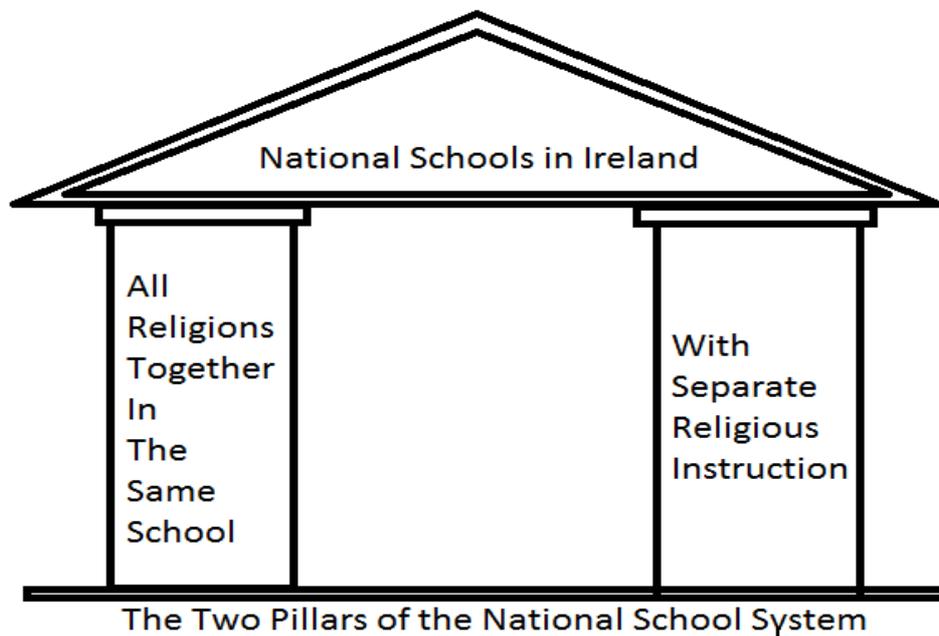


Illegal Religious Discrimination In National Schools In Ireland



“In summary, therefore, the present reality of the denominational character of the school system does not accord with Article 44.2.4°. The situation is clearly unsatisfactory. Either Article 44.2.4° should be changed or the school system must change to accommodate the requirements of Article 44.2.4°” (extract from the 1996 Constitutional Review Group Report)

Proposed by the Clontarf Branch
Adopted by the Dublin North Central Constituency Council
of the Labour Party

Written by John Suttle
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1. Summary

In the past twelve years, the Catholic Church, through its bishops, has introduced “Catholics First” admissions policies into National Schools under its patronage. This has removed a right of entry to local National Schools from a significant proportion of children in Ireland. This is both unconstitutional and illegal. This report looks at this issue, and how it might be tackled.

The National School system is a State system of free primary education. The central pillar of the National School system is a legal right for “*children of all religions to be taught together in the same school*”. A National School is a school that has subjected itself to the “Rules for National Schools”, and thereby receives State funding. There are other primary schools which receive no state funding. The State is not allowed, by the Constitution and ordinary legislation, to provide funding for schools which discriminate on religious grounds.

This report details the various constitutional and legislative measures that relate to National Schools, and shows that a “Catholics First” admissions policy in any National School is illegal.

Author

This Report was written by John Suttle B.E. Mr. Suttle was a member of two Boards of Management of two National Schools over a period of four years. He was a member of the Parents Association Committees of five schools over a period of twelve years. He has been involved in a number of other school parent committees dealing with co-education and with the sale of school property. His primary occupation is as a landscape contractor for the past thirty years – the company in which he is involved being designated the Best Landscape Contractor in Ireland in 2001. He has been involved in commercial investment property for the past twenty years, and has dealt with the legal issues related to these. Others who have helped with the Report include friends and colleagues who have some expertise in law, in European and international affairs, and in public administration.

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Format

All items in italics are original extracts from elsewhere (see references in Section 9).

2. Introduction

In 2002 the author of this report was a member of a National School Board of Management. During his time on the Board, the Board of Management introduced a new admissions policy which allowed for the exclusion from the school of children who were not baptised Catholics. This seems to have been the first time in the 157 years since the school was founded in 1845 that children were excluded on the basis of their religion. The school, as was commonly the case, was founded in the mid 1800s by a local Protestant family (the local landlord), and was given by them around 1900 into the management of the local Catholic clergy. The school was moved and rebuilt in 1940 by the same Protestant family. The school, although primarily funded by Protestants as a National School, is today under the control of the Catholic Archbishop of Dublin.

The recent introduction of a “Catholics First” admissions policy, under the instruction of the Archbishop of Dublin, was surprising, given the public utterances of the Catholic authorities in recent years espousing support for inclusivity, and respect for diversity.

There is general lack of legislation relating to education in general. From the 1996 Constitutional Review Group Report:

“Referring to this general lack of legislation in the case O’Callaghan v Meath VEC in November 1990 in the High Court, Costello J stated: It is a remarkable feature of the Irish system of education that the administration by the Department of Education is largely uncontrolled by statute or statutory instruments and that many hundreds, perhaps thousands, of rules and regulations, memoranda, circulars and decisions are issued and made by the Department and the Minister (dealing sometimes with the most important aspects of educational policy) not under any statutory power but merely as administrative measures. These measures are not of course illegal. But they have no statutory force, and the sanction which ensures compliance with them is not a legal one but the undeclared understanding that the Department will withhold financial assistance in the event of non-compliance.”

Laws relating to National Schools are as follows:

1. The Irish Constitution of 1937.

Subsidiary to the Constitution is legislation:

2. The Stanley Letter of 1831 which remains the legal basis of the National Schools System.
3. The Education Act 1998
4. Equal Status Act 2000
5. International and European legislation

Subsidiary to the Constitution and legislation are statutory instruments and departmental circulars such as

6. The Rules for National Schools
7. Regular Circulars from the Department of Education.
8. The Deed of Variation which tries, in retrospect, to change the lease of National Schools (but seems to be illegal and therefore void). This is not dealt with in this report, as the Deeds are not readily available to the public. The Minister for Education should formally repudiate any such deeds already signed.

There are primary schools in Ireland which are not National Schools and are not subject to the restrictions specific to National Schools. This was much better understood in the 19th century and early 20th century. A report was commissioned by the government in 1870 (the Powis Commission Report) to look into the National Education System. The following is a small extract *“That the progress of the children in the National Schools of Ireland is very much less than it ought to be. That in Church Education schools, non-National Convent schools, and Christian Brothers’ schools, the result is not very different.”* These private faith primary schools (not National Schools)

remain today, but in very small numbers (Willow Park in Blackrock is an example). Private primary schools would commonly be attached to private secondary schools. Unlike in the secondary sector, private primary schools receive no funding (nor any teachers' salaries) from the State.

National Schools are in existence to provide primary education to all of the children of the State – specifically regardless of their religion. The “National” designation, which exists in no other country specifically relates to children of all religions being taught together in the same school. There are no “National Schools” in England, France, Germany, USA or anywhere else. The National School system is unique to Ireland. There was a determination by the State, a determination that continued right through Independence up to 1965, that the National School system would not exacerbate the religious divisions which have plagued Ireland. There is confusion in the public mind between “National” and “primary” (they are not the same) in the school system - this confusion should be removed. All National Schools are primary schools – however there are private faith primary schools which are not National Schools.

