

**IN THE SUPREME COURT OF CANADA  
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)**

BETWEEN:

**HER MAJESTY THE QUEEN**

Appellant

- and -

**A.M.  
(A Young Person)**

Respondent

- and -

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CATHOLIC DISTRICT SCHOOL BOARD, and CANADIAN FOUNDATION FOR  
CHILDREN, YOUTH AND THE LAW**

Interveners

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**FACTUM OF THE INTERVENER,  
CANADIAN FOUNDATION FOR CHILDREN, YOUTH AND THE LAW  
(JUSTICE FOR CHILDREN AND YOUTH)**  
(pursuant to Rules 55 and 59 of the *Rules of the Supreme Court of Canada*)

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**PART I – STATEMENT OF THE FACTS AND OVERVIEW**

**OVERVIEW:**

1. This appeal concerns whether students' rights to be free from unreasonable search and seizure, pursuant to section 8 of the *Charter of Rights and Freedoms* (the "*Charter*"), were violated in this case, and whether the evidence collected as a result of the search of the Respondent's belongings should be excluded pursuant to section 24(2) of the *Charter*.

2. The Intervener the Canadian Foundation for Children Youth and the Law, Justice for Children and Youth (“JFCY”) has been granted leave to file a factum in the appeal A.M. (A young person).

3. As set out in the material filed in support of JFCY’s Motion for leave to intervene, the Clinic is a provincially incorporated charitable organization constituted for the purpose of promoting the rights of children and youth and their recognition as vulnerable individuals under the law.

4. JFCY has considerable expertise in legal representation, advocacy, and policy and community development on behalf of children and youth in the youth justice as well as in the educational systems. JFCY has consulted directly with the federal government on issues relating to the *Youth Criminal Justice Act*<sup>1</sup> (the “YCJA”) and the *Young Offenders Act* and with the Ontario provincial government with respect to education law in the province. JFCY brings a youth rights focus to this appeal.

**FACTS:**

5. JFCY submits that the following facts, as found by the trial judge and as established in the evidentiary record, are germane to this appeal:

6. On November 7, 2002, police officers came to St. Patrick’s High School in Sarnia with the intention of using sniffer dogs to search the school for drugs. The police did not have a warrant or any specific or individual information regarding drug activity in the school. The police simply had a two year old standing invitation from the principal to bring in sniffer dogs whenever they were available, as part of the school’s general anti-drug policy. The police arrived as part of a common desire of the police unit to do random searches at various schools, some 140 searches over 10 years. These searches involve shutting down classes for all students for over an hour.<sup>2</sup>

7. On the police’s arrival, the principal announced the search over the P.A. system and, as part of a mutual understanding with the police, instructed the students to remain in class with

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<sup>1</sup> S.C. 2002, c. 1 [YCJA].

<sup>2</sup> Appellant’s Record at 45, 49, 52, 55, 57, 74, 77, 79, 84.

their teachers. The students were not allowed to leave their location and the police and teachers understood they would cooperate to restrain any students trying to leave.<sup>3</sup>

8. The police officers and their sniffer dogs did an initial sweep of the building, including classrooms, hallways and lockers, but found no drugs. They then asked the principal to suggest another search location and the principal suggested the small gymnasium because that was the only place the police had not yet searched.<sup>4</sup>

9. A gym class was ongoing in the gym at the time of the principal's P.A. announcement and the students had subsequently been directed out of the gym. A number of backpacks remained in a pile in a corner of the gym. One police officer directed his German Shepherd, Chief, who is trained to detect human scents and narcotics, to sniff the backpacks. Chief indicated A.M.'s backpack by very aggressively scratching at it and biting it. The police then physically searched the backpack, found illegal drugs and subsequently arrested A.M.<sup>5</sup>

## **PART II – QUESTIONS IN ISSUE**

10. At issue in this appeal is whether a unanimous panel of the Court of Appeal for Ontario erred in determining that the right to be free from unreasonable search and seizure, protected by s. 8 of the *Charter*, was violated when police officers, with the assistance of sniffer dogs, conducted a warrantless and random sweep of a high school and found illegal drugs in a student's backpack while all students were detained in classrooms in the school.

11. JFCY respectfully submits that A.M.'s and all St. Patrick's students' rights were violated and that the appeal should be dismissed. The Court of Appeal correctly held that the police were not agents of the school authorities; the dog sniff and subsequent physical search of A.M.'s backpack was a search within the meaning of s. 8 of the *Charter*; the dog sniff search was not reasonable; and the trial judge did not err in excluding the evidence.

12. JFCY submits that the Court of Appeal's decision should be upheld particularly since the sniff search in this case undermines the special protections to which young people are entitled,

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<sup>3</sup> *Ibid.* at 55, 56, 62.

<sup>4</sup> *Ibid.* at 61, 75.

<sup>5</sup> *Ibid.* at 65, 66, 74, 75, 76, 82.

pursuant to the *United Nations Convention on the Rights of the Child*<sup>6</sup> (the “*Convention*”) and Canada’s *YCJA*. The privacy, inherent dignity and equal rights of the students were violated and their teachers and principal breached their duties to diligently educate and protect them.

13. JFCY will not be addressing the issue of whether the evidence should be excluded under section 24(2) of the *Charter*.

### **PART III – ARGUMENT**

*“Students do not check their Charter rights at the school door – nor should those rights be diluted to the level of those enjoyed by prison inmates or other institutionalized citizens.”*

A. Wayne Mackay<sup>7</sup>

#### **A. YOUNG PEOPLE’S SPECIAL PROTECTIONS ARE UNDERMINED BY THE DOG SNIFF SEARCH**

14. This Court has held that Canadian law must be interpreted to comply with Canada’s international treaty obligations.<sup>8</sup> The most significant international convention regarding the rights of children is the *United Nations Convention on the Rights of the Child*. The *Convention* is the most widely ratified and accepted human rights treaty of all time.<sup>9</sup>

15. The Preamble to the *Convention* states that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.” Article 3 provides that in all actions concerning children by courts of law, the “best interests of the child shall be a primary consideration.”<sup>10</sup>

16. Canada, as a signatory has an obligation to uphold the *Convention*’s principles and diligently protect the inherent dignity and equal rights of children. All Canadian provinces have endorsed the *Convention* and share with the federal government responsibility for implementing

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<sup>6</sup> Can. T.S. 1992 No. 3 [*Convention*].

<sup>7</sup> “Don’t Mind Me, I’m from the R.C.M.P.” (1997) 7 C.R. 5<sup>th</sup> 24.

<sup>8</sup> *Canadian Foundation for Children Youth and the Law v. Canada (Attorney General)*, [2004] 1 S.C.R. 76 at para. 31.

<sup>9</sup> Office of the United Nations High Commissioner for Human Rights, *Status of Ratifications of the Principal International Human Rights Treaties*, 09 June 2004.

<sup>10</sup> *Convention*, *supra* note 6, Preamble and art. 3.

the rights set forth in the *Convention*.<sup>11</sup> Ontario is therefore obligated to ensure the *Education Act* is interpreted in a manner consistent with the *Convention*, which requires governments to ensure that school discipline is administered in a manner consistent with the child's dignity and privacy interests.<sup>12</sup>

17. It is therefore incumbent on both our criminal justice and educational systems to ensure that the applicable legal standards, including the best interests of A.M., and all the other students who were subject to the over one hour lockdown and dog-assisted searches of their personal belongings, are observed. Protecting the rights of children in the present context is especially important, since liberty, autonomy and dignity were engaged by the detention, the search and the possibility of criminal consequences attending on finding illegal substances. Students were not advised of their rights; nor were they free to leave.

18. As this Honourable Court has recognized, Parliament intended that the *YCJA* principles must be respected whenever young persons are brought within the Canadian system of criminal justice.<sup>13</sup> Further, this Court has attributed the protections and values in the *YCJA* to Parliament's recognition of the "heightened vulnerability and reduced maturity of young persons" and to its efforts to fulfill Canada's international obligations, including those under the *Convention*, which this Court has recognized to be incorporated by reference in the *YCJA*.<sup>14</sup> In keeping with Canada's international obligations, the *YCJA* makes clear that in proceedings against young persons, there are special considerations and guarantees of their rights and freedoms.<sup>15</sup> The *YCJA* mandates that the criminal justice system emphasize enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their heightened right to privacy, are protected.<sup>16</sup> To further ensure such enhanced protection, the *YCJA* principles must be construed liberally.<sup>17</sup>

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<sup>11</sup> *Canada's First Report on the Convention on the Rights of the Child* (submitted to the UN on June 17, 1994) at para. 1.

