

EDST 552/Summer 2B
School Law
July 24th – August 11th, 2017
PCOH 1011
8:00-10:30
Dr. Gerald Fallon
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Purpose

The education law issues of today are more diverse and complicated than ever before. Increasingly, those involved in education, whether as teachers, administrators or educational assistants, are facing new issues that are unique to the field. Participants will examine, discuss, and analyze education law issues, including those arising from student discipline, safe schools, negligence and liability, human rights, school staff rights and responsibilities, freedom of information, and special education.

Course Objectives

The objective of this course is to give participants a better understanding of federal and provincial legislations and the common law as they affect the administration and practice of education in British Columbia and in the rest of Canada. More specifically, participants will be introduced to the fundamentals of the discipline of law and, while the objective is not to turn educators into lawyers, it is expected that the course will enable participants to:

- Demonstrate a working knowledge of basic legal concepts related to their practice;
- Demonstrate the ability to analyze, synthesize, and extract the appropriate principles of law from legal cases, and evaluate their significance and implication for educators; and
- Demonstrate communication and research skills appropriate to the graduate level.

It is hoped that the cumulative effect of the achievement of these objectives will enable participants to view the educational system from a legal perspective and to analyze educational policies and practices, and the laws that affect them, through an alternative set of critical lenses.

Format

Instruction will consist of a combination of lectures by the instructor and guest speakers, participant presentation of cases, and small and large group discussions of legal issues and of assigned materials. As a community of learners, you will be expected to share your personal, professional, and collaborative queries, explorations, and expertise through group discussions and projects. Participants will also need to have recourse to both the Law Library and the Faculty of Education Library, and other sources, including the Internet, for the purpose of researching and preparing their seminar presentations and final papers.

Assessment

Assessment will involve the following methods:

- **A CASE BRIEF** of an educational case selected by the instructor (Team work – 2 members). The brief should be 3 - 5 double-spaced typewritten pages and will be worth 25 percent of the final grade.

Further particulars of the requirements of this assignment will be explained during the first class. The first assignment will be due at the end of the first week, July 29th 2017 (Saturday) at 16:00.

- **A CASE PRESENTATION** (Team Work – 2 members) worth 35 percent of the final grade. Each team will be required to lead a seminar (approx. 20 to 30 minutes) based on the assigned case or cases (depending on the case topic and class size), relevant to the day's discussions. It is expected that case presentations will provide an analysis, which will extend beyond the readings/preparation assigned to class members in general. Indeed, secondary sources materials and comments, and additional group discussion questions or exercises should augment case presentations. Participants will be free to choose the format of their presentation (i.e. lecture, small groups, debate, role-play, etc.). Discussion among presenters of cases sharing similar issues and topics will be strongly encouraged. Summary handouts, limited to 3 – 5 pages, should be provided for each member of the class. Participants may select their own cases from the list provided by the instructor.
- **A FINAL PAPER** worth 40 percent of the final grade (Team work of 2 members). This paper may take the form of either a case study or a review essay. Participants choosing the case study format can choose one critical legal issue in education (a list of critical legal issues in education will be provided) or create a hypothetical fact situation involving several legal issues relating to the course. They will identify and apply relevant legal principles from statute and case law in order to suggest an appropriate legal solution. Participants choosing a review essay will choose a conceptual topic related to the content of the course. They will be expected to identify the legal issues involved in their topic and identify and explain the legal principles that relate to these issues. Regardless of which format participants choose, they will be expected to state the implications of their paper for educational policy and practice, and make recommendations, where appropriate, for reform of the law and/or educational policy. The suggested length for this paper is approximately 10 to 15 double-spaced typewritten pages. The paper is due on August 14th (Monday), 2017 by 16:00. For those students part of REA5 (Richmond Cohort) and NSE6 (North Vancouver Cohort), your last assignment will be marked in priority in order to enter your final mark and be part the graduation ceremony in November 2017.

Common criteria for all assignments

All assignments should be double-spaced using Times or Times New Roman, 12-point font. Conventions of written English language usage should be followed. All submissions should be checked for spelling and grammar and proofread. ***APA style*** should be used for all citations, quotes and reference lists. Guidelines for APA style can be found at <http://www.library.ubc.ca/pubs/apastyle.html>. Papers should be well organized, with an introduction and conclusion, and use headings and subheadings as appropriate. Assignments should be submitted as e-mailed attachments unless otherwise arranged with the instructor. Please keep a copy of all submitted assignments.

Continuous Class Work

Course participants are expected to attend all classes, to come well prepared, and to participate in all class discussions and activities. Preparation for class includes critically reading the required readings and preparing notes prior to class. Critical reading means paying attention to the meanings of words and phrases, the author's purpose, and how authors build their argument. It also means paying attention to how you respond emotionally and cognitively to the readings—how do you feel after reading them? What do you agree with and why? What do you disagree with and why? What passages stand out for you and why? Quality contributions in the class are more important than quantity. Contributions to the class community include respectfully offering your own views; listening respectfully and reflecting upon the views of others; drawing others into the discussion; asking questions for clarification; responding to any

conflicts in a mature fashion; having patience with ambiguity and confusion; communicating any concerns about the course to the instructor.

