

Report on the Charter and IDE (Inclusion, Diversity, and Equity) Implications of School Boundary Reviews Limiting Access to Education

Prepared for: TCDSB Board of Trustees on Boundary Review.

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Executive Summary

This report investigates the potential implications of school boundary reviews on students' access to nearby educational facilities, with a focus on how such policies may conflict with the Canadian Charter of Rights and Freedoms and IDE (Inclusion, Diversity, and Equity) principles. While boundary reviews are generally conducted to manage enrollment and resources, they can unintentionally create barriers to equitable access to quality education. These impacts raise questions about equality rights, rights to life and security. This report examines relevant Charter protections and argues that boundary reviews must align with both legal obligations and IDE principles to ensure fair, inclusive access to education.

Introduction

School boundary reviews determine the geographic zones from which students are eligible to attend specific schools. Although these reviews help balance enrollment and resources, they may inadvertently reinforce socio-economic, linguistic, and cultural barriers, limiting access to nearby, quality schools for certain communities. This raises questions about potential Charter¹ violations, particularly concerning **Section 15 (Equality Rights)**, and **Section 7 (Life, Liberty, and Security of the Person)**, as well as issues related to inclusion, diversity, and equity.

This report argues that boundary reviews should prioritize IDE principles to promote an education system where all students, regardless of background, have equitable access to resources and learning opportunities that foster inclusion and diversity.

Charter and IDE Analysis

Section 15 - Equality Rights

Section 15 of the Charter guarantees every individual the right to equal protection and benefit of the law without discrimination. In the context of boundary reviews, equality rights and equity-based IDE principles intersect where access limitations affect certain communities disproportionately—often those from lower-income, racialized, or otherwise marginalized backgrounds. Adverse effects discrimination, as outlined in *R. v. Kapp (2008)*², where the Supreme Court of Canada recognized that boundary policies, though neutral on its face, may have a disproportionate unintentional negative impact on marginalized groups.

¹ Canadian Charter of Rights and Freedoms

² 2008 SCC 41, [2008] 2 S.C.R. 483

Application for Boundary Review

Boundary reviews impose greater burdens on certain communities, restricting access to quality educational resources and thus perpetuating socio-economic or cultural disparities, this may infringe on students' Section 15 rights and equity principles. For example, students from historically disadvantaged neighborhoods may face longer commutes or fewer resources if boundary changes limit access to nearby well-resourced schools. This outcome would conflict with both *Section 15* rights and the IDE principle of equity, which requires proactive measures to address barriers faced by underrepresented groups.

Further, *Eldridge v. British Columbia (Attorney General)*³ established the need to ensure equal access to essential public services. Although focused on healthcare, this principle can apply to education. Just as health services must be accessible, so too should educational opportunities be equally accessible, particularly when boundary changes threaten to reduce access for marginalized groups.

By considering the case of *Kapp*, boundary reviews that unintentionally disadvantage specific communities could be seen as indirectly discriminatory, underscoring the need for an equity-focused approach that addresses historical and socio-economic disparities to achieve true inclusivity.

Section 7 - Right to Life, Liberty, and Security of the Person

Section 7 of the Charter protects individuals' rights to life, liberty, and security of the person, and has been interpreted to encompass aspects of personal development and well-being. While often associated with legal protection, this section can extend to rights affecting fundamental aspects of personal growth, as seen in *Gosselin v. Quebec (Attorney General)*⁴.

Application for Boundary Review

Restricting access to nearby quality schools, through boundary limitations, could hinder students' educational and personal development, directly affecting their well-being. Section 7 may thus provide grounds for challenging boundary reviews that substantially restrict educational access, particularly if they adversely affect students' ability to participate fully in a diverse and inclusive learning environment. Policies that limit educational access impact students' future, their engagement, and sense of belonging, infringing on both their development under Section 7 and their right to an inclusive educational experience.

Gosselin v. Quebec argued for Section 7 rights in the context of socio-economic issues essential to personal development. Applied here, this case suggests that boundary reviews leading to educational inequities could be interpreted as restricting students' developmental rights. In an IDE-focused education system, such policies should support all students' access to schools by fostering

³ [1997] 3 S.C.R. 624

⁴ 2002 SCC 84, [2002] 4 S.C.R. 429.

a secure, inclusive environment where every student feels valued and has equal opportunity to thrive.

Administrative Policies, IDE, and Charter Compliance⁵

Overview

In *Nova Scotia (Workers' Compensation Board) v. Martin*⁶, the Supreme Court highlighted that boundary policies, though administrative must adhere to Charter standards, are subject to Charter compliance and should be mindful of inclusion and equity. Given the administrative nature of boundary reviews, compliance with Charter rights is essential to avoid infringing upon inclusion and equity principles unintentionally.

Application for Boundary Review

Administrative decisions, such as boundary reviews, have a responsibility to uphold Charter rights and IDE principles, ensuring they do not inadvertently create inequitable access. Policies must be sensitive to diversity and prioritize equity, recognizing that boundaries affect each community differently. By incorporating IDE considerations into boundary policies, decision-makers can prevent unintended barriers and foster a fair, inclusive educational system.

Conclusion

School boundary reviews that restricted access to nearby schools can have unintended consequences, disproportionately impacting specific groups and affecting students' right to education. Analyzing these boundary reviews under Charter rights — specifically Sections 15 and 7 reveals potential issues of inequity and lack of inclusivity. Boundary decisions must be made with a commitment to IDE principles, ensuring that all students, irrespective of background, have equitable access to resources that encourage diversity, inclusion, and belonging.

To support an equitable, inclusive educational system, boundary policies should:

1. **Prioritize IDE Impact Assessments:** Consider how boundary adjustments might affect diverse communities to proactively address inequities.
2. **Ensure Access to Diverse and Inclusive Schools:** Support IDE by ensuring that all students, regardless of socio-economic background or cultural identity, have equitable access to high-quality schools within *reasonable proximity*.

⁵ Equity and Inclusive Education in Ontario Schools - Guidelines for Policy Development and Implementation: Realizing the Promise of Diversity, 2014

⁶ 2003 SCC 54, [2003] 2 S.C.R. 504.

Recommendations

1. **Conduct Equity Impact Assessments:** Prior to implementing boundary changes, assess the potential impacts on underrepresented communities to avoid unintentional discrimination and inequity.
2. **Promote Access to Quality Schools for All:** Design boundary policies that allow equitable access to well-resourced schools, reflecting the IDE principle of inclusive education.