To get a flavour of what it means to be a National school - again from recommendations of the Powis Commission of 1870.

32. That all schools open for instruction of the poor, under proper management, may receive aid from the National Board on condition:.....

id) Of being such as all children can frequent without interference with their religious belief.

42. That in places where there is only one school, religious instruction shall be confined to fixed hours.

(a) No child registered as a Protestant shall be present when religious instruction is given by a Roman Catholic. No child registered as a Roman Catholic shall be present when religious instruction is given by a person who is not a Roman Catholic.

(b) No child shall be allowed to join in, or to be present at, any religious observances to which the child's parents or guardians may object.

(c) The school-books shall be such as have been allowed by the Commissioners of National Education for use in a mixed school.

(d) No religious emblems should be exhibited during school hours.

The National School system expanded rapidly through the 19th century: “by 1900, there were over eight and a half thousand national schools in the country attended by half a million pupils.” Most of the National Schools in existence today were presumably in existence by the end of the 19th century. Today, the National Schools system is dominated by the Catholic Church. As of 2007, the following are the numbers of National Schools, listed by patronage:

Catholic	3032	92.4%
Church of Ireland	183	5.6%
Multi-denominational	40	1.2%
Presbyterian	14	0.4%
Inter-denominational	5	0.2%
Muslim	2	0.1%
Methodist	1	
Jewish	1	
Jehovah's Witnesses	1	
Quaker	1	

Given that the schools under Catholic patronage would normally be much larger than those under other patronages, it is likely that the National Schools under Catholic patronage cater for 98% or 99% of the children going to National Schools. The Department of Education is presently compiling details on the patronage of all National Schools – this will hopefully be available in 2011.

Ireland is a country divided by religion – misunderstanding and hatred have been endemic for four hundred years up to very recent times. The National School system was designed to address this religious divide. It is imperative that the State takes back control of National Schools. The existing legislation empowers the State to override the wishes of the religious denominations, and empowers the State to insist that there be no religious discrimination on entry to National Schools. Existing legislation empowers the State to ensure that religious divisions are not allowed or promoted in National Schools. However, the regulatory authorities in Ireland have shown a complete lack of will to use their powers to confront the religious denominations, and the Catholic Church in particular. This situation should be changed.

This report deals primarily with the legal position under the Constitution and other legislation. It must be kept in mind that all written law is “what a reasonable person” would believe it to be – not what a barrister or a professor of English might think. If the State is to make a decision based on a legal opinion, there should be public discussion of such opinion, until the public can come to an informed understanding of the issue. Such informed public understanding might inform the actions of the State.

Virtually all religious indoctrination by the Catholic Church is done in National Schools, including the important occasions of First Confession, First Holy Communion, and Confirmation. This report does not envisage a change in the situation for the Catholic population, rather that children of other religions and none should see a change – a change back to the schools and education that was always envisaged by the founders of the National Schools – where children of all religions received the secular and moral education together, with separate religious indoctrination, all in the same school – the National School.

We have entered a new era in the evolution of our society. Like many others ours is becoming a multi-cultural, multi-racial, multi-faith, multi-lingual society. It is no exaggeration to claim that the very nature of what it is to be Irish is being redefined before our very eyes. If we do not steer these changes, what will emerge will be a new society which is unlikely to serve the needs of its citizens. The building and development of a society always occurs through education. This starts formally with the education of our youngest citizens in our National Schools. Mutual respect and a willingness by a majority to protect the rights of minorities is one of the marks of a civilised society, which, after all, is what we aspire to. The founders of the National School system made the best effort they could for their times to promote religious understanding – it is now up to us, 180 years later, to ensure their goals are maintained and hopefully improved.

3. Admissions policies for National Schools

Section 15.2 (d) of the 1998 Education Act puts an obligation on the Board of Management of every school to create and publish an Admissions Policy. In schools receiving public monies, the school cannot refuse a place to any child if the school is not fully enrolled (meaning the multiple of the number of class teachers and the pupil-teacher ratio as dictated by the Department of Education).

However, if a school has more applications for admission than it has available places, it must decide who shall have first right of entry. The criteria defining who gets first preference in places in the school is defined in the Admissions Policy.

Historically, the criteria for entry to a National School should be as follows

1. Children of the catchment area (often the geographical-civil parish), and siblings of existing pupils in the school.
2. Children from outside the catchment area.
3. Where there are too many applicants, priority will be given to older children (“first come, first served” has also been common for this last criterion).

With this admissions policy, all children in the local area had an equal right of entry to their local National School – they may have had to wait an extra year until they receive a place, if there was pressure on places in the local area.

The “Catholics First” admissions policy being promoted by the Catholic Church is generally:

1. *Catholic children living within the parish and brothers and sisters of children already enrolled in the school.*
2. *Catholic children who live outside the parish and who do not have a Catholic school in their parish.*
3. *All children who live within the parish boundaries but are not Catholic.*
4. *Catholic children from outside the parish.*
5. *All children who apply to the school and are not Catholics and not resident in the parish.*

This “Catholics First” Admissions policy removes the equal RIGHT of entry from local non-Catholics. In most cases, non-Catholics will get a place in their local school, but, no longer, as of right.

Comments:

1. All schools are obliged under the 1998 Education Act to create and publish an Admissions policy. This is strictly the role of the Board of Management of the school – not the Patron.
2. All children should have an equal right of entry to their local National School – under the Constitution, the Stanley Letter, the Equal Status Act etc.
3. The only role for the Patron is to agree the manner of publication of every school's Admissions Policy. The Patron has no role in creating the content of the policy.
4. The “parish” in Ireland is a geographic-civil, as well as a religious, entity. “Catchment area” would be a much better term to use when defining right of entry to a National School.
5. An admissions policy only comes into action when a school has filled all of its available places – a school cannot refuse a place to any applicant unless the number of applicants exceeds the number of available places.
6. There is some evidence of a practice of holding places for children of particular religion (who have not yet applied), while not replying to applicants with a different religious background. This is unacceptable and should not be allowed. Such a delay in offering places is effectively a refusal of a place. Places should be offered or refused to all applicants at the same time.

4.1 Summary of Legislation relating to National Schools

As stated in the introduction, there is very little legislation relating to National Schools in Ireland. The current legislation consists of the following:

1. The Constitution of 1937 - supreme
2. The Stanley Letter of 1831 - subject to the Constitution
3. The 1998 Education Act - subject to the Constitution
4. The Equal Status Act 2000 - subject to the Constitution
5. The Rules for National Schools - subject to 1,2,3,4
6. International and European Legislation

Effectively, the Stanley Letter of 1831 remains the primary legislation controlling National Schools. In the negotiations for Independence from Britain in 1921, the importance of the National Schools system was recognised by both sides, and the primary provisions of the Stanley Letter were incorporated in Article 16 of the Angle-Irish Treaty of 1921 “*Neither the Parliament of the Irish Free State nor the Parliament of Northern Ireland shall make any law so as toaffect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at the school.....*”. This provision was copied directly into the Article 44.2.4 of the 1937 Constitution and remains in force today.

