

# Rights Talk

STUDENTS AND  
CIVIL LIBERTIES AT  
SCHOOL

BC CIVIL LIBERTIES ASSOCIATION

Alyssa Stryker

with

Laura Crestohl,

Menka Sull and

Danielle VanderEnde



The BC Civil Liberties Association is grateful to the Law Foundation of BC and the Notary Foundation of BC for providing support for this project.



Written by Alyssa Stryker with Laura Crestohl, Menka Sull and Danielle VanderEnde.

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## ACKNOWLEDGEMENTS

The BCCLA gratefully acknowledges the financial support of the Law Foundation of BC and the Notary Foundation of BC, without which this guide could not have been produced. The collaboration of our 2013 legal interns – Laura Crestohl, Menka Sull and Danielle VanderEnde – was also invaluable.

We would also like to thank Laura Huey and Pam Murray, who wrote the original 2001 version of the Rights Talk handbook. Although this new version of the handbook is significantly different than theirs, it was their hard work that gave us a strong foundation on which to build a more up-to-date product for students who are facing the kinds of civil liberties concerns Laura and Pam just could not have anticipated twelve years ago.

Thanks to Emily Stryker for generously offering a teenager's perspective on various drafts of the handbook, Jeanie Casault for help with the editing, and to BCCLA Office Manager Jim Braunagel for his layout and graphic design skills. Last but not least, thanks to BCCLA staff Stefanie Ratjen, Micheal Vonn, and Josh Paterson for their various roles in helping to shepherd this project to completion.

— Alyssa Stryker, *BCCLA Caseworker*, October 2013

### **This guide is not legal advice!**

This publication is a general guide. It covers technical and complex subjects and should not be used to make decisions on legal matters. If you have a legal issue in your personal life related to the topics covered in this guide, you should consult a lawyer. If you don't know how to do this, call the BCCLA. We can't give you legal advice ourselves, but we can help you find somewhere to get it.

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## What You're About to Learn...

Welcome to the Rights Talk handbook, your guide to your rights as a student and a youth in Canada. In this handbook, you'll learn about a whole variety of civil liberties issues that affect you – everything from dress codes to sniffer dogs to whether or not your teacher can go through the contents of your phone.

Some of the things you'll know after reading this handbook include:

- When it's ok for the government to limit your rights and freedoms (page 12).
- Whether it's ok for religious parents to pull their children out of classes that discuss subjects like LGBTQ issues and sex ed (page 22).
- Whether you can face criminal charges for sexting (page 31).
- Whether your teacher or the police can search the contents of your cell phone (page 36).
- Whether you can be disciplined at school for something you said outside of school (page 28).
- When it's ok for your school to bring in a sniffer dog to look for drugs (page 42).
- How to appeal if you get suspended at school (page 47).
- What your rights are when talking with the police (page 49).

Don't want to read the whole thing? Check out the table of contents and you can figure out what part to read to get the information you're looking for. Or you can read it cover to cover to become as informed as possible about your rights and freedoms both at school and beyond.

If you have more questions about one of the “Think about it” boxes, or need a bit more information to get a good discussion started, check out the “For Further Discussion” section, beginning on page 53.

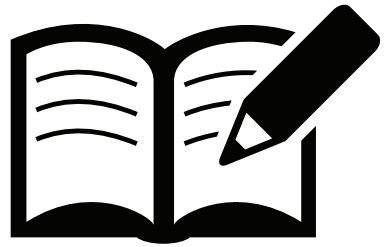
Throughout this handbook we’ll make reference to different legal decisions that teach us different things about how our laws work in Canada. If you are particularly interested in an issue, it can be fascinating to take a look at the legal decision itself. The very last section of the handbook provides you with URLs where you can access the different decisions referenced in this guide.

One last point before we get started: it’s important to note that we wrote this handbook with public school students in British Columbia in mind. If you go to school in another province, or attend a private school in BC, not all of the information contained here will apply to you. You may still find it interesting, however – it might help you think of questions you should be asking about how things work in your home province or private school.



# 1 THE BASICS

The BC Civil Liberties Association believes that informed and active citizens are vital to protecting fundamental rights and freedoms in Canada. People in power, from police officers to your Social Studies teacher, may sometimes try to take certain actions that violate your rights. This isn't necessarily because they are bad people – it may be that they themselves don't know what your rights are, or it may be because they are trying to take advantage of the fact that that you go along with it because you don't know any better.



For this reason, it's crucial that you know what your rights are and how they work. The more you know about them, the more you can make sure that your rights (and the rights of others) are respected, both in and out of school.

## **So, what are civil liberties?**

Civil liberties are a set of values concerning individual freedom and the limits of government intervention in our lives. Because public schools are run by the government, civil liberties include the freedom of students in school and the limits to the school's control over your life. As you will see, however, the law does allow schools to limit your freedom in ways that other parts of the government – like the police – are not allowed to.

There are many examples of civil liberties in Canada. Some might apply only to citizens of Canada, like voting rights, while others apply to everyone regardless of citizenship. Key civil liberties include:

- Privacy (the right not to be snooped on by the government)

- Access to information (the right to know what information the government possesses)
- Freedom of speech and expression (the right to express what you think, believe and feel)
- Freedom of association (the right to spend time with and form groups with whoever you want)
- Legal rights in relation to the criminal law (rights when you are arrested, during a trial and if convicted)
- Political rights (the right to vote and the duty of governments to hold free and fair elections)

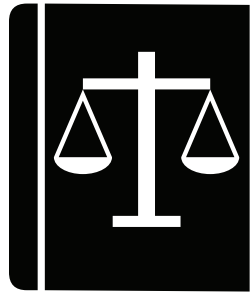
The civil liberties we talk about in this handbook will touch on a number of these different areas, but will particularly relate to privacy, freedom of speech and expression, and legal rights.

### **Where do civil liberties come from?**

Civil liberties in Canada are outlined in three main legal sources:

- 1) *Canada's constitution*: Many of your civil liberties are guaranteed in the *Canadian Charter of Rights and Freedoms*, part of our constitution. The constitution is the highest law in Canada, and all other laws must uphold *Charter* rights. It is much more difficult for the government to change the constitution than it would be to change any other law.
- 2) *Federal and provincial human rights laws*, such as the *Canadian Human Rights Act* and the *BC Human Rights Code*: These laws protect individuals against certain kinds of discrimination, based on things like race/ethnicity, gender, physical or mental disability, marital status and sexual orientation.

3) *The common law*: A complicated concept that expresses the way both old and new court decisions help to shape our current legal system. For the purposes of this handbook, you can think about common law as a fancy way of saying the stuff that judges decided in old legal decisions. Other judges take this into account and are guided by this when looking at new cases. When we refer to things we know from old legal cases throughout this handbook, we'll be referring to the common law. These old legal cases are often called 'case law'.



While all of these sources are extremely important, we will be working mainly with the *Charter of Rights and Freedoms* and examples from the common law. We've provided you with a link to an online copy of the Charter below. It might be a good idea to read it over before you get any further, and to keep it handy to refer to as you go. For such an important piece of legislation, you'll be surprised at how short it is – it won't take you long to read at all.



<http://laws-lois.justice.gc.ca/eng/const/page-15.html>

Although the *Charter* is very powerful, it does not apply to all issues of injustice or unfairness. Section 32 of the *Charter* states that it applies to dealings between an individual or group and the federal, provincial and municipal government and their designated agencies or agents.

This means that your *Charter* rights protect you when you deal with the police (since they are technically part of the government), but you can't enforce your *Charter* rights against a private company, a friend or a sibling. The *Charter* also doesn't apply to your relationship with your parents, which becomes more important than you might think when we get into the way the way the *Charter* applies to schools – read on! We'll come back to this in the section titled "The *Charter* and the *School Act*."

## Your rights can be limited!

You may be asking by now why, if you have the right to privacy, you have to tell ICBC your address when you go in to get your driver's license, or why, if you have the right to free speech, you aren't allowed to go around threatening anyone you want. This is because our rights and freedoms, even in a country like Canada, are not absolute – that is, they have limits.

