The concept of legal literacy amongst educators in Canada

by

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"For everyone, everywhere, literacy is, along with education in general, a basic human right.... Literacy is, finally, the road to human progress and the means through which every man, woman and child can realize his or her full potential.”

- Kofi Annan, 1997

Abstract

The purpose of this paper is to show that both federal and provincial legislations directly impact the education profession, thus making it essential for educators to be legally literate. I intend to achieve this by thoroughly exploring the concept of legal literacy amongst educators. I take into account the legal framework that hold their profession to account, while I attempt to contribute to the understanding of what it means for an educator in Canada to be legally literate. I do not only seek to provide an understanding of the legal bodies that regulate the teaching profession, even though that is a great starting point, but to reflect on the importance of educators being knowledgeable of these legal bodies and for what purposes. The paper is organized in four main sections each one with its own subsections. In the first section I analyse the definition of literacy, the meaning legal has in the concept of legal literacy, and its role in the educational field. Section two is where I address educators’ understandings and level of legal literacy. In section three I explore the importance of having legally literate educators and I include some recommendations that might contribute to improving educators’ level of legal literacy. Finally, I conclude in section four with a reflection on the importance it has for educators to be legally literate and to see the process of becoming legally literate as an active one.
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1. Introduction

In this paper I attempt to demonstrate that current legislation has a profound impact on educators’ daily practices\(^1\) and that having educators that are knowledgeable of the laws and regulations of the profession (legally literate) have a positive impact in their everyday practice. When educators become legally literate, they benefit by being able to identify possible legal problems and staying out of them, being accountable of their actions and in turn becoming effective advocates for their students’ rights. In order to achieve this I present an in-depth analysis of the concept of legal literacy amongst educators in Canada; an analysis I hope continues to open spaces for reflection on what being part of a 24/7 and highly regulated profession implies. Legal tests and legal decisions in court cases have clearly conveyed the idea that teachers are held to a professional standard even outside of the school grounds. For instance, in the *Abbotsford School District 34 Board of School Trustees v. Shewan* (1987) case schoolteachers John and Ilze Shewan were suspended because they allowed Gallery Magazine to publish a partially nude picture of Mrs. Shewan. The Court established that Mr. and Mrs. Shewan off-duty conduct as misconduct because educators hold a position of trust, confidence and responsibility and when they incur in improper behaviours (on or off the job)

> “there may be a loss of public confidence in the teacher and in the public school system, a loss of respect by students for the teacher”

\(^1\) By educators daily/everyday practises I refer to the activities educators engage in a daily basis such as those involved in the teaching-learning process and in their interactions with students, parents, colleagues, and community members where they may engage in administrative and/or leadership activities.
involved, and others, and there may be controversy within the school and within the community which disrupts the proper carrying on of the educational system” (p. 97).

For practicality issues, I have decided to use the term educators as an umbrella term to refer to both teachers and administrators.

In a “literal” definition, legal literacy might be understood as the ability to read and write legal arguments (Zariski, 2014). However, I concur with Manley-Casimir, Cassidy & Castell (1986) who suggest that legal literacy “goes beyond the development of a basic legal competence and implies the acquisition of knowledge, understanding and critical judgment about the substance of law, legal process and legal resources, enabling and encouraging the utilization of capacities in practice” (p.90). Thus, being legally literate is an ongoing process that involves not only the ability to grasp what the laws entail, but to be able to use them whenever needed. It is my aim to show in the next pages that legal literacy in the field of education should be seen as an active practise. Educators, as well as their students, would benefit more not only by having an understanding of the legal bodies their profession is accountable to, but by being able to use this knowledge to exercise their agency and advocate for their students’ and their own rights.

Last summer I took a “School Law” course, which was very insightful regarding the legal framework that regulates the teaching profession. To begin with, I got fascinated with the Canadian legal system mainly because Canada, except for Quebec, follows a common law system which is fairly different to the legal system I am familiar with, the civil law. Moreover, I realised that educators in Canada are highly regulated
through many administrative bodies and legislative frameworks from both provincial and federal jurisdictions (See Figure 1 for a graphical description of the distinction between these two).

Canada is characterized by not having a federal department of education and according to the Council of Ministers of Education (2015), each province is “responsible for the organization, delivery, and assessment of education at the elementary and secondary levels, for technical and vocational education, and for postsecondary education”. However, some federal legislation, notably the Criminal Code, also hold the profession to account. All law must also comply with the constitutional Charter of Rights and Freedoms. Together, federal and provincial laws are so robust that educators are never in an off-duty position (Oliveiro & Manley-Casimir, 2005). They, unlike other professions, never get out of their role; they are educators 24 hours a day, seven days a week (Anderson & Fraser, 2001).

1.2 Legal framework holding the teaching profession to account
In this subsection I present a detailed account of both federal and provincial jurisdictions that regulate education in Canada (figure 1). I present this account in an attempt to show the broad legislative bodies that regulate the profession as well as the complex relation that exist between the provincial and the federal jurisdictions. I begin my analysis by focusing on the federal level with the Charter of Rights and Freedoms and the Criminal Code followed by the provincial laws that regulate the profession. Figure 1 provides a graphical description of both provincial and federal legislation: educators are located at the centre of the figure surrounded by the provincial laws and the federal legal bodies
encircle all these. I decided to surround educators by the provincial laws because each province is directly in charge of education, but these provincial acts and laws have to be in accordance to those at the outer circle. All the provincial documents I analyse come from the province of British Columbia (BC) since those are the ones I am familiar with; however, they have their equivalents in the rest of the provinces.

![Figure 1. Legal framework that regulates educators in British Columbia. The figure provides a graphical description of the federal jurisdiction (in the outer yellow circle) and the provincial jurisdiction (in the blue circle) that hold educators to account.](image)

The signing of the Canada Act 1982 marked an important point in Canadian legislation (Black-Branch, 1993). This Act included the Canadian Charter of Rights and Freedoms.
(hereinafter referred as the Charter) that guarantees fundamental freedoms and basic rights to every Canadian citizen under constitutional law; right and freedoms essential to live in a free and democratic society (Canadian Charter of Rights and Freedoms, 1982). Since its enactment, the Charter has been highly influential on the educational system. The words of Black-Branch (1993) provide a good picture of the impact of the Charter:

“The Canadian Charter of Rights and Freedoms is superior to all federal and provincial statutes. It changes the role of the judiciary. Courts now have the power to go beyond simply interpreting legislation; they now have the power to judge the laws themselves to insure compliance with the rights and freedoms enshrined in the Charter” (p.280).

What Black-Blanch words manifest is the prime place the Charter has in Canadian legislation. The fact that the Charter is part of the Constitution makes it essential for all other laws, regulations and documents to be consistent with it and thus locates it above all federal and provincial laws.

The rights embedded in the Charter that are particularly relevant to the educational system are those found in section 2 “Fundamental freedoms” (which include freedom of religion, of expression, and of association amongst others); those under section 8 “Freedom from unreasonable search and seizure”; section 15 “Equality rights”; and section 23 “Minority language educational rights” (Canadian Charter of Rights and Freedoms, 1982). These rights have influenced educational policies and practises (Manley-Casimir & Manley-Casimir, 2009).

For example, section 15 has had a profound impact in cases dealing with discrimination against minority groups such as homosexuals. A clear example of how the
Charter has impacted these sectors in education is the Chamberlain v. Surrey School District no. 36 (2002) case. In this case, the local school board did not allow school teacher, James Chamberlain, the use of three books that depicted families with same sex parents, in his Grade one classes. Nevertheless, the Supreme Court of Canada considered this decision went beyond the legal power of the board since it was based in religious values instead of the secular principles of tolerance and non-discrimination. Consequently, the Court concluded that the local school board should allow the use of books that intend to promote tolerance of same-sex relationships despite the board’s religious values.

The way the legislation has been interpreted and applied in court cases regarding fundamental freedoms, legal rights, and minority language rights, has shaped the way legislation regulates schools in Canada (Manley-Casimir & Manley-Casimir, 2009). For instance, the Charter, under section 23, promoted school policy changes that provided francophones minorities outside Quebec access to French schools where numbers warrant (Foot, 2015) as demonstrated in the Arsenault-Cameron v. Prince Edward Island (2000) case. In this case, the Supreme Court ruled that the numbers of Francophone children living in Summerside, Prince Edward Island were enough, under section 23 of the Charter, to justify French language education in Summerside. Consequently, the Court forced the province to create a French language school.

