

Education Law

- A. Wayne MacKay

Winter Term
2009

Wednesday Evenings

4:30 – 6:30 p.m.

Room 309

(Three Credit Paper Course)

Text: Education Law (2007-2008) Casebook
(MacKay)
(as edited by Lydia Billingsley)

EDUCATION LAW
READING LIST (Winter, 2009)
- A. Wayne MacKay

- 1) January 14th Introduction and Judicializing Education (7-57)
- 2) January 21st Post-Secondary Education/Academic Freedom &
Teachers' Roles & Responsibilities (58-96)
- 3) January 28th Teachers' Rights (97-160)
- 4) February 4th Defamation and Students Rights (161-218)
- 5) February 11th Suspensions/Expulsions and Technology,
Schools and Violence (219-266)
- 6) February 18th Safe Schools (267-310)
- February 25th Study Break Week
- 7) March 4th Intersection of Criminal Law and Education (311-359)
- 8) March 11th Human Rights in Education: Students' Human Rights (360-411)
- 9) March 18th Disability as a Case Study (412-491)
- 10) March 25th Aboriginal Education (492-524)
- 11) April 1st Teachers' Human Rights and Religion in Schools (525-624)*

End of Term Party / Prof. MacKay's House to follow class*

* There will be an "End of Class" Party on this date to be held at Prof. MacKay's home at 1538 Waverley Rd. (Transportation to be arranged)

Dalhousie University Calendar
(2007 – 2008)

LAWS 2116.02 / 2117.01: Education Law

The purposes of the class include assessing the relation between law and government policy; breaking down the barriers between different disciplines; evaluating the impact of the Charter in a discrete setting and considering the links between law and values in Canadian society. The class will be offered in seminar form with discussion as the norm. There may be some guest lecturers and student presentations. The class will be broad in scope and useful to students who do not intend to directly pursue a career related to education, as well as those who do. Without limiting the instructor, the kinds of topics which might be covered include the following: judicializing education, jurisdiction over schools, the impact of the Charter, discipline and enforcing rules, schools as microcosms of society, teachers rights, the role of public education, accommodating diversity in our schools; and the limits of rights discourse. The impact of the Charter equality provisions on the field of education will also be an important theme. While there will be a high profile Charter component to the class, there will also be an examination of administrative law issues, collective bargaining concerns, negligence, minority language education rights and denominational school structures. There will be specifically assigned readings for each class and an expectation of informed participation.

EVALUATION: Twenty percent by class discussion or oral presentation and 80% by major paper. Students can also reduce the 80% paper component to 60% by doing a class presentation for 20%.

EDUCATION LAW

W. MacKAY

EVALUATION

(1) Major Term Paper

This is to be an extensively researched and documented essay in the approximate range of 25-40 pages. For law students the standards for this “major paper” are set in the major paper guidelines passed by Faculty Council and included in the Law School Calendar. The relevant excerpt was handed out in the first class. For education students the standards will be modified to take account of the fact that you do not have a law background. In respect to all students the following criteria will be considered in assigning a grade to the papers:

- 1) Originality
- 2) Thoroughness of Research
- 3) Clear Expression
- 4) Organization
- 5) Citation (accuracy and consistency)
- 6) Inter-disciplinary and/or empirical efforts
- 7) Substantive Content
- 8) Form of Presentation
- 9) Links between Law and Education, etc.

There are three stages to this component

a) Paper Proposal:

Due: January 28

A one page statement of the research topic that you wish to pursue and why you want to do it. Be as precise about your topic as you are able to be.

b) Selected Bibliography on Topic:

Due: March 4

A 2-5 page list of sources and materials that you plan to refer to in your paper. This is not intended to be an exhaustive list of references but rather to ensure that there is enough material on your topic to make it viable. Sources can include interviews with people or empirical data.

c) **The Major Paper**

Due: April 15

This paper should be typed and double spaced. Citations should as far as possible be in proper legal form (although there will be some leeway with the education students). The general reference as to citation form should be the *McGill Guide* generally used by law schools. This deadline is non-negotiable. Any later date would have to be approved by the Studies Committee. Of course, you can submit earlier!