However changes have been brought into the National Schools which are subverting the Constitutional provisions. In 1965 the Rules for National Schools were changed to allow for recognition of the denominational ethos of National Schools. In the 1970s, an integrated curriculum was allowed, whereby religious instruction could be spread throughout the school day, and throughout different academic subjects, so that separation of religious instruction was eliminated, and the right to remove a child from religious instruction was undermined.

4.2 The Stanley Letter 1831

“My Lord, The Irish Office, London, October 1831 His Majesty's Government having come to the determination of empowering the Lord Lieutenant to constitute a Board for the superintendence of a system of National Education in Ireland, and Parliament having so far sanctioned the arrangement as to appropriate a sum of money in the present year as an experiment of the probable success of the proposed system, I am directed by his Excellency to acquaint your Grace, that it is his intention, with your consent, to constitute you the President of the new Board: and I have it further in command to lay before your Grace the motives of the Government in constituting this Board, the powers which it is intended to confer upon it, and the objects which it is expected that it will bear in view, and carry into effect.....”

For the success of the undertaking much must depend upon the character of the individuals who compose the Board, and upon the security thereby afforded to the country, that while the interests of religion are not overlooked, the most scrupulous care should be taken not to interfere with the peculiar tenets of any description of Christian pupils. To attain the first object, it appears essential that the Board should be composed of men of high personal character, including individuals of exalted station in the Church; to attain the latter, that it should consist of persons professing different religious opinions. It is the intention of the Government that the Board should exercise a complete control over the various schools which may be erected under its auspices, or which, having been already established, may hereafter place themselves under its management, and submit to its regulations. Subject to these, applications for aid will be admissible from Christians of all denominations; but as one of the main objects must be to unite in one system children of different creeds, and as much must depend upon the co-operation of the resident clergy, the Board will probably look with peculiar favour upon applications proceeding either from,

1st The Protestant and Roman-catholic clergy of the Parish; or

2nd One of the clergymen, and a certain number of parishioners professing the opposite creed; or

3rd Parishioners of both denominations.....”

(The Commissioners).... will require that the schools be kept open for a certain number of hours, on four or five days of the week, at the discretion of the Commissioners, for moral and literary education only; and that the remaining one or two days in the week be set apart for giving, separately; such religious education to the children as may be approved by the clergy of their respective persuasions. They will also permit and encourage the clergy to give religious instruction to the children of their respective persuasions, either before or after the ordinary school hours, on the other days of the week. They will exercise the most entire control over all books to be used in the schools, whether in the combined moral and literary, or separate religious, instruction; none to be employed in the first except under the sanction of the Board, nor in the latter but with the appointment of those members of the Board who are of the same religious persuasion with those for whose use they are intended: Although it is not designed to exclude from the list of Books for the combined instruction, such portions of sacred history, or of religious and moral teaching as may be approved of by the Board, it is to be understood that this is by no means intended to convey a perfect and sufficient religious education, or to supersede the necessity of separate religious instruction on the day set apart for the purpose.”

COMMENTS

1. The Stanley Letter remains today the legal basis of the National School system. It has not been replaced by any legislation specifically for National Education.
2. The core principle of the Stanley Letter is that children of all religions should be taught together in the same school.
3. Public funding would only be provided for schools where there was no hint of proselytism (attempting to convert children to another religion).

4. Primary education for all children should be free.
 5. The Stanley Letter envisaged the existence of private faith schools – but, if schools wished to subject themselves to the National School system (and the funding that accompanied such a system), they would have to subject themselves to the control of the Commissioners for National Schools (the Rules for National Schools).
 6. The Stanley Letter envisaged that the State (through the Commissioners) would exercise complete control over the schools. Such control was transferred after Independence to the Minister for Education.
 7. There was to be local funding for the building of the schools, and for the maintenance of the buildings thereafter.
 8. Religious instruction would be carried out by clergy of the various religious denominations.
 9. **A “Catholics First” admissions policy in a National School is not allowed under provisions of the Stanley Letter.**
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4.3.1 The Constitution 1937

The Constitution of Ireland was enacted in 1937, replacing the previous constitution. There are three sections of the Constitution which relate directly to National Schools – (i) Article 42 sections 1 to 4 relates to parents rights in relation to the education of their children in National Schools and other primary schools, (ii) Article 44.2.2 relating to State support for religion and (iii) Article 44.2.4 relating to how publically funded schools must act in relation to admissions and to religion.

Eamon DeValera is given credit for the formulation of the Constitution. He was a devout Catholic, but he was not the pawn of the Catholic Church, and he was aware of the dangers of a State dominated by the Church. He was a revolutionary, and, particularly in regard to education in National Schools, the Constitution shows his belief in religious equality – particularly in services provided by the State.

4.3.2. Article 42 of the Constitution

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.

3.2 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.

Comments:

1. Article 42.4 allows for National Schools – primarily funded by the State, with denominational ownership and management – provided that rights of children to religious freedom is not interfered with.
2. The State allows for faith schools where parents can have single denominational religious indoctrination – privately (not State) funded.
3. The State shall not force parents to send their children to the National Schools (State schools), provided that the children receive a basic education, whether at home or in private schools.
4. Article 42.4 declares that the State shall provide free primary education. This provision is fulfilled through the National Schools.
5. Article 42 provides that parents, if they so wish, can send their children to private schools.
6. Parents will be free to provide education in their homes, or in private schools, or in schools recognised or established by the State.
7. The State can insist that all children receive a minimum education, whether provided by the State or by private means.
8. Article 42.4 is crucial to an understanding of the Constitutional position of the State relating to National Schools – it requires repeated reading to achieve an understanding.
9. The State shall not provide support for private faith schools in the primary sector.
10. The State may support private schools (National Schools under denominational ownership and management) – but only under certain conditions.
11. The “due regard” phrase in Article 42.4 means that the State cannot provide funding for schools which do not provide for the rights of parents, especially in the matter of religious formation.
12. The State cannot provide support for a school that has a “Catholics First” admissions policy.
- 13. A “Catholics First” admissions policy in a National School is not allowed under Article 42 of the Constitution.**

4.3.3 Article 44.2.2 of the Constitution

Article 44.2.2 “*The State guarantees not to endow any religion.*”

Comments

1. Webster defines ENDOW to mean “*to furnish with an income; especially : to make a grant of money providing for the continuing support or maintenance of <endow a hospital>*”
2. The state cannot financially support any religion. The state cannot create its own religion (like the Church of England) – nor can it financially support any other religion.
3. It was envisaged that religious indoctrination in National Schools would be carried out by clergy of the separate religions – not by teachers paid by the State.
4. The State presently pays teachers in National Schools to teach religious indoctrination – this is in breach of article 44.2.2.
5. Where there was large scale financial input into National Schools (if there ever was) by religious denominations, it could be argued that such financial contributions were offsetting the costs of teachers giving religious indoctrination.
6. For many years the local church made a financial contribution to the National School under its management – this may have contributed towards payment for the teachers (salaried by the State) in their work in giving religious indoctrination. This “local contribution” has been discontinued in recent years.
7. The National Schools are now totally funded by the State (with the addition of “voluntary contributions” from parents) – there is no longer any church funding.
8. The National Schools are now using part of their capitation grant to support the Catholic Church's control of the schools. From Catholic Primary Schools Managers Association website “*The Department of Education and Skills has confirmed that when a board of management decides to make a payment to CPSMA, it is legitimate to do so from the capitation grant.*” Annual payment varies from €300 to €900 per annum. This is in breach article 44.2.2.
9. A core principle of National education is that religious indoctrination should not be incorporated in the teaching of secular and moral education given by the State-employed teacher. It is important that religious indoctrination be kept separate from the secular educational curriculum.
10. **A “Catholics First” admissions policy in a National School is not allowed under Article 44.2.2 of the Constitution.**

4.3.4 Article 44.2.4 of the Constitution

Article 44.2.4 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.