If you read the *Charter* carefully, you may have noticed section 1:

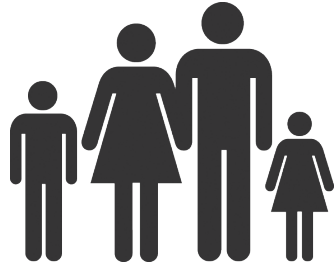
The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

What does this mean? It means that when some part of the government wants to do something that violates your rights, they can do so legally if they convince a judge that they have a very good reason for doing so. The reason also has to be consistent with the fact that we live in a free and democratic society. Doing this can be very complicated – many of the most important legal cases related to civil liberties hinge on lawyers trying to make arguments about whether an alleged violation of *Charter* rights is justified under section 1. It can also be straightforward, like the fact that most people consider it reasonable to send someone to jail if they commit a serious crime, despite the fact that going to jail is a major infringement on freedom.

## The Charter and the School Act

There is just one more thing we need to talk about before getting into the more meaty part of this handbook, and that is a piece of British Columbia legislation called the *School Act*. It is a very long law that sets out the legal powers and responsibilities of teachers, school administrators and school boards.

To understand how this *Act* works and how it interacts with the *Charter*, you'll need to learn a little Latin: *in loco parentis*, which means "in the place of a parent". During school hours the school (the teachers, principals, and other school officials) act as your parents or guardians.



Therefore, school officials have the right, within reason and within the guidelines of the *Act*, to discipline you if you are not behaving appropriately in class, or to demand that you hand in your homework on time.

It also means that, although public school officials are technically part of the government and would therefore usually be covered by the *Charter*, they actually fall into a grey area between the government and your family – remember how we learned that the *Charter* does not apply to your relationship with your family?

This means that while you do have many rights while in school, it is sometimes considered acceptable for teachers to violate your rights if they can argue that it's in your best interest, and they claim that they are acting *in loco parentis*. This is different than if you were dealing with a police officer or other government official, as police officers cannot claim to be acting *in loco parentis*. We'll learn more about this later in the handbook.

## 2 FREEDOM OF EXPRESSION

Freedom of expression is the right to express yourself to others. It's because of free expression that we're allowed to share ideas with each other – good ones, bad ones, smart ones, dumb ones, popular ones and unpopular ones, even ideas that may be highly offensive to some people. Free expression is one of the most fundamental and important civil liberties – democracy just wouldn't exist without it.



We often use “freedom of expression” and “freedom of speech” interchangeably, but actually expression covers much more than just speech. It can also include thoughts, writing, symbols, songs or art. Actions can also be expressive - flag-burning is a classic example of this.

### Think about it

What kinds of things do you think someone might be trying to express by burning their country's flag?

Free speech is not limitless, however. In Canada, the government and the courts have outlined a number of circumstances in which they (on behalf of society at large) deem it appropriate to limit the freedom of expression of citizens when it can be shown that other interests are more important. We'll talk more about this later in this section.

### Dress Codes: What'll I wear?

One classic free expression in schools issue is the case of dress codes for students. Clothing choices are an important way that individuals express themselves in society, along with other aspects of appearance such as hairstyles, make-up, tattoos, piercings, buttons with slogans or head coverings.

However, many schools argue that limiting what students can wear to school (restrictions that can range from banning clothing with swear words

to requiring that students wear uniforms) is crucial to the important goal of creating a safe and healthy learning environment.

There have not been any recent legal cases in Canada that specifically examine the constitutionality of school dress codes. The older cases on the subject (many of them from before the *Charter* even existed!) all uphold schools' rights to set and enforce dress codes.

Can you think of something a student might try to express through their clothing that you feel it would be appropriate for the school to restrict?

### South of the border

As you may know, Canadian courts do not have to follow American law and court decisions. However, it can be interesting to look at American examples when learning about civil liberties, particularly in areas where there are not many Canadian decisions to look to. School dress codes is one of these areas.

In the fall of 2003, a federal judge in the United States examined the case of a teenager whose school banned him from wearing a t-shirt with a picture of President George W. Bush and the caption "International Terrorist." The school argued that wearing such a shirt might cause a disruption, and that school was an inappropriate place for political debate.

The judge found that the student *must* be allowed to wear the shirt to school, writing that "students benefit when school officials provide an environment where they can openly express their diverging viewpoints and when they learn to tolerate the opinions of others."

More information about this case can be found here: <https://www.aclu.org/free-speech/judge-rules-favor-michigan-students-right-wear-anti-war-t-shirt-school>

## Nudity: The Limits of Clothing as Expression?

In May 2009, a man named Brian Coldin drove through a Tim Hortons drive-through in Bracebridge, Ontario with no clothing on. Four days later, Mr. Coldin – this time along with two friends – surprised another drive-through worker, this time at A&W: all of them were naked. Mr. Coldin was charged with public nudity, and argued in his defence that laws against public nudity violate his *Charter* right to free expression and freedom of religion. He argued that he is a 'naturist', and that wearing as little clothing as practical was crucial for the expression of his beliefs. The judge was not convinced, and ruled that in this case the social disruption of public nudity overshadowed any expressive rights Mr. Coldin may have as a naturist. What do you think? Can you think of examples of important expression that could be communicated through nudism? Do you think these are important types of expression to protect?

Schools that enforce dress codes of various kinds use several main justifications for limiting expression in this way. Which of the following arguments do you think make the most sense?

- *Bullying*: Some people argue that school uniforms decrease the visible differences between students, thus making it less likely they will be bullied for looking different. Others argue that dress codes don't actually affect bullying much anyway, so they say that this isn't a good argument.
- *"Distracting" clothing*: Some suggest that particular kinds of clothing have the potential to distract students from their schoolwork, and so must be limited to improve student focus. They tend to focus on clothing worn by young women that they consider "overly sexualized." Almost everyone would agree that *some* regulation on sexualized clothing in schools is appropri-



## Think about it

Maya is a grade 12 student who has been involved in pro-life activism from a very young age. Recognizing the sacredness of life from conception is an important part of her religious beliefs, and she believes strongly that she needs to try to teach her fellow students that abortion is the same as killing a baby. She decides to start regularly wearing a t-shirt to school that says “ABORTION = MURDER.”

Ye is also a grade 12 student at Maya’s school. When she was in grade 10 she got pregnant and decided to have an abortion. When she saw Maya’s shirt she got very upset at the idea that Maya was calling her a murderer. She was so upset that she started feeling anxious at school, and had a great deal of trouble focusing on her work. She talked to her school counsellor about it, who passed her complaint anonymously to the principal. Maya was told she could no longer wear her shirt to school.

- 1) How is this situation similar to the American student with the “International Terrorist” t-shirt? How is it different?
- 2) Was there a less extreme way the school could have made sure Ye didn’t feel harassed and discriminated against other than forbidding Maya from wearing her t-shirt?
- 3) Do you think Maya should be allowed to wear her shirt? Why or why not?

See “For Further Discussion” section on p. 53 for more information.

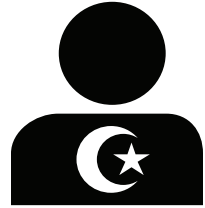
ate – it would be hard to find someone who would seriously argue that students should be allowed to attend school naked (although see box on page 16 for quirky case about nudity and expression!) – but how much limitation is appropriate?

- *Discriminatory expression:* Schools and school boards are legally required to ensure that human rights are protected and form the basis of their learning environments. Clothing with racist, sexist or homophobic messages, or any other negative messages that overtly target a recognizable group or individual, could possibly make it very difficult for all individuals to participate equally and safely in the school environment.

As you can see, many of the examples that we've touched on in our discussion of freedom of expression also tie into another important *Charter* right: freedom of religion. We'll discuss freedom of religion in much more detail in Chapter 3.

### 3 WALKING THE LINE: SECULARISM AND RELIGIOUS FREEDOM

In the previous section, we mentioned some examples of free expression protected under the *Charter* that are related to religion, such as the right of people to wear religious clothing or clothing that expresses a religious belief. In this section we're going to talk about freedom of religion more specifically. Canada is often referred to as a secular country, which means that the government is separate from religious institutions and the government will not impose particular religious beliefs on the public.



