
October 2011

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Citation Information

Lopatriello, Grant. "Book Notes: The Courts, the Charter, and the Schools, edited by Michael and Kirsten Manley-Casimir." *Osgoode Hall Law Journal* 49.2 (2011) : 407-408.

DOI: <https://doi.org/10.60082/2817-5069.1070>

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Book Note

THE COURTS, THE CHARTER, AND THE SCHOOLS, edited by
Michael and Kirsten Manley-Casimir¹

GRANT LOPATRIELLO

IN THIS COLLECTION OF ESSAYS authored by academics, lawyers, and teachers, Michael and Kirsten Manley-Casimir provide readers with interdisciplinary perspectives on the importance of the *Canadian Charter of Rights and Freedoms*² in the development and application of Canadian educational policy and practice. Following up on a book Michael Manely-Casimir co-edited in 1986,³ this new collection takes readers through a contemporary analysis of the educational issues that touch and concern the rights protected by the *Charter*. The editors conclude that, although recent jurisprudence has advanced the understanding of the impact of the *Charter* on these issues, there is no clear judicial consensus on what they consider to be the most important provision—section 15 equality rights. Nevertheless, the editors note that significant progress has been made in the adjudication of *Charter*-related educational issues and are optimistic that such issues will be further developed in the decades ahead.

While the authors of chapter 1 evaluate the impact that section 15 has had on educational policy and practice broadly, the authors of chapters 2 through 5 take a more focussed approach. The author of chapter 2, for example, examines the effect of equality rights on inclusiveness. He argues that the equality rights provided for under section 15 can be used to achieve safer, more inclusive schools. Although his analysis is centred on disability access, the author underscores that other issues, such as the balancing of gay and lesbian rights, are important in achieving equality in schools. He concludes that greater equality promotes a

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1. (Toronto: University of Toronto Press, 2009) 371 pages.
 2. Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].
 3. Michael E Manley-Casimir & TA Sussel, eds, *Courts in the Classroom: Education and the Charter of Rights and Freedoms* (Calgary: Detselig, 1986).

culture of tolerance and respect, which reduces violence and harassment. Chapter 3 examines the impact of the equality protections under section 15 on special education in Ontario. The authors of that chapter conclude that because that province had enacted special education legislation containing built-in equality guarantees before the enactment of the *Charter*, section 15 has had no direct effect in shaping the provision of special education in Ontario.

Chapters 4 and 5 extend the discussion from the preceding chapters to equality of access to public schools, and the trend towards secularization in both public and denominational schools. In chapter 4, the author uses the test developed by the Supreme Court of Canada in *Law v Canada (Minister of Employment and Immigration)*⁴ (which was later refined in *Falkiner v Ontario (Ministry of Community and Social Services)*⁵) to argue that public funding of private schools through vouchers and tax-credit programs is a clear violation of section 15. He argues that “vouchers and tax credits requiring parents to top-up their value to pay private school tuition fees unconstitutionally excludes poor parents and children from access to private schools.”⁶ The author concludes that in order to increase access to quality education for marginalized groups such as the poor, the public education system has to be improved. The authors of chapter 5 observe that the enactment of the *Charter* has led to increased secularism in both public and denominational schools. In particular, recent jurisprudence demonstrates a trend towards eliminating religious practices in public schools—allowing for religious education only if it is non-indoctrinatory.

In chapters 7 and 8, the impact of the *Charter* on a student’s constitutional rights to be free from unreasonable search and seizure and from cruel and unusual punishment are explored. In analyzing the former issue, the author argues that, similar to the direction taken in the United States, the *Charter* restricts a student’s constitutional rights. He notes, for example, that courts have held that students have a diminished expectation of privacy, which judges view as required to promote safety, order, and discipline.

The remaining chapters explore the interaction of *Charter* rights with the broader rights of the child, the impact of the *Charter* on minority language rights, and the notion of the school as a social institution as constructed by the courts.

The *Charter’s* entrenchment in Canada’s Constitution necessitates a continuing role for the courts in setting this policy through interpreting and applying the *Charter*. And as the fabric of Canada changes, so too will the courts’ opinions on educational policy.

4. [1999] 1 SCR 497.

5. (2002), 59 OR (3d) 481 (CA).

6. *Supra* note 1 at 8.