<sup>12</sup> *Convention*, *supra* note 6, arts. 16 and 28.2.

<sup>13</sup> *R. v. R.C.*, [2005] 3 S.C.R. 99 at para. 36.

<sup>14</sup> *Ibid.* at para. 41.

<sup>15</sup> *YCJA*, *supra* note 1, s. 3(1)(d)(i).

<sup>16</sup> *Ibid.* s. 3(1)(b)(iii).

<sup>17</sup> *Ibid.* s. 3(2).

19. The foregoing principles, regarding young people's inherent dignity, privacy and equality rights and the need for special protections, were flouted when the police arrived at St. Patrick's High School without a warrant and without specific information to suspect the occurrence of any particular illegal activity, and conducted dog-assisted searches of students' personal belongings, while the entire student population was detained.

20. Although this Court recognized that teachers must have the power to search where circumstances require it in order to protect their students and provide an orderly atmosphere required for learning,<sup>18</sup> this was not a search by teachers, nor did the circumstances require or justify a search. As the trial judge, found, the school authorities took no active part in the search and "for all intents and purposes, this was a police search."<sup>19</sup> Accordingly, the usual standard for police searches as set out in *Hunter v. Southam*<sup>20</sup> applies.

21. The search in this case was warrantless and therefore prima facie unreasonable. The police did not have the requisite reasonable and probable grounds to search. It would shock the conscience of Canadian society if similar actions were taken against adults in similar circumstances. Consider, for example, an employer who thought it was "pretty safe to assume"<sup>21</sup> that drugs could be in the workplace, and gave the police a standing invitation to bring in sniffer dogs, who then attended the workplace, (where there is also a lessened expectation of privacy than in the home), and detained employees while dogs sniffed all their purses or briefcases. JFCY submits that if such a scheme would be unconstitutional, it does not become any less so by virtue of the targets being young people, especially in a school setting here students are learning to participate as citizens in a democratic society.

22. However, even if the search was by the school authorities, it would still be unconstitutional. Although educators are given more latitude to search students, they must still have reasonable grounds to suspect that searching a particular student or group of students will turn up evidence that the student has broken the law or the school rules.<sup>22</sup> There were no such

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<sup>18</sup> *R. v. M.R.M.*, [1998] 3 S.C.R. 393 at para. 47 [*M.R.M.*].

<sup>19</sup> *R. v. A.M.*, [2004] O.J. No. 2716 at para. 19 (Ct. J.) [*A.M. Trial*].

<sup>20</sup> *Canada (Combines Investigation Acts, Director of Investigation and Research) v. Southam Inc.*, [1984] 2 S.C.R. 145.

<sup>21</sup> *R. v. A.M.*, [2006] O.J. No. 1663 at para. 11 (C.A.) [*A.M. Court of Appeal*] (Principal Bristo's words).

<sup>22</sup> *M.R.M.*, *supra* note 18 at para. 40.

reasonable grounds in the present case. Further, schools are among the “institutions responsible for the care or protection of children”, under the *Education Act*,<sup>23</sup> as well as under international law.<sup>24</sup> In keeping with the *Convention*’s principles, school authorities must take care to ensure that the dignity and privacy rights of the students in their care are protected.<sup>25</sup>

## **B. THE STUDENTS’ PRIVACY AND DIGNITY WERE VIOLATED BY THE DOG SNIFF SEARCH**

### *i. Reasonable Expectation of Privacy*

23. The arrival of the police at St. Patrick’s high school led to a “lockdown” of all students and the disruption of the education of students generally. No student was free to move from class to class according to their timetables. No student was free to leave whether ill or to keep appointments or to meet a parent. Students at St. Patrick’s were fulfilling their legal duties to attend school;<sup>26</sup> their right to progress in their educational programs was breached. There was no urgent or specific reason to override their right to learn<sup>27</sup> or their duty to “be diligent in attempting to master [their] studies.”<sup>28</sup>

24. The police activity constituted a search within the meaning of s. 8 of the *Charter* because it violated the students’ reasonable expectation of privacy<sup>29</sup> with respect to their own belongings especially those possessions normally carried with them, and in the attendant characteristics associated with them.

25. Although this Court held that students have a diminished expectation of privacy in schools, the expectation is diminished not extinguished, and state violation of this privacy interest is still constitutionally impermissible. As this Court has stated “the expectation does not have to be of the highest form of privacy to trigger the protection of s. 8.”<sup>30</sup>

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<sup>23</sup> R.S.O. 1990, c. E-2, s. 265(1)(j) [*Education Act*] and *Operation of Schools Regulation*, R.R.O. 1990, Reg. 298, s.11(3)(k) [O. Reg. 298].

<sup>24</sup> *Convention*, *supra* note 6, arts. 3.3, 19.1, 28.1.

<sup>25</sup> *Ibid.*, arts. 16.1, 28.2.

<sup>26</sup> *Education Act*, *supra* note 23, s. 21.

<sup>27</sup> *Convention*, *supra* note 6 art. 28.

<sup>28</sup> O. Reg. 298, *supra* note 23, s. 23(1)(a).

<sup>29</sup> *R. v. Law*, [2002] 1 S.C.R. 227 at para. 15.

<sup>30</sup> *R. v. Buhay*, [2003] 1 S.C.R. 416 at para. 22.

26. This privacy interest is reinforced and informed by Ontario's and Canada's obligations under the *Convention*. The *Convention* requires that no child is "subjected to arbitrary or unlawful interference with his or her privacy..."<sup>31</sup>; and that every child is entitled to legal protection of his or her privacy in all situations,<sup>32</sup> including schools.

27. The diminution of students' reasonable expectation of privacy in school is founded on the duty of school officials to act on credible reports of rule violations where necessary to provide "a safe environment and maintaining order and discipline in the school."<sup>33</sup> School authorities may be required to conduct searches of students and to seize prohibited items from suspected students who are expected to traffic drugs at a school function.<sup>34</sup> In the absence of a reasonably suspected problem, or known emergency, reasonable students do not expect their personal belongings to be searched. In this case there was no particular problem, no suspected individual, no reasonably anticipated endangering of other students within the school. Nevertheless the entire student body was "locked down" in a heightened form of detention and regular education disrupted while a sweeping search was conducted, but no emergency or imminent danger was present.

28. JFCY submits that the dog-sniffing operation of the students' backpacks was indeed a search within the meaning of s. 8 of the *Charter*, as conceded by the Appellant at trial<sup>35</sup> and held by the Ontario Court of Appeal. In examining whether a reasonable expectation of privacy exists, "the question must be framed in broad and neutral terms."<sup>36</sup> The proper question is not whether the students have a reasonable expectation of privacy in the odour of *illegal drugs*, but rather whether they have a reasonable expectation of privacy in their personal belongings and the odours not noticeable by human beings which may emanate from them. JFCY submits that they do:

Odour is information that may on its own be capable of engaging a privacy interest. Odour often reveals intensely personal details of lifestyle and biographical data that individuals typically prefer to keep to themselves. This is evidenced by the enormous

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<sup>31</sup> *Convention, supra* note 6, art. 16.1.

<sup>32</sup> UNICEF, *Implementation Handbook for the Convention on the Rights of the Child* (Geneva, Switzerland: 1998) at 197 [Convention Implementation Handbook].

<sup>33</sup> *M.R.M., supra* note 18 at para. 33.

<sup>34</sup> *Ibid.* at para. 36.

<sup>35</sup> Appellant's Record at 77 (evidence of R.K. McCutchen (cross-ex)).

<sup>36</sup> *R. v. Wong*, [1990] 3 S.C.R. 36 at para. 20.

industry aimed at producing and marketing products to mask odour on the person, on our effects, and in our homes.<sup>37</sup>

29. To further illustrate that odour can reveal intensely personal information in a dog sniff search, take the example of a female student, during her menstrual cycle, who was required to change undergarments because of an “accident” and put the stained undergarment in her backpack. A dog-sniff of her backpack would reveal the presence of blood, since many, including the dog in this case, have been trained to locate human scents.<sup>38</sup> One could expect that the girl may feel exposed and embarrassed by the very fact that the dog has detected her stained undergarment, further the information is then acquired by the dog-handler through the subsequent physical search. Ultimately then, the dog-sniffing would reveal very personal and intimate information about this student to the dog and the dog-handler, thereby violating her dignity and informational privacy.