This component will be worth 80%

(2) **Optional Component/Presentation**

Students can present selected topics to the class. These presentations would be in the months of February and March, and be based on materials in the casebook, although you can add to or subtract from these.

In doing this presentation you must prepare a one page outline, distribute any additional materials and conduct a 45-60 minute segment of class. You can also form a group or two or three, and lead a full 2 hour class. Originality is encouraged.

To exercise this option you must sign up for a topic by September 29.

This component will be worth 20%

The effect of doing this option will be to reduce the value of your major paper to 60%.

(3) **Class Participation**

The remaining 20% of your grade will be assigned to Class Participation. This will be assessed on the basis of the following factors:

- (1) Preparedness (readings prepared)
- (2) Quality of comments (thought and insight)
- (3) Regularity of comments (some frequency but not domination)
- (4) Attendance (if you are not there, you cannot participate!)
- (5) Consideration for other class members (not dominating, sensitivity, etc.)
- (6) Relevance of comments to subject matter and class discussion

What is desired is informed participation based upon the readings and your own thoughts - not filling dead air space or speaking to hear your own voice. It is important to be conscious of speaking space and allow for a wide basis of participation, as class participation is worth 20% of the grade.

Participation Guidelines for Education Law

Many students have asked me what a participation grade represents, or how they can improve their participation grade. Participation grades do not reflect how much a person speaks in class, so you cannot fluff up a grade merely by talking a lot.

Rather, in my class, your final grade for participation will primarily reflect the five factors listed below. My expectations of students evolve and progress during the course of year, as students become familiar with the 'basics' of Education Law. For example, I would not expect a student to be able to participate as per guideline (3) the first week of class but would expect a student to strive to effectively participate as per guidelines (1) and (2) from the very start.

1. *Content Mastery*: The student must evidence an understanding of the facts, concepts, and theories presented in the assigned readings. This ability is the basis for all higher level skills and must be made evident by classroom comments and/or responses to questions.
2. *Communication Skills*: The student must be able to inform others in an intelligent manner. Ideas must be communicated clearly and persuasively. Communication skills include listening to others and understanding what they have said, responding appropriately, asking questions in a clear manner, avoiding rambling discourses or class domination, using proper vocabulary pertinent to the discussion, building on the ideas of others, etc.
3. *Synthesis/Integration*: Students must illuminate the connections between the material under consideration and other bodies of knowledge. For example, one could take several ideas from the readings or class discussions and combine them to produce a new perspective on an issue, or one could take outside materials (other classes, personal experiences, etc.) and combine them to create novel insights. Students demonstrate this skill when they probe the interdisciplinary roots of the theories presented or are able to view the author or the material from several viewpoints.
4. *Creativity*: Students must demonstrate that they have mastered the basic material and have gone on to produce their own insights. A simple repetition of ideas from the text will not suffice, nor will simply commenting on what others have said. Students must go beyond the obvious, by bringing their own beliefs and imagination to bear. Creativity may be displayed by showing further implications of the material, by applying it to a new field, by finding new ways of articulating or setting the materials which produce significant insights, etc.
5. *Valuing*: The student should be able to identify the values inherent in the material studied. The underlying assumptions of the author should be identified. Furthermore, students should be able to articulate their own positions by reference to basic underlying values. The student must not simply feel something is wrong or incorrect; he or she must be able to state why, based on some hierarchy of values. In either accepting or rejecting a position, the operative values must become explicit.

This approach to evaluating participation is largely drawn from Neff & Weimer, *Classroom Communication* (Madison, WI: Magna Publications, Inc., 1989) pps. 45-4.6.

Plagiarism:

All students in this course must read:

- the University policies on plagiarism and academic honesty referenced in the Policies and Student Resources sections of the plagiarism.dal.ca website, and
- the Law School policy on plagiarism, as set out in the law school regulations (available in hard copy from the Associate Dean's office and online at http://law.dal.ca/current_students/course_selection_materials/regulations_handbook/)
- the Orientation Handbook (provided to all first year students and available online at http://law.dal.ca/Files/First_Year_Handbook_2007.pdf)

Any paper or assignment submitted by a student at Dalhousie Law School may be checked for originality to confirm that the student has not plagiarized from other sources. Plagiarism is considered a serious academic offence which may lead to loss of credit, suspension or expulsion from the law school, or even revocation of a degree. It is essential that there be correct attribution of authorities from which facts and opinions have been derived. Prior to submitting any paper or other assignment, students should read and familiarize themselves with the policies referred to above.