One example of where we see the principle of secularism come up in Canada is in the running of public schools. The *BC School Act* states that all public schools must be secular and that no particular religion should be taught in them.

#### Think about it

How secular is Canada?  
Can you think of any examples of when the government does impose a particular religious belief on people? What about holidays like Easter or Christmas? Do we consider these to be religious holidays anymore?

#### Freedom of religion under the Charter

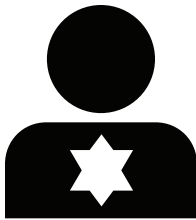
At the same time, section 2(a) of the *Charter* protects each person's freedom of religion. There are two main aspects to this freedom. First, freedom of religion includes the right to hold religious beliefs and the right to express these beliefs openly without fear.<sup>1</sup> Second, freedom of religion includes the ability to be free from the imposition of other religious beliefs and practices.

<sup>1</sup> This right is outlined in a legal case called *R v Big M Drug Mart Ltd.*

While section 2(a) of the *Charter* ensures that you are not forced into *following* a religion, there is no guarantee of freedom from all *exposure* to other religions. This means that followers of a religion can express their beliefs in public as long as they do not violate the rights of others.<sup>2</sup>

### Balancing secularism with freedom of religion

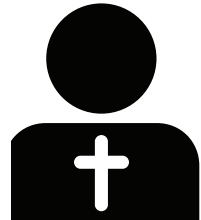
Balancing secularism with freedom of religion in the public school system can be a difficult task. Although the *School Act* says that schools have to be secular, this does not mean that there is no room for religion at all. For example, schools can teach students about different religions as long as they do not force students to join a religion.<sup>3</sup>



The following examples demonstrate how courts and the government try to balance the *Charter's* guarantee of freedom of religion with the principle that public schools should be secular. As you can see, it can sometimes be a tricky balance.

### Religious clothing

For many people, expressing their religious beliefs involves wearing religious items, symbols or clothing. But what if expressing your religious beliefs could endanger the safety of others? The Supreme Court of Canada had to deal with this issue in the case of *Multani v Commission scolaire Marguerite-Bourgeoys*, in which a Sikh student wanted to wear a religious dagger called a kirpan to school. The school authorities were concerned that wearing the kirpan would pose a safety risk to other students because it could be used as a weapon. They told the student he could not wear it to school. The Supreme Court said that not allowing the student to wear his kirpan violated his freedom of religion, and that the school needed to take steps to allow him to wear it.



2 The Supreme Court of Canada talks about this in the case *Chamberlain v Surrey School District No 36*.

3 You can find more about this in the case *SL v Commission scolaire des Chênes*.

As long as the student wore the kirpan securely under his clothes, there was little chance that it would be used for violence against other students.

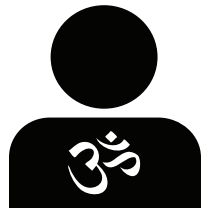
### Think about it

The Quebec Soccer Federation recently overturned its ban on players wearing turbans or other religious headwear on the soccer pitch. If you were a lawyer, what kinds of arguments in support of or against the turban ban could you make based on what the Supreme Court said in the *Multani* case? Remember, a lot of what lawyers do is take arguments from previous cases and apply them to new situations.

### School prayer

As we discussed earlier, freedom of religion includes the ability to be free from having to participate in religious practices that you don't want to participate in. So, for example, public schools cannot require prayer or reading of religious texts in school. But this was not always the case. Until 1989, the *BC School Act* said that all public schools had to open classes with the reading of passages from the Bible and a Christian prayer. In the case of *Russow v British Columbia*, a BC court decided that this violated freedom of religion because it imposed the majority religion on minorities. As a result, the BC government changed the *School Act* to ensure secularism in public schools.

In a 2012 case called *SL v. Commission scolaire des Chênes*, some parents objected to their children having to take a class about various religions because they claimed it would interfere with their ability to pass on their religion to their children. The Supreme Court of Canada disagreed, and ruled that merely being *exposed* to different religious beliefs does not violate anyone's freedom of religion. Does knowing about this case change your answer to the questions in the box on page 22?



## Think about it

School districts in some BC cities allow a Christian group to deliver free Bibles to Grade 5 students with parental consent. Some people think that this goes against the idea of public schools being secular. Do you think this violates the principle of secularism found in the *School Act*? What if other religious groups were also distributing their religious books – would that make a difference to your opinion? Why or why not?

## Teaching 'sensitive' subjects: LGBTQ<sup>4</sup> issues

Even though Canadian society is getting better at respecting the rights of people who aren't heterosexual, there are still some parents who might not want their children to learn about LGBTQ issues in school, usually because of their religious beliefs. Often these same parents are also concerned with the way public schools teach sex ed. What should schools do in these types of situations? How do they address the concerns of parents while also ensuring that students get a comprehensive education, and that schools remain welcoming places for LGBTQ students and their allies?

In the past, some parents would regularly take their children out of a class because LGBTQ issues were being taught. They were able to do this because educational policy said that parents could choose to take their children out of classes with "sensitive content", which included both LGBTQ issues and sex ed. This policy was challenged by two LGBTQ rights activists at the BC Human Rights Tribunal.<sup>5</sup> They argued that BC schools were being discriminatory by not including LGBTQ issues in the school

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4 You probably already know this, but LGBTQ is an acronym that stands for "lesbian, gay, bisexual, transgender, queer." Some people prefer just to use the word "queer" as an umbrella term for all of these, as well as other identities not included in the acronym like two-spirit, asexual and genderqueer. The term queer also includes those who prefer not to label themselves in a more specific way.

5 You can read more about this by looking up the legal cases *Corren and Corren v BC (Ministry of Education) (No 2)* and *Corren and Corren v BC (Ministry of Education) (No 3)*.

curriculum, and they wanted the government to clarify what was meant by “sensitive content”.

Before the case could be heard by the Tribunal, the BC government settled the case. As part of the settlement, the government decided that students cannot opt out of classes like Social Studies, English, or Science for religious reasons – even when controversial issues may arise in these classes. However, parents are able to take their children out of Health and Career classes (where sex ed is taught) as long the subject material is taught at home or through self-directed study.<sup>6</sup> As you can see, this was a compromise – a balancing of the competing interests of secularism, anti-discrimination and religious freedom.



In the case *Chamberlain v Surrey School District No. 36*, a school board refused to approve a teacher’s request to use three books depicting same-sex families in kindergarten and grade one classes. The Board said the books were inappropriate and that some parents could have objections to them based on their religious beliefs.

A group of people, including the teacher, challenged the Board’s decision in court. They argued that the Board’s decision was wrong both because it had made the decision based on religious rather than secular principles (violating the *School Act*) and also that it had violated the *Charter*.

The Supreme Court of Canada agreed. They said that while school boards can address the religious concerns of parents, they must do so in a way that respects other members of the community. The Supreme Court also noted that the *School Act* reflects the fact that Canada is a diverse and multicultural society where there should be tolerance and respect for diversity. The Court then told the school board to reconsider its decision.

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<sup>6</sup> If you’re interested in seeing what the BC Ministry of Education’s official policy is, look up a document online called “Alternative Delivery for Health and Career Education Curriculum (Health Component)”.

How to handle competing religious and secular interests in diverse societies is a question that has come up over and over in different countries around the world for the last several hundred years – it's an old civil liberties favourite! In the next section, we're going to switch gears pretty dramatically, and talk about some of the newest civil liberties issues that you may encounter as a youth and a student: we're going to talk technology.

### Think about it

A student wants to bring her same-sex partner who is not a student to the school dance. The school's policy says that she has to ask the school for permission to bring a guest who is not a student at the school. Some parents find out that the student wants to bring her same-sex partner. They tell the school that they are concerned that seeing the same-sex couple will have a negative influence on their children and goes against their religious beliefs. As a result, the school does not allow the student to bring her partner.

