The Employment Equality Act 1998 prohibits discrimination on nine grounds: gender, marital status, family status, sexual orientation, religion, age, disability, race and membership of the traveller community. Section 37, however, permits discrimination by a religious, educational or medical institution established for a religious purpose, where it is reasonable to do so in order to maintain the religious ethos of the institution or is reasonably necessary in order to avoid the undermining of that ethos. <sup>134</sup> This includes denominational schools. Religious discrimination was deemed to be permissible in order to give 'life and reality to the constitutional guarantee of freedom of religion'. <sup>135</sup> This exemption from equality legislation is undoubtedly one of the areas of most concern to many teachers. <sup>136</sup> In *Flynn v Power* <sup>137</sup> (which predated this legislation) the dismissal of a teacher from her employment in a denominational school because her lifestyle was not in accord with the values promoted by the school was held to be lawful.

Patrons of religious schools under their patronage generally expect that teachers being recruited will be sympathetic to, and supportive of, the religious ethos of their schools. At primary school level, this is buttressed by the system of teacher training: there are five teacher-training colleges, most of which are under the governance of churches.

The Roman Catholic Bishops require that those who teach in primary schools under their patronage hold a Certificate in Religious Education. This is generally a pre-condition of employment. According to the promotional material

This Certificate offers opportunity for primary school educators to gain an overview of selected areas in contemporary Catholic theology and to study theological and religious content that pertains to teaching within the diversity of cultures in Ireland's primary schools today. The course content is intended to foster appreciation of the special place of Religious Education in Catholic Schools and to enable such religious education to be presented with understanding, creativity and confidence. <sup>138</sup>

### *Religious Symbols and Dress*

The issue of religious symbols or dress in schools has not been addressed before the courts. <sup>139</sup> However, it has been suggested that the reasoning in *Campaign to Separate Church and State*

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<sup>133</sup> Education Act 1998 s 6 (e)

<sup>134</sup> See *Re Article 26 and the Employment Equality Bill 1996* [1997] IR 321

<sup>135</sup> *Re Article 26 and the Employment Equality Bill 1996* [1997] 2 I.R. 321 at 360

<sup>136</sup> See generally, A. Mawhinney, *Freedom of Religion and Schools: the Case of Ireland* (2009, VDM Verlag Dr. Müller, Saarbrücken)

<sup>137</sup> *Flynn v Power* [1985] ILRM 336

<sup>138</sup> [www.mic.ul.ie](http://www.mic.ul.ie) accessed on 25<sup>th</sup> June 2010.

<sup>139</sup> The issue has been addressed elsewhere. For example, in the United Kingdom: see generally J.G. Oliva 'Religious Symbols in the Classroom: A Controversial Issue in the United Kingdom' in [2008] B.Y.U.L. Rev. 877-96; M. Hill and R. Sandberg, 'Is nothing sacred? Clashing symbols in a secular world' in [2007] Public Law (Aut.) 488 - 506; N. Gibson, 'Faith in the courts: religious dress and human rights' in [2007] C.L.J. 657-97; P. Petchey 'Legal issues for faith schools in England and Wales' in (2008) 10 EccLJ 174-90. See also *R (on the application of Begum) v Headteacher and Governors of Denbigh High School* [2006]



*Ltd v Minister for Education*<sup>140</sup> may be used ‘...to provide constitutional cover for the display of religious artefacts in publicly funded schools and for the public funding of a curriculum permeated by religious values...’<sup>141</sup>

The issue of religious dress is not remote from Ireland. In 2008 the Principal of Gorey Community School, County Wexford sought guidance from the DOES following a request from a Muslim student to wear a hijab.<sup>142</sup> The response of the Minister for Education was to refer the matter to the Minister for Integration.<sup>143</sup> He declined to give guidance. The entire matter generated debate, sometimes heated, but no conclusions.<sup>144</sup>

In the case of one Muslim school it is laid down that the uniform required for the students be in line ‘...with Islamic requirements.’<sup>145</sup> In the absence of specific guidelines or regulations such as this, it would appear that the matter is to be resolved by management authorities in schools locally.

One example of how dialogue about issues such as this is being addressed is *Guidelines on the Inclusion of Students of Other Faiths in Catholic Secondary Schools* published in 2010.<sup>146</sup> This extensive advisory document describes the changing context for Roman Catholic Schools in Ireland, sets out background information about other faiths and gives practical advice about the inclusion of students of other faiths (including enrolment, religious education, opting-out, prayer, liturgy, religious imagery and uniform). It suggests that no ‘...pupil or staff member should be prevented from wearing a religious symbol or garment...’, while at the same time suggesting that, on ‘...the other hand, the wearing of a full veil over a girl’s face (*niqab*), for example, is a more challenging issue...’<sup>147</sup>

### *Blessing of School Buildings*

In the case of schools under the patronage of a religious body, the blessing of school buildings or a liturgical celebration is normative when new school buildings or extensions are opened. Frequently, however, there are ecumenical guests and, in some cases (depending on the quality of local ecumenical relationships) the participation of representatives of other churches.

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UKHL 15; *R (on the application of X) v Headteacher of Y School* [2007] EWHC 298; [2007] All E.R. (D) 267

<sup>140</sup> *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321

<sup>141</sup> G Hogan and G Whyte, *J M Kelly: The Irish Constitution* (4<sup>th</sup> Edition, 2003, LexisNexis Butterworths, Dublin) 2057 at 7.8.68

<sup>142</sup> ‘The hijab is a religious requirement for all Muslim ladies who have reached puberty’ *Irish Times* 20<sup>th</sup> May 2008; ‘O’Keefe says review will look at hijab policy’ *Irish Times* 20<sup>th</sup> May 2008.