Since the Charter applies to all the provinces, a decision made by the Supreme Court of Canada regarding for example the freedom of expression of a student or language minority rights may affect the way students are treated elsewhere in the country.
As Redfield (2001) argues, what the Supreme Court does through its court decisions is setting societal standards for school/educational related behaviours.

In general, after 1982, society became more aware of their legal rights and this had an impact on education. Parents were given a tool to deal with any school board decision they felt violated their rights and freedoms stated in the Charter (Zuker, 2001) and other legal acts. The Moore v. British Columbia (2012) case is a good example of how parents can use the law to protect their children rights in relation to section 8\(^2\) of the Human Rights Code and the School Act\(^3\). In this case, Jeffrey Moore, a child diagnosed with a severe learning disability, was moved into a private school because the North Vancouver School District closed the Diagnostic Centre where Jeffrey received assistance. As a result, Jeffrey’s father filed a human rights complaint alleging that his son had been discriminated because of his disability and denied a “service customarily available to the public” (para 2). Court cases like this one and the Chamberlain v. Surrey School District No. 36 (2002) made it clear that the Charter as well as the provincial acts and codes are there to ensure that in any school setting the rights of students to freedom of expression, religion, protection from discrimination, and other stipulations under Canadian Law are respected.

\(^2\) Section 8 (1) of the B.C. Human Rights Code: Discrimination in accommodation, service and facility states: A person must not, without a bona fide and reasonable justification, (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or (b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or class of persons.

\(^3\) The School Act states in its preamble that: WHEREAS it is the goal of a democratic society to ensure that all its members receive an education that enables them to become literate, personally fulfilled and publicly useful, thereby increasing the strength and contributions to the health and stability of that society; AND WHEREAS the purpose of the British Columbia school system is to enable all learners to become literate, to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy.
In addition to the Charter, as shown in Figure 1, there are other acts and regulations that impact the teaching profession at a federal level. The *Criminal Code* (1985) for example, in its section 43 states that educators, in the place of a parent, may use reasonable force on a child to discipline. The *R. c. D. É.* (2004) case, where a physical education teacher was acquitted from the charge of two common assaults on a 6-year-old girl, supports the idea that educators have a duty to keep order in a school setting and that to achieve this, they can use ‘reasonable force’ to restrain and control their students. However, section 43 also acts as a protection to students since reasonable force means “the force must be transitory and trifling, must not harm or degrade the child, and must not be based on the gravity of the wrongdoing” (Barnett, 2008). Furthermore, court cases like the *R. v. Audet* (1996) that deal with section 153 (See Appendix A for the full sections 43 and 153) have established that educators have a *de facto* position of authority and trust towards their students. Yves Audet was found guilty of sexual misconduct under s. 153(1) of the *Criminal Code*; a decision that set an explicit precedent for educators’ inherent position of fiduciary duty, authority and trust, regardless of the setting.

In summary, sections 43 and 153 of the *Criminal Code* help position educators in a high standard where the permanent status of authority and trust, as well as the standard of care educators hold over their students is established.

Regarding provincial legislation, in British Columbia (BC), the *School Act* acknowledges the goal of a democratic society to provide education to all its members in order to allow them to become literate and thus its purpose is to guaranty that all learners develop the knowledge and skills needed to be part of society (School Act, 1996).

According to this Act, teachers are responsible for “designing, supervising and assessing
educational programs and instructing, assessing and evaluating individual students and groups of students” (p.29). In this sense, teachers are granted autonomy over their teaching techniques and assessment methods; however, they must exercise their autonomy “within the bounds of the prescribed curriculum and consistent with recognized effective educational practice” (Dorsey, 2009; para.143). The Arbitration Award regarding the professional autonomy grievance of a third grade teacher who was disciplined after refusing to administer the District Assessment of Reading Team (DART) in School District No. 62 (Sooke) is a clear example of the limitations to educators’ professional autonomy. The decisions from this arbitration uphold the School Board’s rights to define the “assessment, materials, and processes to be used by teachers in meeting the specified mandate” (Dorsey, 2009; p. 3). Therefore, educators’ teaching practises should be in accordance with the curriculum and their assessment strategies and methods should be based on the prescribed learning outcomes. The School Act (1996) also promotes educators’ rights by delimiting the number of students per class (22 students for kindergarten, 24 for grades 1 to 3, and no more than 30 for grades 4 to 12), providing some compensation when class size goes over 30 students. Moreover, this Act guaranties access to observation and practise to students enrolled in a teacher-training program as a way to guaranty that training teachers acquire the skills and experience needed to become qualified teachers.

The Teachers Act (2001) makes sure that all the approved teacher programs comply with the academic and professional standards a teacher needs to qualify for a certificate. It is through this act that individuals are guaranteed an education provided by teachers who have completed an approved teacher education program and have a valid
teaching certificate. This Act also corroborates through its section 38: “Duty to report professional misconduct” that educators protect their students’ rights by having the responsibility of reporting any certificate holder who engages “in conduct that involves any of the following: a) physical harm to a student; b) sexual abuse or sexual exploitation of a student; c) significant emotional harm of a student” (Teachers Act, 2001; p. 23). It is important to note here that according to court decisions, educators’ misconduct goes beyond the school environment (Oliveiro & Manley-Casimir, 2005). Educators are always in an on duty position and thus, there are some behaviours they are not allowed to take part in at all, like publishing nude pictures of themselves in publicly access magazines as demonstrated in the Abbotsford School District 34 Board of School Trustees v. Shewan (1987) case. In sum, the School Act and the Teachers Act help achieve an educational system that makes sure their teachers keep up to date in their training and practice in order to fulfil the standards of conduct and to maintain their certificate of qualification, while keeping a safe environment for their students to thrive.

Teachers in BC are also required to go through a criminal record check at least once every five years in accordance to the Criminal Records Review Act (1996). This requirement helps prevent any sexual and physical abuse of children. In addition, educators’ and students’ rights are also protected by the Human Rights Code (1996). This legal document aims to avoid any act of discrimination or inequality related to discrimination of “race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age” (p.4). For example, in the Ross v. New Brunswick School District No. 15 (1996) case, which involved the suspension of teacher Malcolm Ross on the grounds of racism and discrimination due to
his writings portraying his anti-Semitic views, the Supreme Court of Canada highlighted educators’ obligation to provide students with an inclusive and respectful school environment free of discrimination under s. 5(1) of the *New Brunswick Human Rights Act* that states that no person shall discriminate against any other “with respect to any accommodation, services or facilities available to the public, because of race, colour, religion,…” (para. 35), etc.

The *Freedom of Information and Protection of Privacy Act* (1996) prevents teachers from disclosing any personal or sensitive information; however, after my literature review, I did not come across with any court cases where this Act was addressed. The *Employment Standards Act* (1996) guaranties that teachers receive fair compensations for their work; it also ensures that the working conditions are reasonable as well as the treatment they get from their employers. It is partly thanks to the *Employment Standards Act* that teachers are able to meet their work responsibilities because it makes sure teachers do not work overtime, have holidays, a just salary and efficient procedures to solve disagreements between them and their employers. The *Labour Relations Code* (1996) recognizes the rights and obligations of teachers, their employers and the Union. It promotes the practise of collective bargaining between them in order to achieve an agreement when dealing with disputes. Lastly, *Collective Agreements* are legally binding contracts that specify terms and conditions of employment, between a group of employees represented by one or more labour unions and an employer. It is through these agreements that some rights and obligations of the Union and the employer are outlined in addition to wages and health welfare plans (DeMitchell, 2011).
1.3 Educators and the law

Taking into account that teachers are under the scope of the law at all times, it would be expected that at some point during their training, they go through certain educational law courses. Surprisingly, teacher programs rarely prepare future educators to understand the relationship between the legislation and the everyday teaching practise (Dunklee & Shoop, 1986 in Delaney, 2008; Militelo & Schimmel, 2008; Littleton, 2008). Since very few universities across Canada with an approved teacher education program include a law-related course as part of their core courses, it is not startling then, that despite the many existent regulations that govern the profession, media frequently reports on cases where a teacher, a principal, or a school board are being sued. The topics of the lawsuits include:

- Discrimination, like in the Moore v. British Columbia (2012) and in the Ross v. New Brunswick School District No. 15 (1996) cases, that I have previously described, which bring to light the role of the law in promoting inclusive school settings by verifying that neither school boards nor educators incur in discriminative practises. An inclusive school represents an environment where all students belong because diversity is taken into account and genuine equality is promoted (MacKay, 2009). The Supreme Court of Canada made this inclusive setting clear in Ross v. New Brunswick School District No. 15 (1996) case when Justice La Forest stated:

  *The school is an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to*
participate. As the Board of Inquiry stated, a school board has a
duty to maintain a positive school environment for all persons served
by it (para.42).