Policy Regarding Late Assignments and Class Absenteeism

All assignments are due on or before the date stated in the course outline. If you cannot meet a deadline, notify the instructor in advance and explain why you are unable to meet the deadline. Negotiate an appropriate revised due date. Classes are designed to provide opportunities for students to learn through interaction with the instructor and other students, and possibly with guest speakers. When classes are missed this learning is irreplaceable, therefore attendance and participation are important in order to optimize the course experience. Students are asked to notify the instructor in advance if they are unable to attend a particular class. Students who miss a class may be asked to complete an additional assignment to demonstrate proficiency with the content missed. Students who miss two or more classes may be asked to withdraw from the course.

Email and Phone Calls

If you do not get a return email within 24 hours, please email again. I check emails and phone messages from Monday to Friday and respond quickly.

Disability and Accommodation

If you have an impairment that requires accommodation in this course, please speak to me or provide me with documentation and recommendations from the Disability Resources Centre.

Policy Regarding Academic Misconduct

The integrity of academic work depends on the honesty of all those who work in this environment and the observance of accepted conventions such as acknowledging the work of others through careful citation of all sources used in your work. Plagiarism -including self-plagiarism - and other forms of academic misconduct are treated as serious offences at UBC, whether committed by faculty, staff or students. You should be aware of the sections of the University Calendar that address academic integrity (<http://students.ubc.ca/calendar/>) and plagiarism (<http://www.vpacademic.ubc.ca/integrity/policies.htm/>). The UBC library also has a useful web-based Plagiarism Resource Centre that explains what plagiarism is and how to avoid it (www.library.ubc.ca/home/plagiarism/). If you have questions or concerns about any of 5 these policies or conventions in relation to how they apply to the work you do in this course, please discuss them with the instructor.

COURSE SCHEDULE, KEY CONCEPTS & QUESTIONS, GOALS, AND REQUIRED READINGS

Date: July 24th, 2017

Pre-Class Readings for July 24th, 2017

- a. Redfield, S.E. (2001). Why educators need to know the law. *Orbit*, 32(2), pages 14 – 16.
- b. Saskatchewan student's marijuana research spurs lockdown and suspension by JOE FRIESEN - From Wednesday's Globe and Mail - June 20, 2007 at 4:33 AM EDT.
- c. Shariff, S. (2001). The Charter of Rights and Freedoms: The case of school censorship. *Orbit*, 32(2), 20–23
- d. Carter, J.H. (2004). Surrey, British Columbia: Book Ban in the Courts, *Journal of Gay & Lesbian Issues in Education*, 1(4), 81–85

Primary Goals, Key Concepts & Exploration Questions:

- Introduction and general course administration:
 - Purpose and objectives
 - Structure
 - Personal and/or group assignments
 - General criteria for grading graduate assignments (Briefs, papers, and seminars)
- Participants' personal knowledge of the law and its impact on the work of educators:
 - What are the main reasons to know the law in an educational context?
 - What do we already know?
 - What would we like to know more about (research questions)?
 - Group work on the special issue of *Orbit*: sharing and synthesis of the main legal issues faced by educators in school systems (the reading was assigned in mid-June)
- Case study and discussion: *Free speech goes up in smoke at school: Saskatchewan student's marijuana research spurs lock down and suspension*
- Explanation of assignment 1: Formulation of a case brief – summary of the key features of a legal case (See Appendix A for evaluation criteria)
- The nature of law:
 - Socio-cultural paradigms and legal traditions
 - The framework of law in Canada
 - Legal control over education
 - Role of the Canadian Constitution and overview of the *Canadian Charter of Rights and Freedoms*
 - Canada court systems
- Explanations of assignment 2: A case presentation (See Appendix B for evaluation criteria)

Case Presentation Assignment Sheet

Date	Cases	Legal Issues	Presenters
	<p style="text-align: center;">Auton v. British Columbia https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2195/index.do</p>	Equality rights & mental disability	
	<p style="text-align: center;">Moore v. British Columbia http://www.ldao.ca/wp-content/uploads/Jeffrey-Moore-Supreme-Court-decision-2012.pdf</p>	Human rights– Discrimination– Prohibited grounds– Mental or physical disability– Education	
	<p style="text-align: center;">R. v. Audet http://scc.lexum.org/en/1996/1996scr2-171/1996scr2-171.html</p>	Sexual offences–Meaning of terms “position of authority” and “position of trust”	
	<p style="text-align: center;">A.B. v. Bragg Com. Inc. http://www.lexisnexis.ca/documents/2012scc46.pdf</p>	Children — 15-year old victim of sexualized cyberbullying.	
	<p style="text-align: center;">R. v. M. (M.R.) http://scc.lexum.org/en/1998/1998scr3-393/1998scr3-393.html</p>	Search and seizure in schools	
	<p style="text-align: center;">Kemplin v. British Columbia College of Teachers http://www.courts.gov.bc.ca/jdb-txt/sc/04/01/2004bcsc0133.htm</p>	Right of teachers–Freedom of speech	
	<p style="text-align: center;">British Columbia Teachers' Federation v. British Columbia Public School Employers' Assn. http://www.canlii.org/en/bc/bcca/doc/2009/2009bcc39/2009bcc39.pdf</p>	Rights of teachers– Freedom of speech of members of a teachers’ union	
	<p style="text-align: center;">Abbotsford School District 34 Board of School Trustees v. Shewan and Shewan http://www.canlii.org/en/bc/bcsc/doc/1986/1986canlii879/1986canlii879.pdf</p>	Right of teachers–Notion of misconduct; off-duty conduct	
	<p style="text-align: center;">Hazelwood School District et al. v. Kuhlmeier https://supreme.justia.com/cases/federal/us/484/260/case.html</p>	Freedom of speech of students – School newspaper	
	<p style="text-align: center;">J.S. v. Blue Mountain School District http://caselaw.findlaw.com/us-3rd-circuit/1506476.html</p>	Freedom of student speech in cyberspace	
	<p style="text-align: center;">British Columbia Teachers’ Federation and Sooke Teachers’ Association v. The Board of Education of School District No. 62 (Sooke) http://www.bcpsea.bc.ca/documents/ai2009-31-award.pdf</p>	Professional Autonomy of Public School Teachers	
	<p style="text-align: center;">British Columbia Teachers’ Federation v. British Columbia 2015 BCCA 184 https://www.canlii.org/en/bc/bcca/doc/2015/2015bcc184/2015bcc184.pdf</p>	The constitutionality of legislation that limits the bargaining rights of teachers	
	<p style="text-align: center;"><i>Crouch v. Snell</i>, 2015 NSSC 340 http://www.courts.ns.ca/Decisions_Of_Courts/documents/2015nssc340.pdf</p>	Cyberbullying	