Ignorance of the policies on plagiarism will not excuse any violation of those policies.

A. Wayne MacKay

C.M., B.A. (Mt. Allison), M.A. (Florida), B.Ed. (Mt. Allison), LL.B. (Dal.)

Professor of Law

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Biography: Wayne MacKay has had a distinguished career as a university administrator, legal scholar, respected teacher, and constitutional and human rights expert. He has served as President and Vice-Chancellor of Mount Allison University, an advisor to Governments, National Agencies and Tribunals on Canadian diversity issues, constitutional issues, and civil rights and human rights initiatives. Most recently he has returned to teaching as Professor of Law, at Dalhousie University. In June, 2005 he was appointed a member of the Order of Canada.



Wayne MacKay is appointed to the Order of Canada by Governor General Michaëlle Jean.

Noted for his teaching, innovative research and writing, Professor MacKay has been honored by universities, faculty and colleagues for his outstanding contributions to academic excellence. He is Canada's leading authority on Education Law, and has written several books on this complex subject. He has written more than 75 academic articles in the fields of Constitutional law and human rights.

As a Professor of Law for more than 20 years at Dalhousie University's respected Faculty of Law, Professor MacKay earned a reputation for strong commitment to the teaching and learning experience. His concern for accessibility and equity within the Canadian legal system prompted him to be part of envisioning and implementing the law program for Indigenous Blacks and Micmacs at the Law School. He became the law program's first director, and in recognition of his continuing commitment and contribution to diversity initiatives, the Nova Scotia Government appointed him Executive Director of the Nova Scotia Human Rights Commission in 1995.

His broad knowledge, background, and distinguished record of achievement have resulted in a high demand for his wise counsel as a legal consultant and change agent. He speaks to diverse audiences on constitutional reform and Charter of Rights issues. His respected opinions are sought by academics, public policy makers, government, community leaders, and the local and national media. In 2005

Professor MacKay conducted a year long review of inclusive education in New Brunswick and generated a major report for the New Brunswick Government on reforming the education system in that province.

Professor MacKay has received numerous awards and special recognition for his achievements, including the WPM Kennedy Memorial Award for the most distinguished Law Professor in Canada, and the Walters Taronopolsky Award for achievement in the field of Human Rights. He was also appointed a Paul Harris Fellow by Rotary International in February 2005 and a member of the Order of Canada in June, 2005.

He has served on several royal commissions, university task forces, and professional practice committees of the Canadian Bar. He is a prior member of the Nova Scotia Pay Equity Commission, has sat as a Tribunal Member for the Canadian Human Rights Commission and the Nova Scotia Human Rights Commission. He also serves as a member and director of the latter body at different times. He is an active member of Lawyers for Social Responsibility, the Canadian Association of Law Teachers, and is Strategic Counsel for the [International Centre for Human Rights and Democracy](#), based in Montreal.

Recent distinctions: Appointed as member of the Order of Canada in June 2005. Served a term as President and Vice Chancellor of Mount Allison University, Sackville, New Brunswick, (2001-2004); Director of the Nova Scotia Human Rights Commission (1995-1998); Recipient of the Dalhousie University's 2001 Alumni Award of Excellence for Teaching; Winner of the Kennedy Memorial Award for Outstanding Excellence in Teaching Law (National Law Teacher Award) 1999; Recipient of the Hon. Walter S. Tarnopolsky National Award for Achievements in the Field of Human Rights (Awarded by International Committee of Jurists), 2001; Appointed Vice Chair of the International Center for Human Rights and Democratic Development, 2003-2006 and now serves as Strategic Counsel to the Center.