1. Can the school deny the student's request to bring her same-sex partner?
2. Is the school's decision consistent with the *School Act*?
3. What legal cases would you use to make your arguments?



## Meanwhile, in Ontario...

The way that civil liberties work in schools is actually quite different in different parts of Canada, since education is something that is mostly controlled by each provincial government. It can be fascinating to examine situations from different parts of the country.

You may have heard of gay-straight alliances (GSAs) – student-run clubs that provide a safe place for all students to learn about and support LGBTQ students and related issues. The Ontario Government passed a law in 2012 that says that all public schools have to allow students to form certain types of groups, including GSAs.

Here comes the different-in-Ontario part: in Ontario, Catholic schools are publically funded because the Constitution protects certain types of religious schools in certain provinces (to make a long story short, this has to do with the fact that many of Canada's early residents were French Catholics). This is not the case in BC: although some private schools receive funding from the BC government, Catholic schools do not have the same constitutional status in this province.

In any case, some parents and trustees who are part of the (publicly-funded) Catholic school system in Ontario were upset when the government said they had to allow GSAs in their schools. They said that the GSAs promote a view of same-sex relationships that undermines Catholic teachings.

1. In BC, Catholic schools aren't publicly-funded like they are in Ontario. Do you think this changes how acceptable it is for them to teach negative perspectives on same-sex attraction? Why or why not?

*continued on next page*

2. Do you think that certain religions that play a historically important role in Canada (like Catholicism) should get different treatment than other religions that have become common in Canada more recently?
3. How do you think the Ontario government should balance freedom of religion, secularism and non-discrimination in this case?

## 4 NEW CHALLENGES: TECHNOLOGY AND CIVIL LIBERTIES

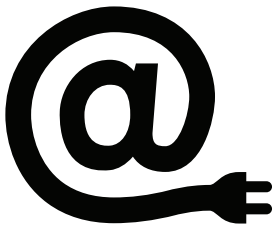
Technology has become an integral part of our lives pretty recently. We use our phones and computers for practically everything we do: to communicate with our friends, to do our homework, to take and share photos and videos, to shop – the list goes on and on. But as we store more and more information



on our electronic devices, and as these devices become our daily companions in classroom and school hallways, new civil liberties concerns arise, and old civil liberties approaches need to be rethought so they continue to be useful to us while we try to make sense of our modern world.

### Taking freedom of expression online

Remember in Chapter 2 when we talked about how everyone has the right to freedom of expression? Expression rights apply to your online activities as well as your offline activities. You can generally say whatever you want on the internet. Just like offline expression rights, however, your internet expression rights are limited in some ways that the courts and the government have decided are reasonable. For example, laws against criminal harassment, defamation (telling lies about people that damage



their reputation) and child pornography limit what you are allowed to express online.

Your school might also have policies that limit the way you can use the internet, particularly when using school computers. It's possible you signed a copy of the policy at the beginning of the school year without really reading it – if so, talk to your teachers and see if you can get a copy to take a closer look. It is important to know what policies your school has about internet usage so you don't break any rules without even knowing you were doing it.

### If I write under a pseudonym (a fake name), how will they know it was me?

When someone reports a possible cybercrime (this is just a way of saying a crime that happens on the internet), the police or school can first make a request to the website – like Facebook or Twitter – to find out the Internet Protocol (IP) address of the computer that was involved. Every computer and smartphone has a unique IP address that identifies your device to any website that you visit. Once the authorities have the IP address, they can ask an Internet Service Provider (ISP) – the company that provides you or your school with internet services – for the subscriber information associated with that IP address (this is the personal information that you, your family or your school gave to the ISP when you signed up for internet service). Under BC's *Personal Information Protection Act*, the ISP is allowed to disclose your subscriber information to either the school (if it has an order from a judge) or to the police, to help them conduct an investigation.

### Meanwhile, in Ontario...

Generally in BC school officials are only authorized to punish students for activities that occur on school property, or at school-organized activities off school property. If we take another quick trip to Ontario, though, we'll see that it's not like this everywhere in Canada. Schools there are allowed to punish students for conduct that affects the school climate, even if the misconduct did not take place on school grounds or during a school-related activity. In a 2008 case called *RT v Durham Catholic District School Board*, a grade 8 student was challenging her school's decision to expel her after she impersonated a classmate on Facebook and made constant mean and threatening remarks towards her. The Review Board found that the school board had been justified in expelling the student because her online actions had disrupted the school environment.

*continued on next page*

1. How would you define “conduct that affects the school climate”?
2. Do you think schools should have any power to discipline you for something that happened outside of school? In what circumstances might this be appropriate?

### **Sexting: Harmless fun or serious crime?**

You may have heard the term “sexting” before – it’s a combination of the words “sex” and “texting”. As you can probably guess, it means texting sexually explicit photos to other people. Sexting presents a number of interesting and complicated problems for those of us concerned with rights and freedoms, problems that we couldn’t even have dreamed of a decade ago.

First, we need to make one thing crystal clear: when we’re talking about sexting in this section, we are talking about someone taking a sexually explicit photo of themselves and sending it to a friend or sexual partner because they want to, **not** because someone is making them or pressuring them to do it. We’re also talking about a situation where the person who receives the photo keeps it **private**. As soon as the recipient of the photo passes it on to someone else without the permission of the person in the photo, **it becomes much more likely that the police may get involved**. You can face very serious charges for distributing an explicit photo of someone without their consent.

With that in mind, read on!

If you and your partner are both over 18, sexting (of the type described above, where the images remain private and everyone involved actually wants to be involved) is nothing to worry about. But you may have guessed where this is going: if you or your partner is under 18, texting nude or sexually explicit photos to each other falls into a grey area. It could

technically be considered the distribution of child pornography, since you're creating sexually explicit material of someone under 18 (yourself) and distributing it to someone else. And that's pretty serious.

### What exactly is child pornography?

According to our *Criminal Code*, child pornography includes any images of a person under the age of 18 shown taking part in explicit sexual activity, or showing "a sexual organ" of a person under the age of 18.

We all know that making, distributing, possessing or accessing child pornography is illegal, and it probably wouldn't be too hard to think of some good reasons why this is. The creation and distribution of pornography is considered by the courts to be an act of expression, protected under the *Charter*, but generally the courts have found that protecting children from the abuse and exploitation associated with child pornography justifies limiting this expression (remember section 1 of the *Charter*?).

In a 2001 case called *R v Sharpe*, however, the Supreme Court recognized that there are some exceptions – some very specific circumstances where the creation of material technically defined as child pornography doesn't actually pose any risk of serious harm to children. One of these exceptions was the case of photographs or videos taken by a youth him- or herself for private use. So this means you cannot go to jail for taking a photograph of yourself naked, even if you are under 18, as long as you intend it for private use. Phew.

But it gets trickier quickly as soon as you think about sharing that photo with someone, even if it's the person you're dating. In 2001 when the *Sharpe* case took place, no one had cell phones fancy enough for sexting, so the information we can get from *Sharpe* doesn't really tell us everything we would like to know about how the practice might be viewed by the courts.

## What do I need to know about sexting?

Because sexting is a relatively new practice, the Supreme Court of Canada has yet to issue a ruling that deals with whether or not you could be charged with distributing child pornography if you're sexting with a friend or your partner. But in general youth haven't been getting charged and prosecuted for it, **as long as the images remain in private**. If you sent a nude picture of yourself to the entire volleyball team, though, you might find yourself in different legal territory.

In April 2013, the Nova Scotia Public Prosecution Service (the public body responsible for prosecuting criminal cases in Nova Scotia) published an official document outlining the way they choose to handle sexting.<sup>7</sup> Currently, British Columbia has no similar document, and even if they did it would not be legally binding (meaning police and prosecutors would not be required to follow it) – this Nova Scotia document contains general guidelines only. Still, it's interesting to see what the Nova Scotia guidelines say, because they show us how one province is trying to grapple with new challenges that sexting poses for criminal law.