- Religion, like the Central Okanagan School District No. 23 v. Renaud (1992)
where the Court determined that employers must engage in reasonable actions short of
undue hardship to accommodate employees’ religious beliefs and practices. This case
reinforces the idea that employers have a duty to accommodate employees’ religious
beliefs under sections 8 and 9 of the BC Human Rights Act. Another example is the
Multani v. Commission scolaire Marguerite-Bourgeoys (2006) case, where a student’s
freedom of religion under section 2 of the Charter was impaired when he was prohibited
from wearing a kirpan to school. Even though the Court concluded that this decision
violated the student’s rights, due to section 1 of the Charter, the student was requested to
replace the real kirpan for a symbolic one in form of a pendant or for one made of a
harmless material. This case demonstrates that students are also entitled to the right to
accommodation based on their religious beliefs, but only to a justified extent in a
democratic and free society where the rights of every member of society are taken into
consideration. Cases like these two represent situations where schools had failed to
achieve religious tolerance.

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4 The BC Human Rights Act in its sections 8 and 9 states that:

  s. 8. 1) No person or anyone acting on his behalf shall
         (a) refuse to employ or refuse to continue to employ a person, or
         (b) discriminate against a person with respect to employment or any term or condition of employment,
             because of the… religion… of that person…

  s. 9. No trade union, employers' organization or occupational association shall
         (a) exclude any person from membership,
         (b) expel or suspend any member, or
         (c) discriminate against any person or member because of the… religion… of that person or member…

5 Section 1 of the Charter states: “The Canadian Charter of Rights and Freedoms guarantees the rights and
freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably
justified in a free and democratic society”.

Negligence, like *Myers v. Peel County Board of Education* (1981), a case dealing with a student being injured due to teacher’s negligent supervision and failure to provide proper equipment during a gymnastics class. What this case highlights is the standard of care educators have towards their students. *Fraser v. Campbell River School District* (1989) is another case where a teacher was taken to trial accused of negligent supervision that ended in a student’s accident. Even if this case supports the idea that teachers have a duty of care over students, it also shows that there is a limit to foreseeability and negligence. If educators are unable to predict students’ actions and its consequences, they cannot be legally responsible.

Abuse as in *R. v. Audet* (1996), which as I stated earlier, demonstrates the permanent status of authority and trust an educator holds over his/her students regardless of the situation or setting, and

LGBTQ issues like in *Kempling v. The British Columbia College of Teachers* (2004) where a teacher was disciplined and suspended because of the anti-gay comments he published that generated a discriminatory environment for his LGBTQ students, or the *School District No. 44 v. Jubran*, (2005) where the school board was found responsible under section 8 of the Human Rights Code for not providing “an educational

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6 It refers to the relationship teachers have with their students established in Common Law. Due to educators’ nature of their work, “there is a duty of care that teachers owe to their students. Teachers are to be attentive and careful in situations where students are involved to ensure that students are not imposed to any unnecessary risk of harm” (Zuker, 2001; p. 20).

7 The *Human Rights Code* in its section 8 states that:

1. A person must not, without a bona fide and reasonable justification, deny to a person or class of persons any accommodation, service or facility customarily available to the public, or discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public because of the race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation or age of that person or class of persons.

2. A person does not contravene this section by discriminating on the basis of sex, if the discrimination relates to the maintenance of public decency or to the
environment free from discriminatory harassment” (para. 2) for one of its students who had been recurrently teased with homophobic nicknames and physically assaulted. School boards are required to take action when a situation involving harassment, homophobia or discrimination arises in a school because of “its duty to maintain a non-discriminatory environment” (para. 87).

The popularity of these lawsuits makes it clear that educators are in constant relation with legal concerns; thus, making it essential for educators to know the laws that pertain to their practise.

Furthermore, the use of technology, particularly of the Internet, and the media has brought information closer to society; with just an online search, any person can have access to any act or legislation. Individuals can easily know what their rights are and what process they should follow if they feel there has been a violation of their rights (Delaney, 2008). It is understandable then, that after the passage of the Charter of Rights and Freedoms in 1982, which brought awareness of the legal rights students possess, the number of lawsuits involving educators has increased (Young, Kraglund-Gauthier & Foran, 2014).

Having said so, in a world where information is extremely available, ignorance of the law is not an excuse. Particularly, since ignorance of educational law has consequences, some of which Findlay (2007) coherently sums up in her study in Saskatchewan where the level of legal knowledge of in-school administrators was evaluated:

\[\text{determination of premiums or benefits under contracts of life or health insurance, or}\
\text{(b) on the basis of physical or mental disability or age, if the discrimination relates to the}\
\text{determination of premiums or benefits under contracts of life or health insurance.}\]
“Administrators’ lack of familiarity with statutes and case law as they apply to education, and a lack of knowledge about rights guaranteed under the Charter, may result in poor decision-making, which may, in turn lead to costly and time-consuming litigation, or in an inability to effectively manage their schools and to be fully accountable to educational stakeholders in matter dealing with legal issues” (p. 179)

However, the lack of familiarity with the law may not only lead to poor decisions that are time-consuming and expensive, but it might also have an impact on the quality of education students get. The Hussack v. Chilliwack School District No.33 (2011) is a case where a physical education teacher “breached his duty of care by permitting Devon [the student] to play field hockey without having progressively attained the necessary skills” (para. 3). This case clearly represents a situation where a teacher’s ignorance of the law, particularly of his duty of standard of care ended up in a costly litigation (sum in damages was $1,365,000.00). Moreover, the consequences for the student notably affected his educational process since he developed a somatoform disorder that impaired his academic growth due to the accident. Cases like this one may be avoided if educators receive training in educational law because currently, the sources where they get their knowledge from may not be reliable and this might have an impact in their teaching. A worrying fact, as educators “must act in accordance with a wide range of federal and provincial legislation and court decisions” (Parkay, Standford & Gougeon, 1996; p. 234).

1.4 Importance of analysing legal literacy in the context of education

“The common law has long recognized that parents are in the best position to take care of their children and make all the decisions necessary to ensure their well-being
providing they act in accordance with the best interests of their children” (Chamberlain v. Surrey School District No. 36, 2002; p. 715). In a school setting, educators acquire this position since they become the responsible adults in place of a parent. Being in this position, educators are entitled a standard of care toward their students, which is defined as “the degree of skill and knowledge that can reasonably be expected of a normal, prudent practitioner of the same experience and standing” (Shoop, 2002; p. 46). This standard of care educators are entitled to was first established in the Williams v. Eady (1893, in McKay et al. v. Board of Govan School Unit No. 29 et al.) case, where it was made clear that a schoolteacher had the responsibility to take care of his/her students “as a careful father would take care of his boys” (p.42).

Consequently, legal literacy in the context of education is a useful component for educators to make informed decisions and act reasonably (as a parent will do) in both legal and educational aspects of their everyday practice without being afraid of being sued for their actions. Because as Schimmel and Militello (2007) point out, “knowledge of education law (or lack thereof) influences administrators’ and teachers’ interactions, relationships, and decisions, which may have an impact on student learning” (p. 260). I can image a situation where a teacher who is unaware of how the Charter applies to public schools, may violate students’ constitutional rights in an unconscious way by disciplining a student for wearing a t-shirt that expresses his religious or political views or for wearing a kirpan just as in the Multani v. Commission scolaire Marguerite-Bourgeoys (2006). Thus, getting into a position where the teacher becomes a target for a lawsuit. A situation like this could be avoided if the teacher was aware of the students’ rights.
However, legal literacy should not be seen as an element designed to help educators win in court; it should instead be used to prepare them to avoid litigations whenever possible (Schimmel and Militello, 2007). Litigation usually involves processes that are expensive, time-consuming, disrupting, and polarizing (Findlay, 2007; Mead, 2008; Schimmel and Militello, 2007), which legally literate educators are more likely to avoid. Moreover, legally literate educators have the power to use the law and rely on it to avoid unconstitutional actions, to point out decisions and policies that violate the law, and to make sure their students’ rights are understood and taken into consideration and thus enhancing their educational experience (Schimmel and Militello, 2007).

