



THE SPFA, ANNOTATED

*an annotated and explained
copy of the SPFA*

This copy of the SPFA has been annotated with brief and concise explanations of each section of the bill, describing its legal purpose and function in simple terms.

Before reading this version, it is important to stress the supremacy of the *Canadian Charter of Rights and Freedoms*. The *Charter* applies to public schools and protects freedom of expression and of the press in such institutions. The SPFA’s purpose is to secure those rights in BC public schools in effort to strengthen our democracy and public education system.

Students, teachers, principals, vice-principals, district staff, superintendents, parents, guardians, and the public all benefit from robust and independent student journalism. It's time BC move to protect and support this essential element of Human Rights.

STUDENT PRESS FREEDOM ACT - DRAFT

Preamble

WHEREAS it is paramount that a free and democratic society ensures that all its members are able to enjoy their fundamental freedoms, including as set out in the *Canadian Charter of Rights and Freedoms*;

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;

AND WHEREAS it is essential that the student journalists of public schools in the British Columbia school system are free to exercise their rights to freedom of expression and of the press as enshrined in the *Canadian Charter of Rights and Freedoms*;

AND WHEREAS it is difficult for students and student journalists to assert the rights necessary for a free press when disagreements arise over news coverage, it is important to clarify these rights and provide procedural vehicles for their assertion;

AND WHEREAS it is the purpose of this Act to ensure the rights of student journalists to freedom of expression and of the press, the rights of students to receive and communicate news and other intelligence free from unjust interference, and further to encourage civics, journalism, and news media education;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

PREAMBLE:

A preamble in legislative context carries no actual legal weight, but is a helpful explanatory pretext to the main passages of a bill, and can aid readers in determining the purpose of the law and the perspective of those drafting it.

Definitions and interpretation

- 1 (1) In this Act:
- “**board**” or “**board of education**” has the same meaning as in the *School Act*;
 - “**journalistic source**” has the same meaning as in the *Canada Evidence Act*;
 - “**proceeding**” has the same meaning as in the *Supreme Court Act*;
 - “**school**” has the same meaning as in the *School Act*;

“**school district**” has the same meaning as in the *School Act*;

“**school official**” means a principal, vice principal, director of instruction, superintendent of schools, assistant superintendent of schools, member of a board, or any person similarly employed or appointed with responsibility for the operation of schools and educational programs.

“**student**” has the same meaning as in the *School Act*;

“**student journalist**” means a student who prepares, compiles, writes, researches, edits, photographs, records, or gathers information for publication or broadcast in student media;

“**student media**” means any journalistic material that is prepared, compiled, written, edited, published, or broadcast by a student or students, with or without the assistance of other persons, for the purpose of dissemination to other students, including but not limited to print and digital newspapers, news websites, yearbooks, podcasts, broadcasts, and other media of communication;

“**teacher**” has the same meaning as in the *School Act*.

Student Journalists’ Freedom of Expression and of the Press

2 (1) Subject to subsection (3), teachers, school officials, and boards of education may only impose such reasonable limits on the freedom of expression and freedom of the press of student journalists in student media as can be demonstrably justified in a free and democratic society.

(2) Student journalists have the rights referred to in section 2(1) regardless of whether they are supported financially, through use of facilities or equipment, or by any other means by a school or board of education.

(3) No teacher, school official, or board of education may prohibit or limit the creation, publication, or dissemination of student media except where the content of the student media:

- (a) is obscene,
- (b) is libellous,
- (c) is unlawful,
- (d) wilfully and without a claim of right, unreasonably violates the privacy of another,
- (e) on the basis of a person’s Indigenous identity, race, colour, ancestry, place of origin, religion, martial status, family status, physical or mental disability, sex or sexual orientation, gender identity or expression, age, or analogous ground of that person or that group or class of persons,
 - (i) indicates discrimination or an intention to discriminate against a person or a group or class of persons, or
 - (ii) is likely to expose a person or a group or class of persons to hatred or contempt,

- (f) poses a threat to the safety or security of the school,
- (g) harms the social, emotional, or physical health of students,
- (h) infringes upon the copyright of a third party, or
- (i) other limits that are reasonable in the context of a Canadian school respectful of freedom of expression and freedom of the press.