30. A sniffer-dog’s indication that drugs are present in a package may reveal some insight into an individual’s biographical core of personal and sensitive information. It can potentially reveal the individual’s medical conditions, such as the ultimate disclosure of someone’s HIV-positive status through the dog’s detection of medical marijuana.<sup>39</sup>

31. These examples demonstrate that, with respect to the question of reasonable expectation of privacy, that expectation should include information that can be revealed in a sniffer-dog search due to its highly personal nature. As this Honourable Court noted in *R. v. Tessling*, “the reasonableness line has to be determined by looking at the information generated... and then evaluating its impact on a reasonable privacy interest.”<sup>40</sup>

32. This Court has stated that “public officials should not have to avert their senses or their equipment from detecting emissions in the public domain such as...suspicious odors...which could identify hazards to the community”;<sup>41</sup> nonetheless, school administrators cannot permit and police officers cannot perform sweeps in schools, where students are required by law to attend and there is no known specific problem or suspected individual. Police officers did not

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<sup>37</sup> *R. v. Brown*, [2006] A.J. No. 755 at para. 121 (C.A.) [*Brown*] (per Paperny J.A. in dissent).

<sup>38</sup> Appellant’s Record at 75 (evidence of R.K. McCutchen (in chief)).

<sup>39</sup> *Marihuana Medical Access Regulations*, SOR/2001-227.

<sup>40</sup> *R. v. Tessling*, [2004] 3 S.C.R. 432 at para. 29 [*Tessling*].

<sup>41</sup> *Ibid.* at para. 51.

enter private property to perform their heat-sensing activities, nor were the occupants of the house in *Tessling* detained while the police activities were carried out; indeed, the police had been informed of illegal activities in the Tessling house. These factors are in marked contrast to the circumstances at St. Patrick's High School and the lack of information held by the principal or the police, and the effect of the police conduct on all of the students. Furthermore, in a school the persons affected are under 18, and therefore decisions in matters which affect them must be made in the best interests of children, while providing them with special safeguards.<sup>42</sup>

33. JFCY submits that students' reasonable expectation of privacy could not be extinguished even by general warnings that the school may resort at some future time to using police officers with drug-detector dogs to deal with drugs in the school. Indeed, reasonable students would assume that such dogs could only be used in response to a known, specific threat. Moreover, as this Court noted in *Tessling*, "[e]xpectation of privacy is a normative rather than a descriptive standard" and "[s]uggestions that a diminished *subjective* expectation of privacy should automatically result in a lowering of constitutional protection should therefore be opposed."<sup>43</sup> While some students might have a lowered *subjective* expectation of privacy because of the announcements, the reasonable expectation of privacy was not extinguished. Furthermore, the principal did not attempt to lower privacy expectations in the best interests of the students nor in recognition of Canada and Ontario's international obligations to recognize the normative privacy interests of students.<sup>44</sup>

34. Students have an expectation of privacy in items temporarily left unattended in a school gymnasium, as adults do when they leave their brief cases or purses temporarily unattended in their office building. Students spend much of their lives at school. They move from school room to school room to participate in various scheduled activities. The fact that they cannot keep constant watch over their backpacks or keep them permanently fastened to their persons (for example in physical education class) does not extinguish their expectations of privacy. In this case A.M.'s backpack was among a number of backpacks piled up in a corner of the gym. A class was in session in the gymnasium when the search announcement was made; students were

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<sup>42</sup> *Convention, supra* note 6, Preamble and art. 3; *YCJA, supra* note 1, s. 3.

<sup>43</sup> *Tessling, supra* note 40 at para. 42.

<sup>44</sup> *Convention, supra* note 6, art. 16; *Convention Implementation Handbook, supra* note 32 at 197.

present before being directed out of the gym to facilitate the search.<sup>45</sup> The backpacks left behind were not abandoned and the students retained a reasonable expectation of privacy with respect to these backpacks.

**ii. Dignity Violation: Intrusiveness of the Dog Sniff Search**

35. In order to adequately ensure that the equal rights and inherent dignity of young people are protected, the intrusiveness of dog sniff searches must be considered:

One reason why the dog sniff is intrusive is because it reveals personal choices with near certainty.... *The dog sniff was also intrusive in a physical sense. Many people are afraid of dogs. The use of dogs has an historical connotation that cannot be ignored. Dogs can and often are intended to be intimidating and their proximity to an individual can be highly invasive.* So too can their enhanced olfactory, as any person who has been sniffed by a dog, friendly or otherwise, can attest. The target of the intrusiveness here is the personal luggage and its odour; the police dogs permits highly accurate identification of particular contents of the bag which are not on display for all to see.<sup>46</sup>

36. In this case, the police and their sniffer dogs went through the school, including into classrooms.<sup>47</sup> A police officer sweeping a school with a working German Shepherd is a daunting and fear-provoking spectacle, and potentially worse for students with dog allergies who are prohibited from leaving an environment that is normally expected to be dog free. Furthermore, a young person might be especially intimidated by the manner in which the dogs were trained to indicate the presence of drugs, that is, by very aggressively scratching at and biting the source of an odour.<sup>48</sup> At the same time, young people may be ashamed to show their fear of dogs and may feel peer pressure to exhibit fearless bravado.

37. A recent report by the New South Wales Ombudsman on police use of drug-detector dogs documented fearful and anxious reactions to the dogs by some people, particularly those from Asian and Arab backgrounds and those who for religious reasons believe dogs are unclean.<sup>49</sup> The review also found that many people felt humiliated and felt a loss of privacy and dignity as a

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<sup>45</sup> Appellant's Record at 62 (evidence of Principal Bristo (cross-ex)) and at 65 (evidence of Morrison (in chief)).

<sup>46</sup> *Brown*, *supra* note 37 at paras. 133, 135 (per Paperny J.A. in dissent).

<sup>47</sup> Appellant's Record at 75 (evidence of Milliken (in chief)).

<sup>48</sup> *Ibid.* at 66 and 75.

<sup>49</sup> New South Wales Ombudsman, *Review of the Police Powers (Drug Detection Dogs) Act*, (Sydney, NSW: 2006) at 131-132 [NSW Report].

result of being subject to a sniffer-dog search.<sup>50</sup> Students who are required to go to school and who expect schools to be safe, respectful environments will particularly experience the intrusive nature of dog-led searches. Such a violation of dignity rights cannot be justified in the absence of an express threat that is significant enough to overrule individual dignity rights.

38. JFCY does not suggest that police should never be allowed to use sniffer-dogs as part of their law enforcement efforts. Indeed, this Court has clarified that a principled approach is required, an approach which involves considering the totality of the circumstances rather than creating a catalogue of what is or is not permitted.<sup>51</sup> When balancing privacy, dignity and the special protections of young people, the police need more than a general concern about drugs in schools to bring in sniffer-dogs. This Honourable Court has long made this clear, as recently highlighted by Orsborn J. in *Fowler v. Adams*:

As Cory J. so clearly set out in the opening paras. of *R. v. M. (M.R.)*, while the presence of illegal drugs in schools is a “grave and urgent” problem, the response to the problem must respect the constitutional rights of all members of society, including students.<sup>52</sup>

It is submitted that not only must the constitutional rights of students be respected as members of society, but Canada and Ontario are obliged at international law as incorporated in the *YCJA* to provide students as young people with special safeguards and protections.

39. As this Court noted in *R. v. M.R.M.*, “[t]eachers and principals are placed in a position of trust” and are responsible for the care and protection of their students.<sup>53</sup> In keeping with the *Convention’s* principles, school officials must therefore diligently protect the privacy, inherent dignity and equality rights of their students while providing them with special safeguards. As such, disciplinary powers should not be exercised in such a way as to enable the police to disregard the standards governing police searches and the rights of all students, particularly in a case where there was not a threat to safety.

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<sup>50</sup> *Ibid.* at 133-137; 141-142.

<sup>51</sup> *Tessling*, *supra* note 40 at para. 19.

<sup>52</sup> *Fowler v. Adams*, [2006] N.J. No. 295 at para. 71 (N.L.T.D.) [*Fowler*].

<sup>53</sup> *M.R.M.*, *supra* note 18 at paras. 1, 35.