As a result, analysing legal literacy in the context of education becomes fundamental because it provides a way in which we can increase the awareness and understandings on educators’ knowledge of school law. Besides, it is, as Schimmel and Militello (2007) point out, an opportunity to explore what educators want and need to know about school law as well as to identify viable ways to train preservice and service teachers; both essential elements in the path to developing legally educated educators.

Furthermore, analysing the concept of legal literacy in the context of education allows educational leaders, curriculum and policy makers to deepen their understanding on what educators currently know and the impact this knowledge (or lack of it) has on their daily practice. Redfield (2001) maintains that educators who are knowledgeable of the law are more likely to integrate societal values (like due process and fairness) in their schools, to act wisely and avoid unnecessary litigations, and to reduce their liability across different settings.
1.5 Scope and structure of the paper

The paper is organized in four main sections: section one is dedicated to the concept of legal literacy. In this section I analyse the definition of literacy and discuss the meaning *legal* has in the concept of legal literacy. Moreover, I present an in-depth analysis of the current literature dealing with the definition of legal literacy in the context of education. Section two is where I discuss educators’ knowledge of the law in an attempt to provide an understanding of what being a legal literate educator in Canada means. In this section I also analyse what the literature reveals regarding the level of legal literacy among educators and its impacts on their daily practise. I include some court cases that support the claim that educators’ knowledge of the legal framework that regulates the profession seems to be inadequate to deal with legal issues in their practise. In section three I aim to demonstrate the importance of looking at legal literacy as an active process needed for educators. I discuss the benefits of having educators who are legally literate and I provide some recommendations on how their level of legal literacy may be improved. Lastly, I conclude in section four with a reflection on the importance it has for educators to be able not only to understand the legal framework that regulates their profession, but to be in a position were they can use this knowledge to become active participants in advocating for their rights as well as for those of their students.

2. Legal literacy

In this section I discuss the definition of literacy as well as the meaning of *legal* in the concept of legal literacy. I also analyse the current literature dealing with the definition legal literacy in the context of education.
2.1 Notions of Literacy

The dictionary defines literacy as “the ability to read and write” (Barber and Oxford Reference Online, 2005), hence “to become literate is to become a full member of a written language community” (Zariski, 2011; p. 2). However, being literate goes beyond the mere ability to read and write; the International Adult Literacy Survey (Kirsch, 2001) defines it as “the ability to understand and employ printed information in daily activities, at home, at work and in the community, to achieve one’s goals and to develop one’s knowledge and potential”. Being literate is an ability of such great value that the United Nations Educational, Scientific and Cultural Organization (UNESCO, 2016) has proclaimed it a human right essential for every individual’s social and human development.

Street (1984) came with the idea of multiple literacies distinguishing between an autonomous and an ideological model. In the autonomous model, he defines “literacy in technical terms, treating it as independent of social context” (Street, 1993; p.5). Literacy in this sense is seen as a merely cognitive process that allow individuals to read and write printed text despite the “social and economic conditions that accounted of their ‘illiteracy’ in the first place” (Street, 2006; p.1). On the other hand, the ideological model recognises the impact of the context on literacy since “literacy varies from one context to another and from one culture to another” (Street, 2006; p.1) and it is “inextricably linked to cultural and power structures in society” (Street, 1993; p.7). In this model, literacy is considered a social practise rather than a technical skill; “it is about knowledge: the ways
So, literacy as a practice provides a handful tool to better understand the ways in which people interact within their communities and in relation to their social context. In this sense, literacy also empowers people by giving them the possibility to communicate, interact, influence and exchange ideas with others; or in the words of Paulo Freire, “reading the word and learning how to write the word so one can later read it are preceded by learning how to write the world, that is, having the experience of changing the world and touching the world” (Freire and Macedo, 1987, 2005; p.33). Literacy, therefore, goes beyond the cognitive process of acquiring certain technical skills; it takes into account the environment and the circumstances individuals are living in and thus, it opens windows to better understand the world and possibly, change it. In other words, literacy is a social practice where the cognitive process to understand printed text is necessary, but it cannot be separated from the sociocultural context.

2.2 The Meaning of Legal in Legal Literacy

So far I have presented two ways of looking at literacy: through the autonomous model, as the mere technical process of acquiring a set of skills that makes reading and writing printed text possible; and through the ideological model, which acknowledges that factors such as the culture, the social context and the economical context are in stretch relationship with literacy. Since I cannot conceive a world where people can be separated from the context they are living in, the ideological model makes more sense to me. In every society, there are codes of conduct that regulate how people interact within
their community. Therefore, law and literacy are strongly connected since laws, acts and regulations are published in a written form. They are meant to guide society by setting standards and rules of conduct, thus making literacy a fundamental element in order to participate in the legal system (John Howard Society of Canada, 1996; Zariski, 2011).

The Canadian Bar Association (1992) defines legal literacy as “the ability to understand words used in a legal context, to draw conclusions from them, and then to use those conclusions to take action” (p. 23). Legal literacy as defined by the Canadian Bar Association puts individuals as active human beings who should be able to understand the laws in order to exercise their agency to challenge current situations and maybe change them. In this operational definition, Laird Hunter (Canadian Bar Association, 1992) argues that legal literacy involves individuals capable of leading themselves through a process they understand and, during this process, among other qualities, they:

- acknowledge and exercise their legal rights and responsibilities;
- acknowledge when a conflict is a legal one and a legal solution is accessible;
- know how to prevent legal issues and, where this is not an option, how to get appropriate help.
- know how and where to look for legal information.

Hasan (1994) conceives the concept of legal literacy as “a process of self and social empowerment that moves women not only to activate the rights they do have, but to redefine and reshape the inadequate ones as expressed in law and in practice” (p. 70). So, in accordance with Street’s ideological notion of literacy interconnected to culture and power structures, legal literacy can be seen as a process of developing the faculty to become aware, critically reflect on, and understand the social context in order to achieve
personal and social change. Although Hasan focuses her definition on women, I believe legal literacy is an empowerment process that benefits every person because, whenever an individual has the ability to understand and critically reflect on the situations and sociocultural and political structures that surround him/her; he/she will then be able to position himself/herself in an active role that will allow social change to occur.

Moreover, what these definitions bring to light is the active position where the individual is located, thus pointing out there is some expectation for action in response to any law related problem. Therefore, legal literacy can be seen as an opportunity for non-experts to familiarise with the law and “acquire the knowledge, information and capability to act effectively in various spheres of social life without relying entirely on professional help” (Zariski, 2011; p.4)

2.3 Legal literacy in the context of education.

In an educational setting, when educators become legal literates, they get to speak a new language (the language of the law), they become members of a “language community”. A community that, according to Zariski (2011), comes with a set of rules and conventions of the shared legal system that must be accepted, but it also open the doors for opportunities to act, challenge and change some of the constraints generated by those rules. However, taking into account the ideological model of literacy, the way educators understand literacy as well as the context they are immersed, might influence the way they perceive legal literacy and the level of legal literacy required by them.

Delaney (2008) defines legal literacy as “the knowledge level that administrators have with respect to educational law and how it impacts on the governance of their
In a general sense, governance may be understood as the act of exercising power and authority and carrying out administrative tasks that involve problem solving, decision-making, and allocation of resources among others (Bevir, 2013). In an educational setting, I conceive governance as the regulation of educators’ daily practises within the school environment. These practises include the administrative and leadership decisions that set the discipline standards and norms, promote an inclusive school environment, and guarantee that students’ rights are respected. Consequently, the amount of legal knowledge educators possess may influence the governance they have in their schools.

