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Prisoner and Student Rights in Regard to Education: Are they implemented in Canada?

Abstract

Educational law provides information and guidelines concerning the concepts of democracy, freedom, law, and rights as they relate to the education milieu. This article suggests that although Canada recognizes the rights of prisoners and regular school students, their implementation and practice are not directly enforced in relation to education. The article attempts to define rights and discusses the processes for defining prisoners and regular school students. The impact and influences of the authorities governing prisoners and regular school students are examined and those rights granted to prisoners and students in relation to education are presented. The conclusion argues that rights in relation to education for prisoners and students are paid "lip service" in Canada and that the implementation of their rights associated with education is virtually non-existent.

Democracy. Freedom. Law. Rights. All of these terms are recognized in the study and practice of law. In fact, they are synonymous with law and all that law connotes. In addition the study of law includes areas of specialty, for example, criminal law, constitutional law, corporate law, and educational law. Acquiring knowledge of educational law considers democracy, freedom, law, and rights in respect to how they relate to the education milieu, which includes the school, teachers, students, and parents. While society recognizes the elements of law, democracy, and freedom, rights are not as easily identified. This failure to clearly recognize the composition of rights poses problems because rights are often interpreted in a vague and non-specific manner.

The definitional confusion regarding rights leads to an enigma for recognizing and implementing the rights of some individuals within our

society, in particular, prisoners and regular school students. Because they are recognized as unique groups, often the question of prisoners' and students' rights pertinent to education are overlooked. Hence, the purpose of this article is to consider if prisoners' and regular school students' rights in relation to education are implemented in Canadian society.

It can be argued that investigating prisoners' and regular school students' rights in regard to education is inappropriate because both groups are categorized by vastly different characteristics and their rights in relation to education differ significantly. Magsino (1978) notes that regular school students' rights to an education are founded on provincial statute law, whereas prisoners' rights to an education are non-existent (Rudovsky, 1973). The writer acknowledges these considerations in regard to the vast differences between prisoners and regular school students; however, there are some common elements both groups possess. These shared characteristics include (a) universal societal recognition and definition, (b) institutional influences, and (c) the presence of an authoritative body sanctioned to "guard" the groups. It is because of these shared common elements that the presentation will examine whether prisoner and regular school student rights with regard to education are implemented in Canada.

For the purposes of this article prisoner shall refer to individuals incarcerated in a federal institution. The reference to federal prisons and, by way of association, federal prisoners is based on the national model of such entities and constitutes persons 18 years of age and older. The term regular school student refers to individuals attending a recognized provincial regular school in classes ranging from kindergarten to the final high school year.

What Are Rights?

As previously mentioned, referring to rights leads to ambiguity. The dictionary says that rights are "something that justly accrues or falls to one" (Webster's New Collegiate Dictionary, 1985). Rodham (1973) suggests that the foundation for defining rights is that they are pursuant to human dignity and happiness, as in the *United Nations Charter of Human Rights* and the *Canadian Charter of Rights and Freedoms*. A charter is a written grant of rights by the sovereign or legislature. Specifically, the intent of rights is pursuant to human dignity. However, it is the specificity of the definition of rights which has led to problems in recognizing and implementing rights. This problem is evidenced by the notion of **reasonable limits** which is highlighted in the *Canadian Charter of Rights and Freedoms*.

It is the idea of **reasonable limits** which determines the eligibility and applicability of one's rights. The *Canadian Charter of Rights and*

Freedoms specifies various areas of rights, which include legal rights and equality rights. Because of their impetus in regard to prisoners and regular school students, it is necessary to consider both areas closely. Firstly, Section 12 of the *Canadian Charter of Rights and Freedoms* is concerned with legal rights. It states that everyone has the right not to be subjected to any cruel and unusual treatment or punishment. However, in the case of prisoners one could argue that the very nature and purpose of imprisonment is unusual and that some punishment could be perceived to be cruel. Secondly, equality rights (Section 15, i) denotes that every individual is equal before and under the law without **discrimination** and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or **mental or physical ability**. It is not the purpose of this article to debate the wording of the *Canadian Charter of Rights and Freedoms*, however, given the restrictions and limitations imposed on prisoners and regular school students based on the above underlined criteria, it would appear that their rights with regard to education are not being fully implemented. Before elaborating on this connection there is a necessity to describe additional rights afforded Canadian citizens. A brief description of the rights is presented.

The Canadian Charter of Rights

"The Charter deals with constitutional interpretation and is primarily viewed as an agent for reform or social change (Magsino, 1987)."

