

# LEADERSHIP UPDATE

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## It's the "Principal" of the Thing: Investigations, Interviews, and Search and Seizures in the School

### Part 2

**The Question:** *When can a school administrator investigate or otherwise become involved in an investigation of an alleged criminal incident involving students?*

Section 20(f) of the *School Act*, RSA 2000, chapter S-3, provides that "[a] principal of a school must ... maintain order and discipline in the school and on the school grounds and during activities sponsored or approved by the board."

### Search and Seizure in the School Context

In *R v MRM* (which was considered in *R v JY*, discussed previously), the Supreme Court of Canada had to determine when and in what circumstances a search by an elementary or secondary school official should be considered unreasonable and therefore in violation of the student's rights under the Canadian Charter of Rights and Freedoms (the Charter).

The context was that a school vice-principal received information that a student was dealing drugs in the school. He saw the student at a school dance and called the police. When the plainclothes police officer arrived, the officer and the vice-principal brought the student to an office, where the vice-principal asked if he had any drugs. The student responded that he did not. The vice-principal then told the

student that he intended to search him for drugs and did so—in the presence of the police officer. A small amount of marijuana was found on the student.

Although the majority in *MRM* held that the Charter's guarantee against unreasonable search and seizure (section 8) is engaged because schools constitute part of government, it then concluded that a search by school officials of a student under their authority need not be held to the same exacting standards as a search by police, given school officials' roles and responsibilities regarding the teaching of children and caring for their safety and well-being. Thus, the court outlined a less stringent approach to be taken in considering searches by teachers:

- (1) A warrant is not essential in order to conduct a search of a student by a school authority.
- (2) The school authority must have *reasonable grounds* (italics added) to believe that there has been a breach of school regulations or discipline and that a search of a student would reveal evidence of that breach.
- (3) ... Courts should recognize the preferred position of school authorities to determine if reasonable grounds existed for a search [as school authorities will be in the best position to assess information given to them and relate it to the situation existing in their school].

**It's the "Principal" of the Thing"**

*Continued on page 2*

**Man's  
mind, once  
stretched  
by a new  
idea, never  
regains its  
original  
dimensions.**

*Oliver Wendell Holmes, Jr*



## It's the "Principal" of the Thing"

*Continued from page 1*

- (4) The following may constitute reasonable grounds in this context: information received from one student considered to be credible, information received from more than one student, a teacher's or principal's own observations, or any combination of these pieces of information which the relevant authority considers to be credible. The compelling nature of the information and the credibility of these or other sources must be assessed by the school authority in the context of the circumstances existing at the particular school.

The Supreme Court made it clear, however, that this modified standard would apply only to searches of students on school property conducted by teachers or school officials within the scope of their responsibility and authority to maintain order, discipline and safety within the school. The court noted that the standard would not apply to any actions taken outside the scope of the authority of teachers or principals and, further, that if it could be found that school authorities were acting as agents of the police, the normal standards would apply.

In *MRM*, the majority of the court found that although the vice-principal cooperated with the police, that fact alone was not sufficient to establish that he was an agent of the police. As noted earlier, the test enunciated by the court was whether the search (and seizure) would have taken place, in the form and in the manner in which it did, but for the involvement of the police.

More important, even though there was no specific provision in the relevant statute, (the Nova Scotia *Education Act*), the court found that the search by the vice-principal was by inference authorized by the statute because such an inferred provision to search students in appropriate circumstances was reasonable in the school environment. Accordingly, taking into account all the circumstances, the court found that the search was not unreasonable and did not violate the student's section 8 Charter rights.

The court also outlined further guidelines about searches in the school context, noting that any searches must take into account the age and gender of the student, as well as the purpose and intrusiveness of the search, specifically mentioning that a search for a weapon might be done more quickly and intrusively than a search for drugs, and that a male teacher's searching a female student for drugs may well be "inappropriate and unreasonable."

