



Chapter 3 - Rights and Freedoms

12 NEWS The Winnipeg Sun ■ THURSDAY, MAY 12, 2011

---

**NATIONAL  AFFAIRS**

# ‘This is like a witch hunt’

**Parents ordered to ‘socialize’ kids speak out**

**KRIS SIMS**  
*Parliamentary Bureau*

The Quebec family being ordered to “socialize” their children using public school and daycare say their provincial government is on a “witch hunt” against them.

The father spoke exclusively to QMI Agency through a translator on the condition of anonymity.

“The government is willing to go to whatever means to force their ways on my family,” he said. “This is like a witch hunt.”

He says his nine-year-old daughter and seven-year-old son were forced from their home last year and put into a public elementary school.

“She felt rejected and ostracized at school,” he said of his eldest daughter. “They had her in a ‘special’ class, and she got laughed at and picked on by other children.”

His son is also upset.

“He is calling home to his mom, saying he doesn’t like being at school.”

The traditional Catholic family lives in the Eastern Townships of Quebec. The couple said they wish to raise



SUBMITTED PHOTO

**Quebec kids aren’t smarter**

OTTAWA — Quebec’s \$7-a-day daycare system is failing to improve educational outcomes, an economics professor says.

Pierre Lefebvre of the University of Quebec (Montreal) says when the system was created, Quebecers were told “it would promote children’s development so they would perform better in school later.”

“This never happened,” he says.

Lefebvre compared the progress of children under the age of five from Quebec and the rest of Canada at various points between 1994 and 2006. He found Quebec’s family policy did nothing to improve cognitive skills.

— *Brigitte Pallier*

The Quebec parents who have been ordered to socialize their four children by sending them to state-run daycare and public schools instead of homeschooling them in this room are appealing the judge’s order.

November 2009

In an “urgent motion” the parents were told by Youth Protective Services to put the two eldest children into public school. The parents have not been accused of abuse or negligence.

In March 2011, Judge Nicole Bernier cited minor speech delays caused by hearing difficulties in one of the children, and ruled that all four needed to be “socialized.”

The family’s lawyer, Jean Yves Cote, said the judge dismissed testimony of the family doctor, who said the children were all well cared for.

“That’s outrageous,” he said. “[Youth Protective Services] deeply resented the fact that the parents were doing home school here. They even sent

the second child to school before he was the compulsory age.”

“The family is appealing the ruling.”

kris.sims@winnipeg.ca  
twitter: @kris\_sims

---

## ‘Vegas’ defends campaign vacation

# Soldier taking feds to court

*Alleges he was discriminated against after injury*

By Kevin Rollason

**R**YAN Elrick lost both his legs to a roadside bomb while serving with the Canadian Forces in Afghanistan.

Now he's fighting a battle on another front: he's suing the federal government and the chief of defence staff for damages claiming he was discriminated against because of his disability.

In court documents filed in the Manitoba Court of Queen's Bench earlier this month, Elrick claims the military's University of Service principle is discriminatory under the Charter of Rights and Freedoms and not only cost him his job but also promotions and higher pay.

"(Elrick) was prevented from continuing to serve in the Canadian Forces because of his disability and without regard for his actual abilities or performance," the lawsuit says.

Elrick declined to speak with the *Free Press* on Monday.

The former graduate of John Taylor Collegiate and the University of Winnipeg was in Afghanistan on June 21, 2006, serving as a gunner on a light armoured vehicle when it drove



KEVIN ROLLASON / WINNIPEG FREE PRESS ARCHIVES

Ryan Elrick arrives in Winnipeg in 2006 after being injured by a roadside bomb in Afghanistan.

over a roadside bomb. It exploded and his legs were amputated.

Elrick claims that while he was recovering in hospital, then Chief of Defence Gen. Rick Hillier visited him and told him a place would be found for him within military and that "his career in the Canadian Forces could and would continue and advance."

A year later, the military classified Elrick as having "medical employment limitations."

An administrative review was launched to see if that classification breached the Canadian Forces' Universality of Service principle.

