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THE UNIVERSITY OF ALBERTA

THE CHARTER OF RIGHTS AND FREEDOMS: IMPLICATIONS FOR EDUCATION

by

Peter Edward Zacharko

A THESIS

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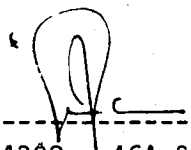

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FACULTY OF GRADUATE STUDIES AND RESEARCH

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled "The Charter of Rights and Freedoms: Implications for Education" submitted by Peter Edward Zacharko in partial fulfillment of the requirements for the degree of Master of Education.

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Date: 2 Oct 87

ABSTRACT

The basic purpose of this study was to determine the impact of the "fundamental freedoms" and "legal rights" provisions of the Canadian Charter of Rights and Freedoms upon the practice of educational administration. Secondly, the findings were translated into specific educational policy and action statements to aid school officials in assuming a positive and anticipatory approach, complementary to the intent of identified sections of the Charter.

The study reveals that the extent to which the Charter will alter the educational administrator's life is not by any means clear. From the analysis of judicial reviews contained in this research, however, it can be argued that little was added by the identified sections of the Charter to the spectrum of rights previously recognized by our legal system and society in relation to educational matters.

Canadians have traditionally enjoyed the freedoms of conscience and religion among the other liberties guaranteed in section 2. Nevertheless, our society has also deemed it reasonable not to extend the complete granting of these rights to the young. Generally, the Charter has not changed these rights nor has it added further restraints upon the activities of school officials.

Additional findings emphasize that the entrenchment of the legal rights provisions in the Charter, prescribing an individual's minimal guarantees for protection in accordance with the "principles of fundamental justice," has not radically altered the procedural protection previously available in common law.

The above findings do not, by any means, diminish the significance of these Charter provisions. The enshrining of our rights and freedoms in the Constitution, the supreme law in Canada, requires all other laws and by-laws of governments and their delegated tribunals to remain consistent with Charter demands. Unreasonable restriction of rights and liberties are thus, more than before, subject to judicial review.

The objective of documenting policy recommendations in the concluding chapters of this thesis is to aid education officials in meeting the challenging task of transforming the Charter from symbolic words into living reality. The effect of the Charter is seen in the changing mind-set of Canadian society. Citizens previously relatively complacent and accepting of governmental authority are now more rights-conscious and challenging of that same authority. The entire educational community must recognize that the teaching about our rights enjoyed in a democratic society is a hollow exercise if schools do not respect those same rights through complementary policies and action.

This thesis is not to be considered as a legally definitive treatment of Charter-based law. The intent was to create an introductory awareness of the implications held for educators. To this end, the promise of the thesis to provide readers a degree of guidance toward the improvement of educational governance, will be of ample reward to this educator.

ACKNOWLEDGEMENTS

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CHAPTER I

Introduction

Laws relating to the operation of schools and school systems have, in general, been taken for granted. The realization that persons engaged in education need to be aware of laws governing their work has come only in recent years in Canada, due particularly to the enactment of the Charter of Rights and Freedoms in 1982. Provincial law, prior to the Charter, was supreme from the time of the confederation of the provinces in 1867; however, provincial control over education is now affected to a significant degree by relevant sections of the Charter. This brings to light one of the major issues confronting educators and educational administrators today.

Prior to 1982, only the principles contained in common law and section 93 of the British North America Act constrained educational legislation, policy and administrative action. Educational matters were rarely a subject for the judiciary provided that actions were taken in good faith and in a fair and just manner.

The superintendent of schools has traditionally been regarded as the supreme power in relation to teachers, parents and students. In these post-Charter times, however, society has witnessed a fundamental shift from the previously accepted institutional authority of the schools to the right of the individual to make personal decisions and act upon them (Anderson, 1986e: 3).

Today, it is evident that educators will witness increased

judicial intervention in educational matters. The combination of these decisions, revised provincial educational policy and the Charter of Rights and Freedoms has forced administrators to examine the implications for policy and practice.

The study of the law and involvement of the courts in relation to the Charter, which is the subject of this thesis, is intended to contribute to the administrator's understanding of the law and the implications that the recent changes in Canadian law have for the management of educational institutions.

Statement of the Problem

The intent of the thesis is to address the following question: What are the implications of the "fundamental freedoms" and "legal rights" provisions of the Charter of Rights and Freedoms for educational practitioners and policy makers?

As a guide to the development of the study and the analysis of the literature, a number of more specific questions have been addressed:

1. What provisions of the Charter and other sections of the Constitution Act, 1982 have altered the position of the provinces in respect of their supreme authority over education as legislated in the British North America Act of 1867?

2. What limitation does the Charter impose on the identified rights of persons in an educational setting?

3. What court decisions have further defined and interpreted

sections of the Charter related to education?

4. What provisions of the Young Offenders' Act build upon the rights of students identified in the Charter?

5. What guides for educational administrative action and policy have emerged from Charter-based decisions?

Significance of the Study

Court decisions are influential in the management of schools. In light of the number and rapidity of court rulings since the enactment of the Charter, keeping abreast of changes in interpretation by the various levels of the courts has become nearly a daily obligation and certainly a requisite for professional survival in the practice of school administration.

The school administrator must take heed of the principle that ignorance is no defense if one is in violation of the law. In his 1958 study, Bargen (1961) supports the view that the administrator's role includes that of the legal expert and that knowledge of school law adds "an inescapable dimension to the task of the school administrator today" (p. 1). For the practitioner in the school setting there is an even more emergent need for comprehensive understanding of legal principles and case law. It is this need that provides the thrust for this research.

The significance of this study lies in providing the reader with an in-depth analysis of legal precedents and subsequent implications. The administrator's performance in the field will thus be facilitated

by reducing the potential for litigation as a result of inappropriate action.

Further, as the concluding chapters provide particulars for policy direction, the study will conserve the administrator's energies in documenting system and school policies. The need for legal guidelines in policy formulation in respect of Charter requirements has been recognized by administrators engaged in the writing of policy statements. The results of this study will serve as a practical reference for trustees, superintendents and principals.

Related Studies

A number of previous legal research studies have been located that deal with Canadian school law. Published University of Alberta doctoral dissertations by Bargen (1961), Enns (1963) and McCurdy (1968) serve as useful references in providing a historical framework in respect of the pre-Charter status of pupils, school boards and teachers. Paton (1977) researched Canadian law in relation to a limited number of administrative processes; his study provides another useful resource in this regard.

Only one Charter-based study (Anderson, 1983) was located; however, her research was mainly limited to the minority rights question and includes a number of predictions regarding implications, some of which have since been addressed by the courts.

The four earlier studies will be of assistance in establishing an appropriate perspective, whereas Anderson's work will serve as a

valuable aid in providing early legal cases related to her topic.

More recently, Anderson, Director of Legal Services for the Alberta School Trustees' Association and noted Canadian authority on school law, writes that "the full impact of the Charter of Rights and Freedoms on education will be unknown for many years to come" (1986e, p. 3). She feels that the Supreme Court has not had sufficient time to address many of the issues facing educators.

MacKay, professor at the Dalhousie Law School, and author of numerous books and articles on education law and human rights, also recognizes that future decisions of the court will have additional considerations for educators. He emphasizes that "there is still time for educators to put their own houses in order, before the courts require them to do so. A careful in-house review of rules, procedures and penalties may prevent legal action" (1986b, p. 85).

MacKay's caution has been recognized by the educational community as numerous books, articles and conferences have recently addressed Charter-based issues in Canada. Manley-Casimir and Sussel (1986) edited the presentations of a 1983 Charter conference of educators in Vancouver. This book was followed by a similar effort of Nicholls and Wuester (1986) summarizing the results of a 1985 conference sponsored by the British Columbia School Trustees' Association. Anderson, a contributor to the above conferences, presented two major papers at the 1986 convention of the Canadian Education Association in Winnipeg (1986c, 1986d). These papers add to her regular contributions to the "Legal Notes" section of the Canadian School Executive, a magazine

published at the University of Alberta for educational administrators.

In summary, it is acknowledged that the literature related to the educational implications of the Charter has expanded immensely in recent years. Certainly the importance of this field of study for school officials has been recognized by both the legal and educational professions.

Design of the Study

This thesis can best be identified as being both a legal study and an historical inquiry into educational legislation and court cases. In respect of the former, there is a conscious attempt to avoid the use of legal terms and Latin phraseology used by the legal profession. This study is intended for the use of educators in everyday practice and the intensive study of the law is left to the lawyers and judiciary. As the Charter is a recent addition to the laws of Canada, the historical nature of the study relates mainly to establishment of the principles of common law. Although the majority of the literature and judgements are relatively current in scope, Borg and Gall (1983, p. 800) would assert that this thesis is an historical study in that it deals with events prior to the time of documentation.

Sources of Data

The study is concerned mainly with a review of statutory and case law with the result that two primary sources of data are used:

1. The laws and by-laws of governments. These include, but are not limited to, the British North America Act, 1867; the

Constitution Act, 1982; the school acts of selected provinces and accompanying regulations.

2. The law reports of various levels of Canadian courts. Case law from Britain and the United States is referenced in areas of uncertainty in Canadian law. Significant implications for educational practice and policy can be inferred from case law by precedent.

Secondary sources written by legal authorities in Canada have been of assistance in the interpretation of Charter court decisions. These books and articles were most valuable in suggesting approaches to problems and implications for education officials.

In addition to the above, the resources and personnel of the Legal Services department of the Alberta School Trustees' Association and the University of Alberta, Faculty of Law, served to verify legal interpretations and educational implications.

Data Analysis Process

The study of the legislation and related literature provided a conceptual understanding of the intent and significance of the various sections of the Charter. Subsequent examination of the law reports and interpretations of case law by legal experts served as a basis for formulating general legal principles, which in turn, were translated into policy statements and guidelines for administrative action.

Organization of the Thesis

This thesis is organized in a developmental sequence of the applicable sections of the Charter of Rights and Freedoms set in the context of the Constitution Act. The intent is to assist the reader

in developing an enhanced sensitivity to the relevance of this area of law. More specifically, sections of the study subsequent to the introductory chapter are developed in a manner to fulfill the following objectives:

1. To place education in a legal perspective of federal, provincial and local authority with emphasis on the impact of the courts on these authorities. Provincial and judicial authority is examined in the pre-Charter and post-Charter eras.

2. To establish a framework for the Charter in relation to its significant power (section 52), application to government agencies (section 32), judicial limits (section 1), political limits (section 33) and enforcement (section 24).

3. To provide the reader an appreciation, in layman's terms, of the educational relevancy of the particular sections of the Charter:

a. Fundamental Freedoms (section 2) references educational concerns within the freedoms of conscience, religion, expression, assembly and association;

b. Liberty and Fundamental Justice (section 7) relates the importance of these doctrines in the treatment of students, parents, and employees;

c. Unreasonable Search (section 8) places responsibility upon officials in the search of school premises and students;

d. Detainment and Detention (sections 9 and 10) in conjunction with the Young Offenders' Act (Canada) requires adherence to the law in relation to various investigations

conducted within schools; and

e. Cruel and Unusual Treatment (section 12) contains implications for educators in respect of the administration of punishment in schools.

4. To summarize the educational implications in a pragmatic manner by suggesting methods of educational practice and policy statements which are consistent with Charter requirements.

Assumptions

A major assumption underlying this study is that knowledge of the law and, in particular, the Charter has a direct relationship to the effective practice of educational administration. Writers and practitioners have assumed that legal knowledge is important; however, the degree of legal expertise of administrators has not been scientifically correlated, for instance, with professional competence in the field.

Delimitations and Limitations

The thesis is delimited to the identified sections of the Charter and the subsequent implications for Alberta educators. Generalizations to educational practice in other provinces should be made with caution.

A major limitation is inherent in the fact that the Charter is relatively new to the judicial arena. Whereas numerous case studies of decisions made in lower courts are available, the Supreme Court of

Canada will prove to be the final authority in considering future interpretations of this legislation. Charter hearings are ongoing; therefore, it is probable that some of the findings of this study will be eventually eroded as the courts continue to address new issues. New judicial analysis will serve as a basis for further research in this area.

This study is also limited in that other provisions of the Charter that hold significant implications for education have not been examined.

For example, the Minority Language Education Rights of section 23 have not been addressed. These guarantees to English and French minorities to have their children educated in their own language is the only section of the Charter that references educational programs directly. Whereas Anderson (1983) devoted her Master of Laws thesis to this topic, further discussion appears unnecessary at this point until the appeal to the Mahe decision, referenced in Chapter II, is heard.

Additionally, section 15, the equality section, has been excluded from this thesis. This provision for the rights of equal treatment by government education systems did not come into effect until April of 1985 in order to provide the provinces and the federal governments a three year lead in time to amend existing legislation to comply with this section. Section 15 promises to be one of the most litigated provisions of the Charter. Education will most certainly be affected by these rights, particularly in the areas of special education

instruction, age-based programs and employment of staff. The author's view is that this extensive topic would lend itself as the sole subject of a future thesis or dissertation after the Supreme Court has had time to address the multitude of new questions to be raised.

Further to the above, the denominational rights in education provision of section 29 will be left to other writers.

Definition of Terms and Principles

The thesis is intended as a reference for administrators not versed in law; therefore, the concepts examined in this section are provided in general terms and are not precise authoritative legal treatments. Other definitions are offered in the text for purposes of explanation of related Charter concepts.

In the construction of these broad legal concepts, a number of sources were relied upon to arrive at a comprehensive definition for the layman: Bargen (1961), Black (1979), Daniels (1986), Gall (1983), MacKay (1984), McCurdy (1968) and Nicholls (1984).

Constitution and Statute

The Constitution of Canada is formally defined in Section 52(2) of the Canada Act, 1982. It contains the Canadian Charter of Rights and Freedoms and other constitutional acts including the British North America Acts (now called Constitutional Acts) and the Statute of Westminister. Collectively, these acts are the "supreme law" of Canada; that is, they are paramount over all other pieces of

legislation and have the status of a constitution. Statutes are laws enacted by Parliament or a Provincial Legislature or by inferior bodies with delegated authority to establish regulations, by-laws, rules and orders issued in accordance with the acts of Parliament or Legislatures. Taken as an aggregate, these statutes are referred to as statute law.

Law

This general term used in the text refers to a specific decree or ruling made by part of the governance structure under human sanction and the will of society which the state is prepared to enforce. Law in this sense is frequently known as positive law to distinguish it from natural law which comprises those considerations of justice, right and universal expediency that are based on the voice of reason and the law which God has prescribed to all men.

Common law. As distinguished from enacted (statute) law, common law refers to that body of non-statutory principles and rules of action which has evolved over centuries of court decisions in England, the United States, Canada and other countries sharing the same legal heritage. These rules and principles relate principally to the security and rights of persons and property, and to the restraint of autocratic actions by government bodies and officials. Common law uses precedent for establishing legal rules and is continually developed through court decisions.

Examples of common law principles dealt with in the text include the rules of natural justice and the doctrine of in loco parentis.

Case law. Sometimes known as judicial decisions, case law is that body of law created by specific interpretations of statute and common law by a body authorized by the state to do so. Case law is to be distinguished from administrative decisions made by a government ministry or agency.

Arbitrary Decisions

The term arbitrary is used frequently in relation to administrative decisions which are made without reason, without rationale, or dependent upon someone else's whim or pleasure. Additionally, an arbitrary detention under section 9 is one that is unreasonable or capricious or one made without reference to an adequate determining principle or standard.

Principles of Courts of Law

This thesis references a number of court decisions in relation to the Charter; thus, as an addendum to the definitions provided above, it is useful to briefly introduce the reader to the fundamental principles in respect of the operations of courts of law. The three underlying principles are (a) the rule of law, (b) natural justice, and (c) binding precedent.

Rule of law. Paton (1977) writes that "the 'rule of law' concept is fundamentally a presupposition that all persons and all institutions within the state are equally subject to the rule of law .... a legal obligation, equally shared by all, to live within that law" (p. 6).

The tradition that the Crown does not rule by right but only in trust for the citizens requires that an independent judicial system exists in order to guard and maintain that trust (Nicholls, 1984, p. 12). People must remain free from any arbitrary decisions of government and its agencies, including those of educational institutions. Decisions of educators and their actions may be challenged in the courts if the actions extend beyond legislated authority or violate natural justice, the second fundamental principle of the courts.

Natural justice and due process. In addition to adjudicating upon and interpreting positive law, courts maintain that the rules of natural justice and the principles of due process founded in natural law apply to judicial and quasi-judicial proceedings.

The two fundamental rules of natural justice, which contain numerous sub-rules, are that (a) both parties to a dispute must be heard and (b) all forms of bias of the hearing authority must be excluded. This concept is provided expanded treatment within the text of the thesis.

Nicholls (1984) writes that:

> The courts will not adjudicate cases based solely on natural law ... for actions brought before the courts must be founded on some positive law contained in statute or in common law. But in cases of uncertainty in the meaning of a statute, when the courts attempt to deduce either what the legislature intended or what it would have done if it had anticipated the new development, they will turn to natural justice if necessary to determine what justice requires. (p. 15)

Precedent and hierarchy of decisions. The third fundamental principle of the operation of the courts is influence of prior decisions upon the case at hand. Gall (1983) writes that "precedent is the doctrine that requires a judge, in resolving a particular case, to follow the decision in a previous case, where the fact situations in the two cases are similar" (p. 219). The problem lies in that rarely, if ever, will situations be completely identical, thus requiring judges to be flexible and creative.

In order that the law may be as consistent as possible the principle of "stare decisis" requires that if there has been a previous decision of a higher court, in a similar case, the judge must follow that decision. This ensures a degree of certainty in the common law while allowing it to grow when necessary.

This thesis refers to a number of decisions handed down by the Supreme Court of Canada which are binding upon all other Canadian courts. Other references are made to lower court decisions of various provinces and also those of the United States which, though influential or even strongly persuasive, are by no means binding. For a more complete treatment on precedent and stare decisis, readers are

directed to Gall (1983, pp. 218 - 241). The diagrams depicting the hierarchy of the courts presents the layman a pictorial demonstration of the operation of this doctrine.

CHAPTER II

The Charter in Perspective

Introduction

On April 17, 1982 Queen Elizabeth II proclaimed the Canada Act, 1982. Schedule B of this Act is called the Constitution Act, 1982 and the 34 sections of Part I of this Schedule make up the Canadian Charter of Rights and Freedoms. More than 100 years after the creation of Canada as an independent nation, it had its own constitution. This patriation of the Canadian constitution with the entrenched Charter marked the beginning of a new era in Canadian life and educational policy-making.

The purpose of this Chapter is to examine various general provisions of the Constitution Act, 1982 with the intent of placing a number of the sections of the Charter relative to educational governance and practice in perspective. Three chapters will follow: fundamental freedoms, legal rights, and implications for policy. This chapter will address a number of Charter principles in order to provide a context for the more detailed treatment which follows.

Historical Background

A study of the political history of the Constitution Act, 1982 and the included Charter of Rights and Freedoms reveals a very difficult experience for Canadian legislators.

The first draft of the Charter entitled Canadian Charter of Human

Rights was first introduced in 1968 by Pierre Elliot Trudeau, then the new Minister of Justice in the government of Prime Minister Lester B. Pearson (Gibson, 1986, p. 30). The following 14 years witnessed protracted negotiations between the federal and provincial governments, task force reports, judicial reviews and amendment bills. In 1978, the Trudeau government introduced Bill C-60, a proposed Constitution of Canada Act in Parliament. A key feature of this act was a new Canadian Charter of Rights and Freedoms. Issues surrounding, but not limited to, minority language education, denominational school rights, provincial powers and amendment formulae continued as the topics of contention in the parliaments of this country.

An accord between the federal and provincial powers was finally reached in September 1981 with only the province of Quebec refusing to sign the agreement. Salhany (1986) documents the events ensuing this accord with its considerable compromise:

> On December 2, 1981, Parliament gave the Constitution Act its third and final reading. Six days later, on November [to read December] 8, 1981 it was passed by the Senate and delivered to the Governor General to be forwarded to Great Britain for passage by the English Parliament and final approval by the Queen. (p.8)

The Constitution Act, 1982 was proclaimed in force on April 17, 1982 and the Canadian Charter of Rights and Freedoms came into effect, except for the equality rights section that took effect three years later.

The underlying purposes of elected officials in patriating the constitution were essentially two-fold: (a) Patriation was necessary

in order to achieve complete independence from the parliament of the United Kingdom, and (b) The civil liberties of Canadians had to be protected. In regards to the latter, the need for a Charter was recognized by a majority of our elected representatives who believed that setting out our rights and freedoms in such a manner that these rights could not easily be infringed upon by government was important enough to be enshrined in a Canadian constitution.

A study of Canadian history provides a list of numerous accounts of the violations of the rights of Canadians, particularly those of unpopular minorities. Gibson (1986) provides the following examples:

> The internment of Japanese Canadians and the confiscation of their property during World War II, the persecution of Jehovah's Witnesses by the Government of Quebec, and the unnecessary and abusive detentions that occurred during the "October Crisis" of 1970. The list could be lengthened substantially. (p. 4)

It appeared evident to the drafters of the Charter that Parliament and the provincial legislatures could not be relied upon to consistently protect the rights and freedoms of individuals or groups, thereby providing the motivation for ensuring rights that could not easily be infringed upon or denied by governments.