According to the document, “possession or transmission to a friend of one or two images of nudity might not attract prosecution.” It also notes, however, that if a youth is sending a large number of sexually explicit pictures of themselves to a lot of different people, it might be a more serious matter.

So what should you know about sexting? In short, you should know that nothing about sexting is clear at the moment, from a legal perspective. You'll have to use careful judgement when deciding whether or not sexting is for you.

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<sup>7</sup> If you're interested, you can read the whole thing online here: [http://www.gov.ns.ca/pps/publications/ca\\_manual/ProsecutionPolicies/Sexting.pdf](http://www.gov.ns.ca/pps/publications/ca_manual/ProsecutionPolicies/Sexting.pdf)

### Think about it

Hamid and Emma are dating. Emma sends Hamid a semi-nude photo of herself, trusting him to keep it to himself. Hamid sends the photo to all his friends at school. When Emma comes to school the next day, the other students are all whispering about her. Later that day Emma sees that someone made a fake online profile of her, calling her names such as “slut” and “whore”.

1. Do you think the school should get involved? Or would this violate Hamid's right to free expression?
2. If you think the school should get involved, who do you think they should punish, and why?
3. If you think there should be punishments, what kind of punishments do you think would be fair?

See “For Further Discussion” section on p. 54 for more information.

### Think about it

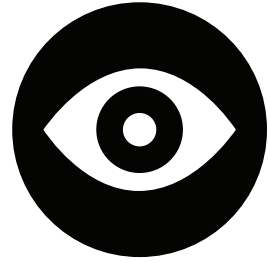
Safiah has discovered that someone made a fake Facebook profile using her name and picture. The profile says really mean things about her. She tells the school, who tell the police. The police find out that it was written by Toshio, another grade 11 student at Safiah's school. Toshio claims that the police violated his right to privacy and that he can write anything he wants online because it's protected by his right to freedom of expression.

1. If you were the principal, what would you do?
2. If you were Safiah's lawyer, what would you argue?
3. If you were Toshio's lawyer, what would you argue?



## They're watching you: Video surveillance

Surveillance cameras are everywhere these days, and it's pretty likely that you have at least a few around your school. This might creep you out, but is it illegal?



No, actually – it's legal for schools to install cameras. Section 74.01 of the *School Act* allows school boards to install surveillance cameras in schools for the purpose of protecting people in the school, people's belongings in the school, or school property. So if your school has installed video cameras it is not doing anything illegal, even if the students at the school object.

The BCCLA believes that schools should have to prove there is a need for security cameras before installing them. We think that surveillance cameras are a pretty serious violation of your privacy, and that they should only be used to deal with problems that actually exist, rather than just installed on the off chance that a problem might develop in the future.

Just because your school can install video cameras, however, doesn't mean that you have *no* rights in relation to the cameras. Think about this when you read the "Think about it" box about Chanelle.

### Think about it

Chanelle is rushing to class. She is a few minutes late, but slips in without the teacher noticing. After class she gets called to the principal's office because this is the third time she has been late for class this week. Chanelle protests, and asks for proof of her tardiness. The principal pulls up surveillance videos of Chanelle in the school hallways with time stamps showing that she was late.

*continued on next page*

1. Do you think Chanelle's rights have been violated? Why or why not?
2. What do you think Chanelle could say in her defense?

See "For Further Discussion" section on p. 55 for more information.

## 5 ALL KINDS OF SEARCHES

In this chapter, we're going to talk about all kinds of searches. Following on the previous chapter's theme of technology, we'll start with a kind of search that has only become of concern very recently: cell phone searches. But first, we need to make a very important point: who is conducting the search matters a lot.

### **READ THIS: Searches and who conducts them**

You may feel violated when someone in a position of authority is rifling through your stuff. You might get just as upset if a teacher looks through your backpack as you would be if a police officer did the same thing, but legally these are two very different kinds of searches. It might not seem like it at the time, but it matters a whole lot who is searching you.

Because of the *in loco parentis* rule (see p. 13), schools are given quite a lot of flexibility about enforcing their own rules and making sure students are safe. This means that they have quite a bit of power to search you if they suspect you might be breaking the rules or threatening school safety.

The police, on the other hand, can only search you in very specific circumstances. We'll talk about this more in this chapter, but for now, it's enough to know that they have to have much better reasons before they can search you than your teachers do.

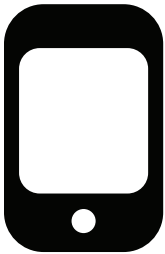
It gets tricky when teachers and the police seem to be working together. There are some court decisions that are helpful for figuring out what kinds of teacher-police team searches are ok and which ones aren't. The courts have said specifically that the police cannot use your teachers to get around the strict rules about when they can search you

*continued next page*

by asking a teacher to search you for them. In other words, the school cannot act as “an agent of the police.” The test to see if the school is acting as an agent of the police is whether the search would have happened even if the police were not involved. If the teacher was only searching you because the police told them to, they are acting as an agent of the police and the search may have been illegal.

## Cell phone searches

As we mentioned way back in Chapter 1, the *Charter* protects individuals from unreasonable search and seizure. Canadian courts have found that a person of authority going through someone’s cell phone is considered a search. But when is this search considered unreasonable? Do we have a reasonable expectation of privacy for the information found on our phones?



In many cases, you do have a reasonable expectation of privacy while at school. However, *in loco parentis* gives schools the right to do all kinds of things your parent might do, which could include confiscating your cell phone temporarily if you are breaking a school rule by using it or having it with you on school grounds.<sup>8</sup>

In *R v AM*, the court decided that school searches need to be based on evidence of a possible violation. This means that a teacher shouldn’t search your phone just because they feel like it – they should have a good reason for doing so, like a reliable report that you broke a school rule.

The BCCLA thinks that students have legitimate claims to privacy while in school, and that you have the right to be clear about the circumstances in which your phone might get searched by a teacher. School authorities should develop clear policies on when teachers or administrators can check out the contents of your phone. Ask your school administrator if your

<sup>8</sup> You can read more about search and seizure by teachers and principals in a case called *R v M (MR)*.

school has such a policy! If not, and if it's something you think is important, see if you can work with your school administration to develop one.

What if the *police* received a reliable report that you broke a school rule? Could they search your phone? Maybe not - read on.

### Can police officers search my phone?

The police can definitely search your phone if they get a warrant – a document issued by a court ordering police to do something. In order to get a warrant, the police usually need to have some pretty good reasons to believe you were involved in committing a crime. They couldn't get a warrant to search your phone just because you were late for biology or because you didn't show up for detention.



So, can the police search your phone even if they don't have the information they would need to get a warrant? The answer is that as of the time that this handbook was written (near the end of 2013), no one really knows! This sounds crazy, but it's true. Because technology advances so quickly, and laws can be slow to change, the case law in this area has not caught up to the changing technology (if you don't remember what case law is, head back to Chapter 1 to review).

Think about the cell phones that you or your parents had not too long ago, that could store phone numbers and maybe some very short text messages. In those days, if someone looked through your phone it would be a privacy violation, but it would be a limited one. Now that phones often contain massive amounts of extremely personal information, such as banking information, thousands of emails with all kinds of personal content, photos and videos and so on, the privacy stakes are much higher.

Many of the cases about cell phone searches that have taken place in Canada have not made it all the way to the Supreme Court of Canada,

which means that the rulings only apply in the province where the decision was made – only the Supreme Court of Canada’s rulings apply all across the country. If the Supreme Court of Canada rules on the issue of cell phone searches in the future, they may or may not agree with the judges who wrote the lower court decisions in various provinces. Despite this uncertainty, there are a few things about cell phone searches that seem – at this point – to be the case:

- If you have been arrested, the police are allowed to search you (without a warrant) if they believe the search is necessary to protect themselves from harm or to find evidence that might otherwise disappear before the trial. The courts have ruled that this search can include your cell phone if they have a reasonable suspicion that it might contain important evidence.<sup>9</sup>
- In a 2009 case called *R v Polius*, an Ontario court found that a police search of an individual’s phone must be only “cursory” without a warrant, and that a warrant should be required to conduct a more thorough search of an individual’s phone. “Cursory” means a search that is done quickly and not very thoroughly – a police officer might skim through whatever email you had open on the screen when they arrested you, for example. But a cursory search would not include looking carefully through every email in your inbox.
- In a 2013 case called *R v Fearon*, the Ontario Court of Appeal found that individuals have less of an expectation of privacy with phones that are not password-protected. So if you are concerned about the privacy of your phone, it’s a good idea to put a password on it. This case shows us that passwords may carry some legal weight.