Guidelines for Presentations

In preparing your case presentation, try to gauge the effectiveness of your presentation on the following criteria:

- a) **Clarity and Interest:** As experienced educators, it is expected that presentations will be involving as well as informative. Avoid over-reliance on lecture.
 - b) **Thoroughness:** Your colleagues should come away from your presentation with a sufficiently thorough grasp of the material to be able to discuss it intelligently.
 - c) **Depth of Analysis:** Demonstrate an awareness of differing points of view or perspectives on a given legal concept, originality, insight, and creativity; the presentation goes beyond repeating what others have said and contribute something new to our understanding of the legal concept used as the topic.
 - d) **Argumentation:** Take or defend a position using logical & legal arguments and carefully elected supportive details and legal cases.
 - e) **Discussion:** The degree to which you have achieved the above goals should be reflected in the liveliness of the subsequent discussion with your colleagues.
- Explanations of assignment 3 (between 10 to 15 pages) - Exploration research questions (See Appendix C for evaluation criteria):
 - Can a lack of special education programs due to under-funding by the Province be considered discriminatory?
 - Can placement decisions regarding students with special needs be based upon category of disability, severity of disability, availability of special education and related services, configuration of the service delivery system, availability of space, or administrative convenience?
 - The *Charter* protects people against unreasonable searches but does it apply to students at school?
 - What circumstances justify the search of students or their belongings?
 - What constitutes "reasonable grounds" for searching students?
 - What other factors determine whether a search is reasonable or unreasonable?
 - Can a school district be sued for educational malpractice¹
 - Do the standard of care and statutory duties of educators in the public system change in the context of budget constraints or reductions?
 - When does the selection of appropriate educational resources by educators become censorship?

¹ The concept of educational malpractice refers to the alleged failure to impart knowledge or to teach practical skills, and particularly, that a school district or school system has failed to provide the student or plaintiff with the academic skills necessary to undertake the most rudimentary tasks involved in coping with life in society (Brown & Zuker, 2002).

- What are the legal challenges related to the ability of schools to discipline students for conduct that occurs on the Internet?
- What are the legal remedies of an educator in the case of parental harassment?
- What is the standard of care of coaches to athletes in schools?
- What is the legal status of home schooling in British Columbia? In the context of home schooling, who is legally responsible for ensuring that children receive a satisfactory level of education?
- Under what circumstances may students' freedom of speech be limited in school?
- Under which circumstances may teachers' and school administrators' freedom of speech be restricted?
- Is it possible that a rule prohibiting the wearing of kirpans at school is reasonable and justifiable?
- Are bargaining rights of teachers protected by the *Charter of Rights* in Canada?
- Are school boards liable for teacher sexual misconduct?
- What is the legal meaning of the concept of fiduciary duty to students?
- What is "accommodation" in the workplace?
- What is the legal definition of professional autonomy of teachers within the context of public school?
- Can a school district cut special education programs in a time of finding cuts?
- *Assignments for July 29th, 2017*
 1. Assignment 1(See Appendix A for evaluation criteria): Case brief of a case selected from the following list of cases:
 - a. Okwuobi v. Lester B. Pearson School Board; Casimir v. Quebec (Attorney General); Zorrilla v. Quebec (Attorney General) – See: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2216/index.do>
 - b. Central Okanagan School District No. 23 v. Renaud – See: <http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/910/1/document.do>
 - c. Arsenault-Cameron v. Prince Edward Island – See: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1762/index.do>
 - d. Delgamuukw v. British Columbia – See: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1569/index.do>
 - e. Multani v. Commission scolaire Marguerite-Bourgeoys – See: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15/index.do>
 - f. R. v. Zundel – See: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/904/index.do>
 - g. United States v. Drew – See: <http://www.scribd.com/doc/61217247/US-v-Drew-aug-29-2009>
 - h. Mahe v. Alberta – See: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/580/index.do>

- i. Brown v. Board of Education – See:
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=347&invol=483>
- k. Jubran v. North Vancouver School District – See:
<http://www.canlii.org/en/bc/bcca/doc/2005/2005bccca201/2005bccca201.pdf>
- l. British Columbia Teachers' Federation v. British Columbia, 2014 BCSC 121– See:
<http://www.canlii.org/en/bc/bcsc/doc/2014/2014bcsc121/2014bcsc121.html>

