

Ferris, In the Matter of [2001] NIEHC 50 (27th June, 2001)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE)

IN THE MATTER OF AN APPLICATION BY ROBERT FERRIS FOR JUDICIAL REVIEW

KERR J

Introduction

1. Robert Ferris is the father of Victoria. She is a pupil at Strangford Integrated College. By this application he challenges the policy of the school to require pupils to undertake a compulsory course in Gaelic studies in their first year. He also challenges the failure of the Department of Education to review this policy and to give appropriate directions to the school.

2. Factual background

3. Mr Ferris is Protestant. His wife is Catholic. They are separated. Their three daughters live with Mrs Ferris. Victoria, who is the eldest, began her secondary education at Strangford College in September 1999. During her first year, she was required to undertake the subject, Gaelic studies, which included a rudimentary course in the Irish language. Mr Ferris did not become aware of this until December 1999 and immediately objected. His wife was happy with the school's policy in relation to the course but she did not oppose her husband's objection to it.

4. The college opened in September 1997. At that time it had sixty-four pupils and six teachers. By the school year 1999/2000 the pupil population had grown to 241 with a teaching staff of sixteen. The school was awarded grant maintained status in September 1999.

5. In accordance with Articles 5 and 6 of the Education Reform (Northern Ireland) Order 1989, the school is required to teach certain subjects known as "the contributory subjects". It also chooses to require pupils in their first year of secondary education (known as "year 8") to undertake a number of other subjects including **Gaelic** studies. This subject occupies one period per week.

6. The college held an open day on 23 January 1999. The principal, Esther Anne Rowe, addressed the parents. In the course of her speech she emphasised that, since Strangford College educated children from all religious backgrounds, it was anxious to promote “cross curricular themes of education for mutual understanding and cultural heritage”. Ms Rowe told parents that pupils in year 8 would have a short course in Irish to enrich their understanding of those two themes. She repeated this information at a parents’ intake meeting on 3 June 1999. Although Mr Ferris attended the open day, he obviously missed the message that Irish was to be taught because, as I have said, he only became aware of this in December 1999.

7. The statutory framework

8. Article 3 of the Education Reform (NI) Order provides: -

“3. It shall be the duty of the Department [of Education]-

(a) to promote the education of the people of Northern Ireland;

(b) to secure the effective execution by boards and other bodies on which or persons on whom powers are conferred or duties imposed under the Education Orders of the Department’s policy in relation to the provision of the education service.”

9. Mr Treacy QC on behalf of the applicant argued that this provision fixed the Department with the responsibility to intervene where it became aware that any of its policies were being contravened. It therefore had a duty, it was claimed, to require the school to change its curriculum where it could be shown to be in breach of the Department’s policy as expressed in Article 4 of the Order.

10. Article 4 provides: -

“4.-(1) It shall be the duty of the Board of Governors and principal of every grant-aided school to exercise their functions as respects that school (including, in particular, the functions conferred on them by this Part) with a view to securing that the curriculum for the school satisfies the requirements of this Article.

(2) The curriculum for a grant-aided school satisfies the requirements of this Article if it is a balanced and broadly based curriculum which-

(a) promotes the spiritual, moral, cultural, intellectual and physical development of pupils at the school and thereby of society; and

(b) prepares such pupils for the opportunities, responsibilities and experiences of adult life.”

11. Mr Treacy argued that the imposition of a compulsory Gaelic studies course that was not counterbalanced by a course which dealt with the British/Unionist tradition clearly offended Article 4 (2).

12. Articles 5 and 6 and Schedule 1 to the Order deal with the subjects that must be included in the curriculum of a grant-aided school. Mr Treacy argued that, by making Irish compulsory in the first year at

the college, the Board of Governors had imposed a requirement that was not sanctioned by these provisions.

13. Article 8 (1) of the Order provides: -

“8.-(1) The curriculum for a grant-aided school shall not, in so far as it relates to pupils of compulsory school age, be taken to satisfy the requirements of Article 4(2) unless it promotes, wholly or mainly through the teaching of the contributory subjects and religious education, the attainment of the objectives of the following educational themes, namely-

(a) Information Technology;

(b) Education for Mutual Understanding;

(c) Cultural Heritage;

(d) Health Education;

(e) Economic Awareness

(f) Careers Education”

14. It was submitted for the applicant that, even if the requirements of this provision were fulfilled, the Board of Governors were not relieved of their obligation under Article 4 (2) to provide a balanced curriculum which addressed these themes.