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9 This was established in a 2007 case called *R v Giles*.

## What about information held by my cell phone provider?

You may not know this, but some cell phone providers keep copies of the text messages you send for a while after you send them. If the police get what's called a "general warrant", they can access old text messages that have been stored by your phone company. To get a general warrant, a judge has to be convinced that there are reasonable grounds to believe that a criminal offence has been committed or will be committed, and that information concerning the crime will be obtained by looking at the text messages. As you can see, this is a pretty high standard.

To intercept your text messages and phone calls as they happen, police need to get a wiretap authorization from a judge. For a wiretap authorization police not only have to show that there are reasonable grounds to believe a crime has been or will be committed, they also have to show that they could not get the required information in a less invasive way.<sup>10</sup>

In the next section, we're going to expand our discussion of searches and dealing with police to include more than just cell phones.

## Searching your person

When we use the phrase "searching your person", we mean things like being patted down, being asked to remove the contents of your pocket, or being asked to take off your shoes and socks to see if you are hiding anything in them.



Because of *in loco parentis*, teachers or school administrators can search your person – just like your parents, they can ask to see what you have in your pockets.<sup>11</sup> However, unlike your parents, they still must have reasonable grounds for doing so. Reasonable grounds might include

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<sup>10</sup> This is outlined in the *Criminal Code of Canada*.

<sup>11</sup> You can read more about search and seizure by teachers and principals in a case called *R v M (MR)*. This is a very important case for this area of the law, and much of the information in this section comes from it.

something like a teacher saw someone passing you drugs, or a couple of reliable students informed the principal that you were carrying a knife. Reasonable grounds would not include things like the fact that you have tattoos or piercings, are late for class, are walking down the hall with your headphones in, or are a student the teacher doesn't like.

The **police**, on the other hand, can only search you legally in one of three circumstances:

1. During a lawful arrest.<sup>12</sup>
2. If they have a valid warrant to search you.
3. If you tell them it's ok to search you ("consensual searches").

In general, consensual police searches are probably the most common. Why? Because people tend to get nervous around the police and agree to do what the police ask them to do even if they don't have to. But it's important to know that legally you may say no.

Even if you may legally say no to the police when they ask to search you, it's important for you to exercise your best judgement when deciding whether or not to do this. It's possible that agreeing to the search will end your interaction with a police officer more quickly and easily. It's also possible that insisting on your right not to be searched will make the police officer frustrated with you. There's no way to know in advance how an individual police officer will respond to you asserting your rights.

The BCCLA can't make any specific recommendations about when it makes sense to assert your rights. But if you know what your rights are, you can make the most informed decisions possible about how to act. It all depends on the specific situation that you're in and how safe you feel.

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<sup>12</sup> What's a lawful arrest? Check out the BCCLA's publication *The Arrest Handbook: A Guide to Your Rights* for more information: [http://bccla.org/our\\_work/the-arrest-handbook-a-guide-to-your-rights/](http://bccla.org/our_work/the-arrest-handbook-a-guide-to-your-rights/)



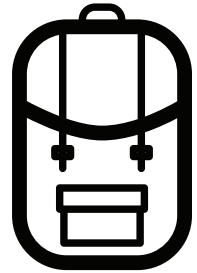
## Grey areas: Teacher search or police search?

If a school official finds drugs or anything illegal on you, they can take it and turn it over to the police. In a case called *R v M (MR)*, a school principal searched a student in front of a police officer. The principal found drugs on the student, handed them over to the police, and the student was charged with narcotics possession. The Supreme Court of Canada decided that this search was reasonable and had been conducted appropriately. They decided that even though the police officer was beside the principal, it was only the principal who was conducting the search.

## Searching your locker and backpack

The rules for searching your stuff are almost the same as the rules for searching your person. The police cannot search you except for the three reasons listed on page 40. School staff must have reasonable grounds (good reasons) to search you – they can't do it randomly or arbitrarily.

School administrators and teachers generally see lockers as school property, however, and often reserve the right to search them when they want to. Usually they even reserve the right to remove the lock.



Some school boards have created policies regarding student locker searches. The BCCLA thinks this is a good idea – we think it's important that students have a clear idea of the circumstances in which the school may look in their locker, so that they can make informed decisions about how to use their lockers. We also think that it's good policy for a school to ensure that the student is present while their locker is being searched.

It's a good idea to find out whether your school has a locker search policy, and if so what it is. If you think the policy doesn't take your right to privacy seriously enough, start a petition to change it!

## Use of sniffer dogs

In a 2008 case called *R v AM*, the Supreme Court of Canada explored the issue of sniffer dogs in schools. In this case, the police had a long-standing invitation from the principal of a high school to bring sniffer dogs into the school to search for drugs.

The police had no specific reason to suspect that there were drugs at the school – they had no reasonable grounds to conduct the search, and probably would not have been able to obtain a warrant for the search if they had tried to do so.



On one particular day, the sniffer dog located a backpack that it identified to the police as possibly containing drugs. The officer searched the bag and found marijuana and magic mushrooms. The student who owned the backpack (referred to as “AM” in the court case to protect their anonymity) was charged with possession of marijuana for the purpose of trafficking.

In this case, the government tried to make the argument that the dog was not actually searching the student’s bag. They said that the dog was merely sniffing “public air space”! The Supreme Court, however, didn’t buy this argument. They said that the use of drug sniffing dogs does in fact count as a search, and that when the dog sniffed the air it was as if it was “seeing through” the fabric of the bags. Because the Court decided this search was illegal, they threw out the evidence and AM was acquitted.

What does this mean for you? It means that drug-sniffing dogs cannot be brought into your school to search backpacks and lockers unless the police or your teachers have a reasonable suspicion that a student has drugs with them at school.

### Think about it

Think back to Chapter 1 when we talked about section 1 of the *Charter*: that your rights are subject to “reasonable limits” as long as they can be “demonstrably justified.” Limiting your privacy rights in school is something that the government and the courts believe is justified in certain circumstances.

1. How might they justify this limitation on your privacy rights in school?
2. Do you think these are good arguments? What arguments might you make to convince the government that limiting your privacy rights in school is not actually justified?

## 6 SCHOOL DISCIPLINE AND CRIMINAL JUSTICE

One of the most important civil liberties that we have in Canada is the right to be dealt with fairly when we break the law. As you know, if you break the law there's a chance you could end up in jail – the fact that the stakes are so high makes it extra important that you are dealt with fairly.



School discipline probably isn't going to land you in jail, which means the standards for fairness are not quite as high. Despite this, the BCCLA believes that the same values should be respected by your teachers and school administrators when they're disciplining you in school. We think that any disciplinary process should be fair.

Characteristics of a fair disciplinary proceeding include things like:

- All the people involved have their views, opinions and beliefs about the situation taken into account.
- The final decision about what kind of discipline is appropriate is made by someone unbiased and not directly involved in the situation.
- The way the decision is made should be transparent – the person who makes the decision should be able to provide reasons about why they decided what they did.

Sometimes we use the idea of “procedural fairness” to describe what an ideal disciplinary process looks like. Having procedural fairness means that everyone feels that the system used by the decision maker to decide whether or not a punishment is appropriate (and how serious the punishment should be) is fair.

