



Lesson Plans - Law

Thinking About our Rights and Freedoms

Prohibiting Kirpans: a Legal Perspective

Updated June 15, 1998

Q: Does the *Charter* apply?

A: So far, the cases involving kirpans have been decided under provincial human rights laws which prohibit discrimination. No case has yet applied the *Charter* in this context. The *Charter* would clearly apply, however, to a regulation passed by the government that allowed school officials to prohibit kirpans on school property.

Q: What right or freedom is at issue?

A: Section 2 of the *Charter* states that "everyone has the following fundamental freedoms:

- a. freedom of conscience and religion;
- b. freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- c. freedom of peaceful assembly; and
- d. freedom of association."

By providing the principal with a basis to prohibit Rajiv from wearing his kirpan to school, the government regulation may be violating a fundamental freedom which the *Charter* guarantees - freedom of religion. (Freedom of conscience protects those who do not wish to follow any religion at all.)

Q: Why might freedom of conscience and religion be first on this list of fundamental freedoms?

A: It is often said that freedom of religion is the "progenitor" or forefather of the other fundamental freedoms. People who have secured their freedom to worship as they please can then pursue the freedom to express and communicate their views. Freedom of the press developed out of the desire to print religious material and thereby teach and persuade others to follow. Freedom of assembly developed because religious groups wanted to meet without fear of political repercussions.

Q: The *Charter* protects freedom of religion and this includes the Sikh religion but has this freedom been violated in this case?

A: Rajiv is a Khalsa (baptized) Sikh. He became a member of the Khalsa (a community of believers) in a special ceremony and in that ceremony he vowed to follow a Code of Conduct. Khalsa Sikhs share five symbols and these include the unshorn hair and the kirpan which is similar to a sword. To a Khalsa Sikh, wearing a kirpan is a fundamental expression of religious beliefs. Freedom of religion includes the right to observe essential practices demanded by one's religion.

In our country, there does not exist a state religion. No one is required to follow someone else's belief. All religions are on the same footing and all Catholics as well as others such as Protestants, Jews, or other adherents of different religious faiths have complete freedom to believe as they wish. The conscience of everyone is a personal affair and not that of anyone else. It would be terrible to think that a majority could impose their religious views on a minority.

A quote from Mr. Justice Taschereau of the Supreme Court of Canada in the case of:
Chaput v. Romain, [1955] SCR 834 (Supreme Court of Canada)

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.

A quote from Mr. Justice Dickson of the Supreme Court of Canada in the case of:
R. v. Big M Drug Mart Ltd. (1985), 18 C.C.C. (3d) 385 (Supreme Court of Canada)

Q: Since *Charter* rights are not absolute, is it possible that a rule prohibiting the wearing of kirpans at school is reasonable and justifiable in this circumstance?

A: Judges must consider section 1 of the *Charter* after they conclude a right or freedom has been violated or breached. The rule prohibiting kirpans at school is designed to protect the safety of other students. School officials feel a kirpan could be used as a weapon, if not by the Sikh student perhaps by others.

Q: What factors might a judge consider before making a decision?

A: Factors such as:

- has a kirpan ever been drawn or used as a weapon in a school?
- how much of a problem are weapons in the school?
- are there other ways of addressing the concern for safety without absolutely prohibiting the wearing of kirpans?

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