From the 1996 report of The Constitutional Review Group

In summary, therefore, the present reality of the denominational character of the school system does not accord with Article 44.2.4°. The situation is clearly unsatisfactory. Either Article 44.2.4° should be changed or the school system must change to accommodate the requirements of Article 44.2.4°.

Comments

1. This Article allows the State to support schools under denominational management, provided the school does not apply religious discrimination in allowing right of entry to the school.
2. Article 44.2.4 asserts that all schools receiving public money cannot discriminate on enrollment on religious grounds.
3. All schools receiving State support must allow children attending to refuse religious instruction in the school.
4. Article 44.2.4 would seem be in direct conflict with Section 7, 3(c) of the Equal Status Act. The section of the Equal Status Act should have excluded “*school(s) receiving public money*” from the exemption that is provided for in this section of the Act.
5. **A “Catholics First” admissions policy in a National School is not allowed under Article 44.2.4 of the Constitution.**

4.3.5 Constitutional Review Group Report 1996

The Constitution Review Group was established by the government, with Dr TK Whitaker as chairman, in April 1995 to review the Constitution, and in the light of this review, to establish those areas where constitutional change may be desirable or necessary, with a view to assisting the All-Party Oireachtas Committee on the Constitution, to be established by the Oireachtas, in its work. This Committee has since been established.

The Constitutional Review Group in its 1996 Report accepted that the activities in National Schools at present are unconstitutional “*In summary, therefore, the present reality of the denominational character of the school system does not accord with Article 44.2.4°. The situation is clearly unsatisfactory. Either Article 44.2.4° should be changed or the school system must change to accommodate the requirements of Article 44.2.4°.*”

In considering whether the activities in the National Schools should be changed, or the Constitution changed to suit the illegal activities, the group made the following comments:

The Review Group does not favour the amendment of this part of Article 44.2.4° for the following reasons:

- i) Article 44.2.4° may be thought to represent something of an exception to the general rule contained in Article 44.2.3° that the State shall not endow any religion. Accordingly, if a school under the control of a religious denomination accepts State funding, it must be prepared to accept that this aid is not given unconditionally. Requirements that the school must be prepared in principle to accept pupils from denominations other than its own and to have separate secular and religious instruction are not unreasonable or unfair.*
- ii) if Article 44.2.4° did not provide these safeguards, the State might well be in breach of its international obligations, inasmuch as it might mean that a significant number of children of minority religions (or those with no religion) might be coerced by force of circumstances to attend a school which did not cater for their particular religious views or their conscientious objections. If this were to occur, it would also mean that the State would be in breach of its obligations under Article 42.3.1°*
- iii) this aspect of Article 44.2.4° reflects an earlier commitment given on behalf of the State contained in the Treaty of 1921 and Article 8 of the 1922 Constitution which was designed to safeguard the rights of religious minorities. Any amendment at this stage would be a retrograde step – especially in the context of Northern Ireland – and would send the wrong signal concerning pluralism in this State.*

Comments:

1. The Group's recommendations were very straightforward in recommending that the existing Constitutional provision for universal multi-denominational National Schools be retained.
2. The Constitutional Review Group Report was straightforward in saying that the present system of National Schools, which, in practice, was becoming increasingly denominational, was in breach of the Constitution.
3. The Constitutional Review Group's report should be read in its entirety in assessing the existing situation regarding National Schools and the Constitution.
4. **A “Catholics First” admissions policy in a National School (introduced since the Report in 1996) exacerbates the unconstitutional position elucidated by the Constitutional Review Group.**

4.4 Rules for National Schools

From Current “Rules for National Schools”, 1965

The rights and duties of citizens of the State in the matter of Education are set forth in Articles 42 and 44.2.4 of the Constitution of Ireland.....

In pursuance of the provisions of these articles the State provides for free primary education for children in national schools, and gives explicit recognition to the denominational character of these schools.

2. These Rules do not discriminate between schools under the management of different religious deoniminations nor may they be construed so as to affect prejudicially the right of any child to attend a national school without attending religious instruction at that school.

Comments

1. The voluntary subjection of a school to the Rules for National Schools is required to gain an entitlement by the school to State funding.
2. The Rules for National Schools (“The Rules”) are the sole responsibility of the Minister for Education.
3. The Rules were changed in 1965, to introduce recognition of the denominational character of National Schools. This is unconstitutional (or meaningless) under Article 42 and Article 44.2.4.
4. There was a change introduced in National Schools in the early 1970s (not in the Rules) which allowed religion to be integrated into the general school curriculum, making it virtually impossible for a child to exclude themselves from religious indoctrination – a situation very definitely in breach of the Constitution.
5. The Rules do not allow for a “Catholics First” policy which prejudicially affects the right of certain children to attend a National School.
6. **A “Catholics First” admissions policy in a National School is not allowed by the Rules for National Schools.**

4.5 1998 Education Act

Section 8 Patron of a school.

There is nothing in this section relating to admissions policies.

Section 15 Functions of a Board

15.1 *It shall be the duty of a board to manage the school on behalf of the patron and for the benefit of the students and their parents and to provide or cause to be provided an appropriate education for each student at the school for which that board has responsibility.*

15.2 *A board shall perform the functions conferred on it and on a school by this Act and in carrying out its functions the board shall -*

(a) do so in accordance with the policies determined by the Minister from time to time,

(b) uphold, and be accountable to the patron for so upholding, the characteristic spirit of the school as 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, and at all times act in accordance with any Act of the Oireachtas or instrument made thereunder, deed, charter, articles of management or other such instrument relating to the establishment or operation of the school,

(c) consult with and keep the patron informed of decisions and proposals of the board,

(d) publish, in such manner as the board with the agreement of the patron considers appropriate, the policy of the school concerning admission to and participation in the school, including the policy of the school relating to the expulsion and suspension of students and admission to and participation by students with disabilities or who have other special educational needs, and ensure that as regards that policy principles of equality and the right of parents to send their children to a school of the parents' choice are respected and such directions as may be made from time to time by the Minister, having regard to the characteristic spirit of the school and the constitutional rights of all persons concerned, are complied with,

(e) have regard to the principles and requirements of a democratic society and have respect and promote respect for the diversity of values, beliefs, traditions, languages and ways of life in society,.....

Comments.