Another term that often comes up when we're talking about disciplinary proceedings is your right to "due process". This term tends to refer specifically to situations where you have actually been accused of a crime. Your right to due process means that the government and its agents (like police, prosecutors and judges) need to treat you fairly and respect your rights during the course of an investigation, arrest, and trial. One of the most famous due process rights can be found in section 11(d) of the *Charter*:

11. Any person charged with an offence has the right
  - d) To be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.

## School discipline and your rights

### Detentions: An in-school deprivation of liberty

Section 9 of the *Charter* gives everyone the right not to be detained by a government agent without good reason. Being detained is a fancy way of saying being kept somewhere where you don't want to be. Your school probably uses detentions as



#### Think about it

What do you think are the characteristics of a fair school rule or policy? What are some ways your school could make its rules and policies more fair?

punishment – notice that 'detain' and 'detention'

are words that sound very similar. Detention is a place where your teachers detain you. In general, if you are sent to detention at school it shouldn't be arbitrary – it should be clear to you what you have done to end up there.

While you may feel like being sent to detention is a little bit like being sent to jail, it is unlikely you could take this matter to court. Technically, detention does deprive you of your liberty, but the consequences for being sent to detention are

### Think about it

Your principal implements a new policy: no one is allowed to wear tank tops at school. She is very serious about this and states that anyone who violates this new policy will be suspended for one day. The policy is announced verbally during the morning announcements. You were off sick that day and were not aware of this new policy. When you're feeling better, you put on your favourite tank top and head to school. As soon as you get there your principal tells you that you have been suspended for one day.

1. Do you think this policy violates your free expression rights? Think back to Chapter 2. If so, how do you think your principal would justify violating your rights in this way?
2. Do you think the way this policy was put into place was fair?
3. Do you feel the punishment is equal to the 'crime'?
4. Should you be suspended for a day? Why or why not?
5. If you believe the school's decision wasn't fair, what actions can you take?
6. How could the school make new policies in a more fair way in the future?

not major enough to be of much interest the justice system. Besides, acting *in loco parentis* means that teachers have a bit more power to deprive you of your freedom than another government agent would.

Even though section 9 of the *Charter* probably won't help you if you feel like you've been sent to detention unfairly, it will help you out a great deal in your dealings with the police, which we'll talk about later in this chapter.

## Suspensions and what to do about them

Suspensions are a more serious form of school discipline than detentions. The school board's power to suspend students is found in section 85(2) of the *School Act*, which also allows school boards to set their own rules regarding suspensions. This means that if you want the most specific information about why you might be suspended and what you can do about it, you'll have to talk to your local school board.

If you are suspended, you and your parent(s) or guardians should be notified right away of the reasons why you have been suspended and the length of the suspension. You should also be notified about how you can appeal the suspension.

Having a way to appeal a decision is a really important part of procedural fairness. If you have been suspended and want to appeal the decision, you should act quickly. Notify the school board of your desire to appeal as soon as possible, and ask them for information on how their specific appeal process works.

How quickly do you have to act? The *School Act* says that if you want to appeal a school decision, you must do it within a "reasonable" time limit. However, different school boards define "reasonable" in different ways. You may have as little as 30 days or as much as one year to file an appeal, but the sooner you find out what your school board's policy is the better.

If you go through the appeal process and are still unsatisfied, you can file a complaint to the Office of the BC Ombudsperson. It is the Ombudsperson's job to ensure that public bodies – including schools and school boards – treat you fairly. You can learn more about the Ombudsperson and how to file a complaint with their office on their website.



<http://www.ombudsman.bc.ca/>

## The criminal law, the police and you

Even though suspensions are a more serious punishment than detentions, they are still significantly less serious than the kinds of punishments you can face if you get tangled up with the police or criminal charges. We've already talked a little bit about your rights when dealing with the police while we were talking about searches; now we're going to go a little deeper into this area. The rights we talk about in this section apply to your dealings with the police both while you're at school and when you're outside of school.

### Key laws

There are two main laws that come into play when talking about youth and crime. The most important is the federal criminal law called the *Criminal Code*. It covers common crimes like shoplifting, breaking and entering, car theft and assault, and more serious crimes, like murder. Separate federal laws deal with things such as possession and selling (or trafficking) of illegal drugs.



The *Youth Criminal Justice Act* is the law that controls how criminal law is applied to young people accused of breaking federal law (such as the *Criminal Code*). The *Act* only applies to young people ages 12 to 17, while the *Criminal Code* applies to everyone over the age of 17.

There are also provincial laws that cover many other offences, such as drinking under age, trespassing and breaking traffic laws. In British Columbia these include laws such as the *Offence Act*, *Trespass Act*, and the *Motor Vehicle Act*. We don't have time to talk about each one of these, but you can find complete copies of all of them online:



<http://www.bclaws.ca/>



## Interacting with the police

There are all kinds of rules relating to the way that police and members of the public interact, and we don't have time to talk about them all here. If you're interested in learning more, you should check out another BCCLA handbook called *The Arrest Handbook: A Guide to Your Rights*. You can access it online.



[http://bccla.org/our\\_work/the-arrest-handbook-a-guide-to-your-rights/](http://bccla.org/our_work/the-arrest-handbook-a-guide-to-your-rights/)

We'll reproduce some key points from *The Arrest Handbook* below.

Dealing with the police can be intimidating and sometimes even scary, so it's good to be knowledgeable about your rights in these encounters.

### Talking to the police while you're on foot

There are three reasons why a police officer would stop someone walking down the street. You have different rights in each situation.

1. *The Police are Just Making Conversation*: If the police seem to be just making conversation with you and you don't like it, you can politely ask them, "Am I free to go?" If the answer is yes, you can leave. If the answer is no, you are being *detained* (remember this word from when we talked about detentions?).
2. *The Police are Detaining You*: If the police tell you that you are not free to go, this means that you are being *detained*. They can only detain you if there are reasonable grounds (good reasons) to suspect that you are connected to a crime. You have the right to know why you are being detained. If you are being detained you have the right to remain silent (you don't even have to tell them your name), but it may make the interaction end more quickly or go more smoothly if you give the police your name and address. If you are being detained for a good

reason, the police can conduct a pat-down search to look for weapons, and they might inspect the contents of your bags.

3. *The Police are Arresting You:* You will know you are under arrest because a police officer has said you are under arrest, or somehow made it clear that you are not free to go by physically holding you. If you are under arrest and the police ask you, you must tell them your name and address. You do not need to tell them anything else. You have the right to ask why you are being arrested. The police must answer unless the reason is obvious.

If you want to find out about your rights if the police arrest you, check out *The Arrest Handbook*.

#### Talking to the police while you're driving

As soon as you get behind the wheel of a car, there are many more reasons why a police officer could stop you and require you to identify yourself by showing your driver's license. You have different rights when you're driving than when you are walking. The police may stop you to check whether you have been drinking or using drugs. If they have reasonable grounds to suspect that you may have been driving impaired, they may ask you to take a breathalyzer test.



In what circumstances can the police ask to search your car? Check out *The Arrest Handbook* to find out.

#### If you are under 18

People younger than 18 sometimes have more rights and protection under the law than adults. If you are under 18, the police have a special responsibility to be very clear about your rights and be sure you understand what's happening. Ask questions if you do not understand. Just like an

adult, you also have the right to remain silent (this means the right not to say anything). Young people also have special rights to a lawyer – you won't have to pay for it. Tell the police or the judge that you want to speak to a lawyer as soon as possible if you have been arrested.

Your parents will be contacted as soon as the police can call them. If they are not around, you can give the police the name of a close relative or trusted adult friend who can come to the jail instead. You have the right to have another adult person with you when you meet with your lawyer.

### **If you feel you have been mistreated by the police**

If you feel you have been mistreated by the police and you want to find out what you can do about it, call the BCCLA! We can help you file a formal complaint if the police have given you something to complain about.

The more information you have about what happened to you, the better the complaint you'll be able to write will be. You should record as much of the following information as you can as soon as possible after the incident:

- Date, time and location of the incident,
- Exactly what happened, in the order that it happened in,
- Name(s) or badge number(s) of the officer(s) involved (if you know them), or a description of the officer(s),
- Names, addresses and telephone numbers of any witnesses,
- If you received medical treatment as a result of the incident, the name of the doctor who treated you,

*continued on next page*

- Copies of any photographs of injuries or damage sustained in the incident,
- Any video footage of the incident.