Significance of the Charter

The Charter carries within its clauses dramatic and far-reaching changes for all aspects of Canadian society. While full certainty of Charter impact is impossible at this early stage of judicial definition, writers appear to agree that the force of this legislation will be felt by all citizens. Romanow (1986), for example, recognizes

the significance of the Charter in writing that "one thing is for certain: April 17, 1982 marked the beginning of the next important phase in the development of our country since Confederation itself and presented a challenge no less great" (p. 25).

Impact on Education

Prior to the Constitution Act, 1982, the major feature of Canada's constitution was the British North America (B.N.A.) Act of 1867, now known as the Constitution Act, 1867. This act of Confederation established the Federal Parliament and distributed certain powers and duties between Ottawa and the Provinces. The Constitution Act, 1867 lists federal powers in section 91 and sets out provincial powers in section 92. Under section 93, the exclusive power to make laws about education is distributed to the provinces with important exceptions concerning denominational education.

From the time of confederation up to the advent of the Charter, provincial law was supreme provided that such laws did not prejudicially affect any of the rights that minority religious groups had at the time of the union of the provinces. There were no other limits placed on the provinces' power to govern education, other than the principles contained in common law and the sanction of the electorate.

Provincial control over education is now affected to a significant degree by relevant sections of the Charter. The framers of the constitution addressed only two provisions specifically to

education: section 23, minority language rights and section 29, preservation of the rights for denominational schools. Judicial decisions of the last five years have shown that other sections are also applicable to schools, and thus bring to light one of the major issues confronting educational administrators today.

In summary: prior to 1982, school system officials were aware that the legal constraints placed upon their conduct were contained in provincial statute and regulation as well as the principles contained in common law. Although these restraints remain, the demands of the Charter have expanded the scope of court actions on matters pertaining to education. These additional considerations will be addressed in this thesis.

Power of the Charter

Whereas section 93 of the Constitution Act, 1867 is guaranteed under Part VI of the Constitution Act, 1982, thus perpetuating each province's control over education within its boundaries, the province is no longer supreme in this regard.

Section 52(1) of the Constitution Act, 1982 reads that:

> The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of inconsistency, of no force or effect.

In that section 52 provides that the Constitution of Canada, including the Charter, is the "supreme law" of Canada, any other law, policies, regulations or directives be they federal, provincial or local may be declared "of no force or effect" if they are inconsistent

with the Constitution, including the Charter. Judicial process will determine whether or not any particular law is consistent or inconsistent with the Constitution. Subsequent to the above, there will be increased judicial intervention in education than has previously been the norm in Canada.

Various courts have already found that provincial education laws and regulations are in conflict with the Charter. Mr. Justice Purvis, of the Alberta Court of Queen's Bench in Mahe v. Alberta found that sections of the Alberta School Act regarding French instruction were inconsistent with section 23 of the Charter and should be altered. Additionally, the Supreme Court of Canada in the case of R. v. Oakes ruled that "section 8 of the Narcotic Control Act is inconsistent with section 11(d) of the Canadian Charter of Rights and Freedoms and thus of no force and effect (p. 133).

The above cases are presented here only to illustrate the significance of section 52(1). Provinces are required to review all existing statutes and regulations to ensure adherence to Charter mandates. Similar reviews by boards of education are also recommended.

Role of the Courts

In light of the importance of section 52(1) and the delegated duty of the courts to rule on the matter of whether a law is "of no force or effect" within the Charter, it is appropriate to discuss briefly the changing role of the judiciary since the advent of the

Charter.

Historically, the powers to legislate federally and provincially were divided by the British North America Act (1867). Courts were not generally concerned about the content of any law provided that the legislatures remained within their sphere of jurisdiction. Judges were required only to interpret and apply the law, not to decide on the merits of the law itself. In respect of education, there appeared to be a judicial reluctance to interfere with the decision of school boards, provided that officials reached that decision in a fair and reasonable manner.

The Charter has changed that traditional role. In recognition of this new judicial role, Blair (1983) writes that "the Charter has conferred immense power on the judiciary. It has become the ultimate arbiter in Canadian society on Charter issues, legally supreme over both the legislative and executive branches of government" (p. 445).

Legislative function of courts. Blair's reference to the court's new "legislative" role requires elaboration. It appears that the Charter has produced a shift from law making by elected representatives to that by the judiciary. Romanow (1986) questions whether the court room is the ideal place to settle Charter issues. He writes that:

> Questions about which there have already been political debate and political resolution, are now being reconsidered and rewritten by the courts. There is reason to question whether the courts are the best institution in which these issues can be resolved, and judges are the best-suited people to make these decisions. (p.22)

Judges have, however, shown a reluctance to impose their own views of what the Charter means and have chosen instead to interpret the intent of the framers of the statute. This may not always be possible.

Solomon (1986), in discussing the presentations at a legal conference which criticized Canada's judges for their interpretations, reports that:

> What causes uncertainty is the opportunity for wide interpretation the document [Charter] offers judges. Unlike most laws, which forbid specific actions, the Charter often outlines vague rights - the right to be tried within a reasonable time, freedom of conscience, freedom of the press - but no definitions. What is "reasonable"? What is the press free to do? (p. C2)

American courts have been seen to be activists in handing down rulings on every aspect of American public life. Fulford (1986) points to the Warren decision in 1954 that desegregated public education and started the process of extending civil rights for the American black population. Is this an appropriate task for judges or does this role belong to politicians? He writes that we have asked judges, who are not elected by the citizens:

> Not only to apply but to reshape and even (when they please) overturn the laws. They are plunged deeply into what we normally think of as the political process - defining who can do what, balancing this need against that right, determining which cause deserves society's sympathetic attention and which does not. And yet they [judges] remain above that [political] process. (p. 9)

The Charter has presented new opportunities and challenges to the judiciary, as well as problems. This recent shift of authority to the courts should be viewed positively by educators, at least until society as a whole recognizes that the legislative role of the bench

has been misplaced.

Application of the Charter

According to section 32, the Charter applies to the actions of federal and provincial parliaments and governments.

> 32.(1) This Charter applies
> (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories, and
> (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

Application to Education

Because the Parliament and legislatures are subject to the Charter, bodies which have been delegated powers from statutes are also bound by Charter requirements. It follows that because school boards are under the legislative authority of the province, the actions of educators are generally subject to requirements of the Charter. Robinson (1986, p. 90) reports that in the compulsory school attendance hearings at the provincial level in the R. v. Jones case, the judiciary did not address the issue of the applicability to schools under section 32 but proceeded as though the Charter applied to education.

Further on this question, in McCutcheon v. Corporation of the City of Toronto, the Supreme Court of Ontario, in ruling on the validity of a municipal by-law, maintained that "law [subject to the provisions of the Charter] includes not only statute law, but also

common law, regulations, and any binding legal norms, including municipal by-laws (p. 125.20-01).

With this declaration that municipalities are subject to the Charter, similar arguments could be adduced for school boards.

In regard to the above, Anderson (1983, pp. 243-244) provides a caution in respect of the application of section 32:

> What is not considered is the extent of the application to school boards and school officials. If it is the function being performed that is crucial for the determination of the application of the Charter, then one is not able to conclude that all educational matters performed by a school board and school officials are automatically covered. There must also be an examination of the function that is being performed and a finding that the function is a government function.

While the actions of school boards are subject to the Charter, the actions of school officials will be determined on the basis of whether such action is a government function rather than an action associated with the position held. This concept will be addressed in greater detail in the search and seizure laws of the legal rights portion of this paper.

For the purpose of this thesis, it will be assumed that the Charter does apply to educational decision-makers in the execution of their duties. The actions of private individuals are not seen to be limited by these sections.

Application to Private Business

It is generally agreed that the Charter was not intended to govern private matters. In Bhindi v. B.C. Projectionists Local 348, the British Columbia Supreme Court ruled that the Charter did not

apply to a collective agreement which is a private contract between the members of a union and a non-government employer. Mr. Justice Gibbs states that "as the collective agreement which the petitioners [Bhindi and London] challenge is a matter of private contract by members of the union with theatre operators, it is not, in my opinion, subject to the provisions of the Charter" (p. 359).

The extension of the Charter to private companies is unlikely to happen for two reasons. "First, the purpose of the Charter is to regulate the activities of government and secondly, every Canadian province has Human Rights Acts which regulate actions between individuals" (Burey - Hesjop, 1983, p. 8).

Parents

The applicability of Charter requirements to parents must also be clarified. MacKay (1986a) writes that "parents, who exercise important powers over students, would not be limited by the Charter. They would, of course, be subject to regular legislation such as human rights codes and the laws against child abuse or neglect" (p. 15). It is normally accepted that parents are acting in a private capacity; therefore, their actions are not generally caught by the Charter.

Trustees

The intent of the Charter is to protect certain rights of individuals and private organizations against actions by the government and its subordinate agencies. Courts have recently shown

that state agencies such as school boards cannot rely upon the rights identified in the Charter. In Weinstein v. Minister of Education for British Columbia, the court ruled that a school board has no guaranteed Charter rights. In ruling that the British Columbia School Act did provide the legal authority for the Lieutenant Governor in Counc to replace the school board with an official trustee and that the rights of the board were not violated by this action, Mr. Justice Callaghan states that:

> The Charter of Rights and Freedoms bestows no rights or freedoms on creatures of statute like the board or on members of the board in that capacity . . . Persons or individuals are entitled to those rights and freedoms. They are not guaranteed to statutory bodies such as the Vancouver School Board or to members of the board acting in their official or elected capacity. (pp. 56-57)

While courts may ultimately provide alternate rulings on the applicability of Charter rights to school boards under other circumstances this decision affirms that, generally, school boards or trustees acting in their capacity as trustees do not have any rights or freedoms under the Charter. The expectation is that actions of a board may not infringe upon the rights of individuals and employees.

Summary

Through further reading of Charter decisions it will become apparent that the applicability of the Charter to different groups will have to be studied on a case-to-case basis. Educators are reminded that, in general, the actions of provincial departments of education, school boards, officials and employees acting in their official capacities are governed by the Charter. School boards and

trustees must ensure that their actions will not infringe upon the rights of others, but they themselves have no guaranteed rights while fulfilling their elected roles. The actions of private individuals and parents are not limited by this statute.

Limitations on Charter Freedoms

Although Charter rights are constitutionally guaranteed, they are not absolute in nature. Rather, they are, in general, qualified rights. Cox (1984) explains that:

> There is no such thing as an absolute freedom or an unconditional right. All rights and freedoms are subject to some limitations. There must always be a balancing of competing rights and a recognition that every right also involves an obligation. (p. 11)

In respect of the expressed limitations upon the rights identified in the Charter, Cruickshank (1986, pp. 54-56) has chosen to label these as political limits and judicial limits.

Political Limits

Section 33, often referred to as the "notwithstanding" clause or "override" provision, allows governments to opt out of identified Charter provisions:

> 33.(1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter
>
> (2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.
>
> (3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or the legislature of a province may re-enact a declaration made under subsection (1).

(5) Subsection (3) applies in respect of a re-enactment made under subsection (4).

The inclusion of this section allows Parliament or a provincial legislature to remove itself and its agencies from section 2 (Fundamental Freedoms) and sections 7 to 15 (Legal and Equality Rights). The framers of the Charter argued that the inclusion of this option would allow the elected representatives to decide the extent to which fundamental freedoms, legal rights and equality rights are permitted to go.

The rationale underlying this section was that governments would only proclaim the denial of these rights at great political peril and only in extreme circumstances. This was a somewhat unrealistic view in that the Quebec government invoked section 33 two weeks after the Charter was passed. Quebec Bill 62, which excluded some 500 Acts of the Quebec legislature made prior to April 17, 1982, was tabled on May 5, 1982 and received final reading on June 23, 1982. This action was later determined to be a valid procedure by the Quebec Superior Court in Alliance Des Professeurs De Montreal v. Attorney General of Quebec but was later rejected by the Quebec Court of Appeal on the basis that Bill 62 was not specific enough in identifying which provision of the Charter is to be disregarded.

Further on this issue, Finkelstein (1986) writes that:

> Due to a quirk in the legislative drafting of the Charter it is unclear whether section 33 confers as absolute power to opt out of section 2 and sections 7 to 15 or whether the exercise of this power must be reasonably and demonstrably justified in a free and democratic society pursuant to section 1. (p. 999)

This question is presently before the Supreme Court of Canada.

Judicial Limits

Section 1, the "justified limitation" provision of the Charter, provides for legal and judicial restraints on the rights and freedoms of individuals as these are balanced with the competing rights of society:

> 1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

This provision stipulates four necessary conditions which must be met before any limitations can be placed on rights or freedoms:

1. The limits must be reasonable
2. The limits must be prescribed in law
3. The limits must be justifiable, in
4. A free and democratic society

Reasonable limitations. The term "reasonable" in a legal sense requires considerable attention as it is on this point that a majority of education matters will be decided. The difficulty in presenting a single definition lies in the fact that what reasonable limits are will be decided by the courts on a case-by-case basis and will depend upon the particular circumstances of each case. Courts have provided many varied interpretations over the years.

For example, in the early Charter case of Quebec Association of Protestant School Boards v. Attorney-General of Quebec the Quebec

Superior Court in ruling on the alleged denial of educational rights under the French language provisions of the Quebec Charter provided the following three-fold test to "reasonable limits":

> 1. A limit is reasonable if it is a proportionate means to attain the purpose of the law;
> 2. Proof of the contrary implies proof not only of a wrong, but of a wrong which runs against common sense; and
> 3. The courts must not yield to the temptation of too readily substituting their opinion for that of the Legislature. (p. 77)

Reasonableness of an action is relative and must be proportioned to the circumstances of the case considered as a whole. Evidence of acting "in good faith", with no malice or bad intent, are other considerations.

The Alberta School Trustees' Association (1971) provides the following advice to policy makers:

> There are many varied definitions of "reasonable". Basically, however, ... the following should be included in any definition of "reasonable":
> a. having regard to the existing and relevant circumstances.
> b. in good faith
> c. logical, sensible and fair. (p. 2)

In relation to the Charter, society has accepted, as reasonable, the placing of limitations on the rights of youth, generally on the basis of age alone. The granting of rights to drive an automobile, consume alcohol and vote in elections is conceived as reasonable for adults only, whereas the requirement to attend school is an accepted limitation on rights of children.

Even with the freedoms granted to "everyone" under section 2, courts will find it reasonable to place limitations on the rights of the young. The extent of those limitations will no doubt see frequent

challenges.

Limitations prescribed by law. The second condition in section 1 requires that limits must be "prescribed by law". This precludes that limits cannot be judicially invented; they must already be set out in law. "Law" in this context is a very broad term and could include the following: statutes, regulations, orders-in-council, municipal by-laws, school board policies, judge-made law (common law) and perhaps decisions of administrators. These laws may limit our rights and freedoms; however, these limits must be both reasonable and justifiable in a court of law.

In this regard MacKay (1986b, pp. 77-79) provides a number of cautions to educators in respect of the administration of rules and policies. Rules must be clear enough to allow others, such as students, parents, or employees, to understand the required conduct. Regulations must also be communicated in a clear and accessible form, preferably in a written format and publicized in some way. It is suggested that administrators examine their policies in order to ensure that Charter rights are not violated and to be prepared to defend rules important for educational purposes. MacKay adds that "it is this kind of thoughtful review of their rules which will allow educators to be proactive rather than reactive to Charter challenges" (p. 79).

Demonstrably justified limits. Although the person alleging that

a freedom has been violated is required to demonstrate conclusively that there has been a limitation placed on his freedom, the onus then shifts to the party prescribing the limit to demonstrate that the limit can be justified in a free and democratic society. In an educational setting, the burden is placed upon the administrator to present convincing evidence that a particular rule or action which places a limitation upon the identified right is necessary and why the objective could not be realized without violating that right.

This is clearly evidenced in the Supreme Court decision in Hunter v. Southam Inc. The court ruled that "the phrase 'demonstrably justified' put the onus of justifying a limitation on a right or freedom set out in the Charter on the party seeking to limit" (p. 169). The above reasoning was affirmed in R. v. Oakes.

Therefore, the party asserting the limitation must demonstrate to a justifiable degree that if the limit is not asserted, there is a probability of harm coming to society. Educators should be aware of the need to present this evidence of actual or real likelihood of harm as opposed to a hypothetical need.

Free and democratic society. This phase would allow courts to refer to international conventions as being evidence of conduct condoned in a free and democratic society, thus allowing comparison of legislation made in other democratic societies.

For most purposes, however, an examination of Canadian societal conventions would be sufficient. In Quebec Association of Protestant

School Boards v. A. G. of Quebec the court ruled the following:

> While it would be possible to consider the notion of a "free and demographic society" at length, the court will not do this. First of all, one only needs to have travelled a little to appreciate the liberties we enjoy in Canada and to realize in what low esteem they may be held elsewhere. The court need go no further to demonstrate that Canadian society is a free society, among the freest in the world. (p. 66)

R. v. Oakes decision. It appears that the most widely referenced ruling on the judicial limitations expressed in section 1 comes from the Supreme Court of Canada decision in R. v. Oakes.

In this instance the court declared that:

> To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First the objective, which the measures responsible for a limit on a Charter right or freedom are designed to serve, must be of sufficient importance to warrant overriding a constitutionally protected right or freedom .... Second, once a sufficiently significant objective is recognized, then the party invoking section 1 must show that the means chosen are reasonable and demonstrably justified. This involves "a form of proportionality test". (pp. 128 - 129)

The judgement continued by providing three components of a proportionality test:

1. Any limiting measures adopted must be specifically designed to achieve the objective in question and not go beyond the objective. Limitations must not be arbitrary, unfair or based upon irrational considerations.

2. The right or freedom in question should be impaired as little as possible.

3. There must be a reasonable proportionality between the effects of the limiting measures and the objective which has been

identified as being sufficiently important. In this case the court stated that "the more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society" (p. 133).

Enforcement of the Charter

Regardless of the good intentions of the framers of the Constitution and the wording of the sections, any provision of the Charter has the potential of being poorly administered thus providing for wrongful inequalities to exist. Section 24, referred to as the "remedies section", allows for the enforcement of identified rights and correction of administrative action:

> 24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.
>
> (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Section 24(1) permits a court to grant a remedy to persons meeting two conditions:

1. The rights are guaranteed in the Charter.
2. The denial of the right has already occurred.

It is significant to note that the court is given an option in this section as it "may" provide a remedy if it is considered "appropriate and just". In relating this section to education, Cruickshank (1986)

states that "a remedy . . . could include an injunction, an order to force a school board to perform a legal duty (mandamus), a court review of an administrative action (certiorari), or an award of damages" (p. 56).

Section 24(2) gives courts the power not to accept evidence which has been obtained contrary to the Charter. MacKay (1984a) explains that:

> This section will be used most frequently in criminal matters, but it raises some interesting issues in the school setting. When school authorities search a student or a locker, are they acting as state agents or in loco parentis? If the latter, the Charter may not apply. (p. 223)

This issue will be explored more fully when legal rights are examined later in this thesis.

Summary

This chapter has briefly traced the historical development of the Charter and provided a general framework of the provisions that will place the remainder of the thesis in perspective. The study of the entrenched rights contained in this legislation would be incomplete otherwise.

It must be recognized that Canada's first attempt in constitutionally guaranteeing the rights of citizens does not provide complete protection of those rights. In as much as the Charter is the supreme law in Canada, it can only regulate the actions of governments. While education falls as a delegate of legislatures, individuals are not protected from unfair dealings in the private

sector under the Charter. Persons so affected will have to rely on other laws and human rights legislation for safeguards in that regard.

Education officials must now consider their actions in light of Charter provisions or otherwise face the possibility of legal challenges. Good planning procedures, common sense and a basic understanding of the rights of persons are imperative. Administrators may continue to limit the rights of persons but only where that limiting action is seen to be "reasonable" under the Charter.

Under common law, adults had the right to be treated fairly in accordance with legally acceptable procedures. With some exceptions this expectation is now extended to children. Courts are now required not only to decide if the procedures for implementing a rule were carried out fairly but also to decide on the fairness of the rule. This non-traditional role for the judiciary may well place the courts in the position of acting as a "national school board" as suggested by Sussel and Manley-Casimir (198

It is only with full awareness of the requirements of the law and reasonable implementation of appropriate policy that educators will ensure that rights and freedoms of persons identified in the following chapters will be administered by elected officials and their appointees and not within the courts.

CHAPTER III

Fundamental Freedoms

Introduction

Section 2 lists freedoms that are "fundamental" in that they are the basis upon which a free and democratic society rests:

> 2. Everyone has the following fundamental freedoms:
> (a) freedom of conscience and religion;
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
> (c) freedom of peaceful assembly; and
> (d) freedom of association.

Anderson (1986c) writes that "the meaning of a freedom is generally regarded as the extent to which persons may act without restraint" (p. 18).

In respect to this provision, Farley (1986) provides that:

> The freedoms set out in Section 2 of the Charter are freedoms which have been recognized in Canada in various ways prior to the Charter and ones which have also been recognized in many other societies. These freedoms have now been given constitutional force and therefore have the potential of having much impact on Canada generally and on education in particular. (p. 36)

Prior to the examination of the individual fundamental freedoms as they apply to education, the reader is reminded of two separate principles set out in the previous chapter:

1. The intent of the Charter is to protect certain rights of individuals against government action. There is no expectation that these rights will be positively assured by the state; it mainly "restricts the areas in which governments may act and regulate" (Anderson, 1986c, p. 19).