40. School is a sheltered space for learning, where access is confined to students, staff and visitors who are permitted to stay after they have reported to the office.<sup>54</sup> Furthermore, students have no choice but to attend school.<sup>55</sup> It is not a public space like a city square or public transportation system where there is more general access, and potentially more compelling countervailing concerns such as national security, and where members of the public have a choice not to enter. As Rowe J.A. for the Newfoundland Court of Appeal noted in *R. v. Taylor*:

...the use of speculative sweeps is disquieting. (I draw a distinction between these and screening techniques used to protect life and safety, e.g. searches for weapons or explosives when traveling by air)... In my view, there is *considerable tension* between the type of speculative sweep used in **Gosse, McCarthy and Brown**, and Justice Dickson's assertion of "the public interest in being left alone by government" in **Hunter et al. v. Southam Inc.**<sup>56</sup>

**C. BREACH OF LEGAL RIGHTS OF ALL STUDENTS, INCLUDING A.M.**

41. Each student at St. Patrick's High School suffered a heightened form of detention and was prevented from leaving. The police sought information from all students while they were detained. No student was given the right to have with him a parent or other adult to advise and protect him. Information obtained in this way could constitute a statement that would and should be excluded under the *YCJA*.<sup>57</sup>

**D. THE PRINCIPAL AND TEACHERS BREACHED THEIR PRIMARY DUTIES TO THEIR STUDENTS BY ALLOWING THE DOG SNIFF SEARCH**

42. The primary duty of school officials is to educate their students. Their duty to maintain order and discipline stems solely from the duty to ensure that teaching and learning are not disrupted:

Teachers and those in charge of our schools are entrusted with the care and education of our children. It is difficult to imagine a more important trust or duty... Teachers and principals... must carry out the fundamentally important task of teaching children so that they can function in our society and fulfil their potential... It is essential that our children be taught and that they learn.<sup>58</sup>

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<sup>54</sup> *Access to School Premises Regulation*, O. Reg. 474/00, s. 2.

<sup>55</sup> *Education Act*, *supra* note 23, s. 21.

<sup>56</sup> *R. v. Taylor* (2006), 40 C.R. (6<sup>th</sup>) 21 at paras. 34, 36 (N.L.C.A.) [*Taylor*] (parenthetical information in original; emphasis added).

<sup>57</sup> *YCJA*, *supra* note 1, s. 146.

<sup>58</sup> *M.R.M.*, *supra* note 18 at paras. 1, 35, 36.

43. It is “*when faced with a situation* that could unreasonably disrupt the school environment or jeopardize the safety of students”<sup>59</sup>, such as drug trafficking reasonably expected to take place at a school activity that school officials are justified in diverting their energies away from their primary teaching duty to their secondary disciplinary duty. In the absence of such a situation, teachers are legally bound to “diligently and faithfully”<sup>60</sup> teach all of their students and all of their classes, including physical education. This is also in the best interest of the students, as required under domestic and international law.

44. When the school staff assisted the police by shutting down all classes to facilitate the police search, in a situation where there was no defined or imminent threat to safety or school discipline, they breached their primary duty to their students. The cause of a disruption in their duty to teach the students was not a threat from a student, but the direct result of an unwarranted police lockdown. Teachers are not employed by the state to enforce the law or to help criminalize the students in their care; they are employed to teach.

45. Under the *Convention*, schools are also responsible to educate children in such a way that helps them develop “respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations.”<sup>61</sup> Governments are aware of this obligation; in reporting to the United Nations, the Ontario government stated that “the Ontario curriculum incorporates the goals of education identified in Article 29 of the *Convention*. Students learn about Canada and the role of citizens within a democratic society and a culturally diverse and interdependent world.” The Ontario government also reported that “the Ontario Human Rights Commission, in co-operation with the Ministry of Education, released a package of materials entitled *Teaching Human Rights in Ontario*, to assist secondary school teachers in promoting respect for human rights.”<sup>62</sup> The importance of human rights education is undermined when the police are permitted to enter school property, confine students, and disrupt classes in the absence of a known threat.

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<sup>59</sup> *Ibid.* at para. 3 (emphasis added).

<sup>60</sup> *Education Act*, *supra* note 23, s. 264(1)(a).

<sup>61</sup> *Convention*, *supra* note 6, art. 29.

<sup>62</sup> Ontario’s Report in *Canada’s Second Report on the Convention on the Rights of the Child* (submitted to the UN on April 26, 2001) at paras. 997, 998.

46. The United Nations Committee on the Rights of the Child has strongly commented upon the right of children and youth to be educated in an environment that is fully respectful of their rights and dignity. Education is to be “child-centred, child-friendly and empowering... The goal is to empower the child, through developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence.”<sup>63</sup> The Committee has further stated that “[c]hildren do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child, enables the child to express his or her views freely...and to participate in school life.”<sup>64</sup>

47. Children cannot be taught respect for rights unless such respect is modeled by members of the school community. Additionally, a principal’s decision that denies students’ rights affects and influences the broader community’s perception of the value to be accorded to the rights of young people. The message that is conveyed to the community by the school’s decision is that the rights of youth do not matter. In *Ross v. New Brunswick School District No. 15*, La Forest J. stated:

A school is a communication centre for a whole range of values and aspirations of a society. In large part, it defines the values that transcend society through the educational medium. The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate.<sup>65</sup>

48. This Court has further stated that schools and school board officials are not only subject to the *Charter* but further have a vital role to play in the development in their students of a respect for the human rights of all people, including themselves. In *R. v. M. (M.R.)*, Cory J., for the majority of the Supreme Court of Canada, stated:

[S]chools have a duty to foster the respect of their students for the constitutional rights of all members of society. Learning respect for those rights is essential to our democratic society and should be part of the education of all students. ***These values are best taught by example and may be undermined if the students’ rights are ignored by those in authority.***<sup>66</sup>

49. School officials partnering with the police to violate their students’ rights flies in the face of the foregoing principles. Neither the police, nor school officials, should render an entire

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<sup>63</sup> Committee on the Rights of the Child, *General Comment No. 1: The Aims of Education* (2001) at paras. 2, 8.

<sup>64</sup> *Ibid.* at para. 8.

<sup>65</sup> *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825 at para. 42.

student body captive for highly speculative and sweeping searches, where there is no threat of imminent danger. Evidence obtained relating to A.M. should be excluded and information obtained about other students should be destroyed.

**PART IV-COSTS**

50. JFCY does not seek costs nor does it believe that costs should be ordered against it.

**PART V – ORDER SOUGHT**

51. JFCY respectfully requests that this appeal be dismissed.

52. JFCY requests permission to present at the hearing of the appeal oral argument not to exceed fifteen (15) minutes.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 27<sup>th</sup> day of April 2007.

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Martha Mackinnon  
Counsel for the Intervener  
Canadian Foundation for Children Youth and the Law  
(Justice for Children and Youth)

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<sup>66</sup> *M.R.M., supra* note 18 at para. 3 (emphasis added).

**PART VI – TABLE OF AUTHORITIES**

<b><u>Cases</u></b>	<b><u>Cited at Para(s).</u></b>
<i>R. v. Brown</i> , [2006] 9 W.W.R. 633, 2006 ABCA 199	28, 35
<i>R. v. Buhay</i> , [2003] 1 S.C.R. 416, 2003 SCC 30	25
<i>Canadian Foundation for Children Youth and the Law v. Canada (Attorney General)</i> , [2004] 1 S.C.R. 76, 2004 SCC 4	14
<i>Canada (Combines Investigation Acts, Director of Investigation and Research) v. Southam Inc.</i> , [1984] 2 S.C.R. 145, 1984 S.C.J. No. 36	20
<i>Fowler v. Adams</i> , [2006] N.J. No. 295, 2006 NLTD 164	38
<i>R. v. Law</i> , [2002] 1 S.C.R. 227, 2002 SCC 10	24
<i>R. v. M.R.M.</i> , [1998] 3 S.C.R. 393	20, 22, 27, 39, 42, 43, 48
<i>R. v. R.C.</i> , [2005] 3 S.C.R. 99, 2005 SCC 61	18
<i>Ross v. New Brunswick School District No. 15</i> , [1996] 1 S.C.R. 825, [1996] S.C.J. No. 40	47
<i>R. v. Taylor</i> (2006), 40 C.R. (6 <sup>th</sup> ) 21, 2006 NLCA 41	40
<i>R. v. Tessling</i> , [2004] 3 S.C.R. 432, 2004 SCC 67	31, 32, 33, 38
<i>R. v. Wong</i> , [1990] 3 S.C.R. 36, [1990] S.C.J. No. 118	28
<b><u>Legislation</u></b>	
<i>Access to School Premises</i> , O. Reg. 474/00	40
<i>Convention on the Rights of the Child</i> , Can. T.S. 1992 No. 3.	12, 15, 16, 22, 23, 26, 32, 33, 45
<i>Education Act</i> , R.S.O. 1990, c. E-2	22, 23, 40, 43
<i>Marihuana Medical Access Regulations</i> , SOR/2001-227	30
<i>Operation of Schools Regulation</i> , R.R.O. 1990, Reg. 298	22, 23
<i>Youth Criminal Justice Act</i> , S.C. 2002, c. 1	1, 18, 32, 41
<b><u>Secondary Sources</u></b>	