Elrick claims that principle is interpreted by the military as requiring "all members of the Canadian Forces to be, at all times, capable of being deployed in a combat role."

The military retrained Elrick as an intelligence officer and had him work as an Intelligence Duty Analyst, a position normally taken by a Sergeant two ranks higher. But in July 2010, the review determined Elrick's combat-caused disability put him in violation of the Universality of Service policy.

Elrick was discharged from the military in March 2011, even though he was given two personnel evaluation reports lauding his "outstanding leadership potential" and characterizing him as an "invaluable team player with excellent military bearing."

No statement of defence has been filed and the issue hasn't been heard in court.

Melanie Villeneuve, a spokeswoman for National Defence, said soldiers who can no longer serve in the regular force or primary reserve and have "complex career transition needs" are given up to three years of support.

"They will have access to career transition assistance, including vocational rehabilitation, financial support and the chance to enhance their education and learn new skills."

Villeneuve said the military will also help transfer personnel to places like Cadet Organizations or the Canadian Rangers.

kevin.rollason@freepress.mb.ca

The Winnipeg Sun ■ THURSDAY, JUNE 26, 2012

# 'Strung along, lied to'

## Soldier lost legs, then fired as intel officer after work praised

**PAUL TURKENT**  
Winnipeg Sun

A Canadian military policy that forces permanently injured soldiers out of their jobs "out of touch with Canadian values," says a Winnipeg man who is challenging the policy in court.

Ryan Erick, a sergeant, was officially discharged in March after he was deemed ineligible for service because he wasn't fit for combat duty.

Erick lost both his legs in Afghanistan and had been working at 17 Wing Winnipeg, analysing data for NCBIAD.

Last July, he was told he was no longer welcome.

"There was definitely a sense of betrayal after being strung along and lied to," said Erick, who spoke publicly Wednesday for the first time since filing a lawsuit against the Canadian Forces.

After Erick lost his legs, he was recruited as an intelligence officer, then recalled as a job normally performed by officers two ranks above him. Formal evaluations praised his ability, leadership and ethics.

But a military policy that requires all personnel to be eligible for all duties, including combat, led to him being discharged last summer. He was never given an explanation as to why the military bothered to train and employ him then only later act on this policy.

"It wasn't explained to me, I'm pretty much in the dark as to what happened at upper levels," Erick said. "The way these policies are applied is unfair and out of touch with Canadian values. This is Canada. I feel for the place and I will not be treated this way."

**'Accountability'**

Earlier this month Erick filed a lawsuit with Manitoba's Court of Queen's Bench, asking for the policy to be declared unconstitutional because it discriminated unfairly against people with physical disabilities, contrary to the Canadian Charter of Rights and Freedoms.

Erick believes there are lots of people in the same boat as him.

"I'm looking for a policy change," he said. "I'm looking for some accountability from the government."

When asked whether he would even want to work for the Canadian Forces if he got his job back, Erick wasn't entirely convinced.

"That's a hypothetical I'm not fully sure I can answer," he said.

**BOB THOMAS / COURTESY**



**BOB THOMAS / COURTESY**

Ryan Erick, who lost his legs in Afghanistan, says he feels betrayed by the Canadian Forces.

### Chapter 3 - RIGHTS AND FREEDOMS

---

Rights and freedoms that protect individuals from the government are collectively called **civil rights** or **civil liberties**.

The British North America Act, (first constitution) did not contain any protection for the civil liberties of Canadians.

There were some protection respecting language rights and separate schools, apart from that the federal and provincial legislatures were free to do what they wanted as long as they were within their jurisdiction. The gov't only fear was to be defeated during an election.

In days gone by Canadians who inhabited a very large and thinly populated country enjoyed a great deal of freedom by world standards and had little to fear from gov't.

There was no guarantee against gov't power nor did it provide any guarantee against private power. There were no laws against discrimination on the basis of colour, race, or religion. This continued until the end of WW II. Then there was an increasing concern regarding the rights and freedoms, and liberties of people.

