



Education Law eBulletin

A newsletter for educators.

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in the courts

Right to wear kirpan at school to be considered by Supreme Court of Canada

Earlier this year, in the case, *Multani (tuteur de) c. Commission scolaire Marguerite-Bourgeoys*, the Quebec Court of Appeal overturned a lower court decision and held that student Gurbaj Singh Multani's religious beliefs and his right to wear his kirpan, the Sikh ceremonial dagger, at school must yield to safety in schools. At the relevant time, Multani had been a grade 7 student. While in the schoolyard, his kirpan fell to the ground and was brought to the attention of school authorities. Multani was initially told to leave the kirpan at home when coming to school, but the school commission then agreed to let Multani wear his kirpan to class as long as it was better protected. However, the commission reversed its decision when its governing board rejected the plan. The Quebec Superior Court subsequently affirmed the right of Multani to wear his kirpan at school. The Court of Appeal, however, held that public safety takes precedence over religious freedom and found that when religious dogma and belief are stripped away from the kirpan, it remains a large blade capable of causing injury to other students.

On October 7th, 2004, the Supreme Court of Canada granted Multani leave to appeal the Court of Appeal's decision. The main issues to be determined by the Supreme Court will be whether the prohibition of the kirpan in school violates the Quebec and Canadian Charter of Rights and Freedoms, and whether the school board has a duty to accommodate Multani.

Interestingly, the Ontario Divisional Court visited this issue more than a decade ago. On April 2, 1991, the Divisional Court released its decision in *Peel Board of Education v. Ontario Human Rights Commission*. In that case, a complaint was filed with the Ontario Human Rights Commission about a policy adopted by the respondent school board prohibiting the wearing of the kirpan by teachers or students on school property. The Board of Inquiry determined that the policy was contrary to s. 10 of the *Human Rights Code, 1981*. The Board of Inquiry found that the policy discriminated against Sikhs, that it was enacted in good faith but was not reasonable in the circumstances as there had never been an incident of kirpan-related violence in any school system in Canada. Alternatively, the Board of Inquiry found that if the policy was a reasonable one, the school board could accommodate the use of kirpans without hardship. It was ordered that the policy be withdrawn and that Sikhs be permitted to wear a kirpan to school subject to certain safety restrictions and limitations. The school board appealed the Board of Inquiry decision to the court on the grounds that: (i) schools are "special places" and the application of the Code must be interpreted in light of that special setting; (ii) the board's policy was reasonable in the circumstances; and (iii) the board would suffer undue hardship if deprived of its policy.

On appeal, the Divisional Court held, first, that there was no reason to give a restricted application of the Code to schools. Second, the onus of proof on the question of reasonableness was on the school board. The Court held that the many safeguards built into the order were evidence that the Board of Inquiry had been cognizant of the genuine concerns of the school board regarding safety. Those safeguards included that the kirpan was to be of reasonable size, worn under the clothing and not visible, and that it be sufficiently secured so that removal would be difficult. The Court also found that the Board of Inquiry properly considered the proportionality as between the objective of safety in the schools and the requirements of freedom of religion. In the absence of any concrete evidence of safety risk, it could not be said that the Board of Inquiry committed any error in law or in principle. Finally, the Court held that the Board of Inquiry had not erred on the issue of undue hardship. Leave to appeal the decision to the Court of Appeal was refused the school board.

Multani's appeal will be the first time this issue is raised before the Supreme Court of Canada. It is difficult to predict how the Supreme Court will decide the case as safety concerns in schools today have intensified since 1991. We will bring you more information on this matter as it becomes available.



human rights

Human Rights Commission releases Guidelines on Accessible Education

On November 30, 2004, the Ontario Human Rights Commission released its long-awaited: "Guidelines on Accessible Education" after a lengthy consultation process. The Guidelines represent the Commission's interpretation of how the Ontario Human Rights Code applies to the provision of educational services for students with disabilities, but are not legally "binding" in and of themselves. The Guidelines address a broad range of issues, including accommodation of pupils with special needs, confidentiality of pupil information, discipline of students with disabilities, accessibility issues, and prevention of harassment and bullying. Many of these issues are addressed elsewhere in legislation such as the *Education Act*, and in case law. A review of these issues in the Guidelines should certainly be considered in the context of this other binding law. In any event, school boards would be well-advised to review the new Guidelines in order to familiarize themselves with the Commission's stated interpretation of these issues. The Guidelines may also provide helpful information to assist school boards in facilitating their accommodation processes for pupils with special needs. The Guidelines can be found on the Ontario Human Rights Commission's website located at www.ohrc.on.ca.

new legislation

Legislation ending teacher testing passed

The Provincial government announced that the Professional Learning Program, a mandatory re-certification program for teachers requiring the completion of prescribed courses, was abolished by the *Professional Learning Program Cancellation Act, 2004*, which passed on December 15, 2004. The Act received Royal Assent on December 16, 2004, and so now is in force.

safe schools

Safe Schools Action Team announced

On December 14, 2004, the Ontario Government announced the appointment of a new Safe Schools Action Team. The four-member Team is charged with implementing the McGuinty government's action plan for addressing safety in Ontario schools. The action plan includes a multi-faceted approach to school safety with a \$9 million allocation for this school year. A province-wide system of safety audits will allow the Team and individual schools to assess local safety issues. School boards will be able to access funding for surveillance cameras to monitor school entrances. The plan also introduces an anti-bullying program into schools and establishes an anti-bullying hotline for students. Finally, the Safe Schools Action Team will undertake a review of the *Safe Schools Act*, relying on experts across the province in the process.

We welcome your comments and questions. Send them, and any updated contact information, to byrdena.macneil@shibleyrighton.com. If you wish to unsubscribe to this eBulletin, please send a blank e-mail to unsubscribe@shibleyrighton.com

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case law

W.Y. v. Bella

Newfoundland and Labrador Court of Appeal

A majority of the Court of Appeal found that s. 38(6) of the *Child Welfare Act* precluded a student from suing her former University for negligently reporting her to Child Protection Services for investigation.

Board of Education of Red Coat Trail v. Canada (M.N.R.)

Tax Court of Canada

The Court upheld the trial judge's finding that a resource worker was an employee of a school board under a contract for services and not an independent contractor for taxation purposes.

Little (lit. guard. of) v. Chignecto Central Regional School Board

Nova Scotia Supreme Court

The Court held that a school need not keep students under constant supervision but must meet the standard of a reasonably careful and prudent parent and that there must be well-known, clear policies dealing with the safety and discipline of students.

Fox v. British Columbia College of Teachers

British Columbia Supreme Court

The Court upheld the authority of the B.C. College of Teachers to issue disciplinary citations initiating formal hearings against three teachers who had successfully grieved their employer's discipline for the same incidents.

Summaries of these cases and others can be found in the Shibley Righton Education Law NetLetter published by Quicklaw. Visit www.quicklaw.com.