2. The freedoms may be limited to individuals to the extent that the restriction would be reasonable in a democratic society.

Freedom of Conscience and Religion in Education

Section 2(a) assures all persons the right of freedom of conscience and their moral sense of right and wrong in addition to the freedom to practice the religion of their choice.

Curriculum Concerns

Romanow (1986) questions the extent that the freedom of conscience will be recognized:

> Does it mean that parents who have misgivings, on moral or religious grounds, about what their child is exposed to in school, may demand a separate, tailored curriculum? Sex education and the theory of evolution might be such controversial matters". (p. 17)

To date there have not been firm judicial rulings on the conscience issue, although the case of Kingston v. School District No. 23 (Central Okanagan) does provide some useful guidelines. In this instance, three students were suspended indefinitely because of their refusal to attend physical education classes. Their parents expressed disapproval of the school's requirement for sports attire which the church felt immodestly exposed the body, particularly in co-educational classes. The students claimed that the board's requirement for co-educational classes and the principal's decision to suspend the students were in violation of Charter section 2.

The initial hearing of the B.C. Supreme Court temporarily removed

the suspensions until the case could be properly heard in court. The ruling provided that an arguable case could be made for exemptions from school activities of a non-academic nature which violate reasonable rules of everyday life accepted by particular students as principles of their religion particularly if their education would not be materially impaired as a consequence, and no harm would be suffered by other students and by the school system. The parents withdrew the petition before a final decision was rendered; therefore, this question has not been judicially determined. The judges intimation that compulsory attendance in co-educational gym classes might be supported as an infringement upon section 2 of the Charter is left for consideration by educators.

Compulsory Attendance Laws

The freedoms of conscience and religion have been debated in the courts by persons objecting to compulsory attendance provisions in provincial school acts. The contention by parents advocating pupil attendance at unapproved religious schools or in home schooling programs has been that this section allows them the choice in this matter.

Unapproved schools. In the Alberta hearings of R. v. Jones, Pastor Jones and parents of the Calgary Western Baptist Academy contended that the Alberta legislation requirement that alternative education be approved by department or school board officials was in

conflict with both sections 2(a) and 7 of the Charter. In a review of this case, Anderson (1987) reports that:

> His [Jones'] position was that his duty to attend to the education of his children came from God and that it would be sinful for him to request the state to permit him to do God's will. He refused to seek either exemption from compulsory attendance, based on efficient instruction at home or elsewhere, or to apply for approval of his Academy as a private school. (p. 25)

Decisions rendered in the Alberta Provincial Court on March 16, 1983 and December 20, 1983 as well as the Alberta Court of Appeal ruling of June 15, 1984 were inconsistent. In the 1983 hearings, Judge Fitch found Jones not guilty on three charges of failing to comply with the compulsory education laws of Alberta. The court declared that it was compulsory education that was mandated, not compulsory school attendance. Additionally, Judge Fitch accepted the argument that the legislation that gave the province the right to determine if efficient instruction was provided offended section 7 of the Charter. The Court of Appeal, however, convicted Pastor Jones on the basis that the children were not attending an approved school. Justice Lieberman declared that Jones' Charter defenses could not be considered as he had not applied for certification of his school thus, Jones was not an aggrieved person in the sense that certification of the school had been rejected.

The Court of Appeal decision left many important issues unresolved. It was the Supreme Court of Canada Ruling of October 6, 1986 that declared clearly that provinces have the right to regulate private denominational schools and that Alberta's attendance laws were

not contrary to the Charter.

In this precedent-setting ruling, Justice Laforest ruled that although the Alberta School Act does to some degree interfere with Pastor Jones' freedom of religion, this infringement is reasonable. He writes that that "a requirement that a person who gives instruction at home or elsewhere have that instruction certified as being efficient is, in my view, demonstrably justified in a free and democratic society" (p. 255). A superintendent or provincial school inspector was deemed to be an acceptable officer to rule on the question of efficient instruction.

Justice Laforest also indicates that the parent and the province share an interest in the education of youth:

> If the appellant has an interest in, and a religious conviction that he must himself provide for the education of his children, it should not be forgotten that the state, too, has an interest in the education of its citizens. Whether one views it from an economic, social, cultural or civic point of view, the education of the young is critically important in our society. (p. 252)

In response to the Supreme Court decision, Betkowski (1986), the Alberta Minister of Education, applauded the judgment of the court in a press release stating that "the most significant aspect of the judgement is that it upholds and supports the legitimate responsibility of the province to protect the rights of children to an acceptable standard of education" (p. 1).

While this decision shows clearly that private school programs require the sanction of government officials, educators are advised that in exercising their functions, standards for approval must be administered in a fair manner. Courts could still intervene if

officials fail to examine the facts fully or to consider applications for religious schools fairly.

Home schooling. A few years ago, relatively few parents in Canada opted for home schooling and private tutorage. Today it is a growing movement with a national organization and a provincial organization in Alberta, which represents a significant concern to public school educators.

In 1986 the Alberta School Trustees' Association (ASTA) provided the following working definition of home schooling: "instruction provided for a child privately at home or elsewhere, not in a public, separate or approved private school" (p. 23). The ASTA (1986) reported that "in the 1985-86 school year approximately 266 students were in home schooling programs. The most common reason for home schooling was religious belief" (p. 17).

Alberta legislation empowers Department of Education officials or Superintendents of Schools to excuse pupils of compulsory school age from attendance provided that the student is receiving efficient instruction at home or elsewhere.

Charter-related case law in relation to home schooling is relatively sparse. In the Alberta case of R. v. Powell the parents wanted to teach their children at home. Their application to the Superintendent was refused, however on the basis that the instructional plan was inadequate. In their defense, the Powells argued that the attendance provisions of the Alberta School Act

offended freedom of religion guaranteed by section 2(a). In ruling on this portion of the argument, Judge Litsky of the Alberta Provincial Court declared the following judicial concern in respect of the educational needs of children:

> The Court cannot accept convoluted curricula which fall below a recognized standard. It cannot be condoned as a rationale for religious freedom. If this court accepted such a standard as set out by the Powells, it would amount to the approval of a kind of academic anarchy within the Province of Alberta without form or substance. (p. 50)

The Judge asserted that the refusal of the application by the Superintendent only incidentally affected the religious freedoms of the Powells, and thus did not offend the Charter. This opinion was later affirmed by the similar conclusion reached by the Supreme Court of Canada in the R. v. Jones case discussed earlier in this chapter.

In R. v. Corcoran, the Newfoundland District Court found that section 2(a) did not release parents from their duty to enroll their children in school as required by provincial legislation. The court declared that the legislation "... imposed a duty on the parents [to enroll their children], whereas section 2(a) gives the parents a right to freedom of conscience and religion. This created no conflict in view of the Court" (Anderson, 1986, p. 20).

While it appears that proponents of home schooling cannot claim infringement upon their freedom of religion, education officials should be aware of other non-Charter decisions affecting the administration of this alternative to formal education.

In another Alberta case, R. v. Wilcox, Judge Fitch concluded that, in Alberta, three lawful forms of schooling are available:

public schooling, private schooling and tutorage. School boards cannot refuse home schooling applications on the basis of which alternative is best for the student; only on evidence bearing on whether the instruction will be efficient. The Superintendent is limited to the act of certifying or not certifying that a particular application for home schooling meets a standard of efficient instruction. The Ontario judgement of R. v. Prentice also confirmed that parents have a right to choose home schooling for their children if efficient instruction is provided.

It is interesting to note that Judge Fitch in R. v. Wilcox indicated that a Superintendent has no legal authority to refuse the alternative of correspondence school courses, thus directing officials to accept this method as efficient instruction. This approach has been endorsed by the Alberta Government. The provincial Department of Education, hereinafter referred to as Alberta Education (1986, February) advised school boards that "the Superintendent is obliged to approve all requests where the home schooling program will be comprised in total of Alberta Correspondence School courses and where the child is to be registered with the Alberta Correspondence School" (p. 2).

Readers are directed to other Charter-related home schooling issues affected by the principles of fundament justice in section 7 of the Charter as addressed in the next chapter.

Religious Instruction and Exercises in Public Schools

The guarantees of religious freedom in the Charter has been used by parents to object to the use of the Lord's Prayer and Scripture readings in public schools.

The pre-Charter position on this issue is described in considerable detail by Bargen (1961, p. 88-101). In his analysis of the legal principles pertinent to religious instruction and exercises in Canadian public schools, the following points are considered: (a) provinces may regulate the inclusion of religious instruction and exercises in public school, (b) all religious denominations may take advantage of such instruction, (c) public school pupils may be exempted from such exercises on objection by a parent.

Five families were recently unsuccessful in challenging Ontario's regulation requiring schools to be either opened or closed by recitation of the Lord's Prayer or other suitable prayers. In Zylberberg v. Director of Education of the Sudbury Board of Education, Justice O'Leary upheld the constitutional validity of the regulation against the claim to infringement upon the freedoms of conscience and religion. The court was convinced that the option of non-participation by objecting students did not constitute pressure to conform. The parents claim to contravention of the equality provision of section 15(1) was also not accepted.

It appears that, on the basis of this decision, the Charter does not alter the situation described by Bargen regarding religious exercises in schools provided that no students are forced to

participate.

Freedoms of Thought, Belief and Opinion

This portion of section 2(b) of the Charter includes three freedoms that are absolute and not subject to limitations. Burey-Heslop (1983) writes that:

> These freedoms are absolute because they are exercised within you. The law cannot impose limits on how you think, on what you believe or on what your opinions are, as long as they are not outwardly expressed. It can only impose limits on how you act. (p. 20)

Although the above freedoms do not have any legal implications for educators, they are presented here to enhance the reader's understanding of the individual's responsibility in respect of the freedom of expression of inner thoughts, beliefs and opinions.

Freedom of Expression in Education

The freedom to express personal thoughts, beliefs and opinions outwardly has been recognized in Canada prior to the Charter. The granting of constitutional force has not made unrestricted expression of individual opinions lawful. Citizens must now, as before, adhere to limitations upon speech and expression found in the laws of the country. These laws are, but are not limited to, those of libel, slander, obscenity and censorship.

The fundamental freedom of expression in section 2(b) of the Charter affects students and employees of school systems and carries with it important considerations for education officials.

United States' Rulings Regarding Student Expression

Writers addressing the expression issue point out that there are relatively few judicial decisions in Canada and look to American jurisprudence for guidance in respect of pupils' rights.

Farley (1986) discusses the United States Supreme Court Tinker decision which proclaimed that students do not give up their constitutional right of freedom of expression in school settings. Further, officials must be prepared to substantiate any limitation on this freedom by providing evidence that the expression of opinions "would substantially interfere with the school's work or would infringe the rights of other students" (p. 38).

MacKay (1986a) looks to the United States in a decision where "the wearing of a Confederate flag as a sleeve patch was held to be valid grounds for suspension" (p. 32) because it created a disruption in the school. He describes another American case in which "the court sanctioned a rule against the wearing of long hair because it was shown to disrupt the classroom" (p. 32).

On a different note, Anderson (1986c) discusses a recent Supreme Court of the United States decision on the application of freedom of expression which held "that the constitutional protection [for freedom of speech] did not prevent the School District from disciplining a pupil who gave an offensively lewd and indecent speech at a student assembly" (p. 22).

In respect of student publications, Farley (1986) writes that "American authorities on this issue have held that school officials

cannot ban student publications simply because they are critical of school policy or discuss controversial issues" (p. 39). Further, he reports that "schools can restrict the content of publications which are libelous, obscene, or substantially disruptive, but the restriction must be supported by evidence and not based simply on officials' fear of disruption" (p. 39). MacKay (1984a) supports this view in stating that "there must be clear and objective rules by which material can be judged; broad and excessively vague rules have been invalidated in the United States" (p. 304).

It is difficult to speculate on the extent to which United States influence will be felt in Canada in respect of students' freedom of expression. It should be emphasized that Canadian courts have taken a more traditional approach in these matters in accepting a greater degree of limitations on free expression than would be accepted in the United States.

Canadian Experiences

The relatively few cases in Canada reflect the attitude of the courts for a greater tolerance for limitations on the freedom of expression.

In the pre-Charter case of Ward v. Board of Trustees of Blaine Lake, the court supported the school board's action in the suspension of a student who wore his hair longer than permitted by local regulations. Justice Tucker of the Saskatchewan Queen's Bench heard the arguments of the American decisions. He decided however, that

these had limited application in a Canadian context. There was no consideration of whether the long hair created a substantial disruption, as in the Tinker decision, only a review of the procedures followed in enacting the regulation.

Similarly, in 1962 Justice Milvain, in the Alberta case of Choukalos v. Board of Trustees of St. Albert Protestant School, upheld the suspension of a student for wearing blue jeans and a T-shirt. The court gave relatively little weight to an argument based on the student's right to free expression in stating that "it would be just as senseless to create a school system without the power of disciplining the students as it would be to build a school house without doors through which to enter" (p. 4).

MacKay (1986a) refers to La Federation des Etudiants de l'Universite de Moncton v. l'Universite de Moncton in which university students demonstrated by occupying various administrative buildings:

> The court concluded that it is reasonable and even necessary to limit the rights of speech and assembly in a university context by enforcing rules and regulations. By breaking these rules the students exceeded the proper bounds of their rights to demonstrate. (p. 17)

This early Charter-case applied the reasonable limits clause to the freedom of expression provision. As the limitations provision of the Charter is not present in American legislation, the Canadian judiciary may moderate any broad application of pupils' rights of expression as evidenced south of the border.

It is uncertain at this point the degree to which Canadian courts will borrow the "substantial disruption" test in Tinker in deciding

what the reasonable limits of expression are for pupils. Educators need to question themselves regarding the amount of control that is necessary in balancing the rights of students with the needs of the institution for control and discipline. Accordingly, Farley (1986) provides a caution to officials writing rules that would limit student expression, in that restrictions should include only those "that are necessary to prevent disruption, maintain order, ensure safety and protect the rights of other students to a proper educational environment" (p. 40).

Employee Freedom of Expression

Just as there are limitations placed on the rights of students in the expression of ideas, so also the rights of teachers and other employees are restricted.

Academic freedom. A review of the history and foundations of education in democratic societies reveals the professional right of a teacher to approach subject matter without undue interference from officials and the public. A teacher's freedom to create a learning environment which develops the critical facilities of students must, however, be balanced against other competing interests of society. The limits placed on the educator's academic freedom to free speech and experimentation in the classroom has been raised in the United States on numerous occasions but only rarely in Canada.

Anderson (1986b) asserts that the "substantial disruption" test

of the Tinker decision should also apply to teachers in this instance. In providing a summary of limits placed on academic freedom in the United States, she writes:

> Constitutional rights will not protect the teacher who insists upon discussing controversial matters in the classroom when they are unrelated to prescribed educational objectives. Any discussion on controversial matters must provide a balanced presentation of prescribed subject matter. (p. 62)

It is unknown how the courts will ultimately deal with the academic freedom issue in Canada. The findings in R. v. Keegstra, however, present some guidance in this area. Alberta high school teacher Keegstra was advised by school officials on several occasions to refrain from teaching the "Jewish conspiracy" theme in his courses and contending that the Holocaust was a hoax. His subsequent dismissal was upheld by the Board of Reference in Keegstra v. Board of Education of the County of Lacombe No. 14 on the basis that he refused to abide with the directives of the Board of Education and did not adhere to the social studies curriculum.

Following this hearing, criminal proceedings were brought against Keegstra on the basis of the hate provisions of the Criminal Code in R. v. Keegstra. Justice Quigley replied to Keegstra's reliance on the freedom of expression argument in stating that "in my opinion, the words 'freedom of expression' as used in section 2(b) of the Charter does not mean an absolute freedom permitting an unbridged right of speech or expression" (p. 268). The statement continued by adding that, in this instance, the limitation to Keegstra's freedom of expression in the classroom "is reasonable, is prescribed by law and

is demonstrably justified in a free and democratic society and in particular in our own Canadian society" (p. 277).

The fact that Keegstra had been advancing his [illegible]ted beliefs to students for a number of years before detection was unfortunate and embarrassing to education officials at all levels, ranging from local administrators to the Minister of Education. Anderson (1986b) provides four recommendations to assist school boards in ensuring that teachers present curricular issues in an appropriate manner: (a) local goals and objectives should be clearly enunciated after consultation with staff, (b) teachers should be advised of the goals and provided assistance with questionable materials, (c) administrators should make themselves familiar with all materials in order to advise teachers appropriately, and (d) teachers should not present controversial issues in a distorted or unbalanced manner.

Criticism of an employer. Free speech outside the classroom is another area that has received little attention in Canadian courts. MacKay (1984a, pp. 281-282) indicates that American decisions have generally supported a teacher's right to publicly criticize a school board or administrator as long as the comments are not reckless accusations or grossly offensive remarks.

An Alberta pre-Charter case did not follow the U.S. lead in this regard. In Morris Rees v. Northland School Division No. 61, Justice Medhurst assessed the right of an employer to discipline a teacher for making public criticisms against the school jurisdiction. The court

ruled that the societal expectation (at that time) regarding freedom of speech did not allow an employee to make disrespectful and derogatory comments regarding the actions of an employer. It was decided that a person has a societal right to freedom of speech and freedom of action but not always the right to make speeches attacking or acting against somebody and then to draw a pay cheque from that same person.

Charter-based decisions which would shed light on this issue have not been located. It is possible however, that on the basis of the Rees case, an employee's right to freedom of expression would have to be balanced against the loyalty owed to the employer and the reasonableness of the action.

Criticism of teaching colleagues. Teachers in Canada are limited by codes of ethics adopted by provincial professional teachers' associations that regulate the manner in which they may direct criticism of the performance of other teachers. In Cromer v. British Columbia Teachers' Federation, a teacher challenged this requirement under the "freedom of expression" provision in the Charter. Cromer claimed that her status as a parent provided her the right to comment openly regarding the actions of another teacher. Subsequent charges of unprofessional conduct were reviewed by the Supreme Court of British Columbia.

Mr. Justice Mackoff of the British Columbia Supreme Court rejected Cromer's contention that she spoke as a parent and not a

teacher in stating that "regardless of the capacity in which the professional person acts or speaks, he or she is bound at all times to conduct himself or herself in accordance with the profession's Code of Ethics" (p. 5).

In review of the denial of the right to expression the Justice added that "the Code of Ethics does not preclude the petitioner [Cromer] from acting as a concerned parent, nor does it deny her right of expressing those concerns ... it merely provides that she must express them by following a certain procedure" (p. 5).

Mr. Justice Lambert of the Court of Appeal supported this decision in asserting that "I do not think people are free to choose the hat they will wear on what occasion" (p. 292). Regardless if educators are acting as teachers or parents, their conduct must adhere to professional codes of ethics at all times.

Dress code issues. At the present time, school boards may typically state regulations regarding dress codes. A board's authority to regulate appearance of teachers and students would have to be balanced between the administrator's duty to maintain order in a school as confirmed in Ward v. Board of School Trustees of Blaine Lake and an individual's freedom of expression through dress.

United States' decisions on this matter have varied. "The importance of the teacher as role model for the students also led some U.S. courts to uphold school-board rules about appearance and dress" (MacKay, 1984a, p. 282).

In respect of teachers' appearance, Anderson (1986b) writes that "if a teacher's dress was personalized but in no way disrupted the school proceedings or detracted from the school objectives, it is unlikely that an employer would be able to restrict the individual freedom of a teacher to dress as he or she wishes" (p. 66).

No Charter-based cases are available in this regard.

Peaceful Assembly and Association

The rights to group expression of opinion by word or demonstration and that of joining in a common lawful cause with others have long been taken for granted by Canadians. The acts of associating with people of like minds, of forming groups in favor of or opposition to given subjects are undertaken in some societies only at the risk of severe punishment. It is appropriate that the Charter should reinforce our fundamental right to freedoms of peaceful assembly and association.

Limitations to Assembly

Again, there are few Canadian cases concerning these rights in education and the influence of American decisions is uncertain. Judgements on issues pertaining to expression of opinion in Canadian courts have indicated a tendency to balance the duty to maintain order and discipline in the schools against individual rights.

In the pre-Charter freedom of assembly case of R. v. Burko, university students were convicted of trespassing in their previous

school while distributing newspapers critical of the school's administration. The Court contended that it was "contrary to the public good to permit individuals on public or secondary school property without the permission of the proper authorities for the purpose of disseminating information" (p. 336). MacKay (1986a) indicates that "there is no evidence in the decision of a serious attempt to balance the rights to peacefully assembly in a public place against the schools need to maintain order" (p. 36-37).

MacKay (1984a) describes an incident at the University of Moncton in 1982 where students occupied an administration building in protest of increases in fees. The judge, in considering the students' appeal against expulsion, "stated that the collective right to unimpeded education prevailed" (p. 306) over the students' right to peaceful assembly.

Limits to Political Participation

Anderson (1986b, pp. 66-67) maintains that while the right to express political views stems from the freedoms of expression and opinion, the right to associate according to those political views is protected in the guarantee of freedom of association.

Charter-based cases ruling on the extent to which employers can regulate the political participation of employees are not available. In a review of the possible impact of American decisions upon future Charter issues, Anderson (1986b) writes that "the right to associate and the right to participate in political activities is not an

absolute right pursuant to the con titutional guarantees" (p. 67).

