

Child and youth activism in Canada: the legal frameworks of the right to protest

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Background

The United Nations Convention on the Rights of the Child (1989) establishes that children and youth have the right to civic participation.
What are the legal frameworks creating venues for children and youth in Canada to exercise their right to protest? To answer this question, we reviewed legislation on the right to peaceful assembly, secondary literature on the right to protest in schools, and case law.

Method

Between January-April 2023, we conducted:
 1. Comprehensive review of legislation and case law governing minors in Canada to identify relevant starting points:
 a. Wilson (1995) *Children and the Law*
 b. Hudani (2022) *Halsbury's Laws of Canada - Education*
 2. Federal case law:
 a. Note up s. 21(c), *Canadian Charter of Rights and Freedom* (1982) and ss. 63 and 64, *Criminal Code*
 b. Filter relevant case law on Thomson Reuters Westlaw
 3. Provincial & municipal case law:
 a. Search through School Boards' Policies, capacity limitation
 b. Review commentaries by Wilson (1995) and Hudani (2022) explaining the lack of case law
 4. Search internet for NGO involvement in peaceful assembly in the education context

Results

Federal Caselaw

Limited attention to right to peaceful assembly by the courts

Canadian Civil Liberties Assn. v. Toronto Police Service, ONSC 2010
 • Protests against the G20 summit in Toronto. Police tactics involving sonic cannons were found by the judge to be harmful to children's hearing, further hindering families' participation to protests. Finding did not discuss youth participation any further.
R. v. Pawlowski, ABPC, 2014
 • Children involved in protest against the 2012 Calgary Stampede. Judge does not analyse youth involvement in the peaceful protest.
The Corporation of the City of Windsor v. Persons Unknown, ONSC 2022
 • Young people present at truck blockade. Judge did not treat the involvement in findings.

No analysis of lawful assemblies vs unlawful assemblies

R. v. Drury, BCPC, 2004
 • N. participated in a peaceful assembly that turned aggressive. N.'s charges did not include rioting or unlawful assembly, but assault.
R. v. R. (M.), O.C.J., 2002
 • R. participated in an unlawful assembly; her s. 63 charge got dropped. Judge focused on formative aspect of charging R. in view of her defiant behaviour but did not discern between lawful protest and aggressive protest.
R. v. P.E. 2007 BCPC
 • P. participated in a riot. Judge delved deeply on need for deterring offenders from offending again vs. need to account for a young offender's age as directed by the Youth Criminal Justice Act, without focusing on the nature of the offence itself.

Provincial / Municipal Law

• Both Wilson's (1995) *Children and the Law* and Hudani's (2022) *Halsbury's Laws of Canada* flag few cases involving youth protests in the education context
 ◦ Province-specific variations of Ontario's Education Act (1990) unveil heavy discretionary power of Principals and School Boards to regulate students' right to peaceful assembly.
 ◦ "(T)hese broad powers have not been Charter tested" (Wilson, 1995)



Fig. 1. Deterrence and de-escalation VS fostering lawful exercise of this right



Conclusion & Call to Action

Results of our legislative and case law review indicate that:
 1. When youth are involved in protests, peaceful or not, the case law shows **little to no attention by the courts** in regards to the application of this right, or its unlawful exercise, to youth;
 2. This Charter right remains **untested in the context of the education system** as Principals and School Boards have broad, discretionary power to limit youth's right to peaceful assembly.
 Most of the work to exercise this right occurs outside of courts, largely by NGOs, who work alongside youth, to vindicate their right to peaceful assembly (e.g., through walkouts and peaceful protests). NGOs provide guidance, legal assistance, and public education.

Policymakers need to set boundaries to the discretionary power of School Boards and Principals to create more room for autonomous assemblies to youth. **Lawyers** need to encourage courts to focus on the importance of the right of peaceful assembly and how it differs from unlawful gatherings.

References

- Canadian Charter of Rights and Freedoms, s. 7, Part 1 of the Constitution Act, 1982
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- Criminal Code (RSC, 1985, c. C-46)
- Education Act, RSO, 1990, c. E2
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- Halsbury's Laws of Canada (online), Education (2022 Release)
- R. v. Pawlowski, 2014 ABPC 126
- R. v. Drury, 2004 BCPC 188
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