

**PENDIDIKAN DAN UNDANG-UNDANG
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MALAYSIAN EDUCATION LAWS - AN OVERVIEW

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My first duty on this occasion must surely be to congratulate the NUTP for taking the initiative in organising a seminar on the legal aspects of Malaysian education. It is an interesting subject and I hope that as a result of this seminar, there will be not only a better understanding of the constitutional and public policy dimensions of education, but also of the variety of regulations having the force of law that touch and concern the daily work of teachers.

By far and large, teachers are a law-abiding set of people. When I looked through the index of the Malaysian law reports I was struck by the fact that there are very few reported cases on education law. Teachers have not been inclined to be litigious. Occasionally, parents or pupils have brought charges against school-teachers, but considering that there are about 100 thousand serving teachers, it must be conceded that they have not earned notoriety in the way that people in high finance and politics have managed to do! May that always be so, for I perceive that teaching is becoming a very stressful occupation. Our society expects a great deal from its teachers. When anything goes wrong, the simplistic reaction is to blame it mostly on the education system, the schools and the teachers. And yet teachers have done and are doing their share for the progress of Malaysia. In the lean years that lie ahead of us, the Malaysian community ought to be even more appreciative of the good work of all teachers.

The most important and basic fact about any education system is that the ultimate control of education is always political. It has to be that

in any way because modern state a principal task of government is the provision of education. At one time the state was expected to provide education for its young people only. Today we are becoming aware that education has to be a life-long process.

The central position that education occupies in the economic and social planning of any modern nation was underscored in these words by the United States Supreme Court in a very famous decision, Brown versus Board of Education (1954):-

Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.

Pre-war Legislation

Anyone who looks up the musty volumes of the Government Gazette to find out what the old Education laws were will if he has the time and the inclination, stumble upon many interesting items. There were officially separate Enactments for the FMS, the Straits Settlements and for each of the Unfederated Malay States. However all were identically worded.

Primary education was compulsory by law for male Malay pupils, and the earliest of these laws was enacted in Perak in 1916. There were also

separate sets of Regulations for English, Malay, Chinese and Tamil schools respectively, with detailed syllabuses. Registration of teachers and registration of schools were also the subject of regulations. The threat of subversion was ever present, particularly in the 1930s, when the Great Depression and the rise of all the totalitarian regimes led to unrest everywhere. Some elements of those laws have had to be continued into our present-day laws as well.

For reasons of space and time I have not elaborated on these prewar laws. In Appendix A I have given some quaint and curious extracts from the old FMS education enactments.

Constitutional provision

Malaysia is a federal polity. It is the federal government that is responsible for establishing and maintaining schools and other related institutions. The states do not have the power to encroach upon this field. We find that in the legislative list in the Constitution of Malaysia the entry for Education is as follows:-

Education, including

- (a) Elementary, secondary, and university education; vocational and technical education; training of teachers; registration and control of teachers, managers and schools; promotion of special studies and research; scientific and literary societies;
- (b) Libraries; museums; ancient and historical monuments and records; archaeological sites and remains.

It will be seen that the list is divided into two clusters of institutions. Group (a) can be regarded as a list of formal education institutions and of agencies that assist or promote that type of education. Group (b) are typical non-formal educational agencies. Non-formal education is becoming more essential nowadays.

Education Act 1961 - The Magna Carta

The principal law governing school education in Malaysia today is the Education Act 1961. The long title of this Act reads: An Act to amend and consolidate the law relating to education. This legislation embodies the national education system that was conceived by the Razak Committee Report (1956) and further refined by the Rahman Talib Committee Report. The Education Act 1961 repealed and replaced the Education Ordinance 1957 and the Registration of Teachers Ordinance 1957.

Preamble

The first thing that will strike any reader is that the Act contains a Preamble. It is a rare thing to find a preamble in any general public law nowadays but it does serve a very useful purpose and it is reserved for very special legislation. In the words ^{of} an eminent English jurist, Sir Edward Coke, the preamble is a good means to finding out the meaning of the statute, and as it were, a key to open the understanding thereof. The text of the Preamble is given as an Appendix to this paper.