Legal Rights

Legal rights come from statute law and are written as part of the law. Rodham (1973) notes that they are enforceable claims to possession of property or authority or to the enjoyment of privileges or immunities.

Welfare Rights

Welfare rights are based on the notion of equality within society. They are derived from claims to the goods of life which are conferred by the social ideal of community. They are exercised by adults on behalf of children (Rodham, 1973).

Option Rights

Magsino (1978) writes that option rights are based on independent choices by the party concerned, and they relate to the free will and autonomy of the individual.

Claims to Rights

These are not formally recognized by law. Claims to rights rely on the status of needs or interests, not rights.

It cannot be denied that the *United Nations Charter of Human Rights* and the *Canadian Charter of Rights and Freedoms* provide every individual with listed information as to the make-up, description, and entitlement of their rights. The rights of freedom, democracy, and humanity are often cited in relation to the Charters. Furthermore, legal, welfare, and option rights enhance individuals' rights for living and functioning within society. Therefore, given the universality of both Charters and the specificity of legal, welfare, and option rights, it can be seen that prisoners and regular school students have rights in conjunction with every individual within Canadian society. However, the question which warrants consideration is: Given the implications of prisoners' and regular school students' characteristics and their status within society, are they afforded their due rights in regard to education? In order to answer the question let us consider the processes used for identifying prisoners and regular school students.

Defining Prisoners and Regular School Students

Prisoners and students are identified in society through the process of labeling and definition. In Canada a student is chronologically defined. For example, in Manitoba a student is a person attending school between the ages of seven and 16 (Part XIV, *Manitoba Public Schools Act*). The chronological definition of student gives rise to the consideration of the legal definition of a child. Because of the close relationship of child and student in a legal context, it would be incongruous to investigate regular school student rights without some reference to the rights of children. A child is an individual below the legal age of majority. Throughout Canada the legal age of majority varies among the provinces and can be either the day after attaining 18 or 21 years. Understanding the legal age of majority is important because that age largely determines the rights and duties of a child before the law (Rodham, 1973). Whereas students are identified in relation to their age and attendance at school, prisoners' identity is relative to their incarceration.

A prisoner is an individual who, through legal processes, has been recognized as violating the law and, as a consequence of this violation, is incarcerated in a prison as a form of punishment for a determined period of time (Leeke, 1972).

Prisoner and Student Characteristics

Because prisoners and students are identified by society through a process of categorization and labeling, a similarity between the two groups emerges. A student is characterized by his or her age and attendance at school, whereas a prisoner is characterized in relation to his or her incarceration. It is through the process of identifying the specific characteristics of prisoners and students that the problem of discrepancies and failure on the part of society to recognize prisoners' and students' rights with regard to education are evident.

Historically, according to West and Gaffield (1978), the identification of children emerged as recently as the 1800s. They suggest that the age ascribed dependency for students dominates their rights to self-determination. This is supported by Conrad and Schneider (1980), who report that the age delineation of children permits them to be perceived as having to be watched closely, needing supervision, not permitted to be left alone, not to be pampered, and needing discipline. In addition, they are expected to practise modesty and decency, to work diligently, and to respect and obey authority. Furthermore, Conrad and Schneider (1980) write that it was the notion of "child" that led to a rationale that the question of children's rights was not an issue because they were perceived incapable, undeserving, immature, dependent, and frivolous. As a consequence it is generally held that children need social institutions to safeguard their position and "society is doing what is best" (Rodham, 1973). All of these characteristics and labels regarding a child provide a strong foundation for the lack of any necessity for implementing their rights. The same rationale applies to the rights of students. Similar labels and perceptions of prisoners are also evident.

A prisoner is generally perceived to be an individual who is mean, rough, uncaring, and dangerous (Fox, 1986). Additional ascribed characteristics of prisoners include low intelligence, personality problems, and a high incidence of alcohol or drug abuse (Forster, 1981). All of these characteristics, plus their incarceration, systematically justify the necessity for some form of "control" or "authority" over prisoners. This observation is supported in light of the purposes of incarceration. Krantz (1976, p. 16) notes six specific objectives for sentencing or punishment of prisoners. They are:

1. Prevention – deterrence by giving unpleasant experiences which the prisoner will not wish to endure again (e.g., loss of independence).
2. Restraint – protecting society from prisoners deemed dangerous.

3. Rehabilitation – giving appropriate treatment to the prisoner for returning to society free from the desire to return to criminal activity.
4. Deterrence – deterring others from committing future crimes by causing suffering of a criminal for his or her crimes.
5. Education – educating the public as to proper distinction between good and bad conduct through publicity which attends the trial, conviction, and punishment of criminals.
6. Retribution – punishment in order to obtain revenge, so that one who causes harm to others should be punished to an equivalent degree of harm.

