

## **Teachers and the Law, 3rd Edition (MacKay, Sutherland, & Pochini)**

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Review of

## *Teachers and the Law, 3rd edition*

by A. Wayne MacKay, Lyle Sutherland, and Kimberly D. Pochini, Toronto, ON: Emond  
Montgomery, 2013

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Because of Canada's radically devolved education system, and the multiple and sometimes conflicting sources of educational law that this system engenders, a book that offers legal opinions to Canadian teachers may seem to be political sacrilege, if not a fool's errand. Without batting an eye, the authors of the third edition of *Teachers and the Law* not only convincingly demonstrate the relevance of a national perspective on educational law, but also provide the kind of accessible, informed and practical guide to legal matters that so many teachers, new and experienced, crave. It is thus all the more disappointing that the third edition of this book has not resolved some fairly elementary organizational issues, carried over from earlier editions, which hamper access to the valuable information it contains, and which at times make for a frustrating reading experience. That the book needed updating to take into account the vastly increased presence of the internet and social media on the educational landscape since the release of the second edition in 2006 is uncontestable. In the interim, cyberbullying in particular, and the responsibility of teachers and schools to prevent it, has emerged as a major issue in educational law, and federal law on copyright has undergone an extensive update to make it better adapted to the digital environment. The new edition of the book duly reflects these important changes.

As in the earlier editions, the authors give themselves and, with only occasional lapses, adhere to a careful mandate to provide a lawyer's view on legal matters that fall within the range of teachers' agency in the education system. The book's organizing principle is a set of "roles" that teachers can be seen as playing in their work with young people both inside and outside the classroom. Six of them are identified: teachers as parents, state agents, guardians of equality, agents of the police, social welfare agents, and employees. The legal responsibilities and rights of teachers vis-à-vis one of these roles is the subject of each chapter. So, for example, under the heading of "teachers as parents" we hear about the legislation and jurisprudence on teachers' liability for accidents occurring on school grounds. The chapter on "teachers as state agents" underlines the need for teachers to respect young people's Charter rights in making and enforcing classroom rules. The jurisprudence on bullying, reasonable accommodation and the inclusion of children with disabilities in regular classrooms are dealt with in the chapter on "teachers as guardians of equality." Guidance on what teachers should do if, in the course of their work, they become privy to information that a student has broken criminal law on school grounds (e.g., by possessing illegal drugs) is offered in the chapter on "teachers as agents of the police." Under "teachers as social welfare agents" their legal obligations to report cases of child abuse and

neglect are explained, and the issue of teachers as role models in and out of class is handled in the chapter on “teachers as employees.” Exceptions to the book’s role-based structure are the last chapter on information technology and copyright, and the first chapter, a backgrounder on the various sources of educational law in Canada, on how the *Canadian Charter of Rights and Freedoms* has acted as a centralizing force in educational law since its introduction in 1982, and on two fundamental principles of educational law internationally: *parens patriae* (i.e., that the state has the authority to protect those who cannot protect themselves, including children against their parents) and *in loco parentis* (i.e., that parents delegate their parental authority to teachers while their children are at school).

The book’s scope, then, is impressive, and, without aspiring to be comprehensive on the many legal matters it addresses, it consistently possesses the qualities one should expect from legal opinion: informative, thorough, pragmatic and neutral. Its starting point is to challenge a received idea among teachers about school law. This idea is that teachers needn’t be overly concerned with it since all that society expects of them from a legal standpoint—and all they have to do to avoid becoming the object of litigation—is to conduct themselves as a reasonable and prudent parent would in all their interactions with young people in schools. The authors’ contention, amply corroborated in the ensuing chapters, is that this idea is badly out of date. Although judges do continue to routinely appeal to the standard of “the careful parent” in cases assessing liability for accidents at school, the authors point out that the standard provides little guidance for teachers attempting to navigate the complex web of constitutional, statutory and common law, and other regulations that now surrounds teachers’ work. That said, nothing could be further from the authors’ intent than scaremongering. The book’s message concerning many teachers’ understandable fear of being sued for negligence or otherwise prosecuted for failing to meet legal obligations is clear and consistent. First, the legal record shows that the courts tend to be very sympathetic to the complexity of teachers’ decision-making around legally sensitive issues like the duty to report suspected cases of abuse or neglect. Second, litigants rarely go after individual teachers, the authors point out, because the deep pockets of the employer hold the promise of a much richer financial award and, in any case, teachers are typically sheltered by the principle of vicarious liability—employers are legally responsible for torts committed by their employees in the course of employment. The book’s impetus is the authors’ commitment to the belief that striving to be knowledgeable about and judiciously respecting the laws and regulatory frameworks that apply to teachers and schools is an essential aspect of teacher professionalism.

Despite its undeniable strengths as a resource for teachers on contemporary educational law in Canada, this book is in need of a firm editorial hand. The limitations in this regard are several and range from minor annoyances to serious discouragements. On the minor annoyances end of the spectrum there is the lack of a glossary of recurring legal terms, the repetitive treatment of bullying and cyberbullying—cyberbullying is discussed in detail twice, bullying three times—and the fact that case years are not cited in the text. The latter was likely the result of the book’s use of Chicago-style endnotes, almost certainly imposed by the publisher, but in the case of the present book it deprives the reader of convenient access to relevant information. Is the judgment pre- or post-Charter? It is relatively recent or several decades old? Evidence of poor organization is also apparent. The limitations of the otherwise compelling plan to structure the book around teachers’ roles are revealed by the inclusion in the chapter on “teachers as parents” of the discussion of teachers’ liability for different forms of sexual abuse in virtue of the *Criminal Code*. Another instance of questionable organization is that the discussion of the relationship between Charter and provincial laws on education and schooling,

the scope of the Charter's application, and the standard steps in Charter litigation appears in Chapter 3 rather than in the opening chapter on the multiple sources of law that touch on teachers' work. This information is so fundamental to following the book that any reader insufficiently versed in it will be quickly lost. The most serious shortcomings of the book stem from an apparent misjudgment of the limits of the target readers' prior knowledge of the Charter and their taste for legal details. The authors' habit of referring to sections of the Charter only by number assumes a constitutional court judge's familiarity with the document. For the rest of us, this is a major barrier to communication. It means having to look up the section in question even to follow the discussion—a problem which is made all the more frustrating because it could have been simply remedied by adding a copy of the Charter as an appendix. Another aspect of the book that risks discouraging readers is the length and detail of a number of the chapters. The first and last chapters are well focused, but the depth of the treatment of certain issues elsewhere in the book—most notably, of the history of youth criminal justice legislation in Chapter 5 and the four dense pages dedicated to the Moore case on fair access to educational services in Chapter 4—is at times excruciating and, above all, hard to justify given the book's intended readership of educational professionals.

These rather nuts-and-bolts problems aside, *Teachers and the Law* remains at once a major academic achievement and a uniquely indispensable resource for Canadian educators. For providing a digest of the vast and constantly evolving network of laws and regulations governing teachers' work, the authors deserve our admiration as scholars. But because the book does this with the aim of helping to prepare educators to meet the expectations imposed on them by society through law, the Canadian educational community at large owes the authors a debt of gratitude.

### **About the Author**

**Bruce Maxwell** is Associate Professor of Education at the University of Quebec at Trois-Rivières. His work deals with contemporary ethical issues in education and schooling, moral psychology as it intersects with ethical decision-making in work settings, and professional ethics in teaching. He has written a number of articles, chapters and books on these topics including, most recently, the co-authored *Questioning the Classroom: Philosophical Perspectives on Canadian Education*.