The Education Act proper starts with a comprehensive 'Interpretation' segment in Part One. Here the different types of schools are described. Part Two deals with Administration. In Part Three we find provision for Advisory Boards. Part Four sets out details about the statutory education system, under various chapters. Part Five deals with registration of schools. Part Six lays down the law governing registration of teachers. Part Eight deals with the Inspectorate. Part Nine is concerned with finance. Part Twelve contains the rule-making procedure by the Minister of Education. Part Thirteen appropriately deals with the Penalties.

Registration of Teachers

Teaching in Malaysian schools is a licensed occupation! That may seem surprising to the people who have a tendency to associate 'licences' with the driving of taxis, running of stalls and ownership of TV sets. Infact, in many states of the USA and in other countries too teachers must not only apply for licences to teach but are required to renew their licences annually. In Malaysia the law (luckily) does not require teachers to apply for 'licences' but only 'certificates of registration'. A certificate of registration as a teacher is the legal authorisation to teach in a school. It is a document that is proof of registration as a teacher. The certificate merely confers a personal privilege and it may be legally revoked, just as any licence or permit too can be revoked under certain situations or circumstances.

During colonial times there was no separate ordinance or enactment relating to the registration of teachers. The legislation for the registration of teachers and for the registration of other persons who ran schools had been contained in the 'Registration of Schools' ordinances of 1920, 1926 and 1937 respectively. Similarly all aspects of the law concerning teacher registration were incorporated in the Education Ordinance of 1952.

In March 1957 however the Registration of Teachers Bill 1957 was debated and passed by the Federal Legislative Council. For the first time in the history of education a separate law on teacher registration found its way into the statute book. In moving the passage of the Bill, Dato Abdul Razak, the Minister of Education explained the reason for proposing a separate ordinance for the registration of teachers:

This is because of the fundamental changes in the organisation and status of teachers which were recommended in the Education Report.

The system of registration and for the refusal and cancellation of registration in this new Bill is substantially the same as that which exists under the present law.

The Razak Committee on Education made a firm recommendation on the cancellation of a teacher's registration for unprofessional conduct although they did not employ that expression. Paragraph 49 of the Razak Report reads as follows:

In the unified teaching profession all qualified persons would be registered as teachers and such registration would lapse only as a result of individual action contrary to the enacted or moral law or through failure to exercise the profession for a stipulated period. Registration would give entry to the teaching profession

It is submitted that by action contrary to the moral law the Committee probably had in mind what in other educational jurisdictions is termed 'immoral conduct' 'grossly improper behaviour' etc.

However the 1957 law introduced the following changes:

1. Previously government teachers were not required to register.

Under the new system all teachers had to register.

2. Under the old law, teachers were registered for a particular school and were required to re-register when they began employment in some other school. Under the 1957 law to quote Dato Abdul Razak, 'teachers, like new-born babes, will have to register once, and once for all'.

One milieu of this law was of course the impending introduction of the national system of education following the acceptance of the Razak Report.

There was to be henceforth only one type of teacher and not different classes of teachers.

The Registration of Teacher ordinance 1975 was repealed by the Education Act 1961. The present law on teacher registration is contained in Part VI of the Education Act.

Present practice

The Registrar-General of Teachers is the designated authority for enforcing all aspects of the law concerning registration of teachers. Every State Director of Education is empowered to deal with specific matters concerning registration.

There is nothing automatic about registration. Section 75 of the Education Act stipulates that no person other than a registered teacher shall teach in any school or educational institution.

Section 77 mentions six grounds, any one of which would suffice for refusal of registration. If I may express the rather involved legal language in simpler words you would not be eligible for registration as a teacher if you

- (a) are under the age of 18
- (b) have no proper qualifications to be a teacher.
- (c) have made a false or misleading statement in connection with your application for registration
- (d) suffer from some physical or mental defect.
- (e) have been convicted in Malaysia or elsewhere of an offence and sentenced to a term of imprisonment.

(f) have been struck off the register established under any law in Malaysia or Singapore for the registration of teachers.

These are definitely very stringent requirements and I expect all right-thinking persons will accept the need for high standards of conduct and character in the teaching profession.

Reciprocity between Malaysia and Singapore

An applicant for registration as a teacher who has been convicted of any offence under any previous law or under any existing law in Singapore relating to the registration of teachers may be refused registration by the Registrar, according to section 77(1)(e) of the Education Act.

A person who has been struck off any register of teachers or managers, or governors of schools in Singapore may also be refused registration as teacher in Malaysia, according to section 77(1)(f) of the Education Act.