Delaney’s definition of legal literacy just makes reference to school administrators; nevertheless, they are not the only ones in close contact with the law, so I would argue that legal literacy in the context of education should include preservice and in-service teachers too. Yet, what I believe is more concerning is the answer to the question: what does educational law imply? And therefore, when is someone considered as legally literate in an educational context?

Currently, educators need not only to know the legislation regulating education mandates and principles; they also need to be aware of the legal documents (those from Figure 1), which have an impact on the policies and practises implemented in any educational setting (Cooper, 2011). For example, some of the legal challenges educators may face are:

- their responsibility for accidents based on the duty of care they have towards their students. A situation that cases like *Myers v. Peel County Board of Education*
(1981) and Fraser v. Campbell River School District (1989), where teachers were sued on the grounds of negligence, have highlighted.

- their responsibility to protect their students’ fundamental freedoms, like their freedom of expression and religion, as stated in s. 2 of the Charter and supported by the Court decisions in cases such as the Multani v. Commission Scolaire Marguerite-Bourgeoys (2006). A case where it was made clear that students should not be discriminated on the grounds of their religious views.

- their responsibility to act as responsible adults in their position of trust and authority as supported by cases like the R. v. Audet (1996) one.

All of these challenges represent situations where educators lacking an understanding of the laws that surround such issues will be vulnerable to a lawsuit in addition to not being able to protect the rights of their students nor their own. Furthermore, educators without knowledge of the law are likely to ignore the rights federal and provincial laws convey to students and parents (Littleton, 2008).

By talking to some teachers I became aware of some codes of conduct such as “never be alone in your classroom with a student”, “never touch a student”, and “never give a ride to a student” that are commonly heard and put into practise in their everyday activities. These notions of how teachers must behave around their students might be, as Schimmel and Militello (2008) state, oversimplified and misleading as educators may end up viewing the law as a cause of stress and fear. Educators’ defense actions coming from fear of litigation may be a result of an unsatisfactory level of knowledge and not enough clarity regarding the legal boundaries of their responsibilities (Shariff, 2004).
Educators should not fear educational law; instead it should “provide an orderly, productive, and humane school basic to the continuation of a democratic society” (Wagner, 2007; p. 4). In this way, educators “may no longer see themselves as victims of the legal system” (Schimmel and Militello, 2007; p. 275) because they have a better understanding of the system and how it works, as well as on ways they can use it to protect their students, themselves and their institutions. Legal literacy is therefore a main concern since “law-informed educators and leaders will be in a position to better avoid or minimize conflict and costly litigation” (Redfield, 2001 p. 5). Knowing the law also gives educators a way to take action whenever a school policy violates their own or their students’ rights since they are more likely to choose legally correct actions instead of those politically acceptable (Littleton, 2008), just as Mr. Chamberlain did when appealing to the board’s decision of banning books that represented those students coming from same sex parents families (Chamberlain v. Surrey School District No. 36, 2002). Thus, minorities can be heard and taken care of despite the popular opinion or the desires of the majority.

Going back to the question of what are the key characteristics that should be part of educational law, Delaney’s (2008) research on the effects of educational courses have on educators provides an insight on the topics that a course on educational law may include: “The Charter of Rights and Freedoms, Provincial Education Acts, teacher collective agreements, due process, teacher liability and negligence, corporal punishment, sexual assault, duty to report, the Youth Criminal Justice Act, Teachers’ Code of Ethics, copyright law, workplace safety in schools, educational policy as a legal instrument, and legal versus moral dimensions of education” (p. 23). All these topics come from the
educational law undergraduate and graduate courses from the Faculty of Education at Memorial University in Newfoundland. From the survey used in Findlay’s study in Saskatchewan (2007) the topics that might be part of an educational law course are: custody and access, search and seizure, privacy and confidentiality, liability and negligence, student rights, school safety, drugs, and teachers’ rights.

Similarly, in Shimmel & Militello’s (2007) empirical study from the US, they identified the following topics as the most relevant ones according to the surveyed teachers: teacher liability for student injury, student due process and discipline, teachers’ academic freedom, student freedom of expression, prayer in school, sexual harassment, search and seizure, special education, and child abuse. Also in the US, the research by Gajda (2008) included the following issues as part of the school law field: special education, abuse and neglect, US and/or State Constitutional law, discrimination and harassment, student freedom or expression, religion and education, students’ due process and discipline, search and seizure, contract issues and employee rights, liability regarding student injuries, and teachers’ academic freedom.

All these studies have some themes in common and these topics are in a stretch relationship with the legal framework that regulates educators’ work and every day practises that I presented earlier in the paper (figure 1). In order to provide an explanation of why these courses would be appropriate for an educational law course I have put together a table (see Table 1) where I synthesize the topic of the course with the relevancy it has for educators.
Table 1 – Educational law courses. In this table I include the topics I believe are the most relevant to provide a basic understanding of educational law for educators (Delaney, 2008; Findlay, 2007; Gajda, 2008; and Shimmel & Militello, 2007).

<table>
<thead>
<tr>
<th>Course / topic</th>
<th>Purpose / relevancy</th>
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| The Charter of Rights and Freedoms   | Since it is part of the Constitution and it is superior to all federal and provincial statutes, educators need to know the leading role it has as well as the sections related to education:  
  s. 2. Fundamental freedoms (freedom of religion, of expression, of association, etc.)  
  s. 8. Freedom from unreasonable search and seizure.  
  s. 15. Equality rights.  
  s. 23. Minority language educational rights.                                                                                                                                                                                                                                                                                                                                                                                                 |
| Provincial Acts                      | Each province is directly in charge of education so educators should be aware of the provincial responsibilities and rights stated in documents such as the School Act, the Teachers Act, the Criminal Records Review Act, the Human Rights Code, the Employments Act, and the Collective Agreements, as well as of the relationship between the federal and provincial statutes.                                                                                                                                                                                                                             |
| Teacher collective agreements        | Educators should be aware of the Union’s role in collective bargaining over aspects such as employment conditions and wages that lead to collective agreements between them and the school board.                                                                                                                                                                                                                                                                                  |
| Due Process                          | It is important that educators know that this is one of the principles on which the legal system in Canada is based and that it means that the legal rights each individual is entitled to under the law must be respected at all times (Government of Canada, 2012).                                                                                                                                                                                                                           |
| Teacher liability and Negligence     | Since educators have a duty of care towards their students, they should know the circumstances when they can be liable for students’ accidents and injuries so they can prevent them. Educators should be aware that their behaviour is assessed against that of a reasonable and prudent parent as their profession puts them in the place of parent. Therefore, failing to fulfill this role would put educators in risk of a lawsuit for being negligent.                                                                                                                                 |
| Corporal punishment                  | Educators should be aware that in their position as responsible adults in the place of a parent, they might use reasonable force on a child to restrain and control their students (Criminal Code, 1985).                                                                                                                                                                                                                                                               |
| Sexual assault and child abuse.      | Court decisions have established that educators have a de facto position of trust and authority towards their students at all times. Educators should be aware of this notion in order to act accordingly and avoid incurring in sexual misconduct even in an off-duty position (R. v. Audet, 1996).                                                                                                                                                                                   |
| Duty to report                       | Educators should be aware that as part of their responsibility to protect their students, they are required by law to report any professional misconduct they notice (Teachers Act, 2001).                                                                                                                                                                                                                                               |
Employment responsibilities and rights

Educators should know that their practice is not only regulated by provincial statutes, but also by school board policies and collective agreements. They must be aware of both their rights regarding compensations, dismissal and holidays to name but a few, and their responsibilities such as their duty to report and their compliance with undertaking a criminal record check every five years.

Teachers’ academic freedom

It is important for educators to know that they have autonomy to decide certain aspects of their teaching practice such as their instruction techniques and their assessment methods. But they should be aware that their autonomy is regulated by the province prescribed curriculum and learning outcomes (Dorsey, 2009).

The topics presented in Table 1 represent what I came to identify as the most important ones to include in an educational law course. I choose them based on what the research scholars such as Delaney (2008), Findlay (2007), Gajda (2008), and Shimmel & Militello (2007) have done in the subject suggests. The reason why the legal dimensions portrayed in Table 1 are essential as part of an educational law course is because they represent the topics on which most lawsuits against educators are carried out (Delaney, 2008; Findlay, 2007; and Gajda, 2008). Therefore, to enable educators to avoid potential litigations, they should be aware of these issues. Even though this list is not exhaustive, it represents a good starting point that might provide educators with a basic understanding of the legislation that regulates their profession and that will allow them to be better prepared to deal with the legal challenges they may face during their practice.

