



How Food Allergy Law Affects Canadian Schools

Is a food allergy legally considered a disability, and are schoolwide food bans legally required to protect allergic students?

Primary Researchers

BLAKE MURDOCH

Faculty of Law
University of Alberta

TIMOTHY CAULFIELD

Faculty of Law
University of Alberta

ERIC ADAMS

Faculty of Law
University of Alberta

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What is this research about?

Food allergies are relatively common in Canada, and many school-aged children have an allergy to one or more foods, particularly peanuts, tree nuts, dairy and eggs. Food allergies cause the immune system to overreact, which in some cases may lead to a severe, life-threatening allergic reaction called anaphylaxis.

Because of this risk, governments and school boards have created laws and policies about planning for and dealing with food allergies in schools.

There is controversy around the use of schoolwide food bans to accommodate allergic students. Some people support food bans as a way to protect allergic children from accidental exposure to food allergens, while others believe bans unfairly limit food choices for non-allergic students. Some parents of food-allergic children have taken concerns about their schools' accommodation practices to provincial human rights tribunals.

In this study, the researchers wanted to better understand Canadian laws and policies that apply to managing food allergies at school. They wanted to know whether a food allergy is legally considered a disability, and whether food bans are legally required to protect allergic students.

What did the researchers do?

The researchers collected and analyzed relevant legislation, human rights policies and legal precedents related to food allergies in schools.

First, the researchers reviewed applicable legislation and policies. In Canada, the power to make laws is divided between federal and provincial governments. The federal government is responsible for making laws to guarantee human rights when accessing public services like schools. Provincial governments are responsible for making broad human rights laws, for making laws around education and schools administration, and for creating human rights commissions that can create related policies. These laws and policies also apply in schools. Often, federal and provincial laws overlap.

Next, the researchers studied Canadian legal precedents. In Canada, laws are interpreted and applied by courts or tribunals, so understanding the law also requires looking at particular legal cases that set precedents. Precedents are legal principles made by courts and tribunals that are followed when deciding later cases dealing with similar issues or facts.

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To find precedents, the researchers collected and analyzed relevant cases from courts, like the Supreme Court of Canada, as well as cases from provincial human rights tribunals.

After looking at the federal and provincial laws, as well as related precedents, the researchers drew conclusions about how these laws apply to food allergy in schools.

What did the researchers find?

FOOD ALLERGY AS A DISABILITY

Food allergy is legally considered a disability, even for individuals who experience only mild allergic reactions. The researchers found cases where tribunals clearly decided that food allergy was a disability.

The *Canadian Charter of Rights and Freedoms*, which is a part of the Canadian Constitution, gives every person the right to freedom from discrimination, including on the basis of disability. Provincial human rights laws do the same, and in combination with legal precedents, all these laws define disability broadly.

Since food allergy is a disability, it triggers a legal requirement for schools to make sure food-allergic children receive fair treatment at school and are not discriminated against due to an allergy. For example, it could be considered to be unfair treatment to make a food-allergic student eat alone due to his or her disability, as this could cause social isolation.

Instead, schools must accommodate students' allergies. Provinces have laws setting out what types of planning and training schools must undertake, and what procedures they must put in place to accommodate food allergies without discrimination. Often, schools have policies requiring supervised hand washing and table washing after eating, or the creation of allergen-free zones.

FOOD BANS

The most relevant Canadian human rights cases about bans of food allergens concluded that such bans are not legally required.

This conclusion was reached because recent scientific evidence has shown that food bans in public settings may not be effective in helping to reduce the number of severe allergic reactions when compared to public settings that do not ban foods. If the scientific evidence changes in the future, the law around food bans could change with it.

How can this research be used?

These findings will help to inform students, parents, teachers, and school board officials involved in discussions, controversies or decision-making about the allergy policies of schools in their communities.

The researchers emphasize that there is no one definitive model to deal with food allergies. Schools looking to craft sensible, effective and rights-sensitive policies around allergies should consider the context of their own setting, as well as recent scientific research on best practices for allergy safety and management.

The law is clear: food allergy is a disability and must be accommodated, but presently, food bans are not legally required.