Similarly the Education Act of Singapore bars the registration of a person as a teacher, if he has been convicted by a Court in Malaysia of an offence punishable with imprisonment.

Registration may also be refused if the applicant has been convicted in Malaysia at any time under any law relating to education or the registration of schools.

Anyone who has been refused registration as a teacher in Malaysia or anyone who has been struck off the register of teachers in Malaysia may also be refused registration as a teacher in Singapore (Section 37(6) (c) and (d) of Cap 175).

Anti-subversion measure

Liability to be struck off the register of teachers for subversive activities or on suspicion of indulging in subversive activities has always been an important feature of education laws in Malaysia.

Section 78 of the Education Act empowers the Registrar to refuse to register a person as a teacher if he is satisfied that that person is likely to promote or foster in a school some unlawful purpose or a purpose, prejudicial to or incompatible with peace, welfare or good order in Malaysia. The registration of a serving teacher can be cancelled similarly on grounds of subversive activity. There is an appeal procedure and the final decision rests with the Minister of Education.

In Singapore section 38(c) of the Education Act (cap 175) states:

The Director may cancel the registration of a teacher if he is satisfied that the teacher has been guilty of professional misconduct.

Some educational jurisdictions are empowered to dismiss a teacher for 'immoral or disreputable conduct'. Revocation of the teacher's certificate is mandatory after such a dismissal.

What about professional intervention?

Teachers should be trained by the training institution, licensed by the state and professionally certified by the Teachers' Association'. That is the practice that prevails in some countries. There are many others in which the third function, namely certification by a teachers' association, has yet to be done. One of the hall-marks of a true profession is that entry into the profession and the right to expel members is a prerogative of the profession itself.

If workshop sessions have been planned for this Seminar I recommend that this aspect of professional involvement be discussed thoroughly.

Discipline and Corporal Punishment

The problem of discipline has received much publicity recently in the media. Traditionally teachers have had the privilege of using their own discretion in the administration of corporal punishment as a disciplinary measure. It is surprising to find that eminent jurists have paid much attention to the teacher's prerogative of punishing pupils. According to Sir William Blackstone, the great English common law jurist, the schoolmaster's position is one of in loca parentis. He has the right to inflict corporal punishment because he plays a parental role at school. The same concept of in loco parentis was expressed by Chief Justice Cockburn as follows:

A parent when he places his child with a schoolmaster delegates to him all his own authority so far as it is necessary for the welfare of the child.

It is only very recently that the British Parliament took the vital decision to abolish capital punishment. It all came about as a result of a decision by the European Court of Human Rights to which some British parents had taken their grievance about the use of corporal punishment in schools.

As far as the Malaysian law on corporal punishment is concerned it has always been expressed in the following two sentences:

- (a) Corporal punishment of girls is prohibited.
- (b) Corporal punishment of boys by a teacher shall be limited to blows with a light cane on the palm of the hand or the buttocks over the clothes and shall be inflicted only by the head teacher or by his express authority given in the specific case.

Historically, those two rules can be traced back to the colonial era. They were included in the General Regulations for Schools in the FMS, as well as the SS and the other 4 states in 1920. The letter and spirit of the corporal punishment law was continued in all succeeding school legislation, and it remains the law even today.

Perhaps the most difficult exercise of discretion that confronts a teacher is when to resort to corporal punishment and to what degree it ought to be applied. The law can only lay down the parameters concerned. The individual teacher has to make his decisions and accept the consequences of those decisions. Excessive punishment may bring about charges for assault under the Penal Code. Not to enforce discipline can lead to undesirable consequences too. I doubt whether the cane will disappear from our schools in the near future. And so the advice given by an American judge to teachers about the conditions under which corporal punishment may be administered may be of interest:

Whenever the teacher undertakes to exercise it, the cause must be sufficient, the instrument suitable to the purpose; the extent and manner of the correction. The part of the person to which it is applied, the temper in which it is inflicted, all should be distinguished with the kindness, prudence, and propriety which become the station.

In our times new attitudes to corporal punishment have arisen. In some educational jurisdictions the use of the cane or rod or birch has completely disappeared, on the grounds that it violates the rights of the child, and is not in harmony with civilized practices. In other places corporal punishment is allowed but only with the consent of parents or guardians. The abolition or retention of corporal punishment will always be as controversial as proposals to abolish or retain capital punishment.