1. The “Catholics First” admissions policies in National Schools is illegal under the 1998 Education Act because the Patron is dictating the Admissions policies, which is the sole responsibility of the Board of Management, and not of the Patron.
2. The only role allowed for the Patron with regard to admissions policy is in the manner of the publication of such policy – the Patron must agree the manner of publication with the Board of Management. The patron is subverting the provisions of the Act by dictating the actual admissions policy to the Board of Management.
3. The Board of Management of any National Schools which has a “Catholics First” admissions policy, or any admissions policy which allows for religious discrimination on entry, is acting illegally. All National Schools have a traditional position of allowing children of all religions equality of access.
4. Section 15, 2(e) is ignored completely in any National Schools with a “Catholics First” admissions policy.
5. The Board of Management is to manage the school for the benefit of the students and their parents. There is no provision to manage the school for the benefit of the Patron.
6. **A “Catholics First” admissions policy in a National School, dictated by the Patron, is not allowed under the 1998 Education Act.**

4.6 Equal Status Act 2000

Section 3 *Discrimination (general)*

(1) *For the purposes of this Act, discrimination shall be taken to occur where—*

(a) *on any of the grounds specified in subsection (2) (in this Act referred to as “the discriminatory grounds”) , a person is treated less favourably than another person is, has been or would be treated,.....*

(2) *As between any two persons, the discriminatory grounds (and the descriptions of those grounds for the purposes of this Act) are:.....*

(e) *that one has a different religious belief from the other, or that one has a religious belief and the other has not (the “religion ground”),.....*

Section 7 *Educational Establishments*

(1) *In this section “educational establishment” means a preschool service within the meaning of Part VII of the [Child Care Act, 1991](#) , a primary or post-primary school, an institution providing adult, continuing or further education, or a university or any other third-level or higher-level institution, whether or not supported by public funds.*

(2) *An educational establishment shall not discriminate in relation to—*

(a) *the admission or the terms or conditions of admission of a person as a student to the establishment.*

(b) *the access of a student to any course, facility or benefit provided by the establishment.....*

(3) *An educational establishment does not discriminate under subsection (2) by reason only that—.....*

(c) *where the establishment is a school providing primary or post-primary education to students and the objective of the school is to provide education in an environment which promotes certain religious values, it admits persons of a particular religious denomination in preference to others or it refuses to admit as a student a person who is not of that denomination and, in the case of a refusal, it is proved that the refusal is essential to maintain the ethos of the school,*

Section 12.—(1) *A person shall not publish or display or cause to be published or displayed an advertisement which indicates an intention to engage in prohibited conduct or might reasonably be understood as indicating such an intention.*

(3) *In subsection (1), “advertisement” includes every form of advertisement, whether to the public or not and whether in a newspaper or other publication, on television or radio or by display of a notice or by any other means, and references to the publishing or display of advertisements shall be construed accordingly.*

Comments

1. The “Catholics First” admissions policies in National Schools is illegal under the Equal Status Act 2000.
2. Schools under religious patronage (including private faith schools) receive no exemption from the provisions of this Act.
3. This Act makes religious discrimination on admission to a school illegal.
4. An Admissions policy which indicates an intention to discriminate, even if no discrimination actually occurs, is illegal in itself under Section 12. Any discriminatory clause in an Admissions policy will have to be a virtual copy of section 7,3(c) for it not to fall foul of Section 12.

5. There is an exception to the rule (it is an exception, it is not the rule) in Section 7,3(c). This is where “it is proved that the refusal (to allow equal access to a person of a different religion or none) is essential to maintain the ethos of the school”.

Four proofs are required to allow this -

(i) the case must be proven by the school – such proof should be provided to the school applicant. The obligation is on the school, not the child or parent to provide proof. The case must be proven before refusal of entry.

(ii) Delay would normally be legally regarded as “refusal”. Schools may feel that a practice of offering places to only Catholic (for instance) children in February, and not replying to non-Catholics until July or September (when the child will likely be enrolled elsewhere, or where extra Catholics may have applied) does not constitute refusal – this is not likely to stand up legally.

(iii) Refusal must be “essential” in each individual case. Prior to 1998, virtually all National Schools would have had children of different religions – while upholding their ethos. Admission of one individual non-Catholic would normally be unlikely to be make a significant difference to the ethos of a school. “Desirable” or “advantageous” is not the same as “essential”.

(iv) The ethos of every individual school must be proven – details of foundation of the school, enrollment details prior to 1998, and other historical information would be required to define a school's ethos. A school that traditionally accommodated children of different religions might find it difficult to argue that it did not have some (even minor) multi-denominational aspect to its ethos. It is likely that the large majority of National Schools would have difficulty in proving a tradition of exclusive Catholicism in its enrollment.

6. The exception clause allowing discrimination seems to have been aimed at the private faith primary schools (such as Willow Park in Blackrock) rather than the National schools. These schools were set up as private faith schools and receive no state funding of any kind. These faith schools, although in ever decreasing in numbers, have existed since the foundation of the National School system, and were allowed (and remain allowed) under the 1937 Constitution.
7. Section 7, 3(c) of the Equal Status Act would seem be in direct conflict with Article 44.2.4 of the Constitution. The section of the Equal Status Act should have excluded “*school(s) receiving public money*” from the exception that is this section of the Act.
8. The exception clause would seem to allow religious discrimination on entry only where such religious discrimination was already a well established practice – that it would not allow the introduction of religious discrimination.
9. The Equality Authority when questioned on the legislation and its relevance to National Schools seems to quote the legislation only, and does not elucidate.
- 10. A “Catholics First” admissions policy in a National School is not allowed under the Equal Status Act.**

4.7 European and International Legislation

A. 2003 European Convention on Human Rights Act Schedule 2

Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms¹ Article 2

Right to education

No person shall be denied the right to education. In the exercise of any functions that it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.

B. 1995 Framework Convention for the Protection of National Minorities

Article 12

The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.

C. International Covenant on Civil and Political Rights

Article 18.4

The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

D. International Covenant on Economic, Social & Cultural Rights

Article 13

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

E. UN Convention on the Rights of the Child

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

F. International Covenant on Economic, Social & Cultural Rights 1966

Art. 13 (1): *The States Parties to the present Covenant recognize the right of everyone to education. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.....*

Comments

1. All international agreements and conventions entered into by Ireland should be adhered to – both in letter and in spirit.
2. Fundamental to most such international agreements is that the State should recognise the rights of children to be allowed freedom of religion, and that the State should not interfere with such rights.
3. The European Convention on Human Rights precludes the State from allowing children to be excluded from local National Schools on the basis of their religion – where there effectively is no other available free primary education for such a child.
4. **A “Catholics First” admissions policy in a National School is not allowed by the European Convention on Human Rights.**

5. Regulators

5.1 Commissioners of Charitable Donations and Bequests for Ireland

This section is in this Report because the author came in contact with the Commissioners when two charitable trusts transferred and sold some school property for the benefit to the trusts. To complete the transactions approval was required from the Commissioners – this approval was forthcoming.

Under the Charitable Donations and Bequests (Ireland) Act 1844 a body corporate known as “The Commissioners of Charitable Donations and Bequests for Ireland” was created.....The purpose of the Commissioners was to ensure “the more effectual application of charitable donations and bequests in Ireland”.....

The Charities Act 1961 provided that the Commissioners should continue in being and consist of not more than eleven members each of whom should hold office until his death, resignation or removal from office.

For membership of the Commissioners, please see their website at

<http://www.pobail.ie/en/CharitiesRegulation/CommissionersofCharitableDonationsandBequestsforireland/>

From the Website of the Commissioners of Charitable Donations and Bequests

Objective 1 To contribute to the public good by ensuring the wishes of people making charitable donations are protected.....