The inhumanities suffered during the war helped lead this cause. There was also a need for increased social services from the various gov'ts and this lead the gov't to intrude on the lives of Canadian citizens. There was an increase in affluence that lead to the principle that everyone is entitled to an equal opportunity to participate in wealth.

#### CANADIAN BILL OR RIGHTS

In the late 1940's, the legislature of provinces began to enact legislation dealing with discrimination. This lead to and included laws against direct discrimination in accommodation and employment. In 1960, the federal parliament passed the **Canadian Bill of Rights**. This

declared and recognized a list of human rights and fundamental freedoms. This Bill did not change anything but recognized and declared rights already in existence.

The Canadian Bill of Rights represented an important first step, but accomplished very little. The C B of R did not prevail over other legislation. It declared existing rights but did not change anything. As a federal statute it had no effect whatsoever on those areas within the jurisdiction of the provinces.

All this legislation (federal/provincial) suffered because it was merely statute law passed by the appropriate legislature or parliament and could not be changed easily. These statutes did not prevail over other statutes. They had to be interpreted along with the other statutes and inconsistencies had to be reconciled between competing statutes. It was believed that a full and comprehensive Charter of Rights and Freedoms should be **entrenched** in (made part of) the Constitution. This way the charter would be placed beyond the immediate power of Parliament and the legislatures, and changes could be made only by constitutional amendment.

These proposals were difficult to implement, because our Constitution (BNA Act) was an act of British parliament. How the constitution was to be brought home, how it was to be amended, and whether it should contain an entrenched Charter of Rights and Freedoms were issues that were debated. In 1982, the British parliament passed the **Canada Act** which sent the constitution home.

#### CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The Constitution Act, 1982, contained the **Charter of Rights and Freedoms**. This charter was substantially different from the previous one (Canadian Bill of Rights). The Charter was entrenched in the constitution and any law that is inconsistent with the Charter is of no force or effect. The Charter applies to laws passed by parliament and to laws passed by the provinces.

The new Charter has caused a great deal of activity in Canadian courts.  
<http://laws-lois.justice.gc.ca/eng/const/page-15.html>

Application of the Charter

**See page 35**

Section 32 of the Charter, the rights guaranteed take effect only as restrictions on the power of the gov'ts over the persons entitled to the rights. The purpose of a constitution is to protect individuals' rights from gov't interference. The Charter does not regulate relations between individuals. **See examples pg. 35**

The constitution governs gov't actions ex. pieces of legislation or actions of police officers. This ex. is clear but there are gov't actions that are not clear.

Guarantee of Rights and Freedoms

**See page 36**

The application of the Charter is two-staged. "The applicant" (person complaining of a Charter violation) must show a violation of a right guaranteed by a numbered section(s) of the Charter.

In determining whether there has been a breach of the Charter the court will interpret the numbered section(s) of the Charter. The interpretation is aimed at fulfilling the purpose of the guarantee and securing for individuals the full benefit of the Charter's protection. The court will not go beyond the actual purpose of the right or freedom in question and will not go beyond the actual purpose of the right or freedom in question and will place the Charter in its proper **linguistic, philosophic, and historical** contexts.

Once the applicant has established an infringement of a numbered section of the Charter, the analysis shifts to section 1 of the Charter. Under section 1 it is up to the "proponent" (person trying to justify the Charter right infringement) to satisfy the court that the infringement

is a limit prescribed by law that can be demonstrably justified in a free and democratic society.

The Supreme Court of Canada set out the criteria for establishing that a limit is reasonable and demonstrably justifiable in a free and democratic society. 1<sup>st</sup>, the objective to be served by limiting the Charter right must be sufficiently important to warrant overriding a constitutionally protected right or freedom. 2<sup>nd</sup>, once a sufficiently significant objective is recognized, the party invoking section 1 must show that the means chosen are in proportion to the importance of the objective.

The proportionality test involves three components

- The measures must be carefully designed to achieve the objective in question; they must not be arbitrary, unfair, or based on irrational considerations.
- The means should impair the Charter right as little as possible
- There must be proportionality between the effects of the measures and the objective.