Education & the Canadian Constitution

Charter of Rights & Freedoms

  1)  Can students gather in a school area that is designated “out of bounds” or “off limits”?

The key to this question is to examine the limits to the rights of the individual. Each person has a right to assemble [ 2(c)] and associate [2(d])  and a right to liberty [7]. None of these rights can be arbitrarily taken from an individual. However, [1] clearly sets reasonable limits to the rights and freedoms of the individual. If it can be shown that the area that is out of bounds or off limits is labeled as such, for good reason, the students have no right to assemble in the area.

2)     Can school officials search a student’s locker?

Once more the key to this question lies in the limits that can be placed upon one’s right to be free from unreasonable search [8]. If the school officials have good reason to believe that something either dangerous or illegal is being kept in the locker, a search could be justified. School’s often establish the reasonableness by informing all students that the lockers remain the property of the school and are subject to search.

3)     Can school officials search a student’s person?

An involuntary search of the individual would likely not be legal. The reason for the search would need to be established. If it could be argued that failure to search could result in danger to others in the school a search might be upheld in court. In an instance as serious as this, the police would typically be called to conduct the search. A voluntary search may be legal, if based on legally established duties of school officials.

4)     Can a school officials detain a student?

Once more, the issue of reasonableness is important. The fact that a student attends school, makes her or him subject to reasonable discipline policies that are necessary to maintain safety and ‘order and discipline’ in the school. If the detention falls within the guidelines of accepted policy, it is likely that it would be considered legal.

5)  In what ways does the Charter protect sexual orientation?

The Charter does not specificaly protect individuals from discrimination based on sexual orientation. Court rulings may interpret 'sex' as a broader concept and include sexual orientation but this is not yet reflected in the Charter. The New Brunswick Human Rights Code does, however, include sexual orientation in its list of protections in its discrimination clause.

6) What is the importance of the Charter's 'reasonable limits' clause?

     Section One of the Charter balances the rights of students with the responsibilities of those

 who are required to maintain the safe, orderly and sound educational environment of schools.

 This balance is pertinent in each of the first four questions above. If challenged by students or

 their legal representatives, schools must justify any limitation of students charter rights as

 being reasonable and necessary in the daily operation of schools.

 Educational Rights & Privileges –

 7)     What educational rights and privileges are guaranteed by the constitution with regard to:

i)   religious instruction?

The rights & privileges associated with religious instruction are those that were established by each province upon entering confederation [93(1)]. Any dissentient school system that is approved by provincial legislation shares these religious rights [93(3)]. Any rights and privileges extended to the majority, be it Catholic or Protestant, are extended to dissentient schools in Upper Canada [93(2)].

Newfoundland and Labrador abolished denominational schools by an amendment to [17(1)] in 1998. Courses in religion may be provided by the province provided they are not specific to a religious denomination [17(2)]. Religious observances are permitted in a school if parents make the request [17(3)].

NOTE: Bezeau, 2002 states that denominational minorities have a right to dissent and leave the common schools to set up a separate system where they have a right to religious instruction and can require conformity with their beliefs. They have the right to tax themselves to support such schools and are free from taxation to support common schools.

ii)  language of instruction?

New Brunswick is the only province that extends equal linguistic rights for education to both Anglophone and Francophone children [16(1)]. In other Anglophone provinces, minority Francophones have rights to education in French as outlined in Section 23. Parents who speak the minority language as their first language OR who received their primary education in the minority language have a right to have their children educated in the minority language. [23(1- a&b)] provided there enough children in the province to warrant this provision [23(3 a)].

     8)     How do language and denominational rights in Quebec differ from  those in other provinces?

           As a result of a 1997 Constitutional amendment, Quebec is exempt from
           Section 93 which guarantees the rights for Protestant schools. This amendment
           restructures schools along linguistic lines rather than denominational lines.
           Minority language rights for Quebec schools fall under Bill 101 which continues to
           uphold the rights of minority language education for Anglophones with a
           wording that parallels that in Section 23 of the Charter.

9)     How are provincial rights for education tied to the date upon which a province joined confederation?

All provinces may exclusively make laws in relation to education subject to only the provisions laid down in [93 (1-4)] or the equivalent sections from provincial terms of union.

10)   How is New Brunswick unique among Canadian provinces with regard to language of instruction in its schools?

 New Brunswick is the only province that is constitutionally recognized as officially bilingual [16(1)].