Date: **July 25th, 2017**

Pre-Class Readings for July 25th, 2017

a) Young, M. (2015). Charter Eviction: Litigating Out of House and Home – Available at:
<http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1208&context=jlsp>

b) Young, M. (2010). Unequal to the task: “Kapp”ing the substantive potential of Section 15. *Supreme Court Law Review*. 50, 183–219.

c) Koshan, J. and Hamilton, J.W. (2013) The Continual Reinvention of Section 15 of the Charter - Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2244637

Primary Goals, Key Concepts & Exploration Questions:

- Issues of social justice and the courts.
- The legal test
- Substantive equality and formal equality
- Section 15 of the *Charter*

Invited Guest: Dr. Margot Young

Margot Young is Professor in the Allard School of Law at the University of British Columbia. After studying at the University of British Columbia, the University of Toronto, and the University of California, Berkeley, Professor Young began her teaching career at the Faculty of Law at the University of Victoria. In 1992, she moved to the University of British Columbia.

Professor Young teaches in the areas of constitutional and social justice law. She is faculty advisor for the Social Justice Specialization at the law school and has organized the Law and Society Speakers Series for close to a decade. Professor Young is in her third term as Chair of the university-wide Faculty Association Status of Women Committee. She is a research associate with Green College, the Peter Wall Institute of Advanced Studies, and the Centre for Gender, Race, Sexuality and Social Justice at UBC. Professor Young’s research interests focus on equality law and theory, women’s economic equality, urban theory, and local housing politics and rights. She is also working on the intersections between environmental justice, social justice, feminism, and human rights.

Professor Young was co-editor of the collection *Poverty: Rights, Social Citizenship and Legal Activism* and was recently co-Principal Investigator of the Housing Justice Project (HousingJustice.ca). She is widely published in a variety of journals and edited books.

Professor Young is a member of the editorial boards of the *Canadian Journal of Women and Law*, the *Review of Constitutional Studies*, *Studies in Housing Law* and is on the advisory board of the *Windsor Yearbook of Access to Justice*. In 2016, she will be assuming co-editorship of the *Law and Society Review*.

Professor Young is active in a variety of professional and community organizations. She sits on the boards for Justice for Girls, the David Suzuki Foundation, and the International Centre for Criminal Law Reform and Criminal Justice. She is Research Associate with the Canadian Centre for Policy

Alternatives-BC Office. Professor Young actively works with provincial and national women's equality groups during United Nation committees' periodic reviews of Canada's human rights record, travelling as an NGO representative to these meetings in New York and Geneva. More specifically, she works with the BC CEDAW Group and the Feminist Alliance for International Action.

Professor Young is a frequent commentator in the media on a variety of issues to do with social justice and socio-economic rights issues. Interviews include local, national, and international print, television, and radio coverage of key constitutional, equality, and civil liberties issues.

Date: **July 26th, 2017**

Pre-Class Readings for July 26th, 2017

- a) Standards for the Education, Competence & Professional Conduct of Education in British Columbia – See:

http://www.bcteacherregulation.ca/documents/AboutUs/Standards/edu_std.pdf

Primary Goals, Key Concepts & Exploration Questions:

- The notion of investigation in the context of professional misconduct:
 - The legal concept of due process
 - The framework of laws and rules that govern the conduct of investigations in cases involving professional misconduct of teachers and/or school-based administrators.
- Teacher's misconduct:
 - What is the judicial definition of misconduct?
 - What kind of evidentiary test is required to establish misconduct?
 - What is the Investigation process of professional misconducts

Date: **July 27th, 2017**

Pre-Class Readings for July 27th, 2017 (none – assignment 1 due on July 29th, 2017 at 16:00)

Primary Goals, Key Concepts & Exploration Questions:

- Interpretation and application of the provisions of the provincial and local collective agreements, including grievance/arbitration case management.

Guest Speaker: Renzo Del Negro, Chief Executive Officer - British Columbia Public School Employers' Association

Renzo Del Negro is the Chief Executive Officer of the British Columbia Public School Employers' Association (BCPSEA). BCPSEA is the accredited bargaining agent for the British Columbia K-12 public education sector and provides a full range of human resource services to the province's 60 public boards of education.

Renzo is responsible to the Board of Directors for strategic leadership and operational management of the association in accordance with its statutory mandate. Renzo's extensive background in labour relations and collective bargaining includes acting as spokesperson at provincial bargaining tables during several rounds of negotiations with unionized teaching and support staff, as well as coordinating local bargaining initiatives between individual boards of education and their local unions. Renzo liaises with and advises boards of education, provincial governments in BC and other jurisdictions, and other organizations on legal, labour, and employment matters in the public education sector.

In addition to his professional responsibilities, Renzo is a frequently requested and popular guest speaker at various conferences, seminars, and post-secondary institutions. He has a Bachelor of Commerce in Human Resource and Industrial Relations Management from the University of British Columbia (UBC).

