



## Education Law eBulletin

A newsletter for educators

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A firestorm erupted in the media last week after a teenage girl, suspected of having marijuana in her possession, was strip-searched at school by her female principal and another female staff member. In a statement to the press, Quebec's Education Minister Yves Bolduc defended the search, stating that strip searches are "fine" so long as they are performed "in a respectful fashion" to the individual being searched.

Enter Quebec's Education policy regarding police presence in educational institutions. The 2010 policy document to which it is assumed Bolduc was referring to justify the strip search, entitled "Présence Policière Dans Les Établissements d'Enseignement," cites the Supreme Court of Canada decision in *R. v. M.R.M.*, [1998] 3 S.C.R. 393, and states as follows [translated]:

Teachers and school authorities are obliged to provide a safe environment and maintain order and discipline. This may require searches of students and their belongings. However, the search must be made reasonably and preferably with another member of staff or management of the same sex as the student. The leaders of the institution cannot conduct a search without having reasonable grounds to believe that a rule of property was violated and that the evidence of the violation can be discovered on the premises or on the student. The search itself must be made reasonably and appropriately taking into account the circumstances and the nature of the breach of the rules of the school. The age and gender of the child shall in particular be considered. The search must be conducted in a respectful manner and be minimally intrusive.<sup>1</sup>

To be clear, although the policy directly refers to *R. v. M.R.M.*; the policy cited above does not specifically condone with strip searches; nor does it suggest that the Supreme Court's decision condones that type of conduct. In our opinion, as explored more fully below, it may be difficult to suggest that the Supreme Court contemplated the circumstances of a strip search when Justice Cory delivered the majority decision.

In *M.R.M.*, a vice-principal of a junior high school had been informed by some students that another student, M.R., had planned to sell drugs at an upcoming school dance. The vice-principal asked M.R. and his friend to come to his office.

The vice-principal advised them that he was going to search them for drugs. The search took place in the presence of an RCMP officer, who did not take any part in the search, but who had been called by the vice-principal according to school policy.

The search in *M.R.M.* was, in comparison to the recent case in Quebec, benign. M.R. emptied his pockets and, after being asked by the vice-principal to do so, pulled up his pant legs. There was a bulge in his sock. The vice-principal removed a plastic bag of

<sup>1</sup> Quebec, Ministère de l'Éducation, du Loisir et due Sport, Ministère de la Sécurité publique, *Présence Policière Dans Les Établissements d'Enseignement*, (Quebec: 2010) at p. 9. NOTE: This is a translation of the French-only text and is not meant to be an official translation.

marijuana. The bag was given to the police officer who advised M.R. that he was under arrest for possession of a narcotic.

At trial, the student's lawyer argued that M.R.'s s. 8 *Charter* rights, protecting him against unreasonable search and seizure had been violated. The question this raised was whether a student had any expectation of privacy while attending school. M.R. argued that he did have an expectation of privacy and that this privacy was violated by the unreasonable search. This issue went all the way to the Supreme Court of Canada, where the court held that, "[t]he reasonable expectation of privacy of a student in attendance at a school is certainly less than it would be in other circumstances. Students know that their teachers and other school authorities are responsible for providing a safe environment and maintaining order and discipline in the school. They must know that this may sometimes require searches of students and their personal effects and the seizure of prohibited items. It would not be reasonable for a student to expect to be free from such searches."

Moreover, the Supreme Court held that the provisions of the *Education Act*, including the duty to provide a healthy and safe learning environment, implied that searches may be reasonable and acceptable in certain circumstances. The court therefore concluded that the search of M.R. was authorized by law, that the law was reasonable, and that, in this particular case, the vice-principal had acted reasonably. Further to its finding that the search in *M.R.M.* was permissible, the Supreme Court laid certain ground rules when it set out the following factors to be considered in determining whether a search conducted by a teacher or principal in the school environment was reasonable:

- the search itself must be carried out in a reasonable manner; and
- the search should be conducted in a sensitive manner and be minimally intrusive taking into consideration the surrounding circumstances.

As indicated previously, we are hard-pressed to think of a situation in which a strip search, conducted by school administrators is appropriate and falls within the above-mentioned parameters set out in *M.R.M.* In our opinion, it would likely be best to call the police in the event that the circumstances warrant the conduct of a strip search to protect the health and safety of the school environment.

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We welcome your comments and questions. Send them, and any updated contact information, to [bryce.chandler@shibleyrighton.com](mailto:bryce.chandler@shibleyrighton.com). If you wish to unsubscribe to this eBulletin, please send a blank e-mail to [christen.broadbent@shibleyrighton.com](mailto:christen.broadbent@shibleyrighton.com)

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