<i>Canada's First Report on the Convention on the Rights of the Child</i> (submitted to the UN on June 17, 1994)	16
<i>Canada's Second Report on the Convention on the Rights of the Child</i> (submitted to the UN on April 26, 2001)	45
Committee on the Rights of the Child, <i>General Comment No. 1: The Aims of Education</i> (2001)	46
New South Wales Ombudsman, <i>Review of the Police Powers (Drug Detection Dogs) Act</i> (Sydney, NSW: 2006)	37
UNICEF, <i>Implementation Handbook for the Convention on the Rights of the Child</i> (Geneva, Switzerland: 1998)	26, 33

**PART VII – STATUTES AND REGULATIONS**

1. *Convention on the Rights of the Child*, Can. T.S. 1992 No. 3.
2. *Youth Criminal Justice Act*, S.C. 2002, c. 1
3. *Education Act*, R.S.O. 1990, c. E-2
4. *Operation of Schools Regulation*, R.R.O. 1990, Reg. 298
5. *Access to School Premises*, O. Reg. 474/00
6. *Marihuana Medical Access Regulations*, SOR/2001-227

**Convention on the Rights of the Child, Can. T.S. 1992 No. 3**

***PREAMBLE***

The States Parties to the present Convention,

*Considering that*, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

...

*Recalling that*, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

...

*Considering that* the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

*Bearing in mind* that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, '

*Bearing in mind* that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

...

**PART I**

...

***Article 3***

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

...

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

...

**Article 16**

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

...

**Article 19**

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

...

**Article 28**

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:  
...
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.  
...

**Article 29**

1. States Parties agree that the education of the child shall be directed to:
  - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
  - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
  - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
  - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;  
...

**Article 37**

...

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

...

**Article 40**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

**English**

**Youth Criminal Justice Act**

2002, c. 1

Y-1.5

**Preamble**

WHEREAS Canada is a party to the United Nations Convention on the Rights of the Child and recognizes that young persons have rights and freedoms, including those stated in the Canadian Charter of Rights and Freedoms and the Canadian Bill of Rights, and have special guarantees of their rights and freedoms;

...

**DECLARATION OF PRINCIPLE**

**Policy for Canada with respect to young persons**

3. (1) The following principles apply in this Act:

...

(b) the criminal justice system for young persons must be separate from that of adults and emphasize the following:

...

(iii) enhanced procedural protection to ensure that young persons are treated fairly and that their rights, including their right to privacy, are protected,

...

(d) special considerations apply in respect of proceedings against young persons and, in particular,

...

(i) young persons have rights and freedoms in their own right, such as a right to be heard in the course of and to participate in the processes, other than the decision to prosecute, that lead to decisions that affect them, and young persons have special guarantees of their rights and freedoms,

**Act to be liberally construed**

(2) This Act shall be liberally construed so as to ensure that young persons are dealt with in accordance with the principles set out in subsection (1).

...

**General law on admissibility of statements to apply**

146. (1) Subject to this section, the law relating to the admissibility of statements made by persons accused of committing offences applies in respect of young persons.

When statements are admissible

(2) No oral or written statement made by a young person who is less than eighteen years old, to a peace officer or to any other person who is, in law, a person in authority, on the arrest or detention of the young person or in circumstances where the peace officer or other person has reasonable grounds for believing that the young person has committed an offence is admissible against the young person unless

(a) the statement was voluntary;

(b) the person to whom the statement was made has, before the statement was made, clearly explained to the young person, in language appropriate to his or her age and understanding, that

(i) the young person is under no obligation to make a statement,

(ii) any statement made by the young person may be used as evidence in proceedings against him or her,

(iii) the young person has the right to consult counsel and a parent or other person in accordance with paragraph (c), and

(iv) any statement made by the young person is required to be made in the presence of counsel and any other person consulted in accordance with paragraph (c), if any, unless the young person desires otherwise;

(c) the young person has, before the statement was made, been given a reasonable opportunity to consult

(i) with counsel, and

(ii) with a parent or, in the absence of a parent, an adult relative or, in the absence of a parent and an adult relative, any other appropriate adult chosen by the young person, as long as that person is not a co-accused, or under investigation, in respect of the same offence; and

(d) if the young person consults a person in accordance with paragraph (c), the young person has been given a reasonable opportunity to make the statement in the presence of that person.

Exception in certain cases for oral statements

(3) The requirements set out in paragraphs (2)(b) to (d) do not apply in respect of oral statements if they are made spontaneously by the young person to a peace officer or other person in authority before that person has had a reasonable opportunity to comply with those requirements.

Waiver of right to consult

(4) A young person may waive the rights under paragraph (2)(c) or (d) but any such waiver

(a) must be recorded on video tape or audio tape; or

(b) must be in writing and contain a statement signed by the young person that he or she has been informed of the right being waived.

Waiver of right to consult

(5) When a waiver of rights under paragraph (2)(c) or (d) is not made in accordance with subsection (4) owing to a technical irregularity, the youth justice court may determine that the waiver is valid if it is satisfied that the young person was informed of his or her rights, and voluntarily waived them.

Admissibility of statements

(6) When there has been a technical irregularity in complying with paragraphs (2)(b) to (d), the youth justice court may admit into evidence a statement referred to in subsection (2), if satisfied that the admission of the statement would not bring into disrepute the principle that young persons are entitled to enhanced procedural protection to ensure that they are treated fairly and their rights are protected.

Statements made under duress are inadmissible

(7) A youth justice court judge may rule inadmissible in any proceedings under this Act a statement made by the young person in respect of whom the proceedings are taken if the young person satisfies the judge that the statement was made under duress imposed by any person who is not, in law, a person in authority.

Misrepresentation of age

(8) A youth justice court judge may in any proceedings under this Act rule admissible any statement or waiver by a young person if, at the time of the making of the statement or waiver,

(a) the young person held himself or herself to be eighteen years old or older;

(b) the person to whom the statement or waiver was made conducted reasonable inquiries as to the age of the young person and had reasonable grounds for believing that the young person was eighteen years old or older; and

(c) in all other circumstances the statement or waiver would otherwise be admissible.

Parent, etc., not a person in authority

(9) For the purpose of this section, a person consulted under paragraph (2)(c) is, in the absence of evidence to the contrary, deemed not to be a person in authority.

## **Français**

### **Loi sur le système de justice pénale pour les adolescents**

2002, ch. 1

Y-1.5

#### Préambule

que le Canada est partie à la Convention des Nations Unies relative aux droits de l'enfant et que les adolescents ont des droits et libertés, en particulier ceux qui sont énoncés dans la Charte canadienne des droits et libertés et la Déclaration canadienne des droits, et qu'ils bénéficient en conséquence de mesures spéciales de protection à cet égard;

...

## DÉCLARATION DE PRINCIPES Politique canadienne à l'égard des adolescents

3. (1) Les principes suivants s'appliquent à la présente loi :

...

b) le système de justice pénale pour les adolescents doit être distinct de celui pour les adultes et mettre l'accent sur :

...

(iii) la prise de mesures procédurales supplémentaires pour leur assurer un traitement équitable et la protection de leurs droits, notamment en ce qui touche leur vie privée,

...

d) des règles spéciales s'appliquent aux procédures intentées contre les adolescents. Au titre de celles-ci :

(i) les adolescents jouissent, et ce personnellement, de droits et libertés, notamment le droit de se faire entendre dans le cadre des procédures conduisant à des décisions qui les touchent — sauf la décision d'entamer des poursuites — et de prendre part à ces procédures, ces droits et libertés étant assortis de mesures de protection spéciales,

...

### Souplesse d'interprétation

(2) La présente loi doit faire l'objet d'une interprétation large garantissant aux adolescents un traitement conforme aux principes énoncés au paragraphe (1).

...

### Régime de la preuve

146. (1) Sous réserve des autres dispositions du présent article, les règles de droit concernant l'admissibilité des déclarations faites par des personnes inculpées s'appliquent aux adolescents.