Date: **July 28th, 2017**

Pre-Class Readings for July 28th, 2017

- a) Moreau, S.R. (2004). The wrongs of unequal treatment. *University of Toronto Law Journal*, 54, 291-326 – Available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=535622
- b) Oliverio, C. & Manley-Casimir, M. (2005). The judicial construction of the role of the teacher, *McGill Journal of Education*; 40(3), 405-421 – Available at: <http://mje.mcgill.ca/article/view/581/464>
- c) *Robles & Wong v. The State of California*, Superior Court of the State of California – Available at: http://www.publicadvocates.org/wp-content/uploads/s234901_apr_state.pdf

Primary Goals, Key Concepts & Exploration Questions:

- Section 15 of the Charter – General theories of equality: equality of treatment, opportunity, and results.
 - When unequal treatment is unfair, what makes it so?
 - What is the nature of the wrong or wrongs done to individuals when they are unfairly treated unequally?
- Notion of adequacy in the provision of public education:
 - Is there a right to education in Canada under the *Charter of Rights*? Why or why not? Which is likely to pose problems to school boards/districts—questions of equality of access to programs or the definition of an appropriate program for students?
 - Is the province legally responsible to provide all children with an equal opportunity to obtain a meaningful or an adequate education?
 - Could a province be liable if its school funding system is failing to provide the districts with sufficient and appropriate resources to educate students to compete in the work force, find productive employment or quality for advancement through higher education?
 - What is the judicial definition of adequacy in the provision and funding of public education?

Date: **July 31st, 2017**

Pre-Class Readings for July 31st, 2017

- a) *Chamberlain v. Surrey School District No. 36*, [2002] 4 S.C.R. 710, 2002 SCC 86
<http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/2030/1/document.do>
- b) Religious accommodation or ‘accessory to sexism’? York student’s case stirs debate
<http://www.theglobeandmail.com/news/national/education/religious-accommodation-or-accessory-to-sexism-york-students-case-stirs-debate/article16246401/>

Primary Goals, Key Concepts & Exploration Questions:

- The legitimization of lesbian, gay, bisexual and transgender youth in Canadian schools - Chamberlain v. Surrey School District No. 36 (*Each student is expected to prepare a written summary of the Chamberlain case by using the following questions as guidelines:*)
 - What are the main issues being raised in *Chamberlain*? In dealing with a similar issue, what kind of conflicts could you face as a teacher or a school/school-district administrator?
 - What is your initial reaction as a human being? Does it conflict with your own personal values or way of life? How would you deal with such an issue in your school or school district (as a parent, a teacher, or as an administrator)?
 - Do you agree with the legal position taken by the court and why?
 - Do you think that there should be limits to the legal protection of pluralism of values and lifestyles in our society and why?

- Religious accommodation in an educational setting:

What is your position with regard to the decision of Dr. Paul Grayson? – see the article entitled: *Religious accommodation or ‘accessory to sexism’? York student’s case stirs debate*

Date: **August 1st, 2017**

Pre-Class Readings for August 1st, 2017

- a) *British Columbia Teachers’ Federation v. British Columbia*, 2011 BCSC 469, [339], 297 <http://www.courts.gov.bc.ca/jdb-txt/SC/11/04/2011BCSC0469.htm>
- b) The Organization of Schools, Legislation, the BC Supreme Court, and Now What! (BCPSEA) <http://www.bcpsea.bc.ca/documents/00-HJF-The%20Organization%20of%20Schools.pdf>
- c) BC Public School Employers’ Association (School District No. 68 – Nanaimo) (the "Employer") AND: BC Teachers’ Federation (Nanaimo District Teachers’ Association) (the "Union") (Re: Grievance Donna Zakreski)
- d. Board of School Trustee of School District No. 38 (North Okanagan-Shuswap) (the "Employer") and: North Okanagan-Shuswap Teachers’ Association (the Association") (M. Munton Grievance)

Primary Goals, Key Concepts & Exploration Questions:

- *Canadian Charter of Rights and Freedoms* and the protection of bargaining rights:
 - What is the legal meaning of “good faith bargaining” and “consultation”?
 - Notion of performance issues as opposed to professional misconduct in teachers’ evaluation process
 - Conditions for employment termination

Guest Speaker: Sari A. Wiens

Sari has practiced for over 20 years in the areas of labour relations, human rights and employment law. She defends employers before arbitration boards, human rights tribunals, labour relations boards and other administrative tribunals, and at the Supreme Court of British Columbia and BC Court of Appeal.

In her labour practice, she works primarily with public sector clients ranging from boards of education and health authorities to transportation authorities and post-secondary institutions, as well as non-profit societies and private sector clients within the health-care field. Believing in a preventative approach, Sari presents regularly at seminars and conferences on education law, labour, employment and human rights issues.

In her education practice, Sari advises boards of education, independent schools and post-secondary institutions on a broad range of issues involving students, parents, employees and board governance matters.

Date: **August 2nd, 2017**

Pre-Class Readings for August 1st, 2017

- a) Myers v. Peel County Board of Education. – See: <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2521/index.do>
- b) Warner, M. & Drijber, T. (2006). School excursion: Avoiding a trip to court. *Education Law*, 15(2), p. 9 – 16 – See: http://www.blg.com/en/newsandpublications/documents/publication603_EN.pdf

Primary Goals, Key Concepts & Exploration Questions:

- Notion of Liability & Risk Management in a School Setting
 - Notion Negligence, Duty of Care, and Standard of Care
 - Defences to Negligence Claims:
 - Contributory negligence
 - Voluntary assumption of risk
 - Consent to participate
 - Statutes of limitation
- “Duty and standard of care”:
 - When can a teacher be sued?
 - When can schools be sued for a breach of duty leading to liability for damages?
- Developing a consent form for a field trip (45 minutes – sharing for 15 minutes):
 - Based on the article entitled “School excursion: Avoiding a trip to court”, each team will develop a consent form for one of the following field trip:
 - Team 1: 5 days canoe trip – secondary school.
 - Team 2: 2 days of mountain climbing – secondary school
 - Team 3: day ski trip – elementary school
 - Team 4: day trip to the beach – primary school