The labeling processes clearly identify prisoners and students. Prisoners' characteristics and the reasons for their incarceration provide justification for society to also have some control over their lives. Because of the dominance of the purposes of incarceration society assumes the authority of whether or not the rights of prisoners need or should be implemented. The students' chronological age allows for the rationale that society take control of their lives, and as a result the societal authority puts students' rights in abeyance.

Institutions: Prisons and Schools

An additional common element between prisoners and regular school students is that their identification is in relation to their association with a specific institution, namely the prison or school. Undoubtedly there will be some regular school students who would argue that their schools are prisons! However, the point is that the institutions are governed by recognized authorities who have a hierarchial staffing arrangement that disseminates the authority associated with the institution.

Education Authority Governing Prisoners and Students

Magsino (1978) notes that in Canada the provincial authority passed acts granting schools the power to control the conduct of pupils based on *in loco parentis*. He says,

Teachers may exercise powers of control, restraint, and correction as may be reasonably necessary to enable them to properly perform their duties as a teacher and accomplish the purpose of education. The teacher has the right to direct how and when each pupil shall attend to his appropriate duties. (p. 91)

Similarly prisoners face the same notion of authority as is evidenced by Krantz, Bell, Brant, and Magruder (1973) in their book concerning regulations for prisoners' rights. They suggest that the book is beneficial for sound correctional policy. Furthermore, it is asserted that the book will assist correctional administrators and staff in the performance of their duties, and give guidelines to establish their own formalized procedures for disciplinary hearings and the resolution of inmate offences. Clearly, the purpose of the book is to maintain and develop the authority of prison officials, yet the title infers procedures for implementation of prisoner rights (which in this instance appear to be non-existent).

The authority over prisoners is further evidenced in the handbook and information guidelines for Canadian federal inmates (Canadian Federal Corrections, 1985). The handbook states: "If you behave unreasonably, for example, if you are convicted of a disciplinary offence (no example is listed) [*sic*] restrictions and limitations will be placed on your rights (no example is given) [*sic*]" (p. 4).

Rights Afforded to Prisoners and Students

Although the existence of prisoner and student rights in Canada has been recognized by charters and legislature, the implementation of their rights in regard to education has been minimal. The rights of prisoners have been recognized in the information handbook for prisoners in federal prisons (Canadian Federal Corrections, 1985). This can be seen in respect to the handbook being based on the following principles:

1. An inmate shall retain all of the rights of an ordinary citizen, except those which have been removed by law or as a necessary result of incarceration.
2. An inmate's only punishment should be the sentence which the court has imposed, unless a properly established administrative tribunal finds him or her guilty of a disciplinary offence while in custody.

Throughout the handbook the prisoner is reminded that he or she has three kinds of rights: (a) retained rights, (b) penitentiary acts and regulations, and (c) conferred rights. Retained rights are those shared by all the citizens of Canada and are not specifically taken away by law or as a result of incarceration, e.g., those rights conferred by the *Canadian Charter of Rights and Freedoms*. Price (1976) says that the Charter gives prisoners an absolute right to be free from cruel and unusual punishment. Penitentiary acts and regulations are granted by parliament and in most cases are unique to inmates. (It is interesting to note that the handbook does not elaborate as to what is "unique to inmates.") Conferred rights are specifically granted by the Commissioner of Corrections by virtue of the power given to the

Commissioner by the parliament, i.e., some rules within the prison are the Commissioner's directives. This would diminish the rights of prisoners because the Commissioner's directives can be enforced in any situation in the prison. As mentioned, prisoners have no rights to education; however, the *Handbook and Information Guidelines for Canadian Federal Inmates* (Canadian Federal Corrections, 1985) notes that the Commissioner of Corrections shall, if possible, make available academic and vocational training to every inmate who is capable of benefiting from it.

Student rights according to Magsino (1978, pp. 101-102) include:

1. The Right to an Education. Provincial statutory provisions requiring attendance must provide facilities for the accommodation of children.
2. Right to Equal Education Opportunity. This varies in each province and raises questions concerning the resources and financing in comparing the "have" to "have not" provinces.
3. Right to Procedural Due Process. The courts have been concerned with: (a) whether or not punishment was just and if there was reasonable cause for it, (b) whether or not the teachers acted in malice, (c) whether or not the teachers abused their power, and (e) if the punishment was rendered capriciously, excessively, or carelessly.
4. The Right to Reasonable Treatment or Protection. Students receive from teachers and the school board officials the care that a judicious parent would give.