Any limitations placed upon the rights of employees to participate in political activities would have to be balanced against the interests of employers. For example, teachers are prohibited from acting as members of school boards by which they are employed. Participation on town councils, provincial legislatures and federal Parliament, however, is permitted because of the division between the teacher's political status and the interests of the school board. The division of interest grows as the office moves from council, to legislature, to Parliament.

Anderson (1986b) provides the following caution to education officials in respect of policy development in this area:

> In devising policies regarding political activities of employees, it is essential that the individual freedoms of the employee be recognized and maintained if at all possible. Only if the employer's interests would be adversely affected should the individual right to hold and maintain opinions and to participate in advancing those opinions, be curtailed or limited. (p. 67)

Union Activities

The existence of labor unions and professional organizations in Canada is evidence of the right to join together for a common purpose. Collective bargaining is well rooted as an accepted role of unions and since the proclamation of the Charter as supreme law no government agency may negotiate into any collective agreement clauses that would withhold any entrenched rights.

Trade unions have since challenged employers in claiming that the freedom of association provides the additional right to perform

whatever activities are essential to the functioning of the organization. Recent court decisions have addressed these challenges and generally have affirmed that the intent of the Charter is to protect the freedoms of individuals and not the goals and objectives of unions. To date, the courts have considered non-school issues. The relevance to education, however, seems clearly established.

Right to strike and bargain collectively. In the April 9, 1987 Supreme Court of Canada decision of Alberta Union of Provincial Employees v. Attorney General for Alberta it was ruled that the freedom of association of the Charter does not protect a union's right to bargain collectively or the right to strike. It was found that Alberta legislation prohibiting provincial government employees, police, fire fighters and hospital workers from striking and imposing compulsory arbitration did not offend Charter provisions.

Two other Supreme Court of Canada decisions, also dated April 9, 1987, expressed similar opinions. The Public Service Alliance of Canada ruling determined that employees of the federal government and its agencies are not guaranteed the right to strike or to bargain collectively. Saskatchewan dairy employees in Government of Saskatchewan v. Retail, Wholesale and Department Store Union Locals also found that provincial legislation temporarily restricting strikes and lockouts was not in violation of the Charter.

The related reasoning of the courts in these three cases concludes that any legislation limiting negotiable items between

governments and their employees is not inconsistent with the Charter since the Charter does not provide for any specific method to resolve disagreements as an alternative to striking. Resolution of disagreements must come from other statutes.

Right not to associate. One of the surprise effects of the constitution upon the organized labor movement in Canada is the "serious doubt which the Charter has cast upon the constitutional validity of mandatory union membership, commonly referred to as the 'closed shop'" (Reynolds, p.3).

List (1985) comments on the issue in stating that "the labor movement, which hailed the Charter of Rights and Freedoms as a constitutional guarantee of union rights, is finding that the Charter can be a double-edged sword" (p. B3). The two-edged sword of section 2(d) allows for the freedom to associate but also the right of an individual not to associate if he so desires.

Of relevance is the Supreme Court of Ontario judgement of Lavigne v. Ontario Public Service Employees Union dated July 4, 1986. Lavigne, an Ontario college teacher, was not required to be a union member but was bound by the collective agreement to pay compulsory dues by a "check-off" provision. He challenged the constitutionality of the use of his union dues for the support of non-collective bargaining causes such as support for abortion laws and the New Democratic Party. The court found that Lavigne's freedom of association was violated, as the teacher was forced to combine his

financial resources with other members of the union for application to purposes which he did not support. This decision has the potential to severely limit union activities to collective bargaining purposes. Union support of political parties, societal issues and support of other unions could be limited. An appeal of the decision is pending and the case will, in all likelihood, end up in the Supreme Court of Canada.

In the coming years, the courts will see numerous cases from both unions and their opponents to further define labor issues in Canada. Of relevance to education, the questions remain as to whether legislated membership in teachers' associations is: (1) applicable to the Charter as a government activity, (2) a restriction on a teacher's right not to associate, and (3) whether that restriction is reasonable in a free and democratic society (Reynolds, 1987, pp. 4-5). Recent amendments to the British Columbia School Act which would exclude principals and vice-principals from compulsory membership in the teachers' union (Fris, 1987, p. 10) will likely be contested on the basis of Charter-based freedoms. These issues remain for future consideration.

Summary

It would be a serious error to assume that the Charter has constitutionalized all legislation and governmental practices that affect fundamental freedoms. It would, however, be reasonable to recognize that the judiciary has the potential to greatly alter the

delicate balance between the requirements of society and the rights of persons.

The discussion of rights and freedoms in this chapter has shown that the effects of the Charter are in the very early stages of court definition. New and interesting applications to education are inevitable but it is incumbent upon those presently involved in the profession to recognize their responsibility to take account of the known fundamental freedoms of students, parents and teachers.

Freedom of conscience and religion will, no doubt, affect curriculum content, particularly on the controversial issues of sex education and evolution. The present stance of allowing governments to reasonably regulate all alternatives of education confirms the Canadian attitude of the importance of education for the good of society. While tutorage and small religious schools are acceptable alternatives, society must be assured that the needs of students are met. Public school religious instruction and exercise remain an integral part of those needs.

Although we are free to think and believe as we choose, there is a responsibility to express these opinions in a manner that does not significantly disrupt society. Any limitations placed on expression must meet the balance of interests test between the rights of individuals and needs of society. Teachers are limited in their right to express personal opinions to students or even about their employer to any audience. Adherence to the professional codes is required, regardless of the circumstance.

Courts are ready to place limitations on collective rights to assemble and demonstrate, but only so far as to ensure that order is maintained at the assembly point. Fewer limitations will be seen for political participation. Trade unions have found no guarantees in the Charter for their activities and may even witness a deterioration in their ability to require mandatory membership.

The state, in representing the interests of society, must ensure that in adopting "reasonable" regulations the freedoms of individuals are not unduly limited. Canadian society has long recognized that greater limitations may be placed on the rights of the young. It is not only the responsibility of education officials to recognize and observe the freedoms of persons in the educational community but, additionally, to administer "reasonable" limitations for the good of society as a whole.

CHAPTER IV

Legal Rights

Introduction

Sections 7 to 14 inclusive are labeled as the "Legal Rights" provisions of the Charter. At first reading of these sections the reader gains the impression that the rights included are designed for individuals in conflict with the law. Although this is accurate, these rights also serve to protect persons from public authorities in respect of unfair procedures, thus holding implications for educators.

These eight sections either identify or imply that "everyone" and "all persons" are covered by the provisions. Because section 1 allows for reasonable limitations to be placed on all rights in the Charter, however, the extent of application of the legal rights provisions to children in school settings is not always clear.

For the purpose of this chapter, discussion of the legal rights will be limited to: section 7 (Liberty and Justice); section 8 (Search and Seizure); section 9 (Detention); section 10 (Rights Advisement); and section 12 (Punishment), as these issues are the main points of concern for education officials.

Liberty and Fundamental Justice

Although section 7 of the Charter contains broad phrases and principles, important specific educational considerations have evolved from this provision. This section reads as follows:

> 7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Due to the general nature of the terms used in this section, it has been used by numerous challengers to the Charter who are unable to base their arguments on specific rights. These challenges have uncovered various issues related to education which will be discussed following a two-part analysis of "the right to liberty" and "principles of fundamental justice."

Right to Liberty

The elusive term, "liberty," has been the subject of definition by the American courts for a number of years and only recently in Canada.

Anderson (1985) describes an opinion of Justice Douglas in what has been often referred to as an American definition of liberty:

> 1. the autonomous control over the development and expression of one's intellect, interest, tastes and personality;
>
> 2. freedom of choice in the basic decisions of one's life respecting marriage, divorce, procreation, contraception and the education and upbringing of children; and
>
> 3. the freedom to care for one's health and freedom from bodily restraint or compulsion, freedom to walk, stroll or loaf. (pp. 13-14)

In the Charter-based case of Weinstein v. Minister of Education for British Columbia addressed in Chapter II under the applicability question, the court described liberty in relation to section 7. Justice Callaghan felt that liberty:

> Denotes not merely freedom from bodily restraint, but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home, and bring up his children, to worship God

> according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law essential to the orderly pursuit of happiness by free men. (p. 56)

A wide latitude in the definition of this right has been presented in this section in order to stimulate awareness that such uncertainty and breadth can lead to an unlimited number of legal challenges. It is interesting to note that both the American and Canadian definitions of "liberty" had reference to education.

Principles of Fundamental Justice

The rights identified in section 7 cannot be denied from anyone "except in accordance with the principles of fundamental justice." The introduction of the new and unfamiliar concept of "fundamental justice" has proven to be the subject of considerable debate in the courts and uncertainty of the part of the legal profession. This concept has been used interchangeably with the American doctrine of "due process" and the established Canadian doctrine of "natural justice" inherited from the courts of England. Additionally, within the last decade the doctrine of "fairness" which is included in the rules of natural justice has evolved in Canadian law. Although these interrelated concepts have different roots, they are better known in law than that of fundamental justice.

In relating these concepts to the Charter, Gall (1983) provides the following analysis:

> It is reasonable to predict that the courts, in interpreting the phrase "principles of fundamental justice", will look to previous court decisions which have given meaning to the concepts of "fairness" and "natural justice" in administrative law. Likewise, in further defining the latter concepts, the courts will be likely to look at decisions interpreting "fundamental justice" in section 7 of the Charter. (p. 290)

In addition to providing Canadians with constitutionally entrenched procedural protection, section 7 can also be given substantive application. That is, not only may court rule that a person was denied a right due to inappropriate administrative procedures, but may also declare that a law in itself is unjust in that it infringes upon the rights of persons. These two elements, substantive application and procedural rights, inherent in the "principles of fundamental justice" provision are addressed below.

Substantive Application

Early writers in the field, as well as judges, held differing opinions on whether the framers of the constitution intended section 7 to give courts "the power to review substantive law and to declare unjust laws unconstitutional" (Christian, 1984, p. 239). If this was the intention, this judicial process would be a radical departure from the Anglo-Canadian tradition for courts to rule only on the procedures used to administer law enacted by elected representatives and not on the content of these laws.

Section 52(1) of the Charter already allowed courts to declare laws "of no force or effect" if these laws were inconsistent with Charter-identified rights. The inclusion of the power to review substantive law would allow the judiciary to reject any law that proves inconsistent with the principles of fundamental justice regardless if Charter-issues are addressed in that law.

This concept is derived from the American doctrine of "due process"

that allows review of procedural fairness as well as the content of the law. Tremblay (1984) and Christian (1984) reference a number of cases that offered opposing Canadian rulings on this issue.

In a pre-Charter article, Enns (1981) wrote about his concern that the courts only dealt with the procedures used to administer the laws and did not deal with the moral issue of whether the proclaimed law was ethically right. He states that "to deal with procedure alone is to deal with only part of the issue - the technical part. The question of rightness or wrongness of the original decision does need to be considered" (p. 25).

Enns' concern that the principles of natural justice did not go far enough in administering justice is now partially alleviated by the Charter-provision in section 7. Tremblay (1984), in his review of a court decision on this question, writes:

> According to the court, if the "principles of fundamental justice" guaranteed procedures only, such as the principles of natural justice, the courts could never review the content of the law [as provided by section 52(1)]. Therefore, section 7 had to be substantive in order for the court to have the power to review the content of the law. (p. 204)

The early divided debates as to whether persons will be allowed to challenge the content of laws and government policies or only the implementation procedures has since been effectively resolved by the Supreme Court of Canada in the reference case of Re Section 94(2) of the Motor Vehicle Act (B.C.). In his judgement, Justice McIntyre writes that "'fundamental justice' as the term is used in section 7 of the Charter involves more than natural justice and includes a substantive element" (p. 514). Justice Wilson in this case supports the above

statement in asserting that:

> It has been argued very forcefully that section 7 is concerned only with procedural injustice but I have difficulty with that proposition. There is nothing in the section to support such a limited construction. Indeed, it is hard to see why one's life and liberty should be protected against procedural injustice and not substantive injustice. (pp. 518 - 519)

Procedural Rights

As opposed to enabling the examination of the content of a law, section 7 declares that deprivations of rights can occur but only if such deprivations are in accord with the rules of natural justice and the doctrine of fairness. The reader is reminded that these two legal concepts are not mutually exclusive in that fairness is an inherent part of the rules of natural justice.

In order to understand the interplay of these doctrines in relation to the rules of fundamental justice and the manner of implementation required, the functions of administrative bodies or tribunals must be classified.

Functions of administrative tribunals. Administrative law is "that area of law that concerns the organization, powers and duties of administrative decision-makers. Administrative decision makers are people or bodies who are given their authority to act by legislation" (MacKay, 1984a, p. 391).

A study of administrative law reveals that school boards as administrative bodies or tribunals have been delegated the authority by provincial statutes to serve the public interest in relation to

education. To a degree, school board powers may be further delegated to executive officers of the board. In this regard Gall (1983) describes that the operations of a board may be classified into four distinct functions, each carrying varying degrees of discretion:

1. In carrying out the "legislative" or rule-making function, boards have wide discretion in establishing policies.

2. "Administrative" functions in which decisions of a board or officer are made on the basis of general policy set out in school acts and other statutes carry considerable discretion for the establishment of specific policy and action.

3. The "ministerial" or executive functions are those that do not require the exercise of discretion. The simple execution of detailed regulations that do not set policy are included in this category.

4. "Judicial" or "quasi-judicial" functions whereby a board adjudicates upon matters on the basis of established policy usually requires little discretion. A board hearing an appeal from a student facing expulsion has little discretion should the documentation support such action. Additional discretion may be available, however, in respect of the terms of the expulsion.

For the purpose of this thesis it is not necessary to draw the difficult distinction between these two judicial tribunals and "to define a judicial or quasi-judicial tribunal as one which exercises a function by which the tribunal has 'the power to adjudicate upon matters involving consequences to individuals'" (Gall, 1983, p. 284).

Gall places these four functions on a continuum:

At one end, with a large policy-setting role and possessing a large

> amount of discretion, are the legislative tribunals. At the other end, with no policy-setting role and no discretion, are the ministerial or executive tribunals. The administrative and quasi-judicial tribunals fall in between. (p. 284)

The relationship of the four classifications of functions and degrees of discretion attached to them are further correlated to the expectations the judiciary has placed upon administrative tribunals in the execution of their powers.

In respect of the "legislative" and "ministerial" functions, courts will generally not intervene unless a tribunal has enacted rules or made decisions outside the boundaries of the authority granted to it by its governing statute. Additionally, any abuse of power whereby affairs are conducted in bad faith is also subject to judicial review. Policies and actions which are dishonest, fraudulent, malicious, or otherwise based upon irrelevant considerations are included in this latter notion.

Readers are also directed to the earlier treatment of the substantive application of section 7 that allows for the judicial review of policies and by-laws of boards depriving individuals of their rights or liberties.

The main purpose of this discussion was to relate the procedural rights guarantees in section 7 to the functions of administrative tribunals. In this regard the "administrative" actions of tribunals may only be questioned should a decision be made in defiance of the doctrine of fairness. "Judicial" or "quasi-judicial" bodies are required to adhere to the more formal rules of natural justice. Therefore, school boards or their delegates are subject to having either their administrative or quasi-judicial decisions quashed by a court if it can

be shown that the board was not conducting its affairs in accordance with these rules.

Rules of natural justice. McCurdy (1968) defines natural justice in the following manner:

> Natural justice comprises the rules to be followed by any person or body charged with the duty of adjudicating upon disputes between or upon the rights of others. The chief rules are to act fairly, in good faith, without bias, and in a judicial temper, and to give each party an opportunity of adequately stating his case. (p. 4)

The two basic premises of natural justice are that (a) an opportunity for a fair hearing should be given to those affected by a decision, and (b) the decision-maker should not be biased.

In respect of a fair hearing, Anderson (1981) offers the following basic rights as prepared by the Ontario Attorney General:

> 1. The right to reasonable notice of time and place of the hearing.
> 2. The right to reasonable information of any allegation respecting the good character, propriety of conduct, and competence of a party if such matters are in issue.
> 3. Right to a public hearing unless public security and intimate financial or personal matters are involved.
> 4. The right to be represented by a lawyer or an agent.
> 5. The right to call and examine witnesses, and to cross-examine other witnesses.
> 6. The right to protection against self-incrimination respecting the use of evidence in any subsequent civil or criminal proceedings (as far as the Province can grant that right).
> 7. The right to reasonable adjournments of a hearing.
> 8. The right to a written decision with reasons upon request. (p. 10-11)

The element of bias in natural justice requires that a tribunal or decision-maker acting in a judicial or quasi-judicial capacity must not have an interest in the issue to be decided and must not have prejudiced

the issues. A school board member, for example, could be accused of bias if he voted on a salary agreement affecting a spouse.

MacKay (1984a) makes the point that "school boards are expected to have a certain amount of bias in the sense of predetermined views" (p. 32). The fact that board members have preconceived views on various subjects and seek to bring about actions that they were elected to do has been determined not to be a breach of their duty to act fairly. "A certain amount of prejudgement is allowed as long as a board acts in good faith and provides the affected parties an opportunity to be heard" (p. 32).

Doctrine of fairness. This concept, often referred to as procedural fairness, is not a separate standard from the rules of natural justice; it is the heart of natural justice. Where a board or decision-maker acts in an "administrative" capacity, there exists an obligation to act fairly, which is something less than the formal procedures referenced to the traditional concept of natural justice.

Farley (1986) describes the relationship of these concepts to the decision-making process:

> In essence the rules require that a person whose rights or legitimate expectations may be affected by a decision be given an adequate opportunity to state his case and be heard by an unbiased decision-maker. The doctrine of procedural fairness arguably encompasses the rules of natural justice and makes them applicable to all types of [illegible] which affect rights or legitimate expectations whether the decision is judicial in nature or merely administrative. (p. 4)

Gall (1983, pp. 288 - 290) references two Supreme Court of Canada

rulings that found the doctrine of fairness applicable not only to judicial and quasi-judicial decisions but also to administrative decisions. Generally, the courts did not distinguish between the concepts of natural justice and fairness because the elements of each depend on the nature of the case and the seriousness of the impact on the individual. The point of consideration, in each case, was that the tribunal must treat the aggrieved person fairly.

Application to education. The significance of Charter-guarantees to procedural rights is unclear at this time. Canadian courts have long recognized that quasi-judicial decisions of school boards are subject to the rules of natural justice. The doctrine of fairness, developed in Canadian courts over the last decade or so, also allows for the review of administrative decisions of these tribunals. These review procedures contained in common law were somewhat balanced by the reluctance of the courts to interfere with policy decisions of educators. For example, in the student appearance case of Ward v. Board of Blaine Lake School the court would not consider the appropriateness of the school's policy against long hair and would only rule on the fairness of the procedures used to implement that policy.

Writers in the field hold varying opinions of the effect of the Charter in this regard. Farley (1986) writes that "in my view, natural justice and fairness could have provided very similar, if not the same protection to students in many instances and I do not feel that the Charter has significantly altered the protection available to students"

(p. 42). Anderson (1985), on the other hand feels that"

> Different procedural considerations are now considered by courts when dealing with pupil discipline cases. Provincial legislation that fails to recognize the need for procedural safeguards for suspensions and expulsions is legally questionable due to section 7 of the Charter. (p. 27)

The question remaining for educators is, "To what degree must these procedural rights be implemented in the school?" The uncomfortable answer is, "It depends!" Farley (1986) writes that "administrative decisions are on a spectrum or continuum with varying requirements as to what procedural protection is required to satisfy the rules" (p. 41). The answer, "it depends" varies with the age of the individual, mental and physical capacities, degree of denial or infringement upon a right, severity and lasting effect the decision may have, nature of the decision, knowledge and training of the decision-maker, and a host of other possible considerations.

Education officials are therefore cautioned that the procedures to be followed for each decision affecting the rights of others will depend on the circumstances. It is probable that school officials will seek the advice of legal counsel more readily today than in the pre-Charter years. Alternatively, consultation with lawyers on the multitude of administrative decisions made daily would be folly. The best advice is to utilize exhaustive investigative strategies prior to the decision and then to support that information with an appropriate "common sense" decision. The "Golden Rule", so well taught by educators, must also be practiced, particularly in relation to the restriction upon the rights and liberties of others.

Undoubtedly, the Charter has made Canadian citizens more conscious of their rights to fair hearings and unbiased processes. As a consequence, it is likely that educators will witness increased procedural rights challenges. It is necessary, therefore, that officials be aware of the fairness rules and govern their policies and actions accordingly.

Educational Issues

The related provisions of "right to liberty" and the requirement for administration in accordance with the "principles of fundamental justice" are highly relevant for education officials. The educational substance of these two concepts will be explored in the discussion of the numerous issues surrounding section 7 which follows.

Right to schooling. It is generally contended by the courts that the right to attend school is included in the right to liberty due to the influence of an education in ensuring a degree of quality of life and liberty.

Anderson (1986a) references American and European conventions that include the right to schooling (pp. 184-186). Although Canadian provincial legislation specifically provides for the right and obligation to attend school, the Charter's "liberty" reference reinforces this. This view was clearly supported in the 1984 decision of R. v. Kind where Justice Barry states that "I am of the opinion that a child's right to an education is included in the liberty guaranteed to

if in section 7 of the Charter" (p. 338).