3. Educators’ knowledge of the law

In this section I explore the research and studies that assess educators’ perception and knowledge of school law as well as their level of legal literacy. Although the Canadian-based literature on the importance of legal literacy amongst educators is not extensive...
there are journals and associations such as the Canadian Association for the Practical Study of Law in Education (CAPSLE), The Educational Law eBulletin, and the Education and Law Journal that acknowledge the nature of the legal challenges educators come across in their daily practise. Most of the studies conducted on the topic rely on survey and interview methods to determine educators’ knowledge of the law and level of legal literacy.

3.1 Educators’ understandings of educational law

Canadian studies on educators’ knowledge of the law and on the impact of the law on educators’ daily practise, however scarce, show that educators’ understandings of educational law and legal issues concerning their daily practise is worrisome. Even though there are no national studies dealing with the issue, studies in the four western Canadian provinces: British Columbia, Alberta, Manitoba, and Saskatchewan (Peters and Montgomerie, 1998; Findlay, 2007; and Young, Kraglund-Gauthier, & Foran, 2014); in Newfoundland (Delaney, 2008); and in Ontario (Cooper, 2011; Leschied, Lewis & Dickinson, 2000) found that educators’ knowledge of educational law is insufficient. These results are consistent with those conducted in the United States (see for example Littleton, 2008; Schimmel and Militello, 2007; Wagner, 2007; White, 2012; Zirkel 2006), which concluded that educators lack an adequate knowledge of educational law.

Peters and Montgomerie’s (1998) study of educators from the four western provinces (British Columbia, Alberta, Saskatchewan, and Manitoba) revealed that educators lack “a sound knowledge of rights, and that as a result they developed policies and procedures which frequently failed to take into account the rights of students and
parents” (p.45). Take for example, Chamberlain v. Surrey School District No. 26 (2002), where the Surrey School Board prohibited the use of books depicting same-sex parented families as an educational resource material for K-1 level students. A decision from the board that clearly failed to promote the non-discrimination rights the Charter values and guarantees. Decisions like this one corroborate Peters and Montgomerie’s (1998) findings regarding educators’ elevated level of uncertainty “concerning rights in educational matters based in the Charter and found in the provincial statutes” (p. 44-45). This claim is also supported by the results of the survey research conducted by Findlay (2007) in Saskatchewan, which show that in-school administrators lack knowledge of school law principles and as a consequence they have low confidence when making legal decisions.

Taking into consideration educators’ fiduciary duty towards their students and the standard of care they are entitled to, educators “might reasonably be expected to influence the values and attitudes that their students develop” (Peters and Montgomerie, 1998; p. 45). So, having educators who lack educational law knowledge and confidence when making school policy related decisions should be a major concern since “most lawsuits regarding the obligations of educators to keep students physically and psychologically safe are brought under the law of torts and negligence because they are remedial, and compensation can be sought” (Shariff, 2004; p. 226). A tort can be defined as a “wrongful act by one person or institution against another” (Shariff, 2004; p. 226). Negligence, also known as an unintentional tort, in a school setting is usually a consequence of lack of prudence, care or attention from an educator (Shariff 2004) as cases such as Myers v. Peel County Board of Education (1981) and Hussack v.
Chilliwack School District No.33 (2011) have demonstrated. However, it is important to note that in the Thornton et al. v. School District No. 57 (1978) case, some considerations to determine when an educator carries out his/her standard of care in a satisfactory way, were established (Sarna, 2011):

- suitability of the activity in relation to students’ age and mental and physical condition.

- progressive training and coaching so the student can perform the activity avoiding probable risks.

- adequate and suitable equipment arrangements.

- proper supervision while the activity is being performed.

If most lawsuits concerning educators responsibilities are on the grounds of negligence, it is likely that educators might not be acting reasonably because they do not possess a sound understanding of what requirements they must fulfill to meet the demands of the standard of care they are entitled to and thus, end up being negligent towards their students’ rights.

In addition, the results from the mixed methods (online questionnaire and follow-up interviews) research conducted by Young, Kraglund-Gauthier, & Foran (2014), in the St. Francis Xavier University of Nova Scotia, showed that individuals enrolled in a teacher-training program also lack legal knowledge. This is an interesting fact that corroborates the claims that teaching training programmes do not provide university courses dealing with educational law matters. Hence, these programmes fail to equip future educators with the basic legal knowledge they will require to deal with the legal issues they may face in their everyday practice.
Accordingly, as Findlay (2007) found out in her study, school administrators “rely heavily on learning from experience, which may be a cause of concern” because “if legal decisions are not based on accurate knowledge, it would appear that even those with extensive experience are at risk of encountering legal difficulties” (p.197). Moreover, it is also possible that educators’ understandings of educational law are based, as Imber (2008) suggests, in myths educators have due to the lack of knowledge of educational law they have. Educators may hold erroneous beliefs regarding their students’ rights, their own rights or the legal vulnerability of educators and the school (Imber, 2008; Militello & Schimmel, 2008). For example, teachers might overestimate the level of professional autonomy they have over their lessons just like the Vancouver Island teacher who was disciplined and received a letter of reprimand when she refused to administer the District Assessment of Reading Team (DART) test to her students (Dorsey, 2009). Or, due to educators’ legal confusion, they may choose not to act because they are afraid of getting involved in a legal hassle (Militello & Schimmel, 2008), as demonstrated by the results from the research done by Militello & Schimmel (2008) in the US where teachers chose not to use reasonable force to break a fight between students because they had the idea that they might be held liable if one of the students got injured.

3.2 Level of legal literacy amongst educators

As a consequence of teaching training programs lacking courses that provide an understanding of the regulations and legislation that hold the profession to account, the level of educators’ knowledge of educational law seems to be inadequate to deal effectively with the many challenges they face that may require a legal response.
Consequently, it is not a surprise that the shortage of teaching education programs and ongoing training in educational law lead educators to get their legal knowledge from non-authoritative sources (Schimmel and Militello, 2007), mostly through their superiors and their experience (Leschied, Dickinson, and Lewis, 2000; Findlay, 2007). The study conducted in Ontario by Leschied, Dickinson, and Lewis (2000) demonstrated that 83% of teachers got their information regarding legal issues from the principal or the vice-principal of the school, while 70% of school administrators got this information from their colleagues. If educators rely on their superiors and/or on their colleagues in order to avoid potential litigation, they should possess an understanding of the law that applies to education because as Roher (2001) pointed out, the “ability to recognize that an issue has legal aspects is critical to properly respond to events and to prevent problems from arising in the future” (p.50). Additionally, as Young, Kraglund-Gauthier, & Foran (2014) call attention to, there is no agreement on having a law course in teacher training programs across Canada; therefore, there are no agreed-upon standards and consequently, the level of legal literacy across the country is very different.

Despite the fact that I have not been able to find out what a good understanding of the law represents and what aspects or areas of the law educators need to know in order to be considered legally literate, there are some studies that provide some clues as to what should be understood as an acceptable level of legal literacy. For instance, Gajda (2008) concluded that a level of legal literacy that is adequate is one that allows educators “to avoid costly litigation, address issues of child abuse and neglect, take reasonable disciplinary actions, integrate students with special needs, impart the principles of a democratic society, and uphold the rights of their students” (p. 15). Additionally,
Redfield (2001) argues that enough knowledge of the law is that knowledge that will allow educators to guaranty that their educational institutions and practises reflect society’s decision regarding constitutional rights. It will also allow them to actively participate in policy development that will anticipate and thus prevent potential legal issues (Redfield, 2001). So, taking into account that current lawsuits in the educational area deal with topics such as discrimination, negligence, abuse, religion, and LGBTQ issues which denote a lack of educators’ knowledge of the legislation that encompass their profession such as the Charter that promotes fundamental freedoms and equality rights, or the Teachers Act that makes educators responsible of reporting any professional misconduct they notice; to reach and adequate level of legal literacy educators should be knowledgeable enough of these topics as well as the jurisdictions attached to them to avoid potential litigations.