The more of this information you have, the more likely your complaint will be taken seriously.

## FOR FURTHER DISCUSSION

In this section, we will return to many of the discussion questions and case studies that were posed earlier in the handbook. Try to think about the questions on your own at first, but you may find it helpful to read this section if you're having trouble, or want to see whether you missed any key points. **There are no right or wrong answers to these questions.** But the information below should give you a good idea of key issues you could take into account while deciding how to answer them.

### Think About It: Maya, Ye and the Pro-Life T-Shirt (page 17)

- 1. How is this situation similar to the American student with the "International Terrorist" t-shirt? How is it different?*
  - The incidents are similar in that they both deal with free expression in school, and both involve a slogan printed on a t-shirt.
  - In the "International Terrorist" t-shirt example, the person who was being negatively portrayed on the t-shirt was George W. Bush, a public figure. In this example, the person being hurt by the t-shirt is Ye, an actual student at the school. You could argue that the school has a greater responsibility for Ye's well-being than for George W. Bush's.
- 2. Was there a less extreme way the school could have made sure Ye didn't feel harassed and discriminated against other than forbidding Maya from wearing her t-shirt at school?*
  - The school could have worked with Ye to see whether there was anything she or other pro-choice students at the school were interested in doing to teach the students about their position on the issue, in order to be sure that Maya's voice was not the only one that was heard.

- This solution has the advantage of not infringing on anyone's right to free speech. However, it may or may not address Ye's concerns.

3. *Do you think Maya should be allowed to wear her shirt? Why or why not?*

- How you answer this question depends on what you think are good reasons to limit someone's freedom of expression. A good answer will involve a thorough weighing of the pros and cons.
- One thing to consider is whether you feel that the kinds of free speech that should be allowed in schools are different (or not) than free speech in other contexts, like in a public park.

### **Think about it: Hamid and Emma and the Semi-Nude Photo (page 32)**

1. *Do you think the school should get involved? Or would this violate Hamid's right to free expression?*

- The school may want to get involved since Hamid's online actions are affecting the school environment.
- How you answer this question depends on what you think are good reasons to limit someone's freedom of expression. A good answer will involve a thorough weighing of the pros and cons.

2. *Who do you think the school could punish, and why?*

- The school may want to punish Hamid for sending the text, which could be contravening the school's code of conduct. The school might also punish any other students that are calling Emma names as a result of seeing the photo.

3. *What kind of punishments do you think would be fair?*

- There have been many discussions across Canada about the fairest ways for schools to deal with bullying. There is a lot of disagreement on this issue.
- Some people think that bullying is best dealt with at the school level. The school might want to give the students, including Hamid, detentions or suspensions for sending the photograph and harassing Emma.
- Other people feel that the police should be involved too. In this case, it's possible the school would call the police to investigate whether the sending of the photo contravenes any criminal laws, such as provisions regarding harassment or the distribution of child pornography.
- What do you think is the fairest approach? Why?

**Think about it: Channelle and the Video Cameras (page 33)**

2. *What do you think Channelle could say in her defence?*

- She would have to show that she has a reasonable expectation of privacy in her image and whereabouts while at school.
- She could argue that the school is only supposed to use the video surveillance to protect student safety, and that using the video to punish her for being late goes beyond the sort of thing that the school should be using surveillance for.



## LINKS TO LEGAL DECISIONS

### **Chamberlain v Surrey School District No. 36**

<http://www.canlii.org/en/ca/scc/doc/2002/2002scc86/2002scc86.html?searchUrlHash=AAAAAQAsQ2hhbWJlcmxhaW4gdi4gU3VyYcmV5IFNjaG9vbCBEaXN0cmJldCBOby4gMzYAAAAAAQ>

### **Corren and Corren v BC (Ministry of Education) (No. 2)**

[http://www.bchrt.gov.bc.ca/decisions/2005/pdf/corren\\_and\\_corren\\_v\\_bc\\_\(ministry\\_of\\_education\)\\_\(no\\_2\)\\_2005\\_bchrt\\_497.pdf](http://www.bchrt.gov.bc.ca/decisions/2005/pdf/corren_and_corren_v_bc_(ministry_of_education)_(no_2)_2005_bchrt_497.pdf)

### **Corren and Corren v BC (Ministry of Education) (No. 3)**

[http://www.bchrt.gov.bc.ca/decisions/2006/pdf/feb/55\\_corren\\_and\\_corren\\_v\\_bc\\_\(ministry\\_of\\_education\)\\_\(no\\_3\)\\_2006\\_bchrt\\_55.pdf](http://www.bchrt.gov.bc.ca/decisions/2006/pdf/feb/55_corren_and_corren_v_bc_(ministry_of_education)_(no_3)_2006_bchrt_55.pdf)

### **Multani v Commission scolaire Marguerite-Bourgeois**

<http://www.canlii.org/en/ca/scc/doc/2006/2006scc6/2006scc6.html?searchUrlHash=AAAAQAzTXVsdGFuaSB2LiBDb21taXNzaW9uIHJlb2xhaXJlE1hcmd1ZXJpdGUtQm91cmdlb3lzAAAAAAE>

### **R v AM**

<http://www.canlii.org/en/ca/scc/doc/2008/2008scc19/2008scc19.html>

### **R v Fearon**

<http://www.canlii.org/en/on/onca/doc/2013/2013onca106/2013onca106.html?searchUrlHash=AAAAQAMUi4gdi4gRmVhcm9uAAAAAAE>

### **R v Giles**

<http://www.canlii.org/en/bc/bcsc/doc/2007/2007bcsc1147/2007bcsc1147.html?searchUrlHash=AAAAQALUi4gdi4gR2lsZXMAAAAAAQ>



## **R v M (MR)**

<http://www.canlii.org/en/ca/scc/doc/1998/1998canlii770/1998canlii770.html?searchUrlHash=AAAAAQANUi4gdi4gTS4gKE1SKQAAAAAB>

## **R v Polius**

<http://www.canlii.org/en/on/onsc/doc/2009/2009canlii37923/2009canlii37923.html?searchUrlHash=AAAAAQAMUi4gdi4gUG9saXVzAAAAAAE>

## **R v Sharpe**

<http://www.canlii.org/en/ca/scc/doc/2001/2001scc2/2001scc2.html?searchUrlHash=AAAAAQAMUi4gdi4gU2hhcnBIAAAAAAAE>

## **RT v Durham Catholic District School Board**

<http://www.canlii.org/en/on/oncfsrb/doc/2008/2008cfsrb94/2008cfsrb94.html?searchUrlHash=AAAAQAtUi5ULiB2LiBEdXJoYW0gQ2F0aG9saWMgRGldzHJpY3QgU2Nob29sIEJvYXJkAAAAAAE>

## **Russow v British Columbia**

<http://www.canlii.org/en/bc/bcsc/doc/1989/1989canlii2688/1989canlii2688.html?searchUrlHash=AAAAQAaUnVzc293IHJyUlEJyaXRpc2ggQ29sdW1iaWEAAAAAAQ>

## **SL v Commission scolaire des Chênes**

<http://www.canlii.org/en/ca/scc/doc/2012/2012scc7/2012scc7.html?searchUrlHash=AAAAQAIU0wgdI4gQ29tbWlzc2lvbiBzY29sYWlyZSBkZXMgQ2JdQm5lcwAAAAAB>

### **Have you ever wondered...**

- Whether you could face criminal charges for sexting?
- Whether your teacher or the police can search the contents of your cell phone?
- Whether you can be disciplined at school for something you said outside of school?

### **Does your school...**

- Invite the police to use sniffer dogs to look for drugs?
- Have a dress code policy?
- Use surveillance cameras to watch you while you're on school property?

### **Do you...**

- Think it's ok for religious parents to pull their children out of classes that discuss topics like LGBTQ issues and sex ed?
- Know how we decide when it's ok for the government to limit your rights and freedoms?
- Know what your rights are when dealing with your teachers, principals or the police?

**For the answers to these questions and many more, take a look inside!**