Objective 6 To promote equality.

During the year ended 31st December 2008, we (The Commissioners) dealt with 509 applications and sealed 291 orders in respect of matters affecting charities and charity property. We held 12 meetings and an average of 42 items appeared on the agenda at each meeting.

The Commissioners of Charitable Donations and Bequests are appointed by the Government.

Comments:

1. The Commissioners for Charitable Donations and Bequests for Ireland (Charity Commissioners) are at the centre of the regulation of Church involvement in the ownership and trusteeship of schools.
2. The Commissioners are the State body which controls the ownership of schools (if any State body does), and is important in ensuring that charitable bodies do not breach the trust put in them. The citizens and the State in Ireland entrusted those charities with donations towards the funding of the vast majority of schools in Ireland.
3. It is important that charitable bodies which act as Patrons and Trustees in National Schools cannot realistically threaten to remove the schools from the National Schools system. The Charity Commissioners have a pivotal role in ensuring that this does not happen.
4. It appears that the bulk of the work of the Commissioners is to take applications from various charitable trusts to sell or move property, and to approve or disapprove such applications.
5. The Annual Report of the Charity Commissioners gives no details of the applications and orders sealed.
6. The author is aware of three transactions dealt with by the Charity Commissioners, allowing movement or sale of donated property – the average value of these (in today's money) was approximately €6million euro. If this is a reasonable average, the Charity Commissioners may deal with €1,800,000,000 of property per year - €150,000,000 of property at each monthly meeting.

7. The Charity Commissioners appear to be very much part-time commissioners – they include individuals with important responsible full time posts outside the Commissioners..
8. In none of the cases known to the author is he aware that the Charity Commissioners achieved knowledge as to the wishes of those who made donations for the purchase of the properties involved.
9. The public consultation process which might allow for knowledge as to the “*wishes of people making charitable donations*”, in one case known to the author, consisted of a notice on a parish notice board in a church (the property involved was not the church but rather a local school). None of those objectors to the actions of the Charity became aware of the involvement of the Charity Commissioners until years after the transaction was complete.
10. The Annual Report does not detail anything significant about the 500+ applications it processes each year, with a value of perhaps €1.8billion, but reports in some detail about a small investment fund of some €27million which it controls.
11. The Commissioners seem to make some effort when given details of Charitable Bequests, but seems to take no account of Charitable Donations. It would seem to the author that the bulk of the schools controlled by Charitable Trusts are funded by local donations, and not by bequests.
12. In none of the standard forms of application to the Commissioners is there any request for information as to what charitable donations were made which may have contributed to the property (if the sale of a property is substance of the application) coming onto the possession of the Charity. In two of the cases of which the author is aware, it appears that “*the wishes of people making charitable donations*” were not protected.
13. If the Commissioners do not act according to their main objective, there seems to be no way of stopping charitable trusts using donated funds for the personal welfare of the members of the charitable trusts. It is possible for a charity to receive donations to build a school – to run the school for a number of years getting paid for any work the members do during this time – and to then close and sell the school premises and use the funds for the private use of their own members.
14. **The illegality of a “Catholics First” admissions policy in a National School cannot be tackled as long as the Catholic Church can treat property donated to it in trust for their own private purposes. National schools, and funds donated for the purchase and maintenance of such schools, must remain as National schools. The Commissioners of Charitable Donations and Bequests must be vigilant in these cases.**

Regulators

5.2 The Department of Education

The Department of Education is tasked with the implementation of all legislation relating to education.

The Department of Education states as follows on www.education.ie, :

State-funded primary schools used to be known as national schools and include:

- *religious schools, such as Roman Catholic, Church of Ireland, Muslim;*
- *non-denominational schools;*
- *multi-denominational schools; and*
- *Gaelscoileanna (schools that teach through the Irish language)*

Comments

1. If the “Catholics First” policy is allowed in a National School, the Department of Education is failing to carry out its duties as primary regulator of State supported education in Ireland.
2. The above extract from the Department of Education website undermines the whole principle of National Schools.
3. The Department of Education appears to be colluding in illegal activities in our National Schools – activities in breach of the Constitution and other legislation.
4. The Department of Education does not implement the provisions of the Stanley Letter which prohibits religious discrimination on admission to a National School.
5. The Department of Education does not implement the provisions of Article 42 of the Constitution which provides for free education in our National Schools and allows that all children, regardless of their religious beliefs, have equal entry to these schools.
6. The Department of Education does not implement the provisions of Article 44 of the Constitution which guarantees that the State will not endow any religion.
7. The Department of Education does not ensure that all places available in a school are offered at the same time – which would avoid places being held back for Catholic children when non-Catholics have applied, and the school is not full.
8. The Department of Education has facilitated and continues to facilitate the move of National Schools towards becoming faith schools (without any public discussion or any legislative changes). See the extract above from the Department's website above.
9. The author has no evidence that the failure in the Department of Education is due to political policies, but appears to stem from a failure at official level.
- 10. A “Catholics First” admissions policy in a National School should not be allowed by the Department of Education.**

Regulators

5.3 Equality Authority

The Equality Authority is tasked as the regulatory authority for the Equal Status Act 2000. As outlined earlier this Act prohibits religious discrimination in admissions to a school. From the Equality Authority booklet on the issue, the Authority says the following:

The Acts allow primary and post-primary schools which have the objective of providing education in an environment which promotes certain religious values to admit persons of a particular religious denomination in preference to others. Primary and post-primary schools may refuse to admit a student who is not of that denomination if it is proved that the refusal is essential to maintain the ethos of the school.

Further extract from the Equal Status Act 2000

23.—(1) Where it appears to the Authority that—

(a) prohibited conduct—

(i) is being generally directed against persons, or

(ii) has been directed against a person who has not made a claim under [section 21 \(1\)](#) in respect of the prohibited conduct and it is not reasonable to expect that the person will do so
the matter may be referred by the Authority to the Director.

(2) Where a matter is referred to the Director under subsection (1) it shall be dealt with in the same manner and to the same extent as if—

(a) it were a claim referred to the Director under [section 21 \(1\)](#),

(b) the Authority were the complainant and the person alleged to have engaged in the prohibited conduct or to have committed the contravention referred to in subsection (1)(b), as the case may be, were the respondent, and

(c) where the matter involved a contravention referred to in subsection (1)(b), the contravention were prohibited conduct.

Comments

1. To the knowledge of the author, the Equality authority has never sought, nor received, evidence relating to the proofs required by discriminating schools, i.e. (i) evidence that a case has been proven by the discriminating school, (ii) evidence as regards ethos of a school, (iii) evidence as to how the entry of a child effects the ethos of the school and (iv) the “essential” nature of such a refusal of entry to a school.
2. The Equality Authority has the power, under section 23 of the Equal Status Act 2000, to investigate the “Catholics First” admissions policy in a National School, which, prima facie, is illegal, without receiving a formal complaint. To the author's knowledge, it has never done so.
3. Ireland is known worldwide for only one type of discrimination – religious discrimination. The Equality Authority in Ireland should be a world leader in combatting this particular type of discrimination.
4. The Equality Authority's activism in other areas, such as race, ethnic background, gender etc. contrasts greatly with its inactivity in the predominant inequality in Ireland – religion.
5. The education system, by its division on religious lines, undoubtedly contributes to the religious divide in Irish society. The Equality Authority does not seem to promote religious equality on admissions to National Schools, the bedrock of the Irish education system.
6. The Equality Authority appears to promote the exception rather than the general rule in explaining the Equal Status Act which outlaws religious discrimination on admission to National Schools.