It is important to acknowledge that the right to an education is included in the Charter, as it is only in accordance with the principles of fundamental justice that students can be denied this right through suspension and expulsion.

Student suspensions. In 1961, Bargen reported that "in Canada the legal right of a board to suspend or expel a pupil is ... firmly established; but the reasonableness of such action is sometimes challenged" (p. 118). Today, educational policy and action that does not recognize the need for procedural safeguards in respect of suspensions, expulsions, and other disciplinary practices is more likely to be challenged under section 7 than at the time of Bargen's study.

In his review of American jurisprudence, MacKay (1984a) indicates that the 1975 Supreme Court decision of Goss v. Lopez will likely have application in Canada:

> There the court stated that the due process clause required that "... the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story". (p. 98)

In her comments on this case, Anderson (1986a) writes that the court "applied procedural due process safeguards to short-term suspensions (maximum ten days). The court held that the safeguards were applicable because students have a 'property' interest in education and a 'liberty' interest in their reputation" (p. 201).

Educational administrators must fulfill their legal obligations in

the process of denying students their right to attend school. In addition, the procedures used should meet the test of fairness to ensure that the education official's ethical mandate is met in treating parents and children in a humanistic manner. The following suggestions for policy and practice in handling the unpleasant task of suspending or expelling students are suggested:

1. Regulations regarding behavior should be formulated in a specific and clear manner and communicated to parents and pupils in a written format. This guideline is inferred from the 1984 decision in Re Ontario Film and Video Appreciation Society v. Ontario Board of Censors.

MacKay (1986b) suggests that there is a danger in making rules too vague. Rules must provide clear guidance to students in respect of expected behaviors (p. 77-78).

2. The need for policy specificity must be balanced against a need for flexibility in not unduly restricting the discretionary powers of administrators in determining discipline measures appropriate to the circumstances. Severe suspensions mandated in all instances of drug use for instance would offend natural justice in not allowing officials to weigh the merits of each case as determined in Taylor v. Board of Trustees of Langley.

3. The content of a rule must not violate a Charter right unless the rule is sufficiently important for education purposes to justify placing a limitation on a freedom. (MacKay, 1986b, p. 79).

4. Fairness should occur before a decision is made in a matter. This would include, at minimum, a complete investigation into the circumstances by the decision maker(s) and a hearing or at least consultation with parents and student at the school level.

5. Written notice of the initial decision is to be provided to parents.

6. Parents are to be notified of a time and place for an appeal or hearing by a higher authority. The parents' right to be represented by counsel should be included. A reasonable amount of time to prepare for the hearing is also required.

7. The decision of the appeal body is to be provided to parents in writing.

Application of the above guidelines will have to be tailored to particular circumstances. In any limitation of a right, officials must consider both the processes used and the merits of each case.

Compulsory attendance laws. The liberty right has also been used by parents in opposition to provincial legislation requiring student attendance in an approved educational facility.

The Supreme Court of Canada ruling in R. v. Jones was discussed previously in relation to freedom of religion. Pastor Jones further contended that the Alberta requirement to have his private denominational school approved by department officials infringed upon his right to liberty. The court found that this procedure did not violate Jones' liberty rights. While the liberty provision allowed parents to raise their children as they see fit, the province is justified in legislating standards in order to ensure that a certain quality of education is provided.

The interrelationship between the liberty provision, alternative forms of education and fundamental justice is evident in R. v. Kind. An application by Paul Kind, a qualified teacher, to have his child excused from compulsory attendance at school and to substitute efficient instruction at home was refused by the Superintendent. The court found that the Superintendent's arbitrary refusal to exercise his option to exempt the child from attendance was contrary to the principles of fundamental justice of section 7. Judge Barry believed that the Superintendent had offended section 7 because he acted "without

investigation of his [Kind's] application or granting him a hearing" (p. 346).

In a slightly different view, it has been found that parents cannot use section 7 as an argument for not enrolling a child in a school or providing an appropriate alternative educational program. In R. v. Corcoran, the court determined that legislation requiring parents to register their children in a school does not violate their freedom of liberty. Judge Inder stated that:

> I am ... unable to see how it can be said that the "duty" imposed upon the appellants [to enrol their daughter in school] ... infringed or encroached upon the "liberty and security of the person" of the appellants under the provisions of section 7 of the Charter .... We live in an organized society in which "duties" are imposed upon us as well as "rights". (p. 329)

Thus, it appears that neither freedom of religion nor the right to liberty may be used by parents to escape provincial compulsory attendance laws. Provinces must, however, permit parents the option to some alternative form of education outside of public schools. The need for administrators to exercise procedural fairness in administering this option remains.

Placement of students. Related to the right of schooling are the questions of a parent's right to decide on where the schooling should take place and what kind of education should be offered.

The decision as to school location is not included in the right to liberty. Anderson (1986a, p. 185) references five pre-Charter cases, ruling that parents have no vested rights in this matter. Alberta regulations, for example, reserve that decision to school officials

provided that parents are afforded procedural safeguards and appeal in the decision making process. Of relevance is the decision in Yarmoloy v. Banff School District No. 102. The board was held to be in error in its arbitrary decision to place a mentally handicapped child in a Calgary school for appropriate programming. Parents were not properly consulted prior to the decision or given an opportunity to appeal in accordance with the rules of natural justice.

The types of educational programs offered to students is generally left to educators as Canadian courts have traditionally not involved themselves in defining the specifics of an appropriate program. This attitude is exemplified by Justice O'Byrne in Carriere v. County of Lamont. It was ruled that although the handicapped Carriere child had a right to attend regular schools, the court would not prescribe in what manner the Board must meet their obligation in this matter.

Treatment of employees. Judicial decisions referencing the liberty provision in section 7 to appointments, transfers, promotions, tenure and termination of employees have not been located. Anderson (1985, pp. 23-24) points to the possibility that the "right to liberty" includes a job security guarantee as does the "property rights" guarantee in the American constitution. This concept has not, as yet, been addressed by the courts.

There is no doubt, however, that the fundamental principles of natural justice have application to administrators making decisions affecting the reputation and livelihood of employees. As

described earlier, the courts in the past were prepared to apply a requirement to adhere to the rules of natural justice only if the decision-maker was exercising a judicial or quasi-judicial power. In recent years, this narrow approach has broadened "to the position that those exercising purely administrative functions have a duty to act fairly and not arbitrarily, and the courts will in some cases require the decision-maker to give procedural protection to those affected by the decision" (Beckton, 1982, p. 159). The duty to treat employees in a manner consistent with the rules of natural justice and the doctrine of fairness found in common law has been the subject of litigation for a number of years in education. Thus the Charter will produce little or no change in this regard, other than to serve to make employees more aware of their right to be treated fairly.

The common law application of fairness principles for educators has been reviewed extensively by professional organizations and writers in the legal profession. Iftody (1982) provides comprehensive summary of Alberta Board of Reference hearings regarding teacher treatment and termination of employment. The rules of natural justice and fairness procedures are considered in particular factual settings thus assisting the reader to conceptualize the application of these doctrines.

It is beyond this thesis to address these administrative procedures in providing employees procedural safeguards other than to caution officials to understand the requirements of the rules and to abide by them.

Search and Interrogation in Schools

Searches, seizures and interrogation are a common occurrence in today's schools. The intensity varies from the search of desks to find the source of the gum supply, to the search of a student's locker to affirm the possession of illicit drugs. MacKay (1984a) proclaims that search issues "have assumed importance in the school context because of the increasing presence of alcohol and drugs among the student population" (p. 219).

The educator's role in maintaining school order and discipline in relation to students' rights, is being subject to judicial scrutiny, due to the Charter and also the new federal Young Offenders' Act that builds upon some Charter-identified rights.

In order to present the reader with a comprehensive review of the current legal provisions in respect of school searches and investigations involving students, relevant sections of the Charter and the Young Offenders' Act will be considered jointly.

Charter Provisions

The relevant sections of the Charter include:

8. Everyone has the right to be secure against unreasonable search or seizure.

9. Everyone has the right not to be arbitrarily detained or imprisoned.

10. Everyone has the right on arrest or detention
(a) to be informed promptly of the reasons therefor;
(b) to retain and instruct counsel without delay and to be informed of that right; and
(c) to have the validity of the detention determined by way of habeas corpus and to be released if the detention is not lawful.

The following points are presented as elaboration of the above sections:

1. The reference to "everyone" having the stated rights would include students. These rights, in turn, would also be subject to the reasonable limitations prescribed in section 1.

2. The precise meaning of the terms "unreasonable search" and "arbitrarily detained", will be ultimately decided by the courts on a case-by-case basis.

3. "Detained" and "detention" generally involve some form of forced restraint. There has been some speculation that noon-hour and after-school detentions imposed as disciplinary measures upon students may contravene these sections and would have to be supported as a reasonable limitation under section 1. Judge Russell in the R. v. H. hearing at Alberta Provincial Court level shed some light on this issue in stating that "I think it is unlikely that Parliament intended that the rights prescribed by section 10 of the Charter would extend to the type of detention imposed as a normal disciplinary measure upon a school student" (p. 256). Readers are also directed to the R. v G. decision that proclaimed that students are basically in detention by virtue of compulsory school attendance.

4. Section 10(c) provides persons the right to be released from custody if they are held illegally. This provision holds no implications for educators.

Young Offenders' Act Provisions

Section 56 of the Young Offenders' Act (Canada) expands on the above Charter-rights. This legislation provides that certain minimum safeguards must be adhered to before statements made by young persons, aged 12 to 17 inclusive, are admissible in a court:

1. Oral or written statements given to peace officers or other persons in authority must be voluntary.

2. Prior to any statement being made, young persons must be advised and understand that: (a) there is no obligation to give a statement; (b) statements could be used in evidence against them; (c) they have a right to consult a lawyer, parent, adult relative or an appropriate adult; and (d) any statement made must be in the presence of the adult consulted unless otherwise desired.

3. Reasonable opportunity must be provided to make the statement in the presence of that person consulted.

It can be seen that the Charter-rights in sections 10(a) and 10(b) are more specifically addressed by the Young Offenders' Act. A comprehensive discussion of the educational significance of this legislation affecting young persons is beyond the scope of this thesis.

Charter Decisions

Much of the speculation surrounding the application of the Charter to school searches (MacKay, 1984c, 1986b; Robinson, 1986) has been eliminated by recent court decisions. A review of recent Charter-based decisions will serve to clarify previously unaddressed educational issues in the Canadian courts.

R. v. H. In an appeal of the earlier decision referenced, Justice Dechene of the Alberta Court of Queens Bench ruled that principals and

teachers are persons in authority under the Young Offenders' Act; therefore, the evidence collected from a 13 year old boy was not admissible because he was not advised of his rights under the Act. More significantly for this purpose, the court held that it was not necessary to rule on the application of section 10 of the Charter to educational institutions, but had he found it necessary, he would rule that the Charter did not apply in this case. No reasons were given for this argument.

In relating this ruling to the school setting, two principles emerge:

1. The Young Offenders' Act does apply to teachers and principals; therefore, these "persons in authority" are required to advise students of their rights in cases leading to criminal charges.

2. The Charter did not apply to schools on the facts of this case. The requirement of section 10 to advise persons of their right to know the reasons for the detention and the opportunity to retain legal counsel did not exist. The cases of R. v. L.L. and R. v. G., referred to below, provide additional insight to this principle.

R. v. L.L. This Ontario case deals with an administrative school investigation involving the theft of a small amount of money that normally would not have involved the police. During the course of questioning a young person, it was discovered that the boy had cigarettes in his possession which was contrary to school rules. Further investigation showed that the boy had stolen the money and also

that the cigarette package contained a packet of marijuana. The principal had not advised the student of his rights at any time.

On the appeal of an earlier decision, Justice Mercier proclaimed the evidence was lawful under section 24(2) of the Charter and that the detention (section 10) and search (section 8) were also not illegal. The reasoning of the court was that:

1. The school authorities did not intend to lay a criminal charge at the start of the investigation.

2. The seizure of the cigarettes was prompted by a breach of school rule.

3. There was good reason to question the boy.

R. v. G. In another Ontario decision the Court of Appeal reviewed the status of a 14 year old student charged with possession of a narcotic. In this instance a principal acting on information received from a teacher requested the boy's presence and advised him that he had reason to suspect that the student was in possession of drugs. The student was asked to remove his shoes and socks and, after some delay, marijuana was found. Police were then called in and informed the boy of his Charter rights.

The court ruled on the application of two sections of the Charter:

1. In accordance with the power of the principal to maintain proper order and discipline in the school the search of the student under section 8 was justified and dictated by the circumstances. There was no indication of the extent of the crime at the outset of the investigation. The court ruled that "a principal has a discretion in many minor offenses whether to deal with the matter himself, whether to consult a child's parents, and whether to call in the law enforcement authorities" (p. 1).

2. The search of the student was not a "detention" relative to section 10(b) of the Charter as the student was already under

detention through his school attendance. The search was an extension of normal discipline.

Additionally, the court provided two circumstances that could result in different conclusions:

1. Where a crime is so obvious or heinous that police participation is inevitable, the reasonableness of a search by a school principal may be in question.

2. Where a principal is acting as an agent of the police in detecting crime and not as a principal in performing his duty to maintain discipline in the school, his actions may be subject to section 10(b) and he may be required to inform a student of his right to consult a lawyer. (p. 1)

Hunter v. Southam News. This Supreme Court of Canada ruling revealed a number of principles governing the application of section 8. Although the case does not involve an educational institution, the opinions of this highest court in Canada are applicable to actions of education officials. The relevant principles noted are:

1. Section 8 creates a right to privacy or the right to be left alone by government.

2. Warrantless searches are basically unreasonable. The onus to show that a search or any rule restricting a right is reasonable under section 1, rests with the state agent.

3. The reasonableness of a search must focus on the subject of the search and its impact upon that subject. Dependence upon furthering some valid government objective may not be reasonable.

4. At some point the interests of the state in detecting and preventing crime must override the right to privacy. Searches should have a credibly-based probability that the act will be useful and not base searches on mere suspicion.

Capacity of Disciplinarian

In light of the Ontario judgements reviewed above (R. v. H. and R.

v. L.L.), it is evident that the application of the Charter varies in accordance with the administrator's role. MacKay (1986b) suggests that school authorities can be acting in three different capacities relative to school searches. He has coined these as (a) in loco parentis, (b) educational state agent, and (c) police state agent (p. 82).

In loco parentis. Common law has provided that teachers and school officials are acting as delegates of the parents. "Pursuant to the 'in loco parentis' doctrine parents were deemed to have delegated some of their authority and powers of discipline over their children to school officials during the period when the children were the responsibility of the school" (Robinson, 1986, p. 94). While these powers may not be totally unrestricted, the doctrine would allow school searches of lockers, belongings and the student's person, as a reasonable parent maintains that same right.

An over-reliance upon this doctrine in school searches may not be totally appropriate. Farley (1986) indicates that the educator's responsibility to maintain order as a representative of the state is "sufficient rationale to support their power to conduct reasonable searches" (p. 34).

Educational state agent. Educators have a duty to maintain order and discipline within a school setting. School rules and policies are developed with this purpose in mind as well as addressing the safety and protection needs of students. It appears that the judiciary will not

apply Charter search and seizure safeguards in situations where teachers are searching for evidence of activity that would violate school rules. R. v. L.L. makes the point that even if the search for violation of school rules leads to evidence resulting in criminal prosecution, it is the original intent of the investigation that must be considered.

Educators are cautioned, however, that the more intrusive a search becomes upon the privacy of students, the greater the need for procedural protection. Body and strip searches will be addressed in subsequent sections in this chapter.

Police state agent. A search for evidence in situations suspected in advance as being more serious than a breach of school rules and that could result in a criminal charge may place an official in the secondary role of an agent of the police. In these investigations stricter practices and observance of pupil rights must be observed. Conclusions reached in R. v G. clearly illustrate this point.

Boards of education should consider the question of whether their administrators should be involved at all in criminal investigations within the context of the school. Searches of this sort may well be best left to police authorities trained to deal with the circumstances.

Conclusions. In light of the decisions of the courts and the different roles that educators play, Robinson (1986) offers three situations whereby school officials will not offend section 8 rights

against unreasonable search and seizure:

> (a) the school official has reasonable grounds to believe that evidence pertaining to the breach of the law or a rule of the school or school district may be found in the place to be searched; and
>
> (b) the reasonable grounds are based on a credibly based probability that replaces mere suspicion or hunch; and
>
> (c) the scope of the search is not excessively intrusive in light of the nature of the infraction and the age and sex of the student. (p. 96-97)

Anderson (1986d) takes a closer look at the role of administrators in providing the following advice to trustees:

> A good practice to adopt is to clearly delineate between the school administrator's role in enforcing school rules as opposed to his role in assisting in investigations of criminal offences. Where school administrators are embarking upon criminal law investigations, stricter practices and observance of pupil rights must be observed. More latitude will be extended to administrators who are merely enforcing school policies rather than being involved in the administration of criminal law. (p. 11)

Types of School Investigations

The purpose of this section is to relate specifically the previous review of literature and court decisions to the practices in which administrators may become involved. Certainly situations will vary and a complete guide to searches is impractical. The principles addressed, however, will assist the school official in avoiding the possibility of being penalized under the "remedies" section 24(1) of the Charter.

Random search. The requirement for there to be a reasonable suspicion to conduct a search would generally rule out the acceptability of a random or blanket search. The search of the entire class or all

lockers in a school for evidence relating to theft or drug abuse would likely be seen as unreasonable.

Exceptions to the above would probably be justified in matters affecting the health and safety of students. The general clean-out of lockers for cleanliness purposes or search for a dangerous substance in an unidentified locker would be upheld by the courts (Robinson, 1986, p. 98).

School officials are at times prompted to insist on searches of persons (students) attending a particular function. On the basis of the conclusions reached in R. v. Heisler, even hired security guards at a public function would not be allowed to select persons at random for searches of purses or the body without reasonable cause.

In this case, consent to search was connected with an unadvertised requirement for admission to the event. The court found that the evidence obtained from Heisler was inadmissible as her rights under section 8 were infringed. Heisler was not offered any choice with respect to whether or not she would be searched and there was no notice provided to patrons that they would be searched.

Robinson (1986) provides the following advice to officials intending to search everyone attending a particular function.

> 1. Give adequate notice of the fact that everyone will be searched. Notice should be given in advance of a function, but notice should probably also be given at the time of entry to the function. It is probably sufficient for the notice to be in the form of a printed sign.
>
> 2. The notice should advise the students that they are not required to consent to being searched but only those who consent to being searched will be admitted to the function. (p. 101)

Search of place. No Canadian cases have been located that deal with the searches of lockers or desks. On the basis of American decisions, courts would likely rule that locker searches by administrators are permissible providing that the searches are reasonable under the circumstances.

MacKay (1984b) writes that:

> It would appear that if a school official is given authority over the school premises, this carries with it the power to search those premises, including student lockers. This assumption is based on the idea that lockers are school property and that students are only given temporary possession. (p. 201)

Robinson (1986) considers unanswered legal questions regarding searches with or without consent of students, with or without rental of lockers, contract conditions for locker rentals and assignment of lockers. These are basically academic questions in light of the lack of Canadian rulings on this issue. It is suggested that policies be developed for use and rental of lockers. Some written acknowledgement on the part of students that the school retains the right to inspect lockers at any time may prove useful to school administrators.

Certainly, locker use produces an expectation of privacy on the part of students and that privacy should be respected as far as is reasonable within the requirement to maintain proper order and discipline in a school.

Search of persons. Friesen (1983) describes that there is a balancing test that must be applied in school searches. The "purpose and necessity of the search must be weighed against the 'privacy

expectation' of the place being searched" (p. 10). Locker searches correspond to a relatively low expectation of privacy and low reasonable cause. Body, pocket and purse searches have a higher privacy expectation and would require a greater degree of suspicion. Strip searches are on the high end of both spectrums. MacKay (1984a) adds that "the greater the invasion of the students' privacy, the greater must be the evidence that the search is necessary" (p. 220).

In the previously quoted cases of R. v. L.L. and R. v. G., evidence obtained from students consenting to emptying pockets and socks was found admissible. No cases have been noted where students were forcibly and physically searched or required to remove clothing of a more private nature than shoes and socks.

Friesen (1983) comments that "careful judgements on causes must be made before administrators engage in search and seizure ... a highly probable cause should be in evidence before a strip search is initiated" (p. 10).

Strip searches. In consideration of the above it is proposed that rarely, if at all, would an occasion mandate a body or strip search of a student in violation of a school rule. Administrators must consider a number of factors relevant to the reasonableness of the search: "age of the student, school record, past behavior, seriousness of the problem, information base for the search, and the need for haste" (MacKay, 1984c, p. 11).

In his review of an American decision, Pyra (1987) predicts that

Canadian courts will test the reasonableness of searches by evidence that shows that "the search is reasonable in relation to the objectives of the search and was not excessively intrusive in light of the age and sex of the child and the nature of the infraction" (p. 9).

Legal considerations are only one side of the coin for educators. It would indeed be difficult to instill in students an appropriate attitude towards freedoms in a democratic society when their school is seen to place unreasonable limitations upon these same freedoms for students. Obviously, a strip search can only be justified in the most extreme of circumstances and consideration should be given to alternative measures for resolution of the situation.