As demonstrated by the cases I have previously discussed, court decisions have also had a significant impact in they way educators are expected to behave. The fiduciary duty, the standard of care and the position of trust and authority educators have towards their students are clear examples of this; and educators’ ignorance of such distinctive features of their profession have ended in costly and detrimental litigations (like in Fraser v. Campbell River School District, 1989; Myers v. Peel County Board of Education, 1981; Hussack v. Chilliwack School District No.33, 2011; and R v. Audet, 1996). Therefore, if an adequate level of legal literacy is the one that keep educators away from lawsuits then, in order to have legally literate educators, they need to know not only the acts and legislation that regulate their profession but also the court decisions that have had an impact on the rights and responsibilities ascribed to the profession.
4. Perspectives on legal literacy for educators

In this section of the paper I discuss the significance of legal literacy in the educational field. I begin by looking at the importance and benefits of having educators who have a sound understanding of the laws that regulate their profession have. Then, I make an attempt to demonstrate that legal literacy is an active and an ongoing process. Finally, I end this section with some recommendations on how to improve educators’ level of legal literacy.

4.1 Importance of legal literacy for educators

As I have demonstrated in the previous sections of this paper, the federal and provincial legislation as well as the court decisions regarding educational issues have a profound impact on the everyday actions of educators. Since educational law is a continuously changing process that attempts to meet the demands of society (Zuker 2001), it is expected that educators keep up to date with any change in it. Roher and Wormwell (2000) suggested that “principals must endeavour to stay informed and constantly upgrade their knowledge regarding policies, procedures and the law.” (p. 218). However, I argue that even though principals may be in the immediate position required to deal with any legal issue concerning their school, they are not the only ones that should make an attempt to know the laws and keep up to date with any changes in the legislation. When teachers, administrators and those in leadership positions study education law, they have more chances of getting an appropriate level of knowledge that would allow them to
deal effectively with all the demands and challenges that they face (Delaney, 2008); plus, they have better chances of advocating for their students’ rights as well as for their own.

Through my research process, I have noticed that the leading reasons for educators to be aware of the legislation that directly impact their everyday practise can be classified in two: 1) to avoid potential lawsuits, and 2) to be accountable and effective leaders who make sure that their rights and the rights of their students are protected.

1) Avoiding potential lawsuits:

The open access to information, the number of lawsuits against schools and school authorities in Canada, and the court cases I have previously discussed support Zuker’s (1988) claim that laws have been used as a way of dealing with perceived arbitrary practises and that a way to elude possible litigation is for educators to have an understanding of educational law. Educators can put a barrier when dealing with legal issues in the school environment, a wall that comes from the fear of litigation due to their lack of knowledge and clarity regarding the legal boundaries of their responsibilities towards their students (Findlay, 2007). Thus, making educators’ professional development in the educational law field a need to successfully face potential lawsuits.

It seems clear that educators with a good understanding of educational law are more likely to make informed decisions when it comes to any legal situations in their everyday practise (Findlay, 2007; Littleton, 2008). Educators’ lack of knowledge of the law might end up in a costly and time-consuming process as in the Hussack v. Chilliwack School District No.33 (2011) case, as well as in uninformed decisions (Findlay, 2007; Keel, 1998) like that from the School board in the Chamberlain v. Surrey School District
no. 36 (2002) case, that every school would like to avoid. Thus, it becomes evident that “the best defence to potential litigation is knowing and understanding one’s legal rights and responsibilities” (Young, Kraglund-Gauthier & Foran, 2014; p. 7).

Nevertheless, when facing a troubling situation, educators should be able to identify problems, articulate grievances, and deal with them in ways where the level of awareness of all stakeholders is increased (Shariff, 2004), rather than just being able to keep themselves out of court. This is a leadership approach to education that goes hand in hand with the court’s ruling in Ross v. New Brunswick School District No. 15 (1996) that educators have a fiduciary duty towards their students.

2) Be accountable and effective leaders:

Educators who possess a good understanding of the law are not only better at avoiding potential lawsuits, but are also more efficient and responsible leaders, and this applies at all levels. School administrators and those in leadership positions such as principals and vice principals have a very important and complex role since they stand in an out-front position amongst all stakeholders, so they need to attend to the demands of their staff, their school community, and the government to name but a few (Findlay, 2007). Consequently, they must be well informed so they can take action following what current legislation states (White, 2012) without having to seek for professional help (Zariski, 2011). Roher and Wormwell (2000), in their analysis of the role of Canadian principals, found out that the job of the leader is a multi-faceted role where the principal “must understand his or her legal rights and responsibilities” (p.3) in order to be an effective school leader and manager. School leaders should be able to use the law as part
of their leadership to solve problems and to make informed decisions (Findlay, 2007; Keel, 1998) because an effective leader is one that goes beyond the managerial duties and is also concerned with the values and rights of society and advocates for them. Thus, an effective leader should have an understanding of the Charter, the federal, and provincial jurisdiction since these are the documents that contains these ideals, the ideals of a democratic and ethical society (Findlay, 2007).

Furthermore, educators should also be models of ethical and just behaviour (Shoop, 2002) and this will only be possible if they have a sound understanding of the legal rights and responsibilities both they and their students are entitled to. In addition to school leaders and administrators, teachers are in direct contact with students, so having a thorough understanding of the law that regulates their practise can certainly benefit them and their students. Possessing knowledge of the law and its interactions with constitutional and human rights then is fundamental if educators are to be successful (Keel, 1998) because educators are not only responsible for teaching. Society has put them in a role model position where they must behave as ‘super parents’ in order to meet the standards of conduct expected from the profession. This role model educators have to lead by place them in a position of trust and authority full of responsibilities as expressed in the R. v. M.R.M. (1999) case:

“When children attend school or school functions, it is they [educators] who must care for the children’s safety and well-being. It is they who must carry out the fundamentally important task of teaching children so that they can function in our society and fulfill their potential. In order to teach,
school officials must provide an atmosphere that encourages learning. 

During the school day, they must protect and teach our children” (p. 35)

In sum, educators have the huge responsibility of creating safe environments for students to thrive and learn; and a safe environment can only by achieved if legal principles are taken into account (Redfield, 2001). A good example of how educators have the responsibility to provide a positive and safe school environment comes from the Ross v. New Brunswick School District No. 15 (1996) case where the court determined that “schools are an arena for the exchange of ideas and must, therefore, be premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate” (para. 42)

All the legal standards that hold educators to account align with Noddings’ (1992) work on ethics of care since she recognized empathy, dialogue, compassion and modeling as highly valuable aspects in everyday school activities. The ethic of care that Noddings talks about can be related to the ideological model of literacy since this model sees literacy as a social practise that allows individuals to achieve a better understanding of the context and the ways in which people develop and interact with each other. Effective legal literate educators then, are those who acknowledge the cultural, social and economical aspects of the context they are immersed in, and are able to critically assess them in order to identify marginalized victims and advocate for them (Shariff, 2004).

4.2 Improving educators’ level of legal literacy

Educators are in constant contact with the law and, as the studies and research I have explored in the previous sections of this paper show, educators’ level of educational law
knowledge is inadequate to deal with their profession’s legal demands. Also, these studies have pointed out that the sources of information educators use to get their legal knowledge are not reliable and this may negatively impact their teaching. However, despite the desolate picture and the consequences the lack of legal knowledge may have for educators, this situation can be amended by improving educators’ level of legal literacy. One important thing to keep in mind is that legislation keeps on changing to attend the current demands of society, meaning that the process of becoming legally literate is an active and ongoing one.