6. Religious Indoctrination

From the Stanley Letter “.....that the remaining one or two days in the week be set apart for giving, separately; such religious education to the children as may be approved by the clergy of their respective persuasions. They (The Commissioners) will also permit and encourage the clergy to give religious instruction to the children of their respective persuasions, either before or after the ordinary school hours, on the other days of the week.”

Comments

1. The National School system envisaged all children being in need of Christian religious instruction.
2. It was envisaged in the foundation of the National School system that children would receive religious instruction from local clergy.
3. The National School system did not envisage that State funded teachers would carry out religious instruction.
4. It became practice that National School teachers (funded by the State) gave religious instruction/indoctrination to children in National Schools.
5. The system whereby religious denominations made significant financial contribution to the local National School may have allowed for payment towards religious instruction by State funded teachers. “Local” (as these were known) contributions by religious denominations have been discontinued.
6. There is no tradition in Ireland of Catholic children receiving religious instruction except in school.
7. The obvious solution to allowing religious instruction in National Schools, would be to revert to the original system whereby religious instruction was only done at separate defined periods in the schools – perhaps for 2 hours each Friday afternoon.
8. Such religious instruction might be carried out by clergy, or lay people trained to give religious instruction, or perhaps by National School teachers who would be paid for this (separate from their State salaries) by the different religious denominations.
9. The State is constitutionally precluded from endowing or supporting any religion, and consequently there is no legislation governing religious instruction in National Schools, other than the obligation of all such schools to allow all children to exclude themselves from religious instruction.

7. National School Ethos

Extract from Section 15.2 (b) of the 1998 Education Act:

It shall be a function of the Board of Management of a School to

uphold, and be accountable to the patron for so upholding, the characteristic spirit of the school as 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

Comments

1. Ethos and Characteristic Spirit are interchangeable words which are defined by Webster as “*the distinguishing character, sentiment, moral nature, or guiding beliefs of a person, group, or institution*”.
2. The basic ethos of all National Schools includes equal access for children of all religions.
3. Neither individuals nor regulatory authorities should accept a declared religious ethos of any National School that does not include equal access to children of all religions.
4. The ethos of all National Schools must include the principles of the Stanley Letter which includes primarily the object to “*unite in one system children of different creeds*”.
5. Ethos as related to schools in Ireland is not defined in law. However the extract above from the 1998 Education Act gives some legislative guidance.
6. Ethos (characteristic spirit) has come to be associated almost exclusively with religion.
7. There is no such thing as a Catholic National School – it is a contradiction in terms. Many National Schools are named after saints like Scoil Naomh Pádraic, Scoil Bhríde etc. However, in many cases, when the history of the school is checked, it will be found that the school is actually Athlone National School or a similar name relating to the location of the school.
8. The Patron has no power to dictate the ethos of a school.
9. Each individual school must get its ethos from its foundation and traditional position in the community.
10. Ethos can only be legally defined by way of evidence – the assertion of school authorities or Patrons does not constitute evidence.
11. It is important that the ethos of a school should be defined as it appears in the Equal Status Act 2000.
12. Private primary schools, commonly attached to private secondary schools, often have a denominational religious ethos – this is not the case with National Schools.

8. Consequences of Illegal Discrimination.

Census Statistics from the Central Statistics Office – breakdown by religion.

date	Population	Catholic		Protestant		Jewish		Other Religions	No. Religion		Not stated		
1881	3,870,000	3,465,332	89.5%	392,034	10.1%	394	0.0%	12,560	0.3%				
1891	3,468,694	3,099,003	89.3%	356,786	10.3%	1,506	0.0%	11,399	0.3%				
1901	3,221,823	2,878,271	89.3%	328,850	10.2%	3,006	0.1%	11,696	0.4%				
1911	3,139,688	2,812,509	89.6%	311,461	9.9%	3,805	0.1%	11,913	0.4%				
1926	2,971,992	2,751,269	92.6%	207,307	7.0%	3,686	0.1%	9,730	0.3%				
1936	2,968,420	2,773,920	93.4%	182,746	6.2%	3,749	0.1%	8,005	0.3%				
1946	2,955,107	2,786,033	94.3%	157,054	5.3%	3,907	0.1%	8,113	0.3%				
1961	2,818,341	2,673,473	94.9%	129,645	4.6%	3,255	0.1%	5,236	0.2%	1,107	0.0%	5,625	0.2%
1971	2,978,248	2,795,666	93.9%	119,437	4.0%	2,633	0.1%	6,248	0.2%	7,616	0.3%	46,648	1.6%
1981	3,443,405	3,204,476	93.1%	115,411	3.4%	2,127	0.1%	10,843	0.3%	39,572	1.1%	70,976	2.1%
1991	3,525,719	3,228,227	91.6%	107,423	3.0%	1,581	0.0%	38,743	1.1%	66,270	1.9%	83,375	2.4%
2002	3,914,203	3,462,606	88.5%	146,226	3.7%	1,790	0.0%	89,223	2.3%	138,264	3.5%	79,094	2.0%
2006	4,239,848	3,681,446	86.8%	161,291	3.8%	1,930	0.0%	138,541	3.3%	186,318	4.4%	70,322	1.7%

Comments

1. Approximately 1.25% of the population begin primary school every year.
2. This equates to approx. 50,000 children beginning school each year at present.
3. From the statistics above, it is likely that approximately 10% of children beginning primary school will attend (or apply for admission to) a school which is under the Patronage of a religion that does not equate with their parents – approximately 5,000 children per annum.
4. Each of these children and their parents is discriminated against illegally, whether they attend the school or are refused a place (note that expressing an intention to discriminate is illegal in itself, without actually refusing a place in school).
5. If each of these 5,000 cases of illegal discrimination were brought to the Equality Tribunal or to court, and if the complaint of illegal discrimination was upheld, the compensation awarded, given that the damage caused (isolation within the child's community) will last a lifetime, is likely to be substantial.
6. If illegal discrimination is proven, all of those parents and their children who did not apply for admission to their local National School, because of the discriminatory Admissions policy are likely to be entitled to compensation.
7. It is likely, from previous cases, that, although the discrimination is initiated by the Boards of Management and the Patrons of the schools, that the State will end up with significant level of legal responsibility. Regulation of the National School system is firmly in the control of the State.
8. **The financial consequences for the State of illegal discrimination in National Schools could be very substantial.**

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16. Irish Education Documents Vols I-III – NAIRTL
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10. Conclusions