## Random Drug Searches Using Dogs

When is a search done at the school not a search by school authorities? In a recent Ontario Court of Appeal decision, *R v AM* [2006] OJ No 1663 (CA)(QL), the court agreed with the trial judge's decision that evidence garnered from a warrantless police search of a school with a sniffer dog was properly excluded because the search was a breach of the students' section 8 Charter rights, the right to be secure against reasonable search and seizure.

It was contended that the search was conducted at the direction of the principal, based on a standing invitation made by the principal to the police two years earlier to search the school with the assistance of a sniffer dog. Had that been the case, the police would have been acting as agents of the school authorities, and a warrant would not have been required. However, because the principal had not requested the presence of the police on this occasion and, indeed, was not even given notice that the police intended to conduct a search that day, the court concluded that the search was not a search by or on behalf of school authorities. It was simply a police search, and because a warrantless police search is prima facie unreasonable, the Charter applied.

Furthermore, the Ontario Court of Appeal found that neither the *Education Act* nor the subsidiary school zero-tolerance policies could provide authority for a warrantless random search. Indeed, following the Supreme Court's reasoning in *MRM*, a random sniffer dog search "just because," without reasonable grounds for that search, would have likely resulted in the exclusion of any evidence thus obtained, even if the police had been acting as agents for the school authority.

*R v AM* was appealed to the Supreme Court of Canada, where it was heard on May 22, 2007. The decision may result in new or enhanced guidelines on the law in this area.

In *Fowler v Adams* [2006] NJ No 295, Justice Osborne of the Newfoundland and Labrador Court recently discussed the use of drug-sniffing dogs in the school context. That decision was an

appeal by a student's parent of a professional regulatory body's decision that Adams, a police officer, was not guilty of unbecoming conduct.

The adjudicator had found that a drug search conducted by Adams at a junior high school, in which a police dog went up and down the aisles of classrooms, was not a search of Fowler's daughter, a student. The court disagreed, although the appeal was ultimately dismissed because even though it was an illegal search, it did not deserve disciplinary sanction.

Notably, in *Fowler v Adams*, even though the police officer had been requested by the school to conduct the search because the school authorities had been receiving complaints and concerns from parents and students about drugs in the school, the court was not convinced that the police were acting as agents of the school authorities. Accordingly, because the search was conducted entirely by the police, using a police dog, without a warrant, it was an illegal search with no grounds existing to support it.

Taking *Fowler v Adams* and *R v AM* together, then, before a search using a drug-sniffing dog will be legal in the school context, either the police must get a warrant for the search or the school authorities, acting on reasonable belief that a search is required, must invite and control the police dog. Otherwise, the search will be a prima facie unreasonable warrantless police search, and the Crown will have the burden of rebutting the presumption of unreasonableness by proving that the search is authorized by law, the law itself is reasonable, and the manner in which the search is carried out is reasonable.

## Attention School Administrators

What's it like to be a school administrator in Alberta today?

Only school administrators can answer that question. The Alberta Teachers' Association wants to know and has commissioned a research study to document the day-to-day experiences of school leaders. The Association is issuing an open invitation to all school administrators (principals and vice- or assistant principals) to participate in a research project by contributing written submissions sharing their lived experiences as school administrators. These stories will paint a picture of the current realities for school administrators as they work to support teaching and learning in their school communities.

School administrators are asked to consider three open-ended questions within their narratives:

1. What are the current factors and conditions that enable or assist you as a school administrator?
2. What are the current factors and conditions that limit or restrict you as a school administrator?
3. If you could begin your career again, would you choose school administration? Why or why not?

E-mail your written submissions to [leaders@ucalgary.ab.ca](mailto:leaders@ucalgary.ab.ca) by January 18, 2008.

For more information on this study and how to prepare your written submission, visit [www.teachers.ab.ca](http://www.teachers.ab.ca).



*For further information, visit [www.teachers.ab.ca](http://www.teachers.ab.ca) or contact Member Services at the Alberta Teachers' Association, 447-9400 (in Edmonton) or 1-800-232-7208 (from elsewhere in Alberta).*