(4) A student journalist, including a former student journalist, may refuse a request for the disclosure of information that identifies or is likely to identify a journalistic source unless a teacher, school official or board of education can demonstrate that:

- (a) the information cannot be obtained by any other reasonable means; and
- (b) the public interest in disclosing the information outweighs the public interest in preserving the confidentiality of the journalistic source.

(5) a teacher or school official may invoke subsection (4) on behalf of a student journalist, including a former student journalist.

(6) Nothing in this section may be construed to prevent a teacher or school official from teaching professional standards of English or French and journalism to student journalists.

(7) Nothing in this section limits protections otherwise enjoyed by students, student journalists, or student media under the *Charter*.

SECTION 2:

Section 2 is the core of the SPFA. It states that student journalists have rights to freedom of expression and freedom of the press, regardless of whether a school supports them in the creation of student media, subject to a narrow and specific set of limitations that keep in mind the essential role of school officials in maintaining a safe, inclusive, and respectful learning environment consistent with the *Canadian Charter of Rights and Freedoms*. The interests of the school, students, and public are all considered and balanced in this section.

Section two also ensures that confidential sources identities are protected, and makes sure that school officials have a good reason for requesting their disclosure.

Public schools are the nurseries of democracy, and student media should be able to freely converse in the spirit of that democracy. The SPFA makes that possible.

Rights of Student Journalists Upon Limitation

3 Any teacher, school official, or board of education who prohibits or limits the creation, publication, or dissemination of student media pursuant to section 2(3) must promptly inform in writing any affected student journalists;

- (a) of the prohibition or limitation, and
- (b) the specific and articulable reasons for the prohibition or limitation, and
- (c) the legal authority for the prohibition or limitation pursuant to this Act or the *Charter*.

4 (1) Any student affected by a prohibition or limitation or a request under section 2(5) may appeal the prohibition or limitation to the board of education for the school district in which the student is enrolled.

(2) Any student affected by a decision, determination, or order by a board of education under (1) may appeal to the Supreme Court on a question of fact or law.

(3) In any legal proceeding or subsequent appeal resulting from (2), the board of education shall pay any reasonable legal costs incurred by student or the student's litigation guardian and may only seek to recover its own legal costs from any student or student's litigation guardian in relation to conduct that is vexatious, frivolous, or abusive.

SECTIONS 3 & 4:

Sections 3 & 4 deal with the rights student journalists have in the event their content is prohibited in line with section 2 subsection 3.

Section 3 states that if a school official does prohibit the publication of certain content, student journalists have the right to be informed of such prohibition without delay. Officials must also be specific about their concerns and able to explain them.

Section 4 states that students (not just student journalists) may appeal to a school board to overturn the judgement of a school official. If a matter needs to go further, subjecting the process to judicial review ensures that all interests are properly balanced in accordance with Canadian Law. The SPFA makes it possible for student journalists to rely on BC's court of last resort when free expression and press freedom is at stake, with costs covered by their school board to promote access to justice and equity.

No Retribution

5 (1) No student journalist may be dismissed, suspended, disciplined, transferred, or otherwise retaliated against for creating, publishing, or disseminating student media, except

where the student journalist knowingly and intentionally creates or publishes content that is as described in section 2(3).

(2) No teacher or school official may be dismissed, suspended, disciplined, reassigned transferred, or otherwise retaliated against for:

- (a) assisting or supporting the creation, publication, or dissemination of student media, or
- (b) refusing to infringe upon the rights enjoyed by student journalists pursuant to this Act or the *Charter*,

except where the student journalist knowingly and intentionally creates or publishes content that is as described in section 2(3).

SECTION 4:

Section 5 ensures that student journalists exercising their right to freedom of expression and press freedom are not subject to any form of retribution. It also prevents teachers or school officials who support student journalists in using their rights within the boundaries of the law from being retaliated against. The only exceptions are when student journalists knowingly create student media that is alike the contents of section 2 subsection 3.