Common Law Duty of Care

Every teacher while having the status of in loco parentis' which gives him or her the right to admonish or punish pupils, also has an obligation to exercise the Duty of CARE. If the duty of care is not followed in some situations the teacher and the Ministry could be liable for an action or civil suit for negligence. There are situations in the school laboratory, the school padang, canteen and even classrooms where accidents could occur. Adolescent pupils are by very definition inclined to be boisterous and addicted to practical jokes. Inevitably teachers are expected to be vigilant and exercise due care as well as authority to see that injury does not occur.

By law negligence results when these three elements are present:

1. A duty to exercise care
2. Failure to exercise care
3. Damage or injury as a result of such failure.

That common word used by teachers, namely, CARELESSNESS can result in negligence. The crucial question in all such cases is did the teacher take reasonable measures to prevent accidents or mishaps? What are reasonable measures will depend on the environment. There will be different measures in the laboratory, the field during sports practice and in the classrooms. I feel this is one aspect of school law that should be included in all teacher-training courses.

SOME SUGGESTIONS FOR REFORM

My terms of reference require me to say something about education laws for the future. No laws in modern times can be like those attributed to the Medes and the Persians, namely, inflexible and unchanging. The tempo of change, we are told by the sociologists, will be even more intense in

the years to come. Malaysia will be caught up by all the swirls of political, social and economic currents that are sweeping our region. With so much attention being paid to an ASEAN community and an ASEAN Common Market, our schools and other educational institutions must think of future needs and our laws and draft laws must reflect those needs and values. It seems to me that the following are some areas that need to be looked into:

1. The Education Act 1961 has served us well for 25 years.

It would be appropriate to examine it thoroughly to make some amendments that appear to be necessary. Some will be policy decisions for government and parliament but teachers should be concerned with the professional dimension.

2. The preamble to the Education Act should not only be retained but a new paragraph should be added to embody the idea of education being a life-long process.

3. The statutory school system under the Education Act rather rigidly requires pupils/specific ages to be in specific grades, irrespective of the abilities, aptitudes and needs of the individual. Under this system, it is a case of 'no soldier must be out of step with the rest of the regiment'. This is a practice that violates every known principle of educational psychology. The time has come to give serious consideration to following a more flexible system of emplacements that will be less frustrating to the rapid learners and the slower learners alike. The saving of public money could be considerable, especially in these hard times ...

4. Consideration ought to be given to the inclusion, in all teacher-training courses, of some elements of Education Law. I am not recommending that we have a full-scale subject as I believe the curriculum is already rather heavy. I do think that teachers will find aspects of the education law of Malaysia and basic elements of the Common Law relating to negligence and the 'in loco parentis' concept interesting and useful. Some may discover in this manner the intellectual satisfaction of learning the law ... and getting acquainted with Educational Jurisprudence.
5. There is a provision in the Education Act for declaring education to be compulsory. Consideration ought to be given to bring this into force in Sabah and Sarawak.
6. The definition of 'teacher' in the Education Act is inadequate. I would recommend a section on 'Duties of teachers' and others for 'Duties of Principals' and 'Duties of Pupils' to bring our law into line with present-day educational jurisprudence.

APPENDIX 'A'

QUAINT AND CURIOUS

The following extracts from old Malaysian laws on education will probably be of interest (and amusement) to teachers of today,

Registration of Schools Enactment 1920

General Regulation number 18:

The manager of a registered school shall not suffer or permit any food to be cooked or eaten or tobacco to be smoked in any classroom or room used as such during school hours; smoking of opium or the presence of opium couches and implements in school premises is absolutely prohibited.

General Regulation number 24:

In schools where children of both sexes are admitted, there shall be an age limit of twelve years for one of the sexes.

General Regulation number 33:

Occasionally from time to time alarms shall be given for purposes of practice, when the pupils will be required to carry out the scheme without warning. Inspecting officers should themselves sometimes cause the alarm to be given during their visits.

General Regulation number 19:

Spitting, except into spittons, is prohibited.

Spittons must contain a disinfectant fluid and must be cleansed frequently.

General Regulation number 23:

Not more than 40 pupils shall be taught at one time by one teacher, except when classes are massed together for such purposes as drill, needlework or singing.

Title of the pre-war English Language Syllabus:

SUGGESTIVE ENGLISH SYLLABUS FOR SCHOOLS IN THE FMS.