While these student rights are acknowledged, Barga (1961) suggests that as public school education is compulsory in Canada and children between certain ages are compelled to attend, it is necessary to ask whether or not the right to an education is a statutory or a natural right. Further, compulsory education in Canada is a double-sided coin. Compulsion throws the burden of effort on the child and parent to ensure attendance, and the necessity of rights, throws the burden of performance on the educational authorities.

The Evidence Demonstrating the Lack of Implementation of Prisoner and Student Rights

The purpose of this section is to present information which demonstrates societal failure to implement educational rights of prisoners and students. Information is substantiated by the citation of case law

relevant to the area. It is acknowledged that law and situations vary through time and, with the formulation and documentation of the *Canadian Charter of Rights and Freedoms*, some changes in the processes and the dominant attitude of society concerning prisoners and regular school students and their rights with regard to education is imminent. This is supported by Magsino (1987) who suggests the *Canadian Charter of Rights and Freedoms* has opened up possibilities for liberal or reformist justices to act as agents for social change. However, MacKay (1984) warns that it is far too early to say if the Charter will have any effect on determining or implementing students' rights.

The right to an education for regular school students is recognized in all Canadian provinces through legislation such as education acts and school acts; however, cases dealing specifically with student general rights have varied across the country, and this variance is attributable to the provincial responsibility for education. Magsino (1987) notes the following cases in relation to student rights.

In 1981 students at Forest Hill Collegiate [location not stated] were prevented by the principal to hold a debate entitled "Rights of High School Students." This led to the school newspaper presenting a satire on the principal. The principal confiscated the newspaper and the distributing student was suspended. Further, at Bev Facey Composite High School [location not stated], ten boys were strip-searched for a stolen watch. Both cases raised a storm of protest, yet there was no litigation (p. 17). Magsino (1987) further records that in 1980 three Quebec students were expelled for dealing in drugs at school. The students were not informed of the charges and were absent when the decision to expel was authorized. In addition, the students were not given the opportunity to defend themselves. The students were reinstated as the judge determined that the school board had violated the rules of natural justice (p. 17). Another case similar to the Quebec incident involved a 13-year-old female student in British Columbia in 1985. The girl was suspended from October to the end of the academic year for smoking marijuana. Based on the school board's disciplinary policy, the suspension was administered. The court ruled in the girl's favour declaring the policy invalid because the absence of "due warning" did not conform to the province's school act which requires kind and judicious discipline, as well as procedural fairness in disciplining students. Finally, in 1972, an 11-year-old Saskatchewan boy was suspended for refusing to cut his hair. The boy and his mother appealed; however, the court confirmed the school board's authority and principal's power to suspend. The court cited common law the statutory basis for its conclusion (Magsino, 1987, p. 18).

This fluctuation and variance in court decisions regarding students' rights is difficult to determine. The variance in provincial acts pertaining to

education may be an explanation. Magsino (1987) suggests that *in loco parentis* which allows educators to be "paternal surrogates" to determine student conduct may allow for the justification of an educational authority's power to control pupils. This authoritative power can explain the reason for the variance in court decisions, as generally courts do not interfere unless the reasonableness of the power is questioned.

In 1973, the Ontario legislature introduced a bill entitled "Proposed Student Bill of Rights" (cited in MacKay, 1984, p. 388-390). It was an act respecting the rights of students and had over eight areas pertaining to regulations of school boards and teachers in respect to the rights of students. The bill was never enacted as law.

The rights of prisoners pertaining to education are non-existent. However, Price (1976) writes that an inmate continues to enjoy all the civil rights of a person save those that are taken away or interfered with by the inmate having been lawfully sentenced to imprisonment. Furthermore, Rudovsky (1973) notes three principles in deciding prisoners' rights. They are:

1. Incarceration necessarily deprives a prisoner of certain rights and privileges enjoyed in a free society.
2. Convicts do not lose all of their civil rights – there are certain fundamental rights that follow them (with appropriate limitations).
3. Prison officials are vested with wide discretionary powers, and courts are reluctant to interfere with them.

It is because of these principles that Rudovsky (1973) concludes that although prisoners do not have a right to education and training, the rhetoric of corrections which includes rehabilitation, education, training, and treatment, infers prisoners' rights to improve, develop, and grow.

