

Book Review

Education Law

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The field of education law, like other fields of law, is constantly changing. As the authors of *Education Law*, Anthony F Brown and Justice Marvin A Zuker, of the Ontario Court of Justice, note in the first paragraph of the Preface to the Third Edition:

Education law will always be important to those of us who are interested in children. In fact, the seemingly endless proliferation of new statutes, regulations, case law and government memoranda speak of the need to be ever vigilant of how new laws affect education. The challenge for lawyers and educators, then, is to harness the knowledge of this ever-growing field so that we can all make our schools better places for all children. Education law is a dynamic, invigorating and intellectually stimulating discipline because it is constantly evolving. That evolution is reflected in the changes to this edition of *Education Law*. (p. v)

The Third Edition of *Education Law* provides an excellent account of current developments in education law in Canada. It is thoroughly researched and clearly written, and skillfully clarifies the complexities of the legal issues which arise for educators and administrators involved with the provision of education. The hard cover text is attractively presented and includes a Table of Cases and a useful Index.

Chapters 1 and 2 deal with the legal obligations of school boards. Chapter 1 deals with legal issues facing School Boards in their corporate capacity. The scope of these issues is clearly defined in detailed discussion of legislative provisions and key cases. For example, the provincial jurisdiction over education, arising from *The Constitution Act 1867* and the *Canadian Charter of Rights and Freedoms*, raises legal issues in matters such as denominational rights, the funding of private schools, the hiring practices of separate school boards, minority language education rights, native education, the organization of school councils, and pupil representation. There is a similarly comprehensive account of aspects of the exercise of provincial power over education, and of the exercise of delegated power by school boards, as well as of issues germane to the operation of School Boards. Matters discussed include procedural fairness and natural justice, public access to board meetings, conflict of interest, access to information held by the boards, the

property of the boards, and the election of members of the boards. Finally, the legal obligations of private schools are canvassed. Chapter 2 deals with the civil liability of school boards and their employees. It covers negligence, limitation period, occupiers' liability, intentional torts, fiduciary duty, educational malpractice and risk management.

The Introduction to Chapter 3 notes, at p 150, that:

Schools do not exist in a vacuum, nor does education law. As a field of study, education law brings in elements of administrative, tort, corporate, criminal, constitutional and family law. Trends and developments in education law often mirror or shadow developments that happen in society at large and may reflect what is happening to the 'family'. Moreover, the breakdown of family relationships has ramifications in respect of how schools cope with the effects of broken families and domestic violence. Family breakdown also spills over into the ability of individual children to learn when caught up in the breakdown.

This is the rationale for the brief overview of Canadian law relating to the family, marriage, divorce, custody and access, domestic violence and spousal abuse, and a discussion of parental authority, including the use of corporal punishment, which is correctly identified as 'a family issue as well as a school issue'. (at p 150)

Chapter 4 deals with issues relating to pupils and the law. Issues relating to school attendance, discipline and searches are discussed in the light of the relevant statute and case law. A detailed account is provided of statutory developments in Ontario relating to the suspension and expulsion of students, and legal issues relating to procedural fairness in dealing with students, students' freedom of speech, disciplinary measures, academic penalties and student dress codes are surveyed, and relevant Canadian and United States cases are discussed. The depth of the authors' knowledge is shown by the broad range of the issues covered in this Chapter, which also includes discussion of issues related to student internet use, confidentiality and privacy in dealing with matters relating to the health, safety or welfare of students, the administration of medication to pupils, the legislation relating to youth criminal Justice in Canada, and the keeping of student records. Relevant sections of the Canadian *Young Offenders Act* 1985 are included in the Appendix to the book. Chapter 5 is devoted to Special Education, with particular emphasis upon special education law in Ontario. Legal issues relating to the discipline of exceptional pupils are also discussed, as are human rights issues and the Canadian Charter.

The final chapter, Chapter 6, deals with teachers. The Chapter commences with an interesting discussion of the teacher as role model, and canvasses issues relating to teacher misconduct, exploitation and harassment in the context of off-duty discrimination, statutory protection of students, child abuse and sexual harassment. A major section of the chapter is devoted to the content of the *Ontario College of Teachers Act*, 1996 and the regulations made thereunder, relating to teacher qualification and registration, and evaluation of teacher competence and performance. Case law relating to matters such as the use of vulgar language in the classroom, criticism of education policy, and teachers' lifestyle/sexual behaviour is also discussed. Finally, there is a discussion of the application to educational institutions of certain sections of the

Canadian Charter of Rights and Freedoms, the text of which is included in the Appendix to the book.

Conclusion

In *Education Law - Third Edition*, Anthony Brown and Justice Marvin Zuker provide a thorough analysis of contemporary issues in Canadian education law. The book is a valuable text for Canadian educators and educational administrators. However, in my opinion, it also deserves a place on the library shelves of educators and educational administrators in other countries. Although the historical antecedents and constitutional arrangements of the Canadian federation have given rise to a legal framework for education which is unique to Canada, the legal complexities of the provision of education in modern democratic societies in the twenty-first century are not unique to Canada. Consequently, the insights provided by the authors in their analysis of and commentary upon contemporary issues in Canadian education law should be of significant interest to thoughtful educators, administrators and lawyers in other countries who are confronting daily the realities of current and developing legal issues in the provision of education in their Jurisdictions.

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