Date: **August 3rd, 2017**

Primary Goals, Key Concepts & Exploration Questions:

- Case presentations:
 - A.B. v. Bragg Com. Inc. <http://www.lexisnexis.ca/documents/2012scc46.pdf>
 - Moore v. British Columbia <http://www.ldao.ca/wp-content/uploads/Jeffrey-Moore-Supreme-Court-decision-2012.pdf>

Date: **August 4th, 2017**

Primary Goals, Key Concepts & Exploration Questions:

- Case presentations:
 - British Columbia Teachers' Federation v. British Columbia Public School Employers' Assn. <http://www.canlii.org/en/bc/bcca/doc/2009/2009bcca39/2009bcca39.pdf>
 - R. v. M. (M.R.) <http://scc.lexum.org/en/1998/1998scr3-393/1998scr3-393.html>

Date: **August 8th, 2017**

Primary Goals, Key Concepts & Exploration Questions:

- Case presentations:
 - Kemplin v. British Columbia College of Teachers - Right of teachers–Freedom of speech: <http://www.courts.gov.bc.ca/jdb-txt/sc/04/01/2004bcsc0133.htm>
 - J.S. v. Blue Mountain School District: <http://caselaw.findlaw.com/us-3rd-circuit/1506476.html>

Date: **August 9th, 2017**

Primary Goals, Key Concepts & Exploration Questions:

- Case presentations:
 - British Columbia Teachers' Federation and Sooke Teachers' Association v. The Board of Education of School District No. 62 (Sooke) - <http://www.bcpea.bc.ca/documents/ai2009-31-award.pdf>
 - British Columbia Teachers' Federation v. British Columbia 2015 BCCA 184 - <https://www.canlii.org/en/bc/bcca/doc/2015/2015bcca184/2015bcca184.pdf>
 - *Crouch v. Snell*, 2015 NSSC 340 http://www.courts.ns.ca/Decisions_Of_Courts/documents/2015nssc340.pdf

Date: **August 10th, 2017**

Pre-Class Readings for August 10th, 2017

- a) Hydro-Québec c. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ), 2008 CSC 43 – See : <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2507/index.do>
- b) Morin, V. (2008). The Hydro-Québec Case: The Supreme Court Confirms That There are Definitive Limits to an Employer's Duty to Accommodate, *In Fact and in Law*, Lavery de Billy – See: http://www.lavery.ca/upload/pdf/en/DS_080805a.pdf

Primary Goals, Key Concepts & Exploration Questions:

- Employer's Duty to Accommodate:
 - What is the judicial definition of the duty to accommodate?
 - What are the practical details of a duty to accommodate on a day-to-day basis?

Guest Speaker: Paul Fairweather

Paul's practice focuses on providing advice and advocacy on a broad spectrum of labour, employment, privacy and human rights issues, including strategic initiatives, regulatory compliance and employment and labour issues. He has appeared before numerous administrative tribunals and arbitration panels in both the federal and provincial sphere, as well as before the superior courts of British Columbia and Canada. Paul works with clients in both the provincial and federal jurisdictions, including numerous independent schools, post-secondary institutions, transportation companies and the aeronautics industry.

Before becoming a lawyer, Paul spent 11 years as a teacher and principal in the public school system in British Columbia. He continues to bring this practical experience to bear in his approach to client issues in the labour and employment context. After graduating from law school, Paul spent a year as clerk to Madam Justice McLachlin (now Chief Justice McLachlin) at the Supreme Court of Canada.

Date: **August 11th, 2017**

Pre-Class Readings for August 11th, 2017

- a) Shariff, S., & Hoff, D. L, (2007). Cyber bullying: Clarifying legal boundaries for school supervision in Cyberspace. *International Journal of Cyber Criminology*, 1(1), 76-118. – Available at: <http://www.cybercrimejournal.com/shaheenhoff.pdf>

Primary Goals, Key Concepts & Exploration Questions:

- Judicial definition of the notion of “Cyber bullying”:
 - Are school districts within their legal rights to intervene in cyber bullying incidents – even those initiated off campus?
 - How can school districts prevent and respond to cyber bullying?
 - What are the challenges facing educators and school-based administrators when intervening and disciplining students for cyber bullying behaviours?
 - When is it cyber-bullying and cyber-joking?
- Class work on assignment 3
- Evaluation of EDST 552

GRADUATE COURSE GRADING POLICY_DEPARTMENT OF EDUCATIONAL STUDIES

(Approved at EDST Department Meeting, September 18, 2004)

Order of Marking Standards

A Level (80% to 100%)

A+ is from 90% to 100%. It is reserved for exceptional work that greatly exceeds course expectations. In addition, achievement must satisfy all the conditions below.

A is from 85% to 89%. A mark of this order suggests a very high level of performance on all criteria used for evaluation. Contributions deserving an A are distinguished in virtually every aspect. They show that the individual (or group) significantly shows initiative, creativity, insight, and probing analysis where appropriate. Further, the achievement must show careful attention to course requirements as established by the instructor.

A- is from 80% to 84%. It is awarded for generally high quality of performance, no problems of any significance, and fulfillment of all course requirements. However, the achievement does not demonstrate the level of quality that is clearly distinguished relative to that of peers in class and in related courses.