### Cas où les déclarations sont admissibles

(2) La déclaration orale ou écrite faite par l'adolescent de moins de dix-huit ans à un agent de la paix, ou à toute autre personne en autorité d'après la loi, au moment de son arrestation ou de sa détention ou dans des circonstances où l'agent ou la personne a des motifs raisonnables de croire que l'adolescent a commis une infraction n'est pas admissible en preuve contre l'adolescent, sauf si les conditions suivantes sont remplies :

a) la déclaration est volontaire;

b) la personne à qui la déclaration a été faite a, avant de la recueillir, expliqué clairement à l'adolescent, en des termes adaptés à son âge et à sa compréhension, que :

(i) il n'est obligé de faire aucune déclaration,

(ii) toute déclaration faite par lui pourra servir de preuve dans les poursuites intentées contre lui,

(iii) il a le droit de consulter son avocat et ses père ou mère ou une tierce personne conformément à l'alinéa c),

(iv) toute déclaration faite par lui doit l'être en présence de son avocat et de toute autre personne consultée conformément à l'alinéa c), le cas échéant, sauf s'il en décide autrement;

c) l'adolescent s'est vu donner, avant de faire la déclaration, la possibilité de consulter :

(i) d'une part, son avocat,

(ii) d'autre part, soit son père ou sa mère soit, en l'absence du père ou de la mère, un parent adulte, soit, en l'absence du père ou de la mère et du parent adulte, tout autre adulte idoine qu'il aura choisi, sauf si la personne est coaccusée de l'adolescent ou fait l'objet d'une enquête à l'égard de l'infraction reprochée à l'adolescent;

d) l'adolescent s'est vu donner, dans le cas où il a consulté une personne conformément à l'alinéa c), la possibilité de faire sa déclaration en présence de cette personne.

#### Exceptions relatives à certaines déclarations orales

(3) Les conditions prévues aux alinéas (2)b) à d) ne s'appliquent pas aux déclarations orales spontanées faites par l'adolescent à un agent de la paix ou à une autre personne en autorité avant que l'agent ou cette personne n'ait eu la possibilité de se conformer aux dispositions de ces alinéas.

#### Renonciation

(4) L'adolescent peut renoncer aux droits prévus aux alinéas (2)c) ou d); la renonciation doit soit être enregistrée sur bande audio ou vidéo, soit être faite par écrit et comporter une déclaration signée par l'adolescent attestant qu'il a été informé des droits auxquels il renonce.

#### Admissibilité de la renonciation

(5) Même si la renonciation aux droits prévus aux alinéas (2)c) ou d) n'a pas été faite en conformité avec le paragraphe (4) en raison d'irrégularités techniques, le tribunal pour adolescents peut conclure à la validité de la déclaration visée au paragraphe (2) s'il estime que l'adolescent a été informé de ces droits et qu'il y a renoncé volontairement.

#### Admissibilité de la déclaration

(6) Le juge du tribunal pour adolescents peut admettre en preuve une déclaration faite par l'adolescent poursuivi — même dans le cas où l'observation des conditions visées aux alinéas (2)b) à d) est entachée d'irrégularités techniques —, s'il est convaincu que cela n'aura pas pour effet de déconsidérer le principe selon lequel les adolescents ont droit à la prise de mesures procédurales supplémentaires pour leur assurer un traitement équitable et la protection de leurs droits.

#### Déclarations faites sous la contrainte

(7) Dans les poursuites intentées sous le régime de la présente loi, le juge du tribunal pour adolescents peut déclarer inadmissible une déclaration faite par l'adolescent poursuivi, si celui-ci l'a convaincu que la déclaration lui a été extorquée par contrainte exercée par une personne qui n'est pas en autorité selon la loi.

#### Déclaration relative à l'âge

(8) Il peut également déclarer admissible toute déclaration ou renonciation de l'adolescent si, au moment où elle faite, les conditions suivantes sont remplies :

- a) l'adolescent prétendait avoir dix-huit ans ou plus;
- b) la personne ayant reçu la déclaration ou la renonciation a pris des mesures raisonnables pour vérifier cet âge et avait des motifs raisonnables de croire que l'adolescent avait effectivement dix-huit ans ou plus;
- c) en toutes autres circonstances, la déclaration ou la renonciation serait par ailleurs admissible.

#### Exclusion

(9) Pour l'application du présent article, l'adulte consulté en application de l'alinéa (2)c) est réputé, sauf preuve contraire, ne pas être une personne en autorité.

**English**

**Education Act, R.S.O. 1990, c. E-2**

Compulsory attendance

21. (1) Unless excused under this section,

(a) every person who attains the age of six years on or before the first school day in September in any year shall attend an elementary or secondary school on every school day from the first school day in September in that year until the person attains the age of 18 years; and

(b) every person who attains the age of six years after the first school day in September in any year shall attend an elementary or secondary school on every school day from the first school day in September in the next succeeding year until the last school day in June in the year in which the person attains the age of 18 years. 2006, c. 28, s. 5 (1).

...

Duties of teacher

264. (1) It is the duty of a teacher and a temporary teacher,  
teach

(a) to teach diligently and faithfully the classes or subjects assigned to the teacher by the principal;

learning

(b) to encourage the pupils in the pursuit of learning;

religion and morals

(c) to inculcate by precept and example respect for religion and the principles of Judaeo-Christian morality and the highest regard for truth, justice, loyalty, love of country, humanity, benevolence, sobriety, industry, frugality, purity, temperance and all other virtues;

...

discipline

(e) to maintain, under the direction of the principal, proper order and discipline in the teacher's classroom and while on duty in the school and on the school ground;

...

Duties of principal

265. (1) It is the duty of a principal of a school, in addition to the principal's duties as a teacher,

discipline

(a) to maintain proper order and discipline in the school;

...

care of pupils and property

(j) to give assiduous attention to the health and comfort of the pupils, to the cleanliness, temperature and ventilation of the school, to the care of all teaching materials and other school property, and to the condition and appearance of the school buildings and grounds;

...

access to school or class

(m) subject to an appeal to the board, to refuse to admit to the school or classroom a person whose presence in the school or classroom would in the principal's judgment be detrimental to the physical or mental well-being of the pupils;

...

Access to school premises

305. (1) The Minister may make regulations governing access to school premises, specifying classes of persons who are permitted to be on school premises and specifying the days and times at which different classes of persons are prohibited from being on school premises. 2000, c. 12, s. 3.

Prohibition

(2) No person shall enter or remain on school premises unless he or she is authorized by regulation to be there on that day or at that time. 2000, c. 12, s. 3.

Same, board policy

(3) A person shall not enter or remain on school premises if he or she is prohibited under a board policy from being there on that day or at that time. 2000, c. 12, s. 3.

Direction to leave

(4) The principal of a school may direct a person to leave the school premises if the principal believes that the person is prohibited by regulation or under a board policy from being there. 2000, c. 12, s. 3.

Offence

(5) Every person who contravenes subsection (2) is guilty of an offence. 2000, c. 12, s. 3.

## **Français**

**Loi sur l'éducation, L.R.O. 1990, c. E-2**

Scolarité obligatoire

21. (1) À moins d'en être dispensée aux termes du présent article :

a) la personne qui a atteint six ans au premier jour de classe de septembre d'une année quelconque fréquente l'école élémentaire ou secondaire tous les jours de classe à compter de ce jour et de cette année, jusqu'à l'âge de 18 ans;

b) la personne qui atteint six ans après le premier jour de classe de septembre d'une année quelconque fréquente l'école élémentaire ou secondaire tous les jours de classe à compter

du premier jour de classe de septembre de l'année suivante jusqu'au dernier jour de classe du mois de juin de l'année où elle atteint 18 ans. 2006, chap. 28, par. 5 (1).

...

#### Fonctions de l'enseignant

264. (1) L'enseignant, même temporaire, exerce les fonctions suivantes :

##### enseignement

a) enseigner avec application et loyauté aux classes que lui assigne le directeur d'école, et enseigner ainsi les matières que lui assigne celui-ci;

##### apprentissage

b) encourager les élèves à poursuivre leur apprentissage;

##### religion et morale

c) inculquer, par les préceptes et l'exemple, le respect de la religion et les principes de la morale judéo-chrétienne et la plus haute considération pour la vérité, la justice, la loyauté, le patriotisme, l'humanité, la bienveillance, la sobriété, le zèle, la frugalité, la pureté, la modération et toutes les autres vertus;

...

##### discipline

e) faire respecter, sous la direction du directeur de l'école, le bon ordre et la discipline dans sa classe et, s'il est de service, à l'école et sur le terrain de l'école;

...

#### Fonctions du directeur

265. (1) En plus de ses fonctions d'enseignant, le directeur d'école exerce les fonctions suivantes :

##### discipline

a) maintenir le bon ordre et la discipline dans l'école;

...