Teaching subjects: Nationally recognized teacher and scholar, and accomplished author in the areas of Constitutional Law, the Charter of Rights, Human Rights, Privacy Law and Education Law. In addition to teaching courses in the previous areas, he has also taught Administrative Law, Criminology and Aboriginal Rights.

Research interests and publications: Primary areas of research include Constitutional Law, Public Law, the Charter of Rights, Education Law, Criminal Law, Human Rights and Privacy Law. Author of five books in Education Law and currently working on a sixth one. Published in excess of 75 scholarly articles and comments and delivered more than 100 conference presentations.

Selected recent publications:

Books:

- A. Wayne MacKay, *Connecting, Care and Challenge: Tapping Our Human Potential, Inclusive Education: A Review of Programming and Services in New Brunswick*. Submitted to the New Brunswick Department of Education in December, 2005 and available on the [Department web page \(www.gnb.ca/0000/index-e.asp\)](http://www.gnb.ca/0000/index-e.asp) and from the Department in hard form.
- A. Wayne MacKay & Lyle Sutherland, *Teachers and the Law*, 2nd ed. (Toronto: Edmond-Montgomery Ltd., 2006). Updated and significantly revised edition that is double the length of the 1st edition.

Articles:

- “Author’s Summary Connecting Care and Challenge: Tapping Our Human Potential – Inclusive Education: A Review of Programming and Services in New Brunswick” (2007) 17 *Educ. Law J.* 37-104 (R).
- “In Defence of the Courts” A Balanced Judicial Role in Canada’s Constitutional Democracy” (2007) 21 *National Journal of Constitutional Law* 183-244 (R).
- “Social and Economic Rights in Canada: What Are They and Who Can Best Protect Them?” (2007) *Diversity Magazine* (Association for Canadian Studies).
- “Student Freedom of Expression: Violent Content and the Safe School Balance,” a chapter for M. Manley-Casimir ed., *The Courts, the Charter and the Schools* (a forthcoming 2007 book from the University of Toronto Press) with Janet Burt-Gerrans.
- *Inclusion: What is Inclusion Anyway?* (Fredericton: New Brunswick Department of Education, 2007) (Publication for general public in New Brunswick). www.gnb.ca/0000/index-e.asp.) ***set this up so it links to this ***
- “Human Rights in the Global Village: The Challenges of Privacy and National Security” (2006) 20 *National Journal of Constitutional Law* 1-46 (R).
- “Inclusive Education and Maximizing Our Human Potential” (2006) 6 *Perspectives* 1-7 (Canadian Teachers Federation).
- A. Wayne MacKay and Tina Piper, “The Domestic Implementation of International Law: A Canadian Case Study” in Errol Mendes, ed., *Bridging the Global Divide on Human Rights: A Canada-China Dialogue* (Toronto: Ashgate Publishing, 2003), 111-131.
- A. Wayne MacKay & Monica McQueen, “Public Inquiries and the Legality of Blaming: Truth, Justice and the Canadian Way” in Alan Manson and David Mullan, eds., *Commissions of Inquiry: Praise or Reappraise* (Toronto, Irwin Law, 2002), 249-292.

Lawyering, consultation and government advice: Admitted Barrister and Solicitor of the Supreme Court of Nova Scotia, September 1, 1980. Independent legal consultation and association with other lawyers and legal firms (specifically affiliated with Pink Breen Larkin 1988 - 1995). Argued leading cases in Charter of Rights, Education and Constitutional law, including minority language rights in Nova Scotia, school closings, integrating the mentally disabled in schools, and the presumption of innocence in criminal law.

Drawing upon his expertise in Constitutional Law and human rights, Professor MacKay has given advice to governments at the provincial and federal levels. In his capacity as Strategic Counsel for the Rights and Democracy Board, he has also been involved on the international stage.

Broad experience as a senior level media personality at local and national levels, providing high profile commentary in print, radio and television, Professor MacKay is in high demand on the conference circuit, and as a popularizer of law for lay audiences.

Courses:

- [LAWS 2062](#) - Constitutional Law
- [LAWS 2117](#) - Education Law
- [LAWS 1003](#) - Public Law