Incidents such as the random strip search of 24 boys at an Alberta high school in 1982 must be avoided. The students were strip searched in an investigation to locate a stolen watch. The watch was not found during this embarrassing exercise but the outrage of parents was felt across the province (Balderson, 1983). Charter violations were not tested in the courts. Nevertheless, the affair placed the integrity of the entire educational community at risk. The delegation of legal powers to principals, be it from parents (in loco parentis) or from the state (to maintain order and discipline) carries with it a strong moral obligation for fair treatment.

Legal consequences. School investigations such as various searches or questioning of students that could lead to more than the ordinary type of school discipline -- that is, investigation of offences for

which there could be legal consequences -- require more formal considerations. Pyra (1987) suggests that:

> If a student is detained for the purpose of interrogation or search which might lead to criminal charges being laid, school officials must:
>
> 1. Inform the student promptly of the reasons for the detention;
>
> 2. Inform the student of his right to retain and instruct council;
>
> 3. Comply also with section 56 of the Young Offenders' Act which requires that certain procedures be followed before any statements made by a person accused of committing an offense, be admitted as evidence. (p. 12)

As alluded to earlier, administrators should avoid situations that would place them in a capacity of a "police state agent" if at all possible and leave such investigations to police officers. The R. v. H. decision implies that even if the rights of the Charter may not apply or are limited by section 1, the requirements of the Young Offenders' Act would still apply.

Summary

The judiciary has chosen to extend the power of the administrator in school management to allow for reasonable investigations under the Charter. The courts will continue to be called upon to adjudicate on the reasonableness of searches and interviews but these will probably be in the context of the Young Offenders' Act. Policies and practices should be implemented that address the rights provided for pupils in legislation in our efforts to achieve full regard for human rights in educational administration.

Corporal Punishment

Section 12 of the Charter implies that any punishment which is too harsh for the offense committed may be considered cruel and unusual:

> 12. Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Common Law

Traditionally, Canadian teachers maintain a common law power to administer corporal punishment in moderation as a disciplinary measure. Excessive, arbitrary or cruel punishment may constitute an assault. Section 43 of the Criminal Code provides for a defense in respect of the reasonable use of force by a person standing in the place of a parent:

> Every school teacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or a child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.

MacKay (1984a) explains that teachers have acquired the authority to use corporal punishment as a means of discipline under two principles: (a) the in loco parentis doctrine and (b) the need to maintain order in the school (p. 85). These principles were explained in greater depth in relation to school searches and need not be elaborated upon here.

Role of the Charter

The Canadian courts have yet to determine if section 12 has changed the teachers' authority in respect of the use of corporal punishment in the school. It is probable that the judiciary will follow the American

position, which holds that the U.S. constitutional provision prohibiting cruel and unusual punishment does not apply to students at school. This view, coupled with the established Canadian tradition, will likely assist the courts in determining that reasonable corporal punishment in schools is not in conflict with section 12.

Another consideration in this matter is the interplay of section 7 and the possible need for the application of the principles of fundamental justice. Schmeiser (1985) confirms that:

> If corporal punishment is to be applied, it may be argued that fairness demands that the student be given an opportunity to present his side of the story, and that the punishment must be meted out by the principal rather than by the aggrieved teacher. (p. 66)

In respect of the above, MacKay (1984a) writes that "the administration of corporal punishment has not attracted due process protections" (p. 83) in the United States. He refers to the U.S. Supreme Court decision of Ingram v. Wright which held that there was no need for a hearing before the punishment "because the authority to use corporal punishment was a privilege given teachers by law and because there were traditional remedies for its abuse" (p. 83).

Anderson (1986d) points to another U.S. decision, that of Baker v. Owen, which outlined what would constitute due process procedures:

> 1. Corporal punishment may never be used unless the student was informed beforehand that specific misbehavior should occasion its use and, subject to this exception, it should never be employed as a first line of punishment for misbehavior;
>
> 2. A teacher or principal must punish corporally in the presence of a second school official ... who must be informed beforehand and in the student's presence of the reasons for the punishment; and
>
> 3. The person who administers the punishment must provide the pupil's parents, upon request, a written explanation of the reasons

and the name of the second official who was present. (p. 5)

It appears, therefore, that while pupils may be subjected to corporal punishment, they are also entitled to the fair procedures contained in common law.

Treatment and Punishment

MacKay (1986a) points out the possible significance of the inclusion of the word "treatment" in section 12 because treatment is a much broader term than punishment. He holds that it is unlikely that corporal punishment will be considered cruel and unusual. Other punishments and treatments, however, such as "detentions, writing lines, standing in the corner or requiring conduct that subjects a student to ridicule (wearing a 'dunce' cap or sticking gum on the end of a student's nose)" (p. 21) may be considered as cruel and unusual.

This view is legal speculation on MacKay's part but it does contain a message to educators to use reasonable techniques in the discipline of students.

Summary - Legal Rights

Bergen (1982) proposes that "the greatest danger to the school or to the student is not in the breaking of a rule by a student but the manner in which a school deals with the situation" (p. 3). The entrenchment of the legal rights provisions in the Charter of Rights and Freedoms prescribing minimal guarantees for the protection of the rights of students has had the effect of focusing society's attention on the

manner in which schools deal with the disciplinary aspects of education.

Prior to the Charter, the rules of natural justice and procedural fairness were a relatively unknown concept to teachers and education officials. With the advent of this legislation, however, all persons are more aware of their rights under common law and are more likely to resort to judicial intervention if schools are deemed unreasonable in their control of students.

The Charter provisions in respect of searches and interviews, together with the relevant sections of the Young Offenders' Act, have changed the authority of school officials and rights of pupils, but only in situations where students are in conflict with the law and criminal charges may result. The traditional role of the principal in enforcing school rules with school penalties ensuing therefrom remains unchanged. There is no doubt, however, that in the administration of these situations, administrators will be more conscious of the need for procedural fairness.

The most important implication of these sections for education is for officials to make a professional commitment to a search for justice in school administration. There is an urgent requirement to scrutinize administrative practices to ensure that they are legal and just in relation to students, teachers and parents. Certainly, teaching about the legal rights enjoyed in a democratic society is a hollow exercise if the schools do not respect those same rights.

CHAPTER V

Implications for Policy and Practice

Introduction

The intent of this chapter is to offer a number of suggestions as to how the educational community may formulate and enforce effective rules and policies which complement the Charter's provisions. It is anticipated that the recommended principles for practice will also provide cohesion to the material presented in earlier chapters.

Education officials must initially be aware of the spirit and letter of the law as it applies to the Charter prior to developing the required sensitivity as to the impact this law has in regulating the activities of educational administration. It is intended that the applications to practice included in this chapter will enhance the educator's knowledge in this regard.

Administration Under the Charter

This section will briefly review a number of general principles for officials responsible for policy formulation and administrators delegated to enact those policies. Knowledge of these principles will assist educators in taking a positive and an anticipatory approach to the effect of the Charter in school management.

Legal and Moral Obligations

Although the Charter would permit the judiciary to review

legislative and administrative policies, it is not likely that Canadians will witness a radical departure from the traditionally conservative attitude of the judiciary in intervening into the operation of schools. Nevertheless, the moral obligation exists for educators to examine their policies in the effort to maintain an appropriate educational environment without infringing unjustly upon the rights of parents, students and employees. Thus, educators are handed a two-fold responsibility: that of adjusting practice to avoid legal intervention and litigation; and the greater role of demonstrating to students, in particular, the ethical commitment of the profession to manage schools within the Charter's constitutional guarantees and the common law.

Justifiable Limitations

Officials must pay particular attention that new and existing rules that contravene Charter provisions are reasonably justifiable under section 1. The author's contention is that the justification for limitation of student rights must be supported in terms of educational objectives and outcomes rather than upon the personal bias of an administrator or collective bent of a board. The accepted role of the principal to maintain order and discipline within a school will, in many instances, provide justification for limitations to freedoms.

Need to Justify Limits

In the event that an individual challenges a rule, the onus is upon that person to show that a freedom identified within the Charter has indeed been denied or infringed. The burden then shifts to the school to establish that the challenged rule is reasonable and justified in the circumstance. Policy makers must therefore think in these terms during reviews of existing policies and development of new rules.

Officials are urged to anticipate questions that could be heard in a court:

1. Is this rule necessary for an educational purpose?

2. Are the expressed limits on the protected rights and freedoms reasonable and justifiable?

This advance consideration will assist those who will have to defend the legality of the rules in a court. Such consideration will also assist the educators who must justify the rules to parents and students in a school setting. Educators who do not examine their rules in efforts to eliminate or minimize occasions for challenges based on constitutional grounds will find that courts will become increasingly involved in the management of their schools.

Wording of Rules

MacKay (1986b) argues that the phrase "prescribed by law" in section 1 indicates that the United States' doctrines of "overbreadth" and "vagueness" may apply to the substantive content of rules and

policies.

Overbreadth. MacKay explains that:

> The general idea behind the doctrine of overbreadth is that a rule which limits a right should be no more intrusive of the right than is necessary to achieve its goal. If a rule is too broad, it should be struck down and replaced with a narrower one. (p. 77)

Vagueness. This doctrine requires that rules must provide persons sufficient guidance to know what behaviors are required for acceptable conduct in providing them with fair warning. Further, in order for administrators to act in a non-arbitrary manner, policies would have to provide explicit standards of application. Amorphous policies could be held contrary to the natural justice requirements of section 7.

MacKay (1986b) concludes his treatment of these requirements for policy and rule statements by writing:

> It is often school board by-laws or school rules which will be subjected to a vagueness challenge because they are not clear. Vagueness may either take the form of a separate constitutional challenge as contrary to the "principles of fundamental justice" in section 7 of the Charter or as a disqualification for the use of section 1 because the limitation is not prescribed by law. Schools provide a fertile soil for such constitutional challenges. (p. 78)

These doctrines provide a challenge for policy-makers. The common law requirement for clearly stated rules has to be balanced by the administrative need to provide for discretion at the implementation level. Rules that are too prescriptive, regulatory and inflexible will also meet judicial review as provided in Taylor v. Board of Trustees of

Langley addressed in Chapter IV.

Communication of Rules

The ruling in Ontario Film and Video Appreciation Society v. Ontario Board of Censors, described in Chapter IV, cautions officials that rules must be communicated to students, parents and employees in a clear and accessible form.

The tedious task of formulating policies would certainly be a hollow exercise if these same policies are not publicized in some manner. Therefore, drafters of policy must not only ensure that the rules are easily understandable as required under the vagueness doctrine but also that the rules are adequately distributed to affected persons. Oral rules that restrict rights and carry substantial penalties could be viewed as a violation of the "prescribed at law" phrase of section 1.

Hearings for Rule Breakers

Persons alleged to be in violation of a rule should, in some manner, be provided a hearing in accordance with the procedural requirements of the principles of fundamental justice in section 7.

The degree to which accused individuals are presented an opportunity to present their side of the story and the formality of the proceedings will invariably differ with the severity of the possible restriction of a right or freedom. Other associated factors addressed in Chapter IV must also be considered.

For example, one-half hour detention for a gum-chewing incident

would not require the procedural safeguards that would be afforded a student facing a school expulsion for a drug offense. Employees advised of charges leading to possible termination of a contract would require a hearing with complete and formal adherence to the rules of natural justice.

Summary

This brief review has provided some general guidelines for administrators developing and enforcing policies and rules.

MacKay (1986b) provides a caution to education officials in respect of the need for action in policy decision making:

> The number of actual Charter challenges has been few. There is still time for educators to put their own houses in order, before the courts require them to do so. A careful in-house review of rules, procedures and penalties may prevent legal action and give educators a greater sense of being in control of their own destiny. (p. 85)

The additional point to be made here is that the motivation to review policies should not be made merely on the apprehension of legal consequences. Educators have an ethical obligation to adhere to the legal requirements in their continuing efforts of democratizing education. Ezra (1987) writes that "it is paradoxical that, while educators extol the virtues of democracy in the classroom, the principles of democracy are not the norm of school practice" (p. 24). This situation can only be changed by a continuing conscientious and obvious effort to administer with full regard to the dignity of mankind.

It is with this intent that the remainder of this chapter is

presented. The principles for action listed in the following pages may be considered a good start in revising educational practice in accord with the intent and spirit of the Charter.

Principles for Practice

The purpose of this section is to present the findings of this thesis in a format adaptable to policy and practice. There is no attempt to distinguish between statements of policy, guidelines or procedures as suggested by Alberta Education (1986) in the Program Policy Manual. That delineation remains as a local decision. A brief review of selected principles will lead to some considerations that would be appropriately understood as philosophical policy statements of a board of trustees while others are intended as procedures for school administrators.

Exhaustive implementation procedures are not included. It is left to individual officials to develop handbooks of operational procedures best suited to meet local needs.

Educators are reminded that this is not a complete legal treatise of the legal implications for policy development. Rather, it is an attempt to examine some of the Charter-related school law in layman's terms, and to assist the school official in anticipating principles for action. It is recommended that legal advice be sought prior to the adoption of any board policy that has the potential of restricting the rights of persons in either Charter provisions or common law.

Further to the above, the considerations offered are directly

related to Alberta legislation. Applicability to other provinces is certainly evident but should be made with caution.

The policy issues selected for treatment relate almost exclusively to the rights and freedoms of students and parents. The topics represent some of the more sensitive current issues for the consideration of administrators intent on keeping abreast of Charter demands. The majority of litigation regarding teacher and employee rights surrounds the area of natural justice and fairness procedures. Documentation of policy and procedures in this respect were found to be outside the scope of this thesis.

Appeals and Hearings

The inclusion of a general board policy on procedures to be followed in providing for rights of students, parents and employees to appeal administrative decisions serves a two-fold purpose in that (a) all publics are advised of the Board's belief in the requirement for the application of the principles of fundamental justice in the operations of the school system, and (b) the board's endorsement and communication of such a policy will increase the school official's sensitivity to the rules of natural justice in their daily decision-making.

Readers are reminded that the application of procedural safeguards operate on a continuum with varying requirements depending on a number of factors addressed more fully in Chapter IV. For example, the due process stipulations for a one-day student suspension

from school for absenteeism would be less formal than a termination of employment hearing for an employee charged with the sexual abuse of students.

The use of words "persons" or "individuals" in the following principles are intended to apply equally to students, parents, employees or, indeed, non-parent supporters of the school system. It is expected that students, at all times, may be represented by parents or guardians.

Prior to examining the requirements in conducting hearings and appeals it is useful to review the two major concepts of the rules of natural justice:

1. The accused must have an opportunity to be heard or, alternatively, the judicial body must hear both sides.

2. The hearing authority should be unbiased as to the outcomes of appeal, that is, no one can be a judge in his own cause.

Although the opportunity to be heard is relatively simple to arrange in educational matters, the concept of bias may be more difficult. Ordinarily, the board of trustees is the highest hearing authority at a local level; however, there are possible claims that the board, as a corporate body, cannot be free of bias in all cases. Thus, appeals to provincial authorities, such as the Minister of Education, are provided in some areas.

Additionally, the Supreme Court of Canada decision in Kane v. Board of Governors of University of British Columbia holds two cautions for boards and superintendents:

1. All evidence has to be presented in front of the accused person. Private interviews with witnesses are not condoned.

2. In the event that the board goes into an "in-camera" meeting to arrive at a decision, the Superintendent or other persons that may influence the decision should not be present.

It is intended that the considerations below will provide officials additional information in their quest to allow individuals fair and reasonable access to justice in appeals and hearings:

1. Prior to any disciplinary action being taken, persons have a right to the guarantees of the principles of fundamental justice identified in the Charter of Rights and Freedoms.

2. Persons accused of an action and threatened with disciplinary proceedings have a right to request a hearing before the principal, superintendent or delegate, and the board or delegated committee of the board.

3. Individuals must be advised of their rights to a hearing before any disciplinary action is taken.

4. The hallmark of the exercise of disciplinary authority will be fairness.

5. Every effort shall be made by administrators and faculty members to resolve problems through effective utilization of school district resources in cooperation with the accused persons.

6. All persons must be given an opportunity for a hearing if desired. The hearing shall be held to allow individuals to contest the appropriateness of the sanction imposed by the disciplinary authority, or to contest any alleged prejudice or unfairness on the part of the official responsible for the discipline.

7. The hearing authority may request an attempt for conciliation first, but if the individual declines this request the hearing shall be scheduled as soon as possible.

8. The following procedural guidelines will govern the hearing:
   (a) Written notice of charges shall be supplied to the individual.
   (b) The accused person(s) may be represented by legal counsel.
   (c) Persons shall be given an opportunity to present their

version of the facts and their implications. Testimony of other witnesses and other evidence may be presented.

(d) All evidence offered to the hearing authority shall be made available to the individual accused. In addition he shall be allowed to question any witness.

(e) The hearing shall be conducted by an impartial hearing authority who (which) shall make the determination solely upon the evidence presented at the hearing.

(f) A record shall be kept of the hearing.

(g) The hearing authority shall state within a reasonable time the findings of the hearing and the decision as to any disciplinary action.

(h) The findings shall be reduced to writing and sent to the individual.

(i) Persons shall be made aware of their right to appeal the decision of the hearing authority to an appropriate appellate authority, if such avenue of appeal exists.

Special education placement. Few areas of educational management have raised the extent of concerns of officials and parents than the recent debates over the placement of special needs students. Parental demands for educational equality rights under section 15 have been coupled with the procedural fairness requirements embedded in section 7.

In Alberta, the need for fairness in deciding who is a child requiring exceptional treatment and the placement or special education program proposed for a child is recognized in the Program Policy Manual. Alberta Education (1986) mandates specifically that:

> Each school board will establish a Special Education Placement Appeal Committee to hear appeals from parents or guardians disputing decisions affecting students with special needs.
>
> Each school board will establish policies, guidelines, and procedures for the convening and conduct of the Special Education Appeal Committee which reflect the rules of natural justice. (p. III-21).

The regulations further state that if local systems do not provide

appeal mechanisms or do not adhere to the rules of natural justice, then the Minister of Education will have the case reviewed by a provincial committee established for that same purpose.

This provincial regulatory attention to the specific matter of special education appeals further points to the significance of the fairness elements contained in the Charter and common law.

The purpose of the following recommendations is to provide guidance to school systems intending to establish policies and procedures in this regard.

1. Board statements should establish the membership of the Student Placement Appeal Committee. Care should be taken to appoint members that are competent to assess the case, who are impartial (that is non-employees or trustees), who act reasonably and who are able to provide an independent assessment and judgement.

2. Membership could include a combination of the following:
   (a) registered psychologists,
   (b) medical personnel,
   (c) resident parents,
   (d) out-of-system educational specialists, or
   (e) other unbiased and competent personnel.

3. The Student Placement Appeal Committee shall make recommendations to the Board regarding the following:
   (a) Does the student have special education needs?
   (b) What would be an adequate program for that student?
   (c) Was the student directed to an adequate program?
   (d) If the student is not in an adequate program, to what program should the student be directed, and when?

4. The Committee shall hear each student placement appeal referred to it by the Board without undue delay.

5. An appeal must be commenced by parents within 20 days of receipt of the placement decision of the district.

6. Parents shall be advised, in writing, of their right to appeal a district placement decision.

7. Parents shall be provided with:
   (a) an appeal hearing held at a convenient time and place;

(b) the opportunity to receive and examine all the student's school records within a reasonable time prior to the appeal;
(c) the opportunity to attend the hearing and have an interpreter, an advocate and/or a lawyer present;
(d) the opportunity to present evidence, including expert medical, psychological and educational testimony, and to call witnesses;
(e) the opportunity to hear the presentation of evidence by district personnel and to question the testimony therefrom;
(f) the opportunity to decide whether or not the child will be present at the appeal hearing during the presentation of evidence by the parents;
(g) a record of the appeal hearing, if requested.

8. Parents and the Board shall be advised in writing of the recommendations of the Student Placement Appeal Committee, including their reasons, without delay and in no case later than 20 days following the appeal hearing.

9. The superintendent shall inform the parents that should they be dissatisfied with the recommendations of the Student Placement Appeal Committee, they may commence an appeal to the Board within 30 days of receipt of the Student Placement Appeal Committee's recommendations. The grounds of appeal to the Board are limited to the question of whether the parents received a full and fair hearing according to the procedures outlined in 7 a - g above.

10. Administration shall be provided with an equal opportunity to appeal to the Board within 30 days of receipt of the Student Placement Appeal Committee's recommendations. If administration decides to appeal, the parents will be notified and given the opportunity to make representation to the Board at any such appeal hearing.

11. Should no appeal be filed with the Board by either party, the Board will make a decision on the recommendation of the Student Placement Appeal Committee at the first regular Board meeting following the expiry of the 30 day limit for appeals.

12. In cases where an appeal has been filed with the Board, the decision of the Board is to be based on whether the parents received a full and fair hearing by the Student Placement Appeal Committee according to the procedures outlined above. If satisfied that the parents received a full and fair hearing, the Board shall ratify the decision of the Student Placement Appeal Committee. If the Board is not satisfied that the parents received a full and fair hearing,

the Board shall direct a second hearing by the Student Placement Appeal Committee.

13. The decision of the Board should be made within 15 days of the date the appeal is heard by the Board and should be communicated to the parents within 7 days of the date of their decision.

Student marks. To ensure that student evaluation procedures followed in a school have been fair and just, it is recommended that policy be developed to allow students the right to appeal the final standing awarded in any subject. Charter provisions for procedural fairness apply in these matters.