##### mesures d'hygiène vis-à-vis des élèves et entretien des biens scolaires

j) accorder une attention soutenue à la santé et au confort des élèves, à la propreté, à la température et à l'aération de l'école, au maintien en état du matériel d'enseignement et des autres biens scolaires, à l'état et à l'apparence des bâtiments et terrains scolaires;

...

##### accès à l'école ou à la classe

m) sous réserve d'un appel au conseil, refuser d'admettre dans une classe ou à l'école la personne dont la présence dans cette classe ou à l'école pourrait, à son avis, nuire au bien-être physique ou mental des élèves;

...

### Accès aux lieux scolaires

305. (1) Le ministre peut, par règlement, régir l'accès aux lieux scolaires, préciser les catégories de personnes auxquelles il est permis de s'y trouver et préciser les jours et les heures où cela est interdit à des catégories différentes de personnes. 2000, chap. 12, art. 3.

### Interdiction

(2) Nul ne doit entrer ni rester dans des lieux scolaires à moins d'être autorisé par règlement à s'y trouver ce jour-là ou à cette heure-là. 2000, chap. 12, art. 3.

### Idem : politique du conseil

(3) Nul ne doit entrer ni rester dans des lieux scolaires si une politique du conseil lui interdit de s'y trouver ce jour-là ou à cette heure-là. 2000, chap. 12, art. 3.

### Ordre de quitter les lieux

(4) Tout directeur d'école peut ordonner à qui que ce soit de quitter des lieux scolaires s'il croit que les règlements ou une politique du conseil lui interdit de s'y trouver. 2000, chap. 12, art. 3.

### Infraction

(5) Quiconque contrevient au paragraphe (2) est coupable d'une infraction. 2000, chap. 12, art. 3.

**English**

**Operation of Schools Regulation, R.R.O. 1990, Reg. 298, Amended to O. Reg. 132/05**

**Duties of Principals**

11. (1) The principal of a school, subject to the authority of the appropriate supervisory officer, is in charge of,

- (a) the instruction and the discipline of pupils in the school; and
- (b) the organization and management of the school. R.R.O. 1990, Reg. 298, s. 11 (1).

...

(3) In addition to the duties under the Act and those assigned by the board, the principal of a school shall, except where the principal has arranged otherwise under subsection 26 (3),

(a) supervise the instruction in the school and advise and assist any teacher in co-operation with the teacher in charge of an organizational unit or program;

...

(e) provide for the supervision of pupils during the period of time during each school day when the school buildings and playgrounds are open to pupils;

...

(k) provide for instruction of pupils in the care of the school premises;

...

**Duties of Teachers**

20. In addition to the duties assigned to the teacher under the Act and by the board, a teacher shall,

(a) be responsible for effective instruction, training and evaluation of the progress of pupils in the subjects assigned to the teacher and for the management of the class or classes, and report to the principal on the progress of pupils on request;

(b) carry out the supervisory duties and instructional program assigned to the teacher by the principal and supply such information related thereto as the principal may require;

(c) where the board has appointed teachers under section 14 or 17, co-operate fully with such teachers and with the principal in all matters related to the instruction of pupils;

(d) unless otherwise assigned by the principal, be present in the classroom or teaching area and ensure that the classroom or teaching area is ready for the reception of pupils at least fifteen minutes before the commencement of classes in the school in the morning and, where applicable, five minutes before the commencement of classes in the school in the afternoon;

(e) assist the principal in maintaining close co-operation with the community;

...

(g) ensure that all reasonable safety procedures are carried out in courses and activities for which the teacher is responsible;

(h) co-operate with the principal and other teachers to establish and maintain consistent disciplinary practices in the school;

...

### Requirements for Pupils

23. (1) A pupil shall,

- (a) be diligent in attempting to master such studies as are part of the program in which the pupil is enrolled;
- (b) exercise self-discipline;
- (c) accept such discipline as would be exercised by a kind, firm and judicious parent;
- (d) attend classes punctually and regularly;
- (e) be courteous to fellow pupils and obedient and courteous to teachers;
- (f) be clean in person and habits;
- (g) take such tests and examinations as are required by or under the Act or as may be directed by the Minister; and
- (h) show respect for school property. R.R.O. 1990, Reg. 298, s. 23 (1).

(2) When a pupil returns to school after an absence, a parent of the pupil, or the pupil where the pupil is an adult, shall give the reason for the absence orally or in writing as the principal requires. R.R.O. 1990, Reg. 298, s. 23 (2).

(3) A pupil may be excused by the principal from attendance at school temporarily at any time at the written request of a parent of the pupil or the pupil where the pupil is an adult. R.R.O. 1990, Reg. 298, s. 23 (3).

(4) Every pupil is responsible for his or her conduct to the principal of the school that the pupil attends,

- (a) on the school premises;
- (b) on out-of-school activities that are part of the school program; and
- (c) while travelling on a school bus that is owned by a board or on a bus or school bus that is under contract to a board. R.R.O. 1990, Reg. 298, s. 23 (4).

### Français

#### **Fonctionnement des écoles – dispositions générales, R.R.O. 1990, Règlement 298**

##### Fonctions du directeur d'école

11. (1) Le directeur d'une école, sous réserve de l'autorité de l'agent de supervision compétent, est responsable de ce qui suit :

- a) l'enseignement dispensé aux élèves de l'école et les règles de discipline les concernant;
- b) l'organisation et l'administration de l'école. Règl. de l'Ont. 339/91, art. 1.

...

(3) Outre les fonctions que lui confère la Loi et celles que lui assigne le conseil, le directeur d'école exerce les fonctions suivantes, sauf s'il a pris d'autres dispositions en vertu du paragraphe 26 (3) :

a) il supervise l'enseignement dispensé dans l'école et conseille et aide les enseignants, en collaboration avec l'enseignant responsable d'une unité administrative ou d'un programme;

k) il prévoit l'instruction des élèves sur le respect des locaux scolaires et de leur enceinte;

...

#### Fonctions de l'enseignant

20. Outre les fonctions que lui confère la Loi et le conseil, l'enseignant exerce les fonctions suivantes :

a) il est responsable de l'enseignement et de la formation efficaces des élèves dans les matières qu'il est chargé d'enseigner, de l'évaluation véritable de leurs progrès, de l'administration de la ou des classes et, sur demande, de la présentation d'un rapport au directeur d'école sur le progrès des élèves;

b) il met en oeuvre le programme d'enseignement et exerce les fonctions de supervision que lui assigne le directeur d'école, et il lui fournit les renseignements que celui-ci peut demander à ce sujet;

c) il collabore pleinement dans tous les domaines liés à l'enseignement dispensé aux élèves avec le directeur d'école et les enseignants que le conseil a désignés aux termes de l'article 14 ou 17;

d) il est présent dans la salle de classe ou le local d'enseignement et veille à ce que ceux-ci soient prêts à recevoir les élèves au moins quinze minutes avant le début des classes le matin et, le cas échéant, cinq minutes avant le début des classes l'après-midi, à moins que le directeur d'école n'en décide autrement;

e) il aide le directeur d'école à maintenir une collaboration étroite avec la communauté;

...

g) il veille à ce que toutes les mesures de sécurité suffisantes soient prises dans le cadre des cours et des activités dont il a la responsabilité;

h) il collabore avec le directeur d'école et les autres enseignants en vue d'établir et de maintenir une discipline cohérente dans l'école.

...

#### Exigences en ce qui concerne l'élève

23. (1) L'élève :

a) s'applique à maîtriser les matières du programme auquel il est inscrit;

b) fait preuve d'autodiscipline;

c) se soumet à la discipline qui correspond à celle que pourrait exercer un père ou une mère bienveillant, ferme et sensé;

d) fréquente l'école avec assiduité et ponctualité;

e) est courtois envers ses camarades et fait preuve d'obéissance et de courtoisie envers les enseignants;

f) observe les règles de propreté et d'hygiène;

g) subit les tests et examens exigés par la Loi ou que peut imposer le ministre;

h) respecte les biens scolaires. Règl. de l'Ont. 339/91, art. 1.

(2) Lorsque l'élève revient à l'école après une absence, le père ou la mère de l'élève, ou l'élève lui-même s'il est adulte, justifie son absence, verbalement ou par écrit, selon ce qu'exige le directeur d'école. Règl. de l'Ont. 339/91, art. 1.

(3) Le directeur d'école peut, à n'importe quel moment, autoriser un élève à ne pas fréquenter, temporairement, l'école si le père ou la mère de l'élève, ou l'élève lui-même s'il est adulte, en fait la demande par écrit. Règl. de l'Ont. 339/91, art. 1.

