

Understanding the Rights of Proprietors and School Boards in Maintaining & Preserving Special Character

Questions regarding the rights and responsibilities granted to the proprietor in maintaining and preserving special character are often oversimplified. Some stakeholders believe that Schedule 6 of the Education & Training Act (2020) overrides other sections of the ETA such as section 127 or other legislation such as the Human Rights Act (1993). Unfortunately, that is not the case and is the reason why complaints against a proprietor for not maintaining and preserving special character in a school are so difficult and contentious. There is no hierarchy of legislation and each issue (i.e. Complaint) must be weighed up on its nuances and with reference to all relevant statutes.

Clause 1(1) of Schedule 6 of the ETA provides that *a state integrated school on integration continues to have the right to reflect, through its teaching and conduct, the education with a special character provided by it*. Legal opinion provided to APIS is clear that clause 1(1) protects the right of state integrated schools to:

- reflect the school's particular religious or philosophical beliefs and values, and to use religious examples, when instructing students in accordance with the prescribed curricula and syllabuses;
- provide religious instruction in addition to the general school programme;
- and conduct religious or philosophical observances or traditions which could include prayer, liturgy, and festivals.

However, this legal opinion also argues that as the examples move away from the instruction and teaching that takes place within a classroom and move towards a wider notion of “education” - that encompasses all education-related practices and policies - it becomes more difficult to argue that they are protected by clause 1(1). It's clear from our legal analysis that the breadth of the proprietor responsibility for maintaining and preserving special character has clear limitations (which impact on the school board as well). These guidelines have been written to reflect the need for a strong partnership between the proprietor and the school board in protecting special character but to also acknowledge the distinct rights and responsibilities that each entity brings to this partnership.

While a proprietor may not have any legislative power to intervene in particular complaints processes which start with a decision by the school board a strong partnership and relationship between the school board and proprietor is a key to negotiating and responding when issues arise.