1. The Irish Government, through the Constitutional Review Group Report of 1996, is aware that it is colluding in a breach of the Constitution in funding National Schools which discriminate on religious grounds.
2. The public is under a misapprehension as regards their rights in National Schools – they believe that the Catholic Church has complete control to run the schools as it wishes – a misunderstanding.
3. The State does not articulate the rights of parents in relation to National Schools.
4. There is no evidence of political debate regarding the major changes towards faith schools in 1965, 1971, 1999 and since 2000
5. All changes to the National School system appear to have been agreed between officials in the Department of Education and religious officials. There is no public evidence of political involvement.
6. There is no report, no political decision, no government review since 1870 which recommends that National Schools should be denominational. There is no government report that recommends that children be educated only with children of their own religion.
7. Uniformly in Ireland, in Europe, and at the U.N. all modern thinking and legislation recommends that children of different religions should be educated together – with a view to decreasing religious discrimination and strife in society. We in Ireland should have learned this lesson by now.
8. The moves away from equal rights for all religions towards making National Schools into faith schools did not come in the early years of Independence, but only since 1965, more than forty years after independence.
9. There may have been a better understanding among political leaders after Independence as to what National schooling meant, because of the consistent difficulties encountered by the British authorities in resisting religious bigotry in National Schools prior to Independence. This political corporate memory may have been lost by 1965, allowing intolerance and division to be introduced.
10. Politicians of all parties today seem to be unaware of changes being made to the National School system. They seem to be unaware of the import of the new “Catholics First” admissions policy. Politicians of all parties have been and remain very poorly informed on legal matters relating to Church and State in education.
11. There have been a number of myths that have grown up around National Schools without evidence or any apparent promotion - (i) that all National Schools were privately funded by the churches, (ii) that the churches always owned the schools, (iii) that National Schools are fundamentally faith schools and always have been, (iv) that all primary schools are National Schools – all untrue.
12. The existing position of poor public understanding, poor political understanding, and significant undebated efforts by the Catholic Church to move towards faith schools is facilitating changes which are contrary to the needs of a more religiously diverse society.
13. Losses in religious vocations, scandals about child abuse, falling numbers attending religious services seem to have strengthened, rather than weakened, the Catholic Church's determination to maintain its dominant position in schools at both primary and second level.
14. The Catholic Church is a didactic church which encourages its adherents to accept hierarchical instruction without debate. The predominance of Catholics in all walks of life in Ireland, including the civil service, may account for the changes towards faith schools that have been seen since 1965.

15. The failures in regulation detailed in this report may be explained by reference to the Ryan Report which stated "*The failures by the Department that are catalogued in the chapters on the schools can also be seen as tacit acknowledgment by the State of the ascendancy of the Congregations.....The deferential and submissive attitude of the Department of Education towards the Congregations compromised its ability to carry out its statutory duty of inspection and monitoring of the schools.....The failures that occurred in all the schools cannot be explained by the absence of rules..... The rules were ignored and treated as though they set some aspirational and unachievable standard.....Not only did the individual carers disregard the rules.....but their superiors did not enforce the rules.....Neither did the Department of Education "*
16. The State at one stage required that clergy must be part of the management structure of a National School – a condition that might explain the dominance of religions in National Schools.
17. The publication of the Admissions Policies of National Schools is chaotic – it is impossible to find the policy of most schools in any public forum (some have effective websites, most do not). It can only be found by contacting each individual school.
18. Decisions might be made on the basis of legal opinion. Legal opinion has no standing, and it is common to be able to get legal opinions giving completely opposite views.
19. Official published ruling by judges, of which there are very few on the issue of this report, are of some value, but are subsidiary to the legislation.
20. There seems to be no reason for the State to involve itself in Deeds of Variation.
21. Boards of Management at National Schools which have adopted religious discriminatory admissions policies are acting illegally.

There is a concept in law that legislation means what a “reasonable man” would understand it to mean. Many people can rationalise an approach that involves taking no action when action should be taken – on the basis that there is a “legal opinion” that supports the inaction. Legal opinions (and contrary legal opinions) are easy to get – no account should be taken of them unless they are published and open to public scrutiny. The conclusions of this report are based on actual legislation and, above all, on the Constitution.

This report shines some light on a situation in our National Schools where the laws of the State have been ignored for decades, but more particularly in the past ten years. This illegality, is very difficult to understand. The lack of implementation of the laws relating to our National Schools may be due to inappropriate deference to the Catholic Church.

11. Recommendations

1. The State should ensure that all National Schools are open to children of all religions (and none) on an equal basis.
2. The State should unambiguously declare that the National School system is a State system of education.
3. Every Board of Management which has adopted a “Catholics First” admissions policy should change the school policy to one which does not allow for religious discrimination at entry to the school.
4. The Rules for National Schools should be changed (in relation to religion) back to the Rules prior to 1965.
5. No child should be discriminated against on religious grounds on admission to a National School. This should be formally included in The Rules for National Schools immediately.
6. Any individual parent, who is confronted (or has been in the past) by an illegal religious discriminatory Admissions policy should be encouraged by the Equality Authority to pursue a claim through the Equality Authority.
7. The State should unambiguously declare that it cannot (constitutionally) and will not support religious indoctrination.
8. The Department of Education should publish, along with its listing of National Schools, the patronage and admissions policies of each of these schools.
9. Proposals should be sought from the existing patron bodies to see if they have ideas that might accommodate religious instruction for children of all religions in National School premises.
10. Parents should help the clergy provide the religious indoctrination for their children. National School premises are ideal for the indoctrination of children in their different religions. The premises are commonly little used outside normal school hours.
11. The Commissioners of Charitable Donations and Bequests should be reformed (if necessary) to ensure that donations made towards schools remain in use for education.
12. The Commissioners for Charitable Donations and Bequests should require full disclosure from charities as to the funding of the purchase of all properties which they wish to sell or transfer. In the absence of such information, the presumption should be that the properties were funded by charitable donation for their present use, and proceeds of any sale must go to the same purpose, not for any general “charitable purposes of the trust” (or similar ill-defined purpose).
13. There should be a public consultation on education provision in National Schools in Ireland. The present Forum on patronage may be able to do this.
14. A “whistle blowers” website should be set up under the control of the Comptroller and Auditor General to allow those with inside knowledge, but who are afraid of openly challenging church authorities (or others in other fields) of any possible wrongdoing (as the whistleblower sees it), to get information up the chain of command in the State. The C&AG can filter the information provided.
15. Those in the State's regulatory authorities must always be aware of and support the constitutional and legislative provisions relating to the issue of this report. From the Ryan Report *"A culture of respecting and implementing rules and regulations should be developed. Managers and those supervising and inspecting the services must ensure regularly that standards are observed."*
16. No decisions should be made by the State on the basis of unpublished legal opinions – all legal opinions which are being relied upon should be published, and should be open to scrutiny.
17. The copyright of all legal opinions received by the State should be the property of the State – there should be no legal opinion which remains the property of the lawyer who created it.

“...one of the main objects must be to unite in one system children of different creeds....”

from the Stanley Letter of 1831

See page 9

“The State guarantees not to endow any religion.”

Article 44.2.2 of the Constitution

See page 12

“ the present reality of the denominational character of the school system does not accord with Article 44.2.4.

The Review Group does not favour the amendment of this part of Article 44.2.4.”

from the Report of the Constitutional Review Group

see page 14

“An educational establishment shall not discriminate (on grounds of religion) in relation to—

(a) the admission or the terms or conditions of admission of a person as a student to the establishment.”

from the Equal Status Act 2000

see page 17

“Catholic children living within the parish and brothers and sisters of children already enrolled in the school.”

“Catholics First” admissions policy whereby Catholic children are given first preference on entry to National Schools under the patronage of the Catholic Archbishop of Dublin.

See page 7