B Level (68% to 79%)

This category of achievement is typified by adequate but unexceptional performance when the criteria of assessment are considered. It is distinguished from A level work by problems such as:

- one or more significant errors in understanding
- superficial representation or analysis of key concepts
- absence of any special initiatives
- lack of coherent organization or explication of ideas

The level of B work is judged in accordance with the severity of the difficulties demonstrated.

B+ is from 76% to 79%.

B is from 72% to 75%.

B- is from 68% to 71%.

C Level (67% to 60%)

C+ is from 64% to 67%

C is from 60% - 63%

The Faculty of Graduate Studies considers 60% as a minimum passing grade for graduate students. See the UBC Calendar for details. Students should check the University Calendar for information on what constitutes "Satisfactory Progress" for masters and doctoral students. In general, a grade of 68% must be maintained to remain in good standing. See the Faculty of Graduate Studies section of Calendar for more information.

Appendix A

CASE BRIEF – Assignment 1

	Unacceptable	Poor	Marginal	Minimal Graduate Level	Quite Well Done	Well Done	Very Well Done	Excellent	Outstanding
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Evaluation of the Case Brief:

○ Facts: Description of the flow of events giving rise to the litigation	0	5	10	15	17.5	18.75	20	22.5	25
○ Issues: Description of the question(s) the court must answer in order to arrive to a decision	0	5	10	3	17.5	18.75	20	22.5	25
○ Ratio Decidendi: Description of the reasons for deciding— the rule of law used by the court to justify its decision.	0	6	12	3	21	22.5	24	27	30
○ Presentation — English form and style, correct use of A.P.A. style	0	2	4	3	7	7.5	8	9	10
○ Decision: Description of the decision that was reached by the court.	0	2	4	3	7	7.5	8	9	10

Appendix B

CASE PRESENTATION – Assignment 2

Unacceptable	Poor	Marginal	Minimal Graduate Level	Quite Well Done	Well Done	Very Well Done	Excellent	Outstanding
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Evaluation of the Case Presentation:

○ Clarity and Interest: the presentation is involving as well as informative – No over-reliance on lecture.	0	2	4	6	7	7.5	8	9	10
○ Thoroughness: the participants should come away from the presentation with a sufficiently thorough grasp of the material to be able to discuss it intelligently – Sufficient information is provided by the presenters.	0	4	8	12	14	15	16	18	20
○ Depth of Analysis: the presenters demonstrate an awareness of differing points of view or perspectives on a given legal concept, originality, insight, and creativity; the presenters go beyond repeating what others have said and contribute something new to our understanding of the legal concept used as the topic.	0	6	12	18	21	22.5	24	27	30
○ Argumentation: The presenters take or defend a position using logical & legal arguments and carefully elected supportive details and legal cases.	0	6	12	18	21	22.5	24	27	30
○ Discussion: The degree to which the presenters have achieved the above goals is reflected in the liveliness of the subsequent discussion with their colleagues	0	2	4	6	7	7.5	8	9	10

Appendix C

FINAL PAPER – Assignment 3

Evaluation of the Final Paper:

- Research is evident. The participant has reviewed the literature and cases that are relevant, current, and useful in understanding the issue (books, journals, monographs, research reports, and possibly non-print sources such as interviews, tapes, films, DVD, and microfilms).
0 4 8 12 14 15 16 18 20
- Presentation — English form and style, correct use of A.P.A. style— The paper is characterized by clarity, simplicity, parsimony, and good English. It can be easily read and understood.
0 4 8 12 14 15 16 18 20
- The paper says something substantive about the issue that is of value to the reader. The writer has been selective in the literature and cases reviewed.
0 4 8 12 14 15 16 18 20
- The writer’s own input is evident. The ideas taken from the literature and cases are utilized to make observations, discuss implications, develop generalizations, and draw conclusions.
0 4 8 12 14 15 16 18 20
- The paper has overall quality. The writer understands the issues and displays an ability to organize, to analyze, to synthesize, to evaluate ideas and to express thoughts fluently.
0 4 8 12 14 15 16 18 20