Numerous scholars (Bruner & Bartlett, 2008, Cassidy, 2000; Delaney, 2008; Findlay, 2007; Imber, 2008; Litterton, 2008; Mead, 2008; Militello & Schimmel, 2008; Shariff, 2004; Schimmel & Militello, 2007; Young, Kraglund-Gauthier, & Foran, 2014) conclude that in order to improve educators’ current level of legal literacy, training in the legal aspect of their work is essential. Educators who are currently practising would greatly benefit from taking part of a professional development course or a workshop in educational law, while for future educators, including a course in educational law as part as their training programmes will be ideal because, as demonstrated by Delaney’s (2008) results, educators who took a course in educational law in their undergraduate or graduate studies had a better understanding of the legal issues educators face in their daily practise. Plus, the results of the survey study by Schimmel and Militello (2007) in the US prove that educators who have taken an educational course either in their teaching training program or while they were practicing, obtained higher scores in the knowledge of the law section of the survey than those who had not had any law course.
A course in educational law either at an undergraduate or graduate level is a good start to improve educators’ legal literacy level. The list of courses on Table 1 (see section 2.3 of the paper) represent a good starting point for the topics that might be included in an educational law course. There is evidence that shows that an educational law course as part of educators’ training process has positive impacts on educators’ daily practice (Delaney, 2008; Schimmel & Militello, 2007). Some of the positive influences that an educational law course has are: educators become familiar with the federal and provincial jurisdiction that regulates the profession; their awareness, understanding and sensibility towards the legal issues that schools face increase; they are more likely to be accountable of their actions and make sound and responsible decisions when facing legal issues; and their level of confidence and professionalism increase (Delaney, 2008; Findlay, 2007). Besides, teacher educational programs “must create spaces to analyse policy so as to equip beginning teachers with the knowledge to deal with the complex issues that emerge in planning and practise of teaching” (Young, Kraglund-Gauthier, & Foran, 2014; p. 8).

Also, having teaching training programs or ongoing courses that provide educational law information to educators will contribute to minimize the amount of legal misunderstandings and misconceptions educators might have regarding their everyday practise. It will also prevent educators to get their knowledge from rumours and myths since they will get the information from a trustworthy source (Militello & Schimmel, 2008). Through a course in educational law, educators will get the opportunity to be exposed to legal issues such as negligence, religion, search and seizure, and sexual assault while they learn the rights and responsibilities of their profession. All these will allow educators to really understand the boundaries of their profession and their
responsibilities towards their students, their parents, and their colleagues. This will in turn make them feel more confident and less overwhelmed by the actions of others and “more likely to exercise their authority with reason and perspective” (Sydor, 2006; p. 936 in Delaney, 2008). In terms of practicality, when educators are involved in an educational course and study the legislation that regulate their profession, they are capable of better understanding and accepting their accountability as professionals and not just as mere employees; and thus, help creating an efficient school environment where students are allowed to thrive.

The course may be in the form of a lecture, which has the advantage of allowing instructors to present great amount of information in a short period of time (Bruner & Bartlett, 2008). However, due to the lack of hands-on activities, a lecture may limit the amount of high-order critical thinking students get and therefore making the transfer of knowledge for long-term retention difficult (Bruner & Bartlett, 2008; p.39). A good way of dealing with these lecture concerns is to include case studies. This way, students are required to critically analyse the cases and develop problem solving and attention to detail skills (Bruner & Bartlett, 2008).

However, there are some important considerations that should be taken into account when constructing an educational law course. First of all, it is essential to acknowledge that acquiring some knowledge regarding the law might not be the most pressing issue for the majority of educators, particularly when the educational system is centred in achieving high test scores (Imber, 2008). Also, a course in educational law may not be sufficient to include all the legal topics surrounding education due to the wide and complex Canadian legal system (Imber, 2008). Likewise, it could increase the
“potential for paranoia; the potential to impede/inhibit teacher risk taking; and the potential to increase teachers’ stress levels” (Delaney, 2008; p. 16). Another thing to consider is the course length because when courses or workshops are too short (one-day or sporadic half-day), they tend to be inefficient as they fail to achieve a lasting change or effect especially if those taking the course cannot see the content of it as a fundamental topic for their professional development (Cassidy, 2000). So, an effective course relies on its length and depth because when the studied topics can be deeply analysed, those enrolled in the course are able to commit to the new idea and to go through different approaches (Cassidy, 2000). This is particularly relevant since the students are mostly adults and they “view learning activities through the lens of their experiences, and they need to connect their learning to this knowledge and experience because they are relevancy oriented” (Bruner & Bartlett, 2008; p.38).

In addition to having courses at a university level for training teachers, school districts could “develop interactive online tutorials that teachers would be required to complete periodically” that will contribute to dismiss the misconceptions and erroneous beliefs that educators might have regarding their practise and the laws that regulate it (Imber, 2008; p. 96). By creating these interactive online tutorials, educators can be actively involved in keeping up to date with the legislation that hold their profession to account.

Both an educational law course for training and practising educators and an online tutorial represent great starting points to improve educators’ level of legal literacy. With opportunities like this, educators will have the chance to come face to face with the laws that regulate their practise and they will “develop the knowledge, competence, and
confidence about school law that will reduce unnecessary legal misinformation, conflict, and confusion; remove the excessive fears of being sued; avoid unreasonable anguish and intimidation; and reduce financial and emotional costs” (Militello & Schimmel, 2008; p. 105). Plus, educators will become agents of change who are not afraid of becoming a victim of the legal system, they will have the necessary tools to foresee and avoid potential litigations, and more importantly, they will advocate for their rights and their students’ rights.

5. Conclusion

Educators within the Canadian society are part of a highly regulated profession by both federal and provincial legislation. Even though education is a provincial responsibility, provincial acts and laws must be in accordance with those at a federal level. Since the signing of the Canada Act in 1982 and with the increase of public access to information, society became more aware of their rights and the law became a tool they could use to fight any school decision they felt compromised their rights. Research has proven that educators’ lack a good understanding of the laws that regulate their profession, which in turn puts them in a vulnerable position prone to lawsuits. A fact that has become evident by the increased number in litigations where a teacher, a principal or a school board is sued for issues related with negligence, sexual harassment, freedom of expression, religion, homosexuality, and discrimination to name but a few.

The legal disputes educators get involved in can potentially be avoided if they had a better understanding of the laws that impact their profession because when they become legally literate, they are more likely to act reasonably, make informed decisions and act in
ways that guaranty that the rights of their students as well as their own are promoted and respected. Thus, making legal literacy a fundamental aspect in educators’ training, on going professional development, and daily practise.

Legal literacy, however, should be seen as a process that is not limited to the ability of processing the written laws. Rather, it should take into account that individuals, as the social beings they are, are attached to the sociocultural context they live in and that this context frames their interactions. Therefore, legal literacy turns into a practise that lets educators get the knowledge and understanding of the laws that will allow them to become aware of the sociocultural structures that surround them, to be able to critically analyse them, and through this understanding become empowered to truly advocate for their students and their own rights.

A very important fact to take into consideration is that “achieving legal literacy requires a change in consciousness, knowledge, and behaviour in preservice and in-service education” (Militello & Schimmel, 2008; p. 105) because educators should not see the law as a threat, but as a tool that will enhance their everyday practice by allowing them to be effective and accountable leaders who make informed decisions who have in mind their students’ needs. An educational law course at an undergraduate or graduate level for training educators and ongoing courses and online tutorials for in-service educators represent a good and viable way to provide educators with the knowledge they require to become familiar with the legislation that regulate their profession so they may be able to anticipate and avoid potential litigations.

Despite the fact that legal literacy represents a fundamental aspect of educators’ preparation, just a few registered training programmes require educators to take an
educational law course, plus there a no agreed upon standards across Canada as to what an appropriate level of legal literacy means. Based on the literature review I have done, I have come to identify that in the process of achieving legal literacy, educators should not only be aware of the legislation that regulate their profession, but also of the court decisions that have had an impact on the way their profession has been shaped. However, in agreement with Schimmel and Militello (2007), there are some questions that remain unanswered and that future research should address: what is the minimal educational law knowledge an educator should posses in order to be considered legally literate? What are the topics an educational law course should cover? Questions I believe are essential if a quality standard of legal literacy is to be achieved amongst educators in Canada.
6. References


*Canadian Charter of Rights and Freedoms, s2,* Part I of the *Constitution Act, 1982,* being
Schedule B to the Canada Act 1982 (UK), 1982, c11.


Fraser v. Campbell River School District No. 72, (1988) 3368 - BCCA


Hussack v. Chilliwack School District No. 33, (2011) BCCA 258


School District No. 44 (North Vancouver) v. Jubran, (2005) BCCA 201


Appendix A
Criminal Code of Canada

Section 43:

“Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances” (p.54).

Section 153 (1):

“Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in relationship or dependency or who is in a relationship with a young person that is exploitative of the young person, and who

a) for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of the young person; or

(b) for a sexual purpose, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites and the body of the young person” (p. 181).