

Exploring the Landscape of Human Rights Cases Impacting Canadian Schools

by
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In May 2024, Donna Reid and I started Pendulum Law Ltd., a legal publishing firm surveying education law cases, identifying and documenting trends related to Canadian schools and universities law, and disseminating important and timely information within the education law community. We aim to update educational leaders and professionals on new legal developments, emphasizing practical implications and applications for professional practice. In contemplating an article related to human rights in the educational setting, we knew there was no shortage of recent cases to draw upon. We acknowledge that all human rights cases involve the lived experiences of others, and we respect and appreciate the knowledge gained from their trials.

Provincial Human Rights Legislation

In Canada, provincial human rights legislation prohibits discrimination in the provision of educational services on the basis of race, colour, ethnicity, place of origin, religion, marital or family status, physical or mental disability, sex, gender, sexual orientation, age, or class. This applies to public schools, independent schools, colleges, and universities.

In British Columbia, there is the opportunity to resolve a concern or complaint at a school, district, or Ministerial level, but a person may also file a human

rights complaint with the British Columbia Human Rights Tribunal (BCHRT), alleging discrimination under the BC *Human Rights Code* ¹ (the *Code*). Where a complaint involves a child, the complaint is typically filed by a parent or guardian. Only in very specific circumstances will a human rights complaint in the educational setting fall under the ambit of the *Canadian Charter of Rights and Freedoms*.

Human rights complaints are presumptively public. Once filed, human rights complaints at the tribunal or court level, like other litigation, become a matter of the public record. While tribunals may grant an anonymization order or publication ban regarding minor students and individual educators (pending the outcome of the case), there is less willingness to do so for schools and districts. ²

Recent Human Rights Cases Impacting Schools

In the past year, there have been several human rights cases involving teachers, administrators, and schools in Canada. Topics have included teacher privacy (Ontario), private prayer space for students (Alberta), differential treatment in

¹ RSBC 1996, c 210

² *Child K and another v. Queen of All Saints School*, 2024 BCHRT 150



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denial of re-enrollment (Ontario), and reasonable accommodations for students with disabilities (BC). Legal outcomes depend on the specific facts and legislative framework for each case.

In *Webber Academy Foundation v. Alberta (Human Rights Commission)*³, the Supreme Court of Canada denied leave to appeal a decision of the Alberta Human Rights Commission that failing to provide students with access to quiet, private prayer space at school was discrimination on the basis of religion. That case ultimately took more than twelve years to resolve through the legal system; the Commission awarded each of the students – none of whom had attended the school for more than a decade – \$18,000 in damages, along with other systemic remedies.

In *S.R. v. Matthews Hall*⁴, the Human Rights Tribunal of Ontario held that failing to provide sibling students with a re-enrollment package (denying school re-enrollment) was discrimination on the basis of race and ethnicity contrary to the *Human Rights Code*.⁵ In addition to public interest remedies, highlighted later in this article, the school was ordered to pay \$75,000 in compensation for injury to dignity, feelings, and self-respect, with interest in accordance with the *Courts of Justice Act*.⁶ The HRTTO also held the Principal personally responsible for their part in the discriminatory conduct – they were ordered to pay

an additional \$20,000, in part, for refusing to meet with the family.

More recently, and closer to home, is the ongoing case of *Child K*. In that case, a parent filed a complaint with the BCHRT alleging that the child's school had failed to meet the child's disability-related needs. The parent later added themselves as a complainant, alleging that they were adversely impacted by the school's failure to accommodate their child's disabilities, constituting discrimination based on family status.⁷ The case has been permitted to proceed to a full human rights hearing for a decision on the merits.

What About the Canadian Charter of Rights and Freedoms?

The vast majority of human rights cases are navigated at the provincial level. Cases invoking the *Canadian Charter of Rights and Freedoms* (the *Charter*) are more limited, as the Charter applies to entities which are considered an extension of government.⁸ Where an entity is found to be "government", the *Charter* applies to its actions.

In *York Region District School Board*, a recent workplace privacy case involving two elementary school teachers, the Supreme Court of Canada held that the *Charter* applied to Ontario public school boards, with the caveat that each case depends upon its specific factual and statutory context.⁹ In this case, a Principal took screenshots of a private Google Doc and used them in subsequent reprimands, which was found to be an invasion of the teachers' privacy contrary to section 8 of the *Charter*: the right to be secure against unreasonable search or seizure in the workplace.

The teachers were instructed by their union to keep notes of workplace concerns and had a reasonable

3 2024 CanLII 22674 (appeal from 2023 ABCA 194)

4 2024 HRTTO 680

5 R.S.O. 1990, c. H. 19

6 RSO 1990, c C.43

7 *Independent School Authority v. Parent*, 2022 BCSC 570

8 *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R.