Selected resources in Canadian Education Law

Print resources

- Ballosingh, C., & Thorning, P. (2001). The search of student by school officials. *Orbit*, 32(2), 37-41.
- Brown, A.F., & Zucker, M. (2007). *Education Law* (4rd ed.). Toronto, ON: Carswell.
- Carter, J.H. (2004). Surrey, British Columbia: Book Ban in the Courts, *Journal of Gay & Lesbian Issues in Education*, 1(4), 81–85
- Cesare, O., & Manley-Casimir, M. (2005). The judicial construction of the role of the teacher. *McGill Journal of Education*, 40(3), 405 – 422.
- Dickinson, G.M., & Mackay, A.W. (Eds). (1989). *Rights, freedoms and the education system in Canada: Cases and materials*. Toronto, ON: Edmond Montgomery.
- Dickinson, G.M., (2001). The matter of sexual misconduct. *Orbit*, 32(2), 15-19.
- Dickinson, G.M. (2003). [Thoughts, words and deeds: limiting teachers' free expression: The case of Paul Fromm. Education and Law Journal, 13\(1\), 131 – 155.](#)
- Dickinson, G.M. (2005). The problem of heretic teachers: Kempling v. The British Columbia College of Teachers. *McGill Journal of Education*, 40(3), 383 – 404.
- Essex, N. (2005). Students' privacy rights involving strip search. *Education and the Law*, 17(3), 105-110.
- Fraser, G. (2003). What the framers of the Charter intended. *Policy Option*, 4-10.
- Henein, P. & Pettingill, A. (2006). *An update on educational malpractice*. Cassel Brock & Blackwell, 17 pages.
- Luft, S. (2006). Court of Appeal Finds School Boards Violated Teachers' Charter Right to Free Speech. *Education Law Journal*, 15(3), 275 – 278.
- Moreau, S.R. (Summer 2004). The wrong of unequal treatment. *University of Toronto Law Journal*, 54(3), 291-326.
- Morin, V. (2008). The Hydro-Québec Case: The Supreme Court confirms that there are definitive limits to an employer's duty to accommodate, *In Fact and in Law*, Lavery de Billy.
- Morton, F.L. (2003). Can judicial supremacy be stopped? *Policy Options*, 25-29
- Na, G. (2005). Banning kirpan in schools – Supreme Court of Canada to have final say. *CAPSLE Comments*, 14(4), 6 – 9.
- Potter, S.V. (2003). Judging the judiciary: The rule of law in the age of the charter. *Policy Options*, 34-38.
- Potts, A., (2006) Schools as dangerous places. *Educational Studies*, 32(3), 319-330.

- Roach, K. (Fall 2002). American constitutional theory for Canadians (and the rest of the world). *University of Toronto Law Journal*, 52(4), 503-521.
- Sean MacDonald (2006). Acknowledging the rainbow: The need for the legitimization of lesbian, gay, bisexual and transgender youth in Canadian schools. *Education Law Journal*, 16(2) 183-249.
- Seeman, H. (2003). Measuring the growing democracy gap between the Supreme Court and the Parliament. Retrieved May 15, 2011, from <http://www.fraserinstitute.ca/shared/readmore.asp?sNav=nr&id=540>
- Shariff, S. (2001). The Charter of Rights and Freedoms: The case of school censorship. *Orbit*, 32(2), 20-23
- Shariff, S. & Johnny, L. (2007). Cyber-Libel and cyber-Bullying: Can schools protect student reputations and free-expression in virtual environments? *Education Law Journal*, 16(3), 307 – 343.
- Shariff, S. & Hoff, D.L. (2007). Bullying: Clarifying legal boundaries for school supervision in cyberspace. *International Journal of Cyber Criminology*, 1(1), 76 – 118.
- Sussel, T.A. (1995). *Canada's legal revolution: Public education, the Charter, and human rights*. Toronto, ON: Edmond-Montgomery.
- Van Nuland, S. (2001). Beyond regulations: Maintaining the prudent parent model. *Orbit*, 32(2), 20-22.
- Warner, M. (2001). Managing Medication in Schools. *Orbit*, 32(2), 23 – 26.
- Weir, R.W. (2001). Untangling the web: The Internet and schools. *Orbit*, 32(2), 42 – 45.
- Weir, R.W. (2005). Education law alert: court rules violation of autistic children's Charter rights. *CAPSLE Comments*, 14(4), 1-3.

Online Resources

CANLII

<http://www.canlii.org/en/index.php>

BC Court of Appeal and Supreme Court judgments

<http://www.courts.gov.bc.ca/>

BC Provincial Court Judgments

<http://www.provincialcourt.bc.ca/judgmentdatabase/index.html>

Supreme Court of Canada Judgments

<http://scc.lexum.org/en/index.html>

Federal Court Judgments

<http://decisions.fct-cf.gc.ca/en/index.html>

Alberta Judgments

<http://www.albertacourts.ab.ca/Home/JudgmentsfromAllCourts/tabid/72/Default.aspx>

Saskatchewan Judgments

<http://www.lawsociety.sk.ca/WhatsNew/NewJudgments.htm>

Ontario Court of Appeal Judgments

http://www.ontariocourts.on.ca/decisions_index/en/

Quebec Judgments

<http://www.jugements.qc.ca/>

Nova Scotia Judgments

http://www.courts.ns.ca/decisions_recent/decisions_weekly_list.htm

Prince Edward Island Supreme Court Judgments

<http://www.gov.pe.ca/courts/supreme/index.php3>

Northwest Territories Judgments Database

<http://www.justice.gov.nt.ca/dbtw-wpd/nwtjqbe.shtml>

Labour Relations Board decisions (BC)

<http://www.lrb.bc.ca/decisions/>

Employment Standards Tribunal decisions (BC)

<http://www.bcest.bc.ca/decisions/>

Human Rights Tribunal decisions (BC)

<http://www.bchrt.bc.ca/decisions/index.htm>

Workers Compensation Review Board decisions (BC)

http://www.worksafebc.com/claims/review_and_appeals/review_division/review_search/advanced_search.asp

Decisions of the Information & Privacy Commissioner (BC)

http://www.oipc.bc.ca/index.php?option=com_content&view=article&id=81&Itemid=85

Canada Industrial Relations Board decisions

http://www.cirb-ccri.gc.ca/decisions/index_eng.asp

Canadian Human Rights Tribunal decisions

<http://chrt-tcdp.gc.ca/NS/decisions/index-eng.asp>

Bora Laskin Law Library

<http://www.law-lib.utoronto.ca/resources/primary/caselaw.htm>

Lancaster House Labour Law Online

<http://www.lancasterhouse.com/>