Cases pertaining to prisoners' rights in relation to education or improvement are minimal. Price (1976) writes that case law touching upon such issues is not well known. To date the literature contains no systematic cases and issues. He cites two interesting cases from the United States relevant to prisoner rights to education. In 1948, a prisoner was not allowed to proceed with a correspondence course unless he changed the style in which he described prison authorities. They were described as a sadistic group in charge of the brutality department. It was held that the prisoner was abusing the privilege extended by prison authorities, therefore, there was no violation of constitutional rights (p. 54). The second case, in 1964, dealt

with a prisoner who was confined to a segregation unit. The prisoner believed he should be allowed to attend classes. However, the court ruled against the prisoner, saying that it must uphold the supervisory authority of prison discipline (p. 55).

Conclusion

Canada like so many nations prides its political, social, and educational foundations under the guise of democracy, freedom, and the law. What seems apparent is that the implementation of prisoner and student rights in regard to education is minimal, and outcomes of court cases indicate that "lip service" is paid in the area of prisoner and student rights as opposed to commitment to implementation. MacKay (1984) and Rudovsky (1973) note the apprehension of courts to deal with the rights of prisoners and students, preferring the issues to be dealt with in the local setting. Furthermore, prisoner and student rights regarding education are generally admonished under the pretence of societal authority knowing what is best for both groups.

Given the implications of the *Canadian Charter of Rights and Freedoms*, in which individuals are afforded fair and just treatment together with not being discriminated against because of one's age, it can be assumed that issues pertaining to educational rights for prisoners and students may increase. But this can only be an assumption as both prisoners and students are temporarily assigned to each group. Development, maturity, sentence duration, and early release schemes support this observation. Therefore, the question of implementing rights for each group is put into abeyance because of the influence of time.

In the past Canadian courts have failed to implement student and prisoner rights for numerous reasons. Politically and socially the ramifications of implementing the rights of both groups can be seen as self-destructive owing to the dominance of the notion that society knows what is best for both groups. Perhaps the answer to the problem of implementing the rights of prisoners and students is best addressed by Rodham (1973) who suggests that there should be (a) abolition of minority status, (b) granting of all procedural rights, (c) application of a new equal protection theory, and (d) a moving away from the "best interests" theory.

Until such changes come about Canadians may think that their education policies are based on the principles of democracy. However, in the question of rights for prisoners and students, the notion adhering to democratic principles may be a fallacy.

REFERENCES

- Bargen, P.F. (1961). *The legal status of the Canadian public school pupil*. Toronto: MacMillan.
- Canadian Federal Corrections. (1985). *Handbook and information guidelines for Canadian federal inmates*. Ottawa: Canadian Government Printing Office.
- Conrad, P., & Schneider, J. (1981). *Deviance and medicalization: From badness to sickness*. Toronto: C.V. Mosby.
- Forster, W. (Ed.). (1981). *Prison education in England and Wales*. Leicester: NIAE.
- Fox, T.A. (1986). Justifying education programs as a form of rehabilitation in prisons. *Journal of Educational Administration and Foundations*, 1(1), 49-55.
- Krantz, S. (1976). *The law, corrections and prisoners' rights*. St. Paul, Minn: West Publishing.
- Krantz, S., Bell, R., Brant, J., & Magruder, M. (1973). *Model rules and regulations on prisoners' rights and responsibilities*. St. Paul, Minn: West Publishing.
- Leeke, W.D. (1972). *The emerging rights of the confined*. South Carolina: Correctional Development Foundation Inc.
- MacKay, A.W. (1984). *Education law in Canada*. Canada: Edmond Montgomery.
- Magsino, R.F. (1978). Student rights in Canada: Nonsense upon stilts. In H. Berkeley, C. Gaffield, & G. West, (Eds.), *Children's rights. Legal and educational issues* (pp. 89-107). Toronto: OISE Press.
- Magsino, R.F. (1987). Teacher and pupil rights: Prospects for change. In S. Stewin, and S. McCann, (Eds.), *The Canadian mosaic*, (pp. 9-21). Toronto: Copp Clark Pitman.
- Manitoba Public Schools Act*. Winnipeg, Manitoba: Department of Education, Legislative Offices.
- Price, R.R. (1976). Doing justice in corrections. Prisoners, parolees and the Canadian Courts. *Proceedings of the Programme on Rights of Prisoners* (pp. 5-69). Toronto: Department of Continuing Education.
- Rodham, H. (1973). Children under the law. *Harvard Education Review*, 43(4), 487-514.
- Rudovsky, D. (1973). *The rights of prisoners*. New York: Richard Baron.
- Webster's New Collegiate Dictionary*. (1985).
- West, G.W., & Gaffield, C. (1978). Children's rights in the Canadian context. In H. Berkeley, C. Gaffield, & G. West, (Eds.), *Children's rights: Legal and educational issues*. Toronto: OISE Press.