(4) L'élève est responsable, devant le directeur de l'école qu'il fréquente, de sa conduite :

a) dans les locaux ou l'enceinte de l'école;

b) dans le cadre des activités périscolaires qui font partie du programme d'études;

c) lorsqu'il voyage dans un autobus scolaire dont le conseil est propriétaire ou que le conseil a loué. Règl. de l'Ont. 339/91, art. 1.

**English**

**Access to School Premises, O. Reg. 474/00**

1. This Regulation governs access to school premises under section 305 of the Act. O. Reg. 474/00, s. 1.
2. (1) The following persons are permitted to be on school premises on any day and at any time:
  1. A person enrolled as a pupil in the school.
  2. A parent or guardian of such a pupil.
  3. A person employed or retained by the board.
  4. A person who is otherwise on the premises for a lawful purpose. O. Reg. 474/00, s. 2 (1).(2) A person who is invited to attend an event, a class or a meeting on school premises is permitted to be on the premises for that purpose. O. Reg. 474/00, s. 2 (2).  
(3) A person who is invited onto school premises for a particular purpose by the principal, a vice-principal or another person authorized by board policy to do so is permitted to be on the premises for that purpose. O. Reg. 474/00, s. 2 (3).  
(4) Subsection (1), (2) or (3) does not entitle a person to have access to all areas of the school premises. O. Reg. 474/00, s. 2 (4).  
(5) Subsection (1) does not restrict the right of the board to lock the school premises when the premises are not being used for a purpose authorized by the board. O. Reg. 474/00, s. 2 (5).
3. (1) A person is not permitted to remain on school premises if his or her presence is detrimental to the safety or well-being of a person on the premises, in the judgment of the principal, a vice-principal or another person authorized by the board to make such a determination. O. Reg. 474/00, s. 3 (1).  
(2) A person is not permitted to remain on school premises if a policy of the board requires the person to report his or her presence on the premises in a specified manner and the person fails to do so. O. Reg. 474/00, s. 3 (2).
4. Omitted (provides for coming into force of provisions of this Regulation). O. Reg. 474/00, s. 4.

**Français**

**Loi sur l'éducation, Règlement de l'ontario 474/00**

1. Le présent règlement régit l'accès aux lieux scolaires pour l'application de l'article 305 de la Loi. Règl. de l'Ont. 474/00, art. 1.

2. (1) Il est permis aux personnes suivantes de se trouver dans des lieux scolaires n'importe quel jour et à n'importe quelle heure :

1. Les personnes inscrites comme élèves à l'école.
2. Le père, la mère ou le tuteur de tels élèves.
3. Les personnes que le conseil emploie ou dont il retient les services.
4. Les personnes qui se trouvent dans les lieux à une autre fin licite. Règl. de l'Ont. 474/00, par. 2 (1).

(2) La personne qui est invitée à assister à une activité, à une classe ou à une réunion qui se tient dans des lieux scolaires peut s'y trouver à cette fin. Règl. de l'Ont. 474/00, par. 2 (2).

(3) La personne que le directeur d'école, un directeur adjoint ou une autre personne que la politique du conseil autorise à le faire inviter dans des lieux scolaires à une fin particulière peut s'y trouver à cette fin. Règl. de l'Ont. 474/00, par. 2 (3).

(4) Le paragraphe (1), (2) ou (3) ne confère pas un droit d'accès à l'ensemble des lieux scolaires. Règl. de l'Ont. 474/00, par. 2 (4).

(5) Le paragraphe (1) ne porte pas atteinte au droit qu'a le conseil de fermer à clé les lieux scolaires lorsqu'ils ne sont pas utilisés à une fin autorisée par lui. Règl. de l'Ont. 474/00, par. 2 (5).

3. (1) La personne dont la présence nuit à la sécurité ou au bien-être de quiconque se trouve dans des lieux scolaires, de l'avis du directeur d'école, d'un directeur adjoint ou d'une autre personne que le conseil autorise à juger d'une telle situation, ne peut y rester. Règl. de l'Ont. 474/00, par. 3 (1).

(2) La personne qu'une politique du conseil oblige à signaler d'une manière précisée sa présence dans des lieux scolaires et qui ne le fait pas ne peut y rester. Règl. de l'Ont. 474/00, par. 3 (2).

4. Omis (prévoit l'entrée en vigueur des dispositions du présent règlement). Règl. de l'Ont. 474/00, art. 4.

**English**

**Marihuana Medical Access Regulations, SOR/2001-227**

...

2. The holder of an authorization to possess is authorized to possess dried marihuana, in accordance with the authorization, for the medical purpose of the holder.

ELIGIBILITY FOR AUTHORIZATION TO POSSESS

3. A person is eligible to be issued an authorization to possess only if the person is an individual ordinarily resident in Canada.

...

ISSUANCE OF AUTHORIZATION TO POSSESS

11. (1) Subject to section 12, if the requirements of sections 4 to 10 are met, the Minister shall issue to the applicant an authorization to possess for the medical purpose mentioned in the application, and shall provide notice of the authorization to the medical practitioner who made the medical declaration under paragraph 4(2)(b).

(2) The authorization shall indicate

- (a) the name, date of birth and gender of the holder of the authorization;
- (b) the full address of the place where the holder ordinarily resides;
- (c) the authorization number;
- (d) the name of the medical practitioner who made the medical declaration under paragraph 4(2)(b);
- (e) the maximum quantity of dried marihuana, in grams, that the holder may possess at any time;
- (f) the date of issue; and
- (g) the date of expiry.

...

SCHEDULE

*(Section 1)*

CATEGORY 1 SYMPTOMS

<b>Column 1</b>	<b>Column 2</b>
<b>Item Symptom</b>	<b>Associated Medical Conditions</b>
1. Severe nausea	Cancer, AIDS/HIV infection
2. Cachexia, anorexia,	Cancer, AIDS/HIV infection

<b>Column 1</b>	<b>Column 2</b>
<b>Item Symptom</b>	<b>Associated Medical Conditions</b>
weight loss	
3. Persistent muscle spasms	Multiple sclerosis, spinal cord injury or disease
4. Seizures	Epilepsy
5. Severe pain	Cancer, AIDS/HIV infection, multiple sclerosis, spinal cord injury or disease, severe form of arthritis

### **Français**

#### **Règlement sur l'accès à la marijuana à des fins médicales, DORS/2001-227**

...

#### **OPÉRATION AUTORISÉE**

2. Le titulaire d'une autorisation de possession peut avoir en sa possession, conformément à l'autorisation, de la marijuana séchée à ses propres fins médicales.

#### **ADMISSIBILITÉ À L'AUTORISATION**

3. Est admissible à l'autorisation de possession la personne physique qui réside habituellement au Canada.

...

#### **DÉLIVRANCE DE L'AUTORISATION**

11. (1) Sous réserve de l'article 12, le ministre délivre au demandeur l'autorisation de possession aux fins médicales précisées dans la demande si les exigences des articles 4 à 10 sont remplies; il en avise le médecin qui a fourni la déclaration médicale visée à l'alinéa 4(2)b).

(2) L'autorisation comporte les renseignements suivants :

- a) les nom, date de naissance et sexe du titulaire de l'autorisation;
- b) l'adresse complète de son lieu de résidence habituelle;
- c) le numéro d'autorisation;
- d) le nom du médecin qui a fourni la déclaration médicale visée à l'alinéa 4(2)b);

e) la quantité maximale de marijuana séchée, en grammes, que peut posséder le titulaire de l'autorisation;

f) la date de délivrance;

g) la date d'expiration.

...

ANNEXE  
(article 1)  
SYMPTÔMES DE CATÉGORIE 1

Article	Colonne 1 Symptôme	Colonne 2 État pathologique
1.	Violente nausée	Cancer, SIDA/infection au VIH
2.	Cachexie, anorexie, perte de poids	Cancer, SIDA/infection au VIH
3.	Spasmes musculaires persistants	Sclérose en plaques, lésion ou maladie de la moelle épinière
4.	Convulsions	Épilepsie
5.	Douleur aiguë	Cancer, SIDA/infection au VIH, sclérose en plaques, lésion ou maladie de la moelle épinière, forme grave d'arthrite

Court File No. 31496

**HER MAJESTY THE QUEEN**

-and-

**A.M. (A Young Person).**

Appellant

Respondent

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**Supreme Court of Canada**  
(on Appeal from the Court of Appeal for Ontario)

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**FACTUM OF THE INTERVENER  
CANADIAN FOUNDATION FOR  
CHILDREN YOUTH AND THE LAW  
(JUSTICE FOR CHILDREN AND  
YOUTH)**

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