



**Every child's  
legal right to  
education**

## The law in Ontario

It is illegal for children between the ages of 6 and 16 not to be in school:

... every child who attains the age of six years on or before the first school day in September in any year shall attend an elementary school or secondary school on every school day from the first school day in that year until the child attains the age of sixteen years.

— *Education Act (Ontario)*, ss.21(1)(a)

A child is excused from attending school only for a reason set out in the Education Act, such as illness.

**It is illegal** for a school to refuse to admit any child under 18 years of

age because the child or the child's parent or guardian is in Canada without immigration status:

A person who is otherwise entitled to be admitted to a school and who is less than eighteen years of age shall not be refused admission because the person or the person's parent or guardian is unlawfully in Canada.

— *Education Act (Ontario), s.49.1*

School boards must not refuse to admit children because their parents do not have immigration papers:

Accordingly, no children should be refused admission to school solely because of their or their parents' inability to produce any of the following:

- ▶ proof of immigration status or application for legal immigration status
- ▶ a work permit or a social insurance number
- ▶ health documentation that is different from that required of all other children
- ▶ other documentation not required of other children seeking admission to school

— *taken from the “Responsibilities of Boards”  
section of Policy/Program Memorandum  
No. 136, Ministry of Education*

Provincial privacy laws apply to information that parents and children give to a school board.

Although some children without permanent status in Canada have to pay

fees to attend a publicly-funded school, there are many exceptions. For example, children who are included in a refugee claim or an application for permanent residence do not have to pay fees. Section 49(7) of the Education Act lists who does not have to pay fees.

## The Canadian Constitution

In Canada, only the provinces have the power to make laws about education:

In and for each Province the Legislature may exclusively make Laws in relation to Education ....

— *Constitution Act, 1867 (Canada)*, s.93

## Canada's immigration law

Canada's immigration law says:

Every minor child in Canada, other than a child of a temporary resident not authorized to work or study, is authorized to study at the pre-school, primary or secondary level.

— *Immigration and Refugee Protection Act*,  
ss.30(2)

This means that a child under 18 years of age who is claiming refugee status or who has no status in Canada does **not** need a study permit from Citizenship and Immigration Canada to go to school.

# International law

By signing the *United Nations Convention on the Rights of the Child*, Canada has agreed to make primary and secondary education available to all children in Canada:

States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- a) Make primary education compulsory and available free to all;
- b) Encourage the development of different forms of secondary education, including general and

vocational education, make them available and accessible to every child, and take appropriate measures, such as the introduction of free education and offering financial assistance in case of need; ....

— *Article 28*

States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other social opinion, national, ethnic or social origin, property, disability, birth or other status.

— *Article 2*

If you know a child who has been refused admission to a school, speak to a lawyer or contact a community legal clinic.

You can usually find the community legal clinic nearest you by looking under “Legal Aid” or “Lawyers” in your phone book.

You can also check Legal Aid Ontario’s web site at <[www.legalaid.on.ca](http://www.legalaid.on.ca)> or phone them:

Outside Toronto.....1-800-668-8258  
In Toronto.....416-979-1446  
TTY outside Toronto....1-866-641-8867  
TTY in Toronto.....416-598-8867

For more information about children’s education rights, you can check out <[www.educationisright.ca](http://www.educationisright.ca)>.

This pamphlet gives general information about the law. It is not a substitute for getting advice about your particular situation.

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