The author contends that students' grades must be awarded in accordance with comprehensive evaluation policies which describe in detail the method used in calculating final results. Evaluation policies for each subject should, at minimum, provide: an outline of the course content, the portion of the final mark based on assignments, tests, participation, and the final exam. These policies should be made available to students at the commencement of the course.

The following recommendations provide for two levels of appeal for students dissatisfied with their final grades. The statements are fairly specific in an effort to identify the natural justice procedures required of officials.

1. Appeals at the School Level

   a. Normally, the first appeal shall be made in writing to the school principal within one week of the time final standings are released to students. The written appeal shall outline the reason or reasons for making the request. The school principal shall acknowledge receipt of the appeal and

indicate to the student the expected date when a decision with regard to the appeal will be reached.

b. To review the basis of any final standing awarded to a student, the principal shall employ one or more of the procedures listed below:
   (1) consultation with teacher(s) involved.
   (2) a check of records.
   (3) a personal hearing of the student's appeal.
   (4) a review of evaluation procedures followed.
   (5) the granting of permission to the student to see the graded final examination.

c. The school principal shall confirm in writing the outcome of the appeal to the student and keep a copy of the response and supporting evidence on file.

2. Appeals at the District Level

a. In the event that a student is not satisfied with the outcome of the appeal at the school level, the student or parent may request a hearing from an appeal committee appointed through the office of the Superintendent of Schools.

b. The appeal committee appointed shall consist of three or more members. However, no one shall be chosen who is directly involved in the case, such as the principal and teachers whose decision is being appealed.

c. The appeal committee shall:
   (1) arrange a personal hearing of the student.
   (2) review the circumstances and the evaluation procedures followed in determining the final standing.
   (3) submit a report and a recommendation to the Superintendent of Schools with regard to the appeal.

d. The decision of the Superintendent shall be considered final, except in those cases where a student may elect to write an available Grade 12 Provincial Examination.

Student Discipline

It is recommended that boards consider the area of student discipline initially in an all-encompassing manner and then more

specifically in at least the following areas: suspension, expulsion, corporal punishment, and searches. Applicable Charter provisions are section 1 (Justifiable Limitations), section 2 (Right to Liberty), section 7 (Principles of Fundamental Justice), section 9 (Detention) and section 12 (Punishment). Other legal implications are derived from provincial legislation and section 43 of the Criminal Code of Canada.

The following general statements are offered for the consideration of elected officials and administrators:

1. It is the responsibility of the principal and teachers to maintain good order and discipline in the school for the purposes of:
   a. developing in each student the capacity for self control;
   b. providing classroom conditions contributing to effective learning; and
   c. protecting the health and safety needs of students and staff.

2. It is expected that the principal and staff will develop and implement clearly understandable and reasonable expectations for student conduct.

3. Expectations for student conduct and possible disciplinary actions shall be appropriately communicated to students and parents.

4. It is expected that conferences between teachers, students, principals and parents be effectively employed as a means of bringing about acceptable classroom behavior.

5. The following forms of discipline are permissible:
   a. temporary removal from the classroom;
   b. assignment to an alternate activity;
   c. exertion of sufficient and reasonable force to restrain a student from carrying out a destructive act against another person, school property or himself/herself;
   d. withdrawal of classroom, school or extra-curricular privileges;
   e. in-school detentions;
   f. suspensions from class or school for durations of five days or less;
   g. expulsions from school for periods beyond a five-day

suspension; and
h. corporal punishment.

6. Non-permissible forms of discipline are:
   a. physical attack by the teacher upon a pupil;
   b. mass detentions and mass punishments aimed at unspecified individuals or groups.
   c. verbal attacks such as sarcasm, racial or personal references; and
   d. unreasonable treatments that would subject a student to undue ridicule from classmates.

7. The guiding principle for the need and type of discipline is that the most effective method of discipline for this student, in this situation, in view of the nature of this misdemeanor, the maturity of the student and the relative effectiveness of other forms of discipline in producing the desired educational outcomes.

8. It is required that the rules of natural justice be applied in all disciplinary proceedings after due consideration of the above principle.

Suspensions. For the purpose of this section, "suspension" is defined as a temporary denial of a students' right to an educational service not in excess of five school days. In accordance with Alberta legislation, the principal is afforded the power to suspend a student for this maximum period of time; any additional denial of service is classed as an "expulsion" and must be adjudicated upon by the board of trustees.

Applicable Charter sections include section 1 (Justifiable Limitations), section 2 (Right to Liberty and Schooling) and section 7 (Principles of Fundamental Justice).

Some of the following principles provide the basic intent of this disciplinary measure, while others offer fairly specific steps for implementation:

1. The suspension of a student from a class, school, or school bus is a serious disciplinary measure to be invoked when other measures have proven to be ineffective or when the seriousness of the offense warrants such actions.

2. Suspensions are approved provided that:
   a. such cases are dealt with as quickly as possible;
   b. the student and parents are protected against arbitrary decisions at any level;
   c. the student and parents are invited to consult with and/or appeal to the school personnel involved, preferably before the final decision is made;
   d. the student and parents are informed of their right of final appeal to the Board;

3. The parents shall be advised, in writing, of the circumstances surrounding the suspension and of their right to appeal the suspension.

4. The following additional documentation shall be made available as required by local circumstances:
   a. reports from all teachers concerned with the student describing academic achievement, behavior, and relationship with peers;
   b. reports from counsellors;
   c. reports of remedial action taken by the principal and teachers; and
   d. the student's cumulative record.

5. Reasons for suspension shall be at the discretion of school personnel who should take into account and must be tempered by the circumstances under which the student commits the offense. The following may be considered as reasons for suspension but shall not be considered either complete or so prescriptive as to require that suspension follow when a student commits the offense:
   a. Open opposition to the authority of the teacher, principal, school or school board;
   b. Wilful disobedience over a prolonged period or in a single instance where the disobedience endangers students teachers, building, or the general climate of orderly behavior;
   c. Habitual neglect to do assigned work within the students' competence;
   d. Profane or indecent language in the presence of other students or staff;
   e. Threats of physical violence or an act of violence against a teacher or serious unprovoked attack upon another student;
   f. Any act of indecency in a school building or on school grounds;

g. Failure to observe and obey any reasonable rule, regulation or procedure established for maintaining a climate of behavior conducive to learning;
h. Willful or malicious damage to school property; and
i. Misuse of drugs or alcohol.

Expulsion. The principles addressed in this section build upon the student suspension considerations and are based upon identical Charter sections. These statements are addressed separately because the long-term denial of the right to attend school requires that more formal natural justice procedures be afforded to students in appealing any recommendation for expulsion:

1. A temporary or permanent expulsion of a student from a school or the school district is the most severe disciplinary measure that can be applied to a student because it denies a fundamental right to attend school.

2. Principles addressed in the "Suspension" policy shall also apply in expulsion cases.

3. Recommendations by school officials for expulsion can only be considered by the Board or a committee appointed by resolution of the Board.

4. Principals shall ensure the following information has been considered prior to submitting a recommendation for an expulsion:
   a. Counsellor's recommendation;
   b. Teachers' recommendations; and
   c. Parents' recommendation.

5. A student may be suspended from school during the time in which the recommendation for expulsion is being considered.

6. Principals shall inform the student and parents of any recommendation submitted for expulsion.

7. The Superintendent shall inform the parents, in writing, of the following:
   a. The decision to reinstate the student or alternatively to consider the expulsion;
   b. The time and place of a hearing if the parents wish to be heard in the matter; and

c) The parents' right to retain the services of legal counsel or advocate.

8. The following procedural guidelines shall govern the hearing:
   a. Written notice of charges against the student, school documentation and reports and any other recommendations shall be made available to all parties present.
   b. The student, parent or counsel shall be:
      (1) given an opportunity to provide his version of the facts
      (2) allowed to offer the testimony of other witnesses and provide other evidence
      (3) allowed to observe all evidence against him
      (4) allowed to question any witness and school personnel.
   c. The hearing shall be conducted by an impartial body not involved in the recommendation for expulsion.
   d. A record shall be kept of the hearing including all documentation reviewed.

9. The findings of the hearing shall be provided to the parents in writing.

10. Parents are to be advised of their right to appeal to the Minister of Education.

Corporal punishment. It has been argued herein that, for the present, the use of corporal punishment in the schools remains unaffected by the advent of the Charter. It is possible that, in the future, the administration of this form of disciplinary measure will be judged to be contrary to the Charter; however, until the courts decide otherwise, corporal punishment remains an issue to be decided by the provincial legislature and local trustees.

Of consideration is section 1 that permits the use of corporal punishment of section 12, as a justifiable limitation upon students' rights. In addition, section 43 of the Criminal Code of Canada provides a defense for educators in this matter.

The recommendations listed are not direct Charter implications but are offered to assist boards in avoiding arbitrary and unreasonable use of this punishment. Legal safeguards for educators are included.

1. Corporal punishment administered in a judicious and responsible manner is an acceptable form of discipline only when all other disciplinary measures have failed to reach the desired educational outcomes.

2. Corporal punishment should only be used in the most serious of tuations.

3. The wishes of the parents regarding corporal punishment should be respected. Where a parent has, in writing, advised the school that his child is not to be corporally punished, such punishment shall not occur.

   Note: Alberta legislation has delegated to boards the power to make rules about school discipline. Thus, board policy can provide for corporal punishment without parental permission. Where a board opts for allowing parents to deny the school to exercise corporal punishment the parents must assume greater responsibility in assuring that a child's behavior at school is acceptable.

4. Students with a known medical infirmity that may be aggravated by the administration of corporal punishment are to be exempted.

5. Students are to be advised, in the presence of another school official, of the reasons for the punishment. If the student denies these reasons, the student shall be given an explanation of the evidence and an opportunity to present the student's side of the story.

6. Corporal punishment may only be applied to:
   a. the palm of the hand
   b. the buttocks in cases where the developmental level of the student indicates that this is appropriate.

7. Corporal punishment shall only be administered by means of a District supplied strap.

8. The punishment may only be administered by a teacher or certified administrator and shall be administered in private and in the presence of an adult witness.

9. A written record shall be maintained by the principal of all administrations of corporal punishment. The record should

indicate:
a. date of punishment
b. student's name
c. reason(s) for the punishment
d. part of the body to which the punishment was applied
e. number of strokes applied
f. signature of person administering the punishment
g. signature of the witness.

10. Upon completion of the punishment the principal shall advise the parent of the circumstances which necessitated the punishment.

Searches and investigations. The responsibilities of school authorities in relation to the legal rights guarantees of the Charter and the Young Offenders Act (Canada) have been given substantial treatment in Chapter IV. It is not the intention of this section to review the responsibilities of school officials or the types of school investigations possible within the school setting but rather to provide some general considerations for system administrators.

It is strongly recommended that system policies and procedures be developed in this area; firstly, to delegate specifically to school officials the authority to conduct such investigations and secondly, to ensure that school authorities do not create powers of search which do not exist in law. Further, detailed procedures would also assist both school and police authorities in recognizing their responsibilities in respect of the Young Offenders' Act.

On the basis of the decisions to date, it appears that as long as officials involve themselves in school related investigations and avoid intervention in criminal matters the Charter provisions will not apply if investigations are based on reasonable grounds and are not excessively intrusive upon the student. Further analysis in this

regard would be totally light of young offenders' legislation which is not the subject of this treatment.

Dress and Grooming - Teachers

Charter guarantees to the freedom of expression in section 2 includes expression through dress. The treatment of this provision in Chapter III of the thesis affirms that the right of employees to dress as they wish has to be balanced with the need to maintain order and discipline in the school. School officials, in limiting this right through action or policy, would have to show that particular modes of dress would result in a substantial disruption in school proceedings or otherwise have an adverse effect upon the education of students. Short of substantiation on these grounds, dress code rules for teachers would not be held reasonable.

Therefore, the only limitations upon teacher dress shall be those of effect upon professional performance, rights of associates or students, and level of community tolerance. Beyond this, teachers' dress and grooming is a personal matter. Teachers should have the freedom to express their individuality in a manner of their choosing so long as the dress does not intrude upon and violate the rights of others.

The following principles will further serve to assist officials in regulating the dress of teachers:

1. Modes of dress or appearance commonly accepted for society is as appropriate for teachers performing their professional duties as it is for any other member of society.

2. It is reasonable to expect teachers to maintain high

standards in personal dress and grooming.

3. Articles of clothing or other symbolic accessory which could be recognized as symbols associated with social or political movements may be unjustifiable. It is generally accepted that a teacher does not have the right to use his professional position to advocate or promote the acceptance of any one politic l or social philosophy.

4. In weighing the reasonableness of a school rule infringing on the freedom of expression area, officials must take into consideration the following standards:
   a. The rule, and subsequently, the restraints it imposes, must positively relate to the enhancement of the educational process;
   b. The public benefits produced must outweigh the consequent impairment of the individual's right;
   c. The level of community tolerance must be assessed.

Dress and Grooming - Students

Students' rights to express their individuality through dress and grooming are similar to those of teachers. "School boards do not have the right to set grooming and appearance standards based solely on ... [a] collective perception of what school standards ought to be" (Sparks, 1983, p. 24). School officials arbitrarily attempting to institutionalize personal values and attitudes on appearance will be found to be unreasonable in their actions.

The following considerations are offered to administrators for further guidance in this area:

1. Rules concerning student dress may be established only when they relate to specific educational, health or safety purposes. Students should not be subject to school discipline because of their appearance if style, fashion or taste is the sole criterion for such disciplinary measures.

2. The wearing of clothing, hair arrangements, or other personal adornments or embellishments clearly intended to be disruptive or to interfere with the regular operations of school may be forbidden.

3. Students' dress and appearance should not create a health or safety hazard to themselves or others. The following examples are provided for clarification:
   a. The wearing of appropriate head coverings in vocational and food service areas.
   b. Loose clothing around rotating machinery.
   c. Long and protruding hair in various athletic activities.

Home Schooling

The relationship of the Charter and case law to the provision of an education through home schooling programs is summarized as follows:

1. Persons who object to public school programs are free to pursue alternatives such as tutorage (home schooling) and private schools.

2. The requirement to request approval for an alternate school or program from a school official is not an unreasonable infringement upon the freedoms of religion or liberty.

3. Officials empowered to adjudicate on the approval of home programs must deal with the matter in accordance with the rules of natural justice. Applicants have the right to appeal directly to the approving authority.

4. Applications may be disapproved only upon evidence that efficient instruction cannot be provided. Educators remain as the best officials to assess program quality.

5. Rejection of programs on the basis of more appropriate alternatives for the child will not be seen as reasonable.

6. Provincially sponsored correspondence courses are to be accepted as efficient instruction.

It is not intended to provide readers any further direction in this regard because of the excellent treatment given this subject by the Alberta School Trustees' Association (1980). The Report of the Home School Task Force provides recommendations for policy, models for contracts and application forms, as well as criteria for the assessment of applications. Additional documentation in this regard would be redundant.

Religious Instruction

The Charter seems not to have changed the authority of school boards to offer religious instruction and exercises within public schools, provided that no student is forced into participation in these programs. The claim that allowing a child to not participate or to leave the classroom places pressure on the child to conform was not judged to be an infringement upon Charter freedoms to conscience and religion nor the equality provisions. Readers are directed to the Zylberberg decision of Chapter III.

The following general guides are offered school officials in this regard:

1. Schools may be opened or closed by the reading, without explanation or comment, of a passage of scripture and/or with the recitation of the Lord's prayer.

2. Upon receipt by a teacher of a written statement signed by the parent requesting that a pupil be excluded from religious activity, the pupil shall be permitted to leave the classroom or stand in respectful silence. The choice of method of exclusion remains with the parent.

3. Teachers must avoid activities which may be construed as compulsory acts of worship or propagation of dogma.

4. Students should be provided with equal opportunity to study both the Evolution Theory and the Creation Theory, whenever the curriculum deals with the origin of life or the universe.

Readers are reminded that the above considerations are offered in respect of religion for the public school sector. Rules in private religious schools and separate denominational schools may differ significantly.

Summary

It is no longer sufficient for school officials to rely on the vigilance of trustees and superintendents to direct school operation through oral and documented directives. Just as it is impractical for this thesis to outline all of the possible implications of the current law in respect of administrative practice, so also is it impossible for system officials to predict the infinite situations principals and teachers encounter in their roles. Even the most imaginative superintendent would not be able to document policies covering all possible situations.

The solution lies in providing practicing officials the knowledge from which they may be able to understand the intent of the legal principles contained within the written and common law, and apply these concepts to new and unique situations.

Educational administrators must exercise skills at a level reasonably expected of them as professionals. It is anticipated that the reader would, upon study of this thesis, satisfactorily decide upon appropriate actions for issues not addressed in this chapter.

Not discussed, for example, are the due process requirements in personnel evaluation, dismissal and staff reduction; however, the principles of fundamental justice are similar in these cases.

Similarly, the earlier treatment of student demonstrations and political expression should not be unfamiliar. Teachers are aware of their ethical responsibilities regarding criticism of colleagues and employers, whereas trustees recall their duty in allowing for the political participation of all employees and their expectations in providing for the academic freedom of teachers.

The total impact of the Charter presents an unclear and ever-changing picture. It remains for the official to constantly update his knowledge in this area, for, as Bargen (1961) wrote a quarter of a century ago:

> New light is constantly being shed on [legal] problems that have not yet been clarified. In addition, the law is dynamic and to a degree keeps pace with social progress; hence the educator must keep in step with current legal thought if the educational system in which he is working is to achieve its full purpose. (p. 162)

The Charter has called for a quickening of the pace of social progress and it is the school official's mandate to ensure that education does not get out of step with the rest of society.

CHAPTER VI

Conclusions and Implications

Introduction

This study has shown that our constitution is in a state of transition. Old constitutional maxims and statutory approaches are no longer beyond challenge; it will require decades of judicial review to define the scope and impact of the Constitution Act, 1982 and the Charter of Rights and Freedoms. Even as this thesis is being written, constitutional amendments proposed in the Meech Lake Accord of June 1987 present new and interesting challenges for Canadian society (Orr, 1987).

These are exciting times in our history as important changes in Canadian constitutional law are rapidly taking place. No less than any other sector of society, educators and education officials have a responsibility to become informed of their rights and the rights of those whom they serve. Magnet and Pentney (1984) make a similar point in their address to school trustees:

> The advantages brought to Canadians by these rights imposes an obligation upon each of us to act in accordance with the letter and the spirit of the Constitution. Like any other law, the Constitution could not function effectively if conformity to it could not be routinely expected, but required constant and attentive coercive supervision. (p. 3)

The purpose of this chapter is to draw together some of the major findings of this study. It is intended that these concluding pages will provide cohesion to the material presented in previous chapters, as well as offer areas for additional study in the attempt to assist

educators in meeting their legal and moral obligation to become informed of the ramifications of the Charter upon the teaching profession.

Summary of Conclusions

The analysis of Charter provisions with their subsequent judicial interpretations and common-law principles can be consolidated to provide the reader with an overall picture of the implications held for education. Readers are cautioned that the effects of this legislation are dynamic and ever changing. Therefore, the generalizations written here may well be altered by the time of reading.

1. The Constitution is the supreme law in Canada. Thus any legislation of government or its agencies, including education, must abide by Charter provisions. Provinces are no longer the sole authorities in educational matters.

2. Canada is becoming a "rights-conscious" society and citizens will increasingly have recourse to the courts to claim protection from all manner of government action. The judiciary will be called upon more frequently to adjudicate in educational matters. This is a departure from the traditional reluctancy of the bench to interfere with the administrative and quasi-judicial decisions of school boards unless those decisions were arrived at in an unfair and unreasonable manner.

3. Charter provisions are currently seen to protect citizens from

the indiscriminate actions of government and agencies delegated authority from statute. Local school officials and their employees are thus bound not to unreasonably restrict the identified rights and freedoms. Actions of private business, individuals and parents are not generally restricted by this legislation. Local school officials and their employees are thus bound not to unreasonably restrict the identified rights and freedoms.

4. The constitutionally-entrenched rights are not absolute. Generally, any limitations placed upon these rights must be seen to be reasonable and justifiable. Education officials are urged to assess their restrictive actions in relation to educational objectives and administer in good faith in a justifiable, sensible and fair manner. Persons asserting a limitation must be able to demonstrate that if the limit is not asserted, there is a likelihood of actual harm coming to society.

5. Officials are cautioned that the Charter provides an avenue to the courts for remedy regarding inappropriate restrictive actions. Courts could reverse policy directions or possibly award damages to students and parents.

6. Parents objecting to government regulations regarding the compulsory attendance of students in either publicly funded schools, private religious schools or home schooling programs cannot rely on the freedoms of conscience and religion to escape registration requirements. Administration officials rejecting any registration for alternative programs must be able to demonstrate that efficient

instruction is not being provided. Additionally, applicants are to be afforded an avenue of appeal to these decisions in accordance with the rules of natural justice.

7. The Charter has not changed the position of school boards which allow for the inclusion of religious instruction and exercises within schools. Students must be permitted to excuse themselves from such activities.

8. Pre-Charter limitations on a person's freedom to publicly express beliefs and opinions publicly have not been altered. Educators placing restrictions on expression through dress, publication or assembly regulations should ensure that the restrictions are necessary to prevent disruption, maintain order, ensure safety or to protect the rights of others to an appropriate educational environment. The personal biases of administrators in this regard are not reasonable grounds for limiting the conduct of others.