<sup>143</sup> ‘State to consider Muslim School-Dress Code’ *Irish Independent* 20<sup>th</sup> May 2008; ‘Uniform rules referred to Integration Minister’ RTE News 19<sup>th</sup> May 2008 see <http://www.rte.ie/news/2008/0519/integration.html> ; ‘O’Keefe says review will look at Hijab policy’ *Irish Times* 20<sup>th</sup> May 2008

<sup>144</sup> ‘Muslim anger at Opposition calls for school ban on Hijab’ *Irish Independent* 2<sup>nd</sup> June 2008; ‘Hijab issue should be decided by schools, say Unions’ *Irish Independent* 21<sup>st</sup> July 2008; ‘Policy U-Turn on Hijab in Irish schools’ *Sunday Times* 3<sup>rd</sup> August 2008

<sup>145</sup> [www.islaminireland.com/education/mns](http://www.islaminireland.com/education/mns) accessed on 24th June 2010.

<sup>146</sup> *Guidelines on the Inclusion of Students of Other Faiths in Catholic Secondary Schools* (2010, Joint Managerial Body/Association of Management of Catholic Secondary Schools, Dublin)

<sup>147</sup> *Guidelines on the Inclusion of Students of Other Faiths in Catholic Secondary Schools* (2010, Joint Managerial Body/Association of Management of Catholic Secondary Schools, Dublin), 15.

### *Liturgy, celebrations and religious practice*

In the case of schools under religious patronage, an assembly with prayers, readings from religious texts and hymns or songs are normal practice in schools under religious patronage. Religious festivals and calendars shape the implementation of the curriculum. Some of the liturgies and ceremonies the school take place in the local place of worship to which such schools are attached. Local religious events and activities are frequently publicised in the school context. At the Muslim National School the ‘...ethos of the school is distinctly Islamic. ... [C]hildren from 3<sup>rd</sup> class up perform midday (Dhuhr) during the school day. On Friday (Jummah) the children from 3<sup>rd</sup> class up attend the congregational prayer.’<sup>148</sup> At the Jewish school, the day begins with the traditional Shacharit prayer.<sup>149</sup>

### *Religious Holidays*

Standardised school holidays, with the exception of the summer months, are shaped by the Christian calendar: principally, Christmas, Easter and Saint Patrick’s Day. At the Muslim Schools school holidays are taken for national and bank holidays, as well as the Islamic religious festivals of Ramadan (continuing through Eid-ul-Fitr) and also at Eid-ad-Adha.<sup>150</sup> In the case of the Jewish School, Jewish holy days which fall outside the regular school holidays are observed by the school.<sup>151</sup>

### *Opting-Out*

The principle of opt-out is implicit in, and afforded constitutional protection in Articles 42 and 44. Rule 69 of the *Rules for National Schools*, as has been seen, deals with it expressly in the primary school setting. As shown, the key dilemma for those who do not share the ethos and have not had the choice of a different school, is that the religious ethos vivifies the whole life of the school.<sup>152</sup> Opting out of religious education classes as such may be achieved, but to speak of opting-out from an entire curriculum or a school life infused with a religious outlook is impractical. The integration of religion in the entire curriculum raises the question, therefore, of how the rights of children of minority religious groups or their parents (as primary and natural educators) are to be protected, while at the same time protecting the rights of patrons within a system that is inherently denominational.

### *Conclusion*

Among the key challenges facing an Irish education system, overwhelmingly religious in character, is protection of and empowerment of minorities, both religious and non-religious. The State, for its part, will have to consider increasing the number of patrons and diversity of types of school. Schools currently dominating the system will have to face up to the

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<sup>148</sup> [www.islaminireland.com/education/mns](http://www.islaminireland.com/education/mns) accessed on 24th June 2010.

<sup>149</sup> [http://www.stratfordcollege.ie/downloads/school\\_policies/jewish\\_education.pdf](http://www.stratfordcollege.ie/downloads/school_policies/jewish_education.pdf) accessed on 10th July 2010.

<sup>150</sup> [www.islaminireland.com/education/mns](http://www.islaminireland.com/education/mns) accessed on 24th June 2010.

<sup>151</sup> [www.stratfordcollege.ie](http://www.stratfordcollege.ie) *Information for Parents and Students* page 11.

<sup>152</sup> *Rules for National Schools* 1965 Rule 68

distinction drawn by the Supreme Court, between ‘religious education’ and ‘religious instruction’.<sup>153</sup>

Not only in relation to Religious Education, but in the case of all engagement of religion with the educational process, should not the aspiration be that set by the European Court of Human Rights in *Hasan and Eylem Zengin v Turkey* when it suggested that such teaching was to be delivered in an ‘objective, critical and pluralistic manner...’?<sup>154</sup>

Perhaps the greatest challenge to all involved in religion and education in Ireland is set out by that Court in the same case when it suggested that

... in a democratic society, only pluralism in education can enable pupils to develop a critical mind with regard to religious matters in the context of freedom of thought, conscience and religion...<sup>155</sup>

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<sup>153</sup> *Campaign to Separate Church and State Ltd and Murphy v Minister for Education* [1998] 3 IR 321 at 357-8

<sup>154</sup> *Hasan and Eylem Zengin v Turkey* (Application No. 1448/04), Judgment October 9, 2007 Paras. 30-33

<sup>155</sup> *Hasan and Eylem Zengin v Turkey* (Application No. 1448/04), Judgment October 9, 2007 Para. 69