15. The judicial review application

16. The broad thrust of the case made for the applicant was that the compulsory teaching of Irish created an imbalanced curriculum. Evidence was produced for the applicant in the form of a joint affidavit by Gordon Lucy and Lee Reynolds. Mr Lucy is the development officer of the Ulster Society for the promotion of Ulster British Heritage and Culture. Mr Reynolds is the information officer of the “Ulster Heirskip Cooncil”.

17. They considered the claim made by Ms Rowe that balance in the curriculum is achieved by the teaching of Gaelic studies alongside such other subjects as English, History, Music and Art, all of which reflect the culture and ethos of British society. Messrs Lucy and Reynolds disputed this claim. They suggested that the curriculum of each subject had “an internal breadth and balance”. Neither the applicant nor Messrs Lucy and Reynolds opposed the teaching of Irish but all claimed that this was only possible under Article 4 (2) if it was counterbalanced by the teaching of subjects which “reflect the complexity and diversity in Ulster society”.

18. The Board of Governors, although they were a respondent to the judicial review application and had filed affidavits, elected not to be represented on the substantive hearing.

19. For the Department Mr Maguire submitted that its general obligation to promote education under Article 3 of the Order did not give rise to a specific actionable legal duty. This was in the nature of a political rather than a legal duty. The responsibility for the delivery of a balanced curriculum under Article 4 lay with the Boards of Governors of schools. It did not apply to the Department.

20. In any event, argued Mr Maguire, the term “balanced and broadly based” where it appeared in Article 4 (2) was not defined. It would be wrong, he suggested, to construe it as requiring of every curriculum that each subject dealing with a particular aspect of education be precisely balanced against its counterpart, even if that were possible in a hypothetical sense.

“A balanced and broadly based curriculum”

21. I consider that the net issue in this case is the proper approach to the interpretation and application of the phrase “a balanced and broadly based curriculum” in Article 4 (2). In my view, the question whether a curriculum is broadly based and balanced is to be addressed by reference to the entire curriculum rather than by isolating an individual subject and asking whether its impact has been balanced by its counterpart. Such an arid exercise is, in any event, not feasible in relation to many of the subjects that conventionally feature in a school’s curriculum.

22. The purpose of including Gaelic studies in the school’s curriculum is perhaps best explained in an affidavit filed on its behalf by Ms Elizabeth Benton, the chairman of the Board of Governors, as follows:

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“17. ... The applicant claims that the college’s curriculum does not satisfy Article 8 of the Education reform (NI) Order 1989. This contention is not accepted. Education for Mutual Understanding (EMU) as defined by the Northern Ireland Council for the Curriculum Examinations and Assessment (CCEA) involves helping pupils to develop positive values and mutually respectful relationships and to appreciate human differences of all kinds, including culture, disability, gender, ethnicity, politics and religion in a spirit of acceptance and respect. It is also about preparing pupils to deal constructively with conflict. ...

18. ... Strangford College seeks to promote respect for both cultures ... The Board of Governors considers that it is beneficial for Irish studies to be taught because of the integrated nature of the college for one thirty five minute period out of a possible fifty periods a week. The Board of Governors are supportive of both main cultures and the staff of the school are continually seeking vehicles to deliver EMU and cultural diversity in meaningful ways. ... Contact has been made with Professor Wilson of the University of Ulster to develop a teaching pack for Ulster Scots. The Board of Governors does not wish to be seen to support one culture over another. Indeed to do so would be contrary to and would compromise the founding principles of the college. The Board of Governors and the school would be receptive to any suggestions which would foster understanding of cultural diversity.”

23. These passages demonstrate the school’s unequivocal commitment to a balanced educational curriculum that will respect both cultural traditions in Northern Ireland. Of course, a firmly espoused aspiration to supply such a balanced school programme will not necessarily bring about the achievement of that aim. I am entirely satisfied, however, that the Board of Governors has managed to fulfil its statutory duty and its ambition of providing a broadly based, balanced curriculum. I do not consider that it was incumbent on the school to assess the impact of one particular subject and to try to balance that with

a subject that expressed a different perspective. Its duty under Article 4 (2) was to provide a broadly based and balanced curriculum in the general sense of that phrase. In other words, it was required to avoid a narrow biased programme for education that promoted to a position of dominance one particular viewpoint and neglected another. The teaching of an elementary course in Gaelic studies cannot plausibly be said to have had that result. On the contrary, it can only reasonably be regarded as having advanced the cause of cultural diversity and mutual understanding. The application for judicial review must be dismissed.

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