9. Teachers cannot rely upon the freedom of expression provision to refuse to adhere to mandated curricular treatment of controversial issues. Academic freedom is not supported as a license to present these issues in a distorted or unbalanced manner.

10. Freedom of expression in relation to the criticism of others is limited by professional codes of ethics and conduct.

11. The right to schooling is included in the liberty right; therefore, it is only through the principles of fundamental justice that this right can be restricted through suspension and expulsion of

students. These disciplinary actions are, in all instances, subject to the rules of natural justice and procedural fairness.

12. Varying degrees of procedural safeguards are required in most, if not all, educational matters: if not as a legal requirement, then certainly as an ethical obligation. Examples include the following: (a) the special education placement of students; (b) the treatment of employees in appointments, transfers, promotion, suspension and termination; and (c) searches and disciplinary actions within schools.

13. Charter provisions against unreasonable search and detainment will generally not apply to officials acting in their capacities as delegates of the parents (in loco parentis) or their mandate to maintain order and discipline in schools.

14. Administrators are permitted to search students for suspected violation of school rules provided that the search is not excessively intrusive upon the privacy expectations of students. In the event that the evidence produced could result in criminal prosecution, adherence to the Young Offenders' Act is mandated.

15. Investigations conducted purposively in a criminal matter requires that students be advised of their rights in these proceedings.

16. Charter rights of students not to be subjected to cruel and unusual punishment has not altered a teacher's right as a delegate of the parent to administer corporal punishment. Section 43 of the Criminal Code, requiring that the punishment be justified, and not

excessive or malicious, remains in effect.

Key Implications for Education

From the brief summary of conclusions presented in the previous section, the reader may still be left with the question of "How have the reviewed sections of the Charter changed the lives of people in the board rooms of central office and the offices and classrooms of schools?"

In retrospect, the question should not be where or how the effect of the fundamental freedoms and legal rights provisions will be felt, but for whom. The answer lies in the recognition that the different styles of management of school systems shown by school administrators are as numerous as the schools and school systems which they administer.

Further analysis would require that the characteristics of the officials and teachers be placed on a continuum. At the bright end of the spectrum lies the administrator who performs his duties in a non-arbitrary, appeal-conscious manner with full and complete attention to the worth and rights of the individual. The opposite, dark end, contains the person operating in an autocratic, biased, non-democratic and non-responsive fashion.

For the enlightened administrators at the desirable end of this continuum, the Charter provisions covered in this thesis will likely not change their lives to any extent, on the assumption of course that new court decisions do not change the rules of the game. Conversely,

managers at the low end will undoubtedly be required by the courts to extensively alter their methods.

Canadians have witnessed a number of intolerant actions at individual schools and school systems, all in the name of education. As a result of the inappropriate actions of these relatively few administrators, the professional competency of the total educational community appears to be at risk in the eyes of Canadian society. The scattered accounts of cruel treatment of students for their own good, the arbitrary and unreasonble actions and rules enacted for administrative convenience rather than out of educational concerns, and the unfair abridgement of the rights of students and employees have served to tarnish the reputation of all educators. Is it not predictable, therefore, that the educational profession is viewed in rather a dim light at the present time?

Officials at the low and dark side of the administrative spectrum must heed these feelings of society that have been presented by various writers in this thesis. Recognized legal and educational scholar, Magnet (1984) has identified this mood of citizens and asserts that the Charter may provide for a resolution of these issues when he writes that "I say this with some sadness, and with the hope that continued understanding and flexibility among all involved may help to minimize the acrimony which traditionally accompanies even the most trivial dispute with respect to education " (p. 4).

In the final analysis, the Charter will necessitate that the continuum of educational management style be shortened. Society and,

in particular, the courts will not allow officials to operate at the "dark side". Education will witness a greater similarity of policies and practices among Districts as a result of widespread acceptance of view that "constitutionally protected interests of Canadians in education must be recognized by school authorities not just rhetorically but practically" (Sussel and Manley-Casimir, 1986 p. 228). Only through knowledge of the Charter, educational statutes, and common law will educators understand their practical (legal and moral) obligations in the treatment of others.

Implications for Further Research

One of the most readily apparent facts emerging from the data gathering process of this study is the lack of Charter-related graduate level research emanating from educational administration departments in Canada. A search of computer data bases did not reveal any completed theses or dissertations in this regard. Certainly, expanded study of current school law by educational leaders can only enhance the profession's challenge to further democratize education.

The scope of this study did not allow for examination of additional sections of the Charter that hold implications for even the more enlightened administrator. Three subjects of research come readily to mind:

1. Section 15, the "Equality Rights" provision, when considered in conjunction with the multicultural protection of section 27 and the sexual equality of section 28 promises to be one of the most litigated

areas of the Charter. Of relevance to education are the additional issues related to: special education programs, age-based legislation, sexual discrimination practices, handicapped employees, nepotism policies, and mandatory retirement. Other issues will no doubt be debated according to the provisions of these sections.

2. The "Minority Language Educational Rights" guarantees of section 23 hold direct significance for the provision of minority language programs for students qualified under the Charter. A preliminary review of Alberta provincial legislation and board policies in this regard indicates inconsistencies with the requirements of this section. Because the language guarantees may have the greatest potential for affecting provincial legislation and education costs than any other provision of the Charter, further study is necessary. Additional research may be more useful following the appeal to the Mahe decision which is presently before the courts.

3. Catholic separate school trustees and officials need to be aware of the implications the constitution holds for them, particularly in the areas of equal funding and employment policies.

Implication for the Preparation of School Administrators

At the proposal stage of this thesis, the main objective of the study was focused on the actions an educator would have to undertake in order to avoid conflict with the Charter. This intent perhaps reflected the educational administrator's preoccupation with protecting existing practices and policies, particularly if the

educator has been the author of such policies.

During the course of study and reading it became evident that the original intent had to be revised to focus on the actions and policies officials may initiate that will enhance the rights and freedoms of persons associated with the public educational enterprise rather than what to avoid. Educators must take a proactive position in this regard.

The process of carrying through this study has provided the author an insight into what can be modified within a school system to serve the clientele in the manner which society has a reasonable right to expect.

Nicholls (1984) provides reinforcement to these thoughts in writing that:

> School teachers, administrators and trustees who have a working knowledge of school case law will be more discerning and capable in their decision making, as the legal principles contained in past judicial decisions often provide desirable guidelines for school district and individual school policies and procedures. Not only does an understanding of such principles help to avoid lawsuits, but it assists in developing an equitable school system of optimum benefit to students and society. (p. 7)

It is with this objective in mind that the recommendation is made to post-graduate educational administration departments and institutions to take affirmative action in the provision of advanced courses of study in school and constitutional law. The contention is that this knowledge is too important for our educational leaders to be left as an optional area of study. It is only through these officials that education will make the necessary adaptations to our changing, "rights-conscious" society.

BIBLIOGRAPHY

1. Books, Theses and Dissertations

Anderson, J. C. (1983). Effect of the Charter of Rights and Freedoms on school legislation. Unpublished masters of laws thesis, University of Ottawa, Ottawa.

Anderson, J. C. (1986a). Effect of Charter of Rights and Freedoms on provincial school legislation. In M. E. Manley-Casimir & T. A. Sussel (Eds.), Courts in the classroom (pp. 183 - 201). Calgary: Detselig Enterprises.

Anderson, J. C. (1986b). Rights of employers. In A. C. Nicholls & T. J. Wuester (Eds.), Education and the Charter of Rights and Freedoms (pp. 52-72). Vancouver: EduServ.

Bargen, P. F. (1961). The legal status of the Canadian public school pupil. Toronto: Macmillan.

Beckton, C. (1982). Administrative law and due process in the educational context. In J. F. Pyra (Ed.), Constitutional law: Protection of individual rights (pp. 155 - 185). Saskatoon: University of Saskatchewan.

Black, H. C. (1979). Black's Law Dictionary (5th ed.). St. Paul: West Publishing.

Borg, W. R. & Gall, M. D. (1983). Educational research: An Introduction (4th ed.). New York: Longman.

Burey-Heslop, A. (1983). Understanding the Charter: A Nova Scotia Guide to the Charter of Rights and Freedoms. Halifax: Public Legal Education Society of Nova Scotia.

Cruickshank, D. (1986). Charter equality rights: The challenge to education law and policy. In M. E. Manley-Casimir & T. A. Sussel (Eds.), Courts in the Classroom (pp. 51 - 76). Calgary: Detselig Enterprises.

Enns, F. (1963). The legal status of the Canadian school board. Toronto: Macmillan.

Farley, R. V. (1986). The Charter and students' rights. In A. C. Nicholls & T. J. Wuester (Eds.), Education and the Charter of Rights and Freedoms (p. 26 - 51). Vancouver: EduServ.

Finkelstein, N. (1986). Laskin's Canadian Constitutional Law (5th ed.). Toronto: Carswell.

Gall, G. L. (1983). The Canadian legal system (2d ed.). Toronto: Carswell.

Gibson, D. (1986). The law of the Charter: General Principles. Toronto: Carswell.

Iftody, F. A. (1982). The Board of Reference in Alberta: 1970 - 1982. Unpublished masters of education thesis, University of Alberta, Edmonton.

MacKay, A. W. (1984a). Education law in Canada. Toronto: Edmond-Montgomery.

MacKay, A. W. (1986a). The Canadian Charter of Rights and Freedoms: Implications for Students. In M. E. Manley-Casimir & T. A. Sussel (Eds.), Courts in the classroom (pp. 1 - 50). Calgary: Detselig Enterprises.

MacKay, A. W. (1986b). Making and enforcing school rules in the wake of the Charter of Rights. In A. C. Nicholls & T. J. Wuester (Eds.), Education and the Charter of Rights and Freedoms (pp. 73 - 89). Vancouver: EduServ.

McCurdy, S. G. (1968). The legal status of the Canadian teacher. Toronto: Macmillan.

Nicholls, A. C. (1984). An introduction to school case law. N.p.: British Columbia School Trustees Association.

Paton, R. M. (1977). A Canadian legal perspective on selected administrative processes in education. Unpublished master's thesis, University of Alberta, Edmonton.

Robinson, L. R. (1986). The Charter and searches and seizures in Schools. In A. C. Nicholls & T. J. Wuester (Eds.), Education and the Charter of Rights and Freedoms (pp. 90 - 103). Vancouver: EduServ.

Romanow, R. J. (1986). The Charter's impact on education, policy, and parliament. In A. C. Nicholls & T. J. Wuester (Eds.), Education and the Charter of Rights and Freedoms (pp. 10 - 25). Vancouver: EduServ.

Salhany, R. E. (1986). The Origin of Rights. Toronto: Carswell.

Sussel, T. A. and Manley-Casimir, M. E. (1986). The Supreme Court of Canada as a "National School Board": The Charter and educational change. In M. E. Manley-Casimir & T. A. Sussel (Eds.), Courts in the classroom (pp. 213 - 235). Calgary: Detselig Enterprises.

2. Articles, Publications and Reports

Alberta Education. (1986). Program Policy Manual. Edmonton: Alberta Education.

Alberta Education. (1986, February). Advisory bulletin: Home schooling. Edmonton: Alberta Education.

Alberta School Trustees' Association. (1971). Definition of reasonable: Legal. (No. 104.01). Edmonton: ASTA Reference Service.

Alberta School Trustees' Association. (1986). Report of the home schooling task force. Presented to the 1986 Annual Convention of the ASTA. Edmonton: ASTA.

Anderson, J. C. (1981). Legal issues in education in the eighties. Canadian School Executive, 1 (2); 8 - 11, 22 - 23, 26 - 27.

Anderson, J. C. (1985, September). Charter of Rights and Freedoms. Paper presented at workshop for School District No. 15, Moncton, New Brunswick.

Anderson, J. C. (1986c, October). The Charter of Rights: The effects and implications of our new Charter or Rights on the education system. Paper presented at convention of the Canadian Education Association, Winnipeg.

Anderson, J. C. (1986d, October). Trends and implications for developing policies and practices in the area of students and parents. Paper presented at convention of the Canadian Education Association, Winnipeg.

Anderson, J. C. (1986e, December). Charter has changed school board authority. The Canadian School Trustee, 1 (2), 3.

Anderson, J. C. (1987). Compulsory attendance legislation valid. Canadian School Executive, 6 (8), 25 - 26.

Balderson, J. (1983). Principal ignores rights. Canadian School Executive, 2 (7), 36.

Bergen, J. J. (1982). Students should have appeal procedures. Canadian School Executive, 2 (3), 2 - 5.

Betkowski, N. J. (1986, October). [Press release by Minister of Education]. News Release No. 3. Calgary: Alberta Education.

Blair, D. G. (1983). The Charter and the judges: A view from the bench. Manitoba Law Journal, 13, 445 - 454.

Christian, T. J. (1984). Section 7 of the Charter of Rights and Freedoms: Constraints on state action. Alberta Law Review, 22, 222 - 246.

Cox, A. W. (1984). Charter rights are not absolute. Canadian School Executive, 4 (3), 10 - 13.

Daniels, L. (Principal Investigator). (1986, June). Understanding Charter decisions. Unpublished manuscript of the Charter Watch Project, Faculty of Education, University of British Columbia, Vancouver.

Enns, F. (1981). Legality and administrative action. Canadian School Executive, 1 (3), 24 - 27.

Friesen, D. (1983). Managing freedom and justice in schools. Canadian School Executive, 3 (5), 7 - 10.

Fris, J. (1987). Teachers unhappy about proposed labor law changes in B. C. Canadian School Executive, 7 (2), 9 - 11.

Fulford, R. (1986 December). Charter of wrongs. Saturday Night.

List, W. (1985, July 29). Labor movement discovers Charter is a two-edged sword. The Globe and Mail, p. 133.

MacKay, A. W. (1984b). The Canadian Charter of Rights and Freedoms: A springboard to student rights. The Windsor Yearbook of Access to Justice, 4, 174 - 228.

MacKay, A. W. (1984c). The Charter of Rights and Freedoms: Its implications for young offenders. Unpublished manuscript, Dalhousie University, Faculty of Law, Halifax.

Magnet, J. F. & Pentney, W. F. (1984). The educational implications of the Constitution for trustees. Paper presented at the convention of the Canadian Catholic School Trustees' Association, Calgary.

Orr, F. (1987, June 15). The meaning of Meech Lake. Alberta Report, 14 (26), 4 - 10.

Pyra, J. F. & Watkinson, A. M. (1987, June 1). Student discipline and the Canadian Charter of Rights and Freedoms. Paper presented at the administration conference of the Canadian Association for the Study of Education, Hamilton.

Reynolds, L. A. (1987). The constitutionality of mandatory membership in the teachers' association. Canadian School Executive, 6 (10), 3 - 9.

Schmeiser, D. A., & Wood, R. J. (1985). Student rights under the Charter. Saskatchewan Law Review, 49, 49 - 67.

Solomon, H. (1986, August 24). Legal profession split over Charter of Rights rulings. The Calgary Herald, p. c2.

Sparks, R. K. (1983, July). Before you bring back school dress codes, recognize that the courts frown upon attempts to 'restrict' students' rights. The American School Board Journal, 170 (7), 24 - 25.

Tremblay, L. (1984). Section 7 of the Charter: Substansive due process? University of British Columbia Law Review, 18, 201 - 254.

3. Cases, Acts and Statutes

Chapter II

Alliance Des Professeurs De Montreal v. Attorney General of Quebec, (1985) 21 C.C.C. (3d) 273 (Q.C.A.); revg. 9 C.C.C. (3d) 268 (Q.S.C.)

Bhindi v. British Columbia Projectionists Local 348 (1985) 63 B.C.L.R. 352

British North America Act 1867 (Constitution Act 1867) (U.K.), 30 - 31 Victoria, c.3.

Canada Act 1982 (U.K.), c.11.

Canadian Charter of Rights and Freedoms, as enacted in Canada Act 1982 (U.K.), c.11

Constitution Act, 1982, as enacted by Canada Act 1982 (U.K.), c.11

Hunter v. Southam Inc. (1984) 2 S.C.R. 145

Mahe v. Alberta (1986) 64 A.R. 35

McCutcheon v. Corp. of the City of Toronto (1983) 3 C.R.D. 125.20-01

Quebec Association of Protestant School Boards v. Attorney General of Quebec (1982) 140 D.L.R. (3d) 33

R. v. Jones (1984) 10 D.L.R. (4th) 764 (Alta. C.A.); revising 29 Alta. L.R. 344 (Alta. Prov. Ct.); supplementary reasons 25 Alta. L.R. 359 (Alta. Prov. Ct.)

R. v. Oakes (1986) 65 N.R.87

Weinstein v. Minister of Education for B.C. (1985) 65 B.C.L.R. 46

Chapter III

Alberta School Act, R.S.A., C. S-3

Alberta Union of Provincial Employees v. Attorney General for Alberta (1987) School Law Commentary, 1(a). Case file: 1-9-7.

Choukalos v. Board of Trustees of St. Albert Protestant Separate School District No. 6, unreported, 1962, No. 30393, (Alta.S.C.)

Cromer v. British Columbia Teachers' Federation (1986) 4 B.C.L.R. (2d) 273 (B.C.C.A.); unreported, 22 May 1984, Vancouver Registry No. CA 002576 (B.C.S.C.)

Government of Saskatchewan v. Retail, Wholesale and Department Store Union Locals (1987) School Law Commentary, 1(a). Case file: 1-9-9

Keegstra v. Board of Education of the County of Lacombe No. 14, unreported, 14 April 1983 (Alta. Bd. of Ref.)

Kingston v. School District No. 23 (Central Okanagan), unreported, 1984, Kelowna Registry No. C928/84 (B.C.S.C.)

Lavigne v. Ontario Public Service Employees Union (1986) School Law Commentary, 1(4). Case file: 1-4-7

Morris Rees v. Northland School Division No. 61, unreported, 5 November 1984 (Alta. Bd. of Ref.)

Public Service Alliance of Canada v. Her Majesty the Queen in Right of Canada as Represented by Treasury Board (1987) School Law Commentary, 1(a). Case file: 1-9-8

R. v. Burko (1968) 3 D.L.R. (3d) 330

R. v. Corcoran (1985) 52 Nfld. & P.E.I.R. 308

R. v. Jones (1986) 64 N.R. 241 (S.C.C.), affg. (1984) 10 D.L.R. (4th) 764 (Alta. C.A.); revising (1983) 29 Alta. L.R. 349 (Alta. Prov. Ct.); supplementary reasons (1983) 25 Alta. L.R. 359 (Alta. Prov. Ct.)

R. v. Powell (1985) 63 A.R. 43

R. v. Keegstra (1984) 19 C.C.C. (3d) 254

R. v. Prentice, unreported, 1985, Oshawa Registry No. 101/84 (Ont. Prov. Ct.)

R. v. Wilcox (1985) 36 Alta. L.R. (2d) 243

Ward v. Board of School Trustees of Blaine Lake (1971) 20 D.L.R. (3d) 651

Zyberberg v. Director of Education of the Sudbury Board of Education (1986). School Law Commentary, 1(2). Case file: 1-2-1

Chapter IV

Carriere v. County of Lamont, unreported, 1978, No. 107134 (Alta. S.C.T.D.)

Criminal Code (Canada), RSC 1970, C. C-34.

Hunter v. Southam (1984) 14 C.C.C. (3d) 97

Re Ontario Film and Video Appreciation Society v. Ontario Board of Censors (1984) 5 D.L.R. (4th) 766

R. v. Corcoran (1985) 52 Nfld. & P.E.I.R. 308

R. v. G. (1986) School Law Commentary, 1 (4). Case file: 1-4-1

R. v. H. (1986) School Law Commentary, 1(1). Case file: 1-1-1 (Alta. C.Q.B.); (1985) 43 Alta. L.R. (2d) 250 (Alta. Prov. Ct.)

R. v. Heisler (1984) 7 C.R.R. 1

R. v. Jones (1986) 69 N.R. 241

R. v. Kind (1984) 50 Nfld. & P.E.I.R. 332

R. v. L.L. (1986) School Law Commentary, 1 (3). Case file: 1-3-4

Re Section 94(2) of the Motor Vehicle Act (B.C.) (1985) W.W.R. 481

Taylor v. Board of School Trustees of School District 35 (Langley) (1985) 65 B.C.L.R. 197

Ward v. Board of School Trustees of Blaine Lake (1971) 20 D.L.R. (3d) 651

Weinstein v. Minister of Education for B.C. and Stables (1985) 5 W.W.R. 724

Yarmoloy v. Banff School District No. 102 (1985) 63 A.R. 390

Young Offenders Act (Canada), S.C. 1980-81-82-83, c.110

Chapter V

Kane v. Board of Governors of University of British Columbia (1980) 3 W.W.R. 125

APPENDIX

Law Reports Reference Key

Alta. L.R.	Alberta Law Reports
A.R.	Alberta Reports
B.C.L.R.	British Columbia Law Reports
C.C.C.	Canadian Criminal Cases
C.R.D.	Charter of Rights Decisions
D.L.R.	Dominion Law Reports
Nfld. & P.E.I.R.	Newfoundland and P.E.I. Reports
N.R.	National Reporter
S.C.R.	Supreme Court Reports (Canada)
W.W.R.	Western Weekly Reports

Note: School Law Commentary. Edmonton: Flint Consulting, is also referenced in a number of cases.