9 *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22

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expectation of privacy in the Google Doc, given that it was stored in the cloud rather than on a school board server. The union grieved the reprimands, requesting damages for breach of privacy.

The case went to the Supreme Court of Canada, providing an opportunity for the Court to determine *Charter* applicability to Ontario public school boards. A review of the *Education Act*¹⁰ confirmed that Ontario public school boards are government by nature and therefore subject to the *Charter*. The Court held that actions carried on by Ontario public school boards are subject to *Charter* scrutiny, including the Principal's actions in this case, as the Principal acted in their official capacity as an agent of the Board – a statutory delegate – and not in their personal capacity.

Not all jurisdictions have legislation identical to Ontario's *Education Act*, so the case is not a blanket precedent. The Supreme Court carefully cautioned that whether the *Charter* applies to Canadian public school boards depends upon the specific factual and statutory context of each case. However, the facts of the case were straightforward and could have happened anywhere. The decision serves as an authority for the legal proposition that where public school boards are an arm of government, exercising powers conferred upon them by a provincial legislature – powers and functions the legislature would otherwise have to perform – there is a strong likelihood that *Charter* rights and freedoms, and correlating responsibilities, will apply. Public school boards should take this decision seriously, and use it to inform their conduct.

**Monetary Awards, Public Interest
and Systemic Remedies**

The usual remedy for a human rights breach – such as discrimination or invasion of privacy – is an award of monetary damages, intended to restore a person to the position they would have been in had the

breach not occurred. A monetary award provides compensation for intrinsic harm – injury to feelings, dignity, and self-respect – caused by discriminatory conduct,¹¹ recognizing that human rights have intrinsic value independent of actual monetary or personal losses suffered by an individual.

In rare cases where it is not possible for the legal system to make a person “whole” through a damages award, a public interest remedy or systemic remedy may be ordered. Typically, in addition to a monetary award, a systemic remedy may include measures intended to address the systemic “root cause” of the discrimination, prevent it from happening in the future, and promote the purposes of human rights legislation.

In *Webber Academy*, the Alberta Human Rights Commission ordered the school to refrain from future contraventions of the *Alberta Human Rights Act*¹² and ordered a representative of the school's administration to attend or subscribe to an educational program on the duty to accommodate.

Similarly, in *Matthews Hall*, the school was ordered to hire, at its own expense, a recognized human rights expert to conduct a human rights audit and provide in-depth human rights, diversity, equity, and inclusion training to the school's Board of Governors and all administration, teachers, and staff. The audit had to include a review of the school's communication policies, procedures, and contingency plans, together with an assessment of whether the school required a social worker for community support and counselling services for students and staff. *Matthews Hall* was also ordered to hire, at its own expense, an independent expert in leadership and communication to provide leadership, conflict resolution, and communication

¹¹ *Arunachalam v. Best Buy Canada*, 2010 HRTO 1880

¹² *RSA 2000, c A-25.5*

¹⁰ *RSO 1990, c E.2.*

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skills training for senior administration and the Chair of the Board, and to provide confirmation of completion of the mandated audit and training within 60 days of completion.

Additionally, in a recent but already much-cited case, the Human Rights Tribunal of Ontario mandated a university admissions pilot project for students with disabilities, impacting the postsecondary admissions landscape in Ontario and elsewhere.¹³ In that case, a student made a human rights complaint based upon their experience of the university admissions process, alleging discrimination with respect to educational services because of disability, contrary to the *Human Rights Code*.¹⁴ Given the passage of some eleven years in that case – owing in part to

the legal process – the complainant no longer sought university admission. Instead, they sought systemic change, so that others in similar circumstances could rely upon an enabling admissions process with accommodations if needed.

Why is an Exploration of Recent Human Rights Cases Important?

These cases were selected and shared to cultivate awareness and learning from the experiences of others. It is important for educational leaders to have a basic understanding of the implications of human rights legislation on the education system, including the fundamental categories and grounds for discrimination, together with the duty of reasonable accommodation to the point of undue hardship. An awareness of the rights and responsibilities of stakeholders – students, teachers, and administrators – will lead to better decision-making, enhanced professional practice, and promotion of the fundamental purposes of human rights legislation. Creating quality educational environments is not easy in an increasingly complex and demanding world, but basic knowledge of human rights legislation and processes will promote inclusive, accommodating environments which are happier learning spaces for all.

¹³ *Longuepée v. University of Waterloo*, 2024 HRTO 707

¹⁴ R.S.O 1990, c. H.19



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About the Author

Anna Zadunayski BA, LLB, MSc, is a Calgary-based lawyer, ethicist, researcher, writer and editor. A partner at Pendulum Law Ltd., providing practical legal information for interdisciplinary professionals, Anna is also a research associate and preceptor at the University of Calgary. A busy mother of three high-performance student athletes, Anna is also President of the Killarney Swim Club, a community-based competitive swimming club for youth of all ages.

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