



Education Law eBulletin

A newsletter for educators.

December 2003

❄️ *Wishing you and yours a
wonderful holiday season!* ❄️

video surveillance

Information and Privacy Commissioner releases *Guidelines for Using Video Surveillance Cameras in Schools*

The Information and Privacy Commissioner/Ontario has released a publication entitled *Guidelines for Using Video Surveillance Cameras in Schools*. The Guidelines “were created to assist school boards intending to use video surveillance to introduce these programs in a manner that ensures stringent privacy controls”.

School boards are subject to the *Municipal Freedom of Information and Protection of Privacy Act* (the “Act”). The Act protects individuals’ personal information. Given that personal information is defined as recorded information about an identifiable individual, which includes, but is not limited to, information relating to an individual’s race, colour, national or ethnic origin, sex and age, an individual’s image on a video surveillance tape wherein the identity of the person is clear, can constitute “personal information” of an individual within the meaning of the Act. In that case, the obligations imposed by the legislation relating to the collection, use, disclosure, retention, security and disposal of that personal information apply.

The Guidelines aim to recognize “that modified expectations of privacy exist in schools. In contrast to public places, schools are considered to be a supervised environment where a reasonable degree of monitoring by school staff is both desirable and expected”.

The Commissioner recommends that all school boards using video surveillance implement formal policies governing their use; and create a set of written procedures addressing the day-to-day usage of the system. The Commissioner also recommends that students, staff and the public should be notified, using clearly written signs, of the video surveillance equipment’s existence and its operation.

The Commissioner sets out minimum standards for procedures governing the use, disclosure, retention, security and disposal of the video surveillance tapes: video surveillance should not be used for monitoring staff performance; all tapes or other storage devices not in use should be securely stored and identified; access to the tapes or other storage devices should be limited to authorized personnel.

The access provisions of the Act apply with respect to any request to view a surveillance tape made by a student, staff member or member of the public who has been recorded by a video surveillance camera.

A copy of the Guidelines can be found at the IPC’s website at
http://www.ipc.on.ca/scripts/index_.asp?action=31&P_ID=14821&N_ID=1&PT_ID=11351&U_ID=0

new sexual misconduct text

Given the recent decisions of the Supreme Court of Canada and the Ontario Superior Court of Justice respecting the sexual abuse of children in *K.L.B. v. British Columbia*, *E.D.G. v. Hammer*, *M.B. v. British Columbia* and *Doe v. O’Dell*, school boards and other institutions are well-advised to ensure that they are taking those steps necessary to protect children in their care from sexual harm. It is timely, therefore, that a new publication has been released dealing with the issue. *Sexual Misconduct in Education*, written by Grant Bowers, Rena Knox, and Consulting Editor Justice Marvin A. Zuker, provides an excellent resource for educators and others who work with children. The book discusses the law and liability issues (both civil and criminal) as established by Canadian courts, and outlines the role of the Children’s Aid Society. Types of sexual misconduct and the proactive responses to them are also detailed. Most helpful is the discussion about how to handle an investigation into a student’s allegation of sexual misconduct, and what happens after the investigation. Various hypothetical scenarios and suggestions on how best to deal with them are also provided. *Sexual Misconduct in Education* is published by LexisNexis/Butterworths.

SHIBLEY RIGHTON LLP
Barristers & Solicitors
www.shibleyrighton.com

Toronto Office:
250 University Avenue
Suite 700
Toronto, ON M5H 3E5
Tel.: (416) 214-5200
Toll free: 1-877-214-5200

Windsor Office:
2510 Ouellette Avenue
Suite 301
Windsor, ON N8X 1L4
Tel.: (519) 969-9844
Toll free: 1-866-422-7988

Education and Public Law Group:

John P. Bell
john.bell@shibleyrighton.com

Brian P. Nolan
brian.nolan@shibleyrighton.com

Alan Wolfish, Q.C.
alan.wolfish@shibleyrighton.com

Diane M. Abbey
diane.abbey@shibleyrighton.com

Sheila M. MacKinnon
sheila.mackinnon@shibleyrighton.com

J. Paul Howard
paul.howard@shibleyrighton.com

Thomas McRae
thomas.mcrae@shibleyrighton.com

Byrdena M. MacNeil
byrdena.macneil@shibleyrighton.com

Marion Hoffer
marion.hoffer@shibleyrighton.com

Jennifer E. Trépanier
jennifer.trepanier@shibleyrighton.com

Jason Green
jason.green@shibleyrighton.com

upcoming summit

The Learning Partnership is holding an innovative public policy *Summit on Education Governance* on January 8-9, 2004. The Summit will examine education governance in Ontario at the elementary and secondary school level. Speakers will include prominent community, business and educational leaders such as Claude Lamoureux and Dr. John Evans, two outspoken proponents of transparency and accountability, as well as the Honourable Bob Rae, Jennifer Lewington and Justice Paul Rouleau.

The Summit will take place at the Ontario College of Teachers. Those interested may register online at: http://www.thelearningpartnership.ca/policy_research/summit_schedule2003.pdf or contact Sophie Theleritis at (416) 440-5128.

We believe that the Summit is an important step toward putting education governance squarely on the public policy agenda.

safe schools text

Jennifer E. Trépanier's book, *Student Discipline: A Guide to the Safe Schools Act*, can be purchased at:
<http://www.lexisnexis.ca/bookstore/bookinfo.php?pid=623>

announcement

A one-day seminar on "Sexual Misconduct in Education" is being held in Toronto on February 6, 2004. John P. Bell, Brian Nolan, and Byrdena M. MacNeil of our Education and Public Law Group will be among the seminar presenters. The seminar features a series of sessions to help administrators and teachers understand the best ways to identify, investigate and ultimately to prevent the occurrence of abuse and sexual misconduct. Chaired by Mr. Justice Marvin Zuker of the Ontario Court of Justice, the sessions include:

- ~ The Problem of Sexual Misconduct in Education
- ~ After the Robins Report: Vicarious Liability and School Boards Dealing with Disclosures of Misconduct
- ~ The Role of the CAS
- ~ The Role of the OCT in Relation to Sexual Abuse and Sexual Misconduct
- ~ Investigating Allegations
- ~ Sexual Misconduct Risk Management: How to Create a Sound Policy to Guide Teachers and Staff.

For more information call 1-800-668-6481 or go to http://www.lexisnexis.ca/bookstore/sem_info.php?id=6

case law

Doucet-Boudreau v. Nova Scotia (Minister of Education) Supreme Court of Canada

In order to comply with the *Charter* guarantee of minority education, the Nova Scotia government announced that it would build French language schools in 5 particular communities where the population of Francophone students warranted it. The provincial government then put the building project on hold because of budget concerns. Proponents of the schools asked the Court of first instance to intervene to ensure that the schools were built; the trial judge ordered the Province to appear at future hearings before the Court to report on its progress in providing French-language programs and building the schools, in compliance with the requirements of s. 23 of the *Charter*. The appeal to the Supreme Court of Canada concerned the appropriateness of the ongoing involvement of the trial judge.

While the appeal before the Supreme Court of Canada was rendered moot because the hearings at issue had already been held and the required schools built, nonetheless, the Court rendered a decision to provide guidance for future *Charter* cases. In a 5-4 majority decision, the Court held that a Superior Court created by s. 96 of the Constitution is empowered to order such remedy as it considers "appropriate and just" in the circumstances. Such a remedy must be meaningful to the rights and freedoms of the infringed party and must be interpreted broadly, in keeping with the constitutional scheme for the vindication of rights and freedoms enshrined in the *Charter*. The Supreme Court held that the requirement for the Province to attend further status hearings effectively vindicated the s. 23 rights of the parents in the context of the Province's history of delay. A mere declaration of rights by the trial judge would have forced the parents to bring a new application to enforce their rights every time the Province failed to use its best efforts to comply with the Order. Although the Order was not a common *Charter* remedy, it did not exceed the role of the courts in a constitutional democracy and was judicial in the sense that it called upon the functions and powers known to courts to exercise a continuing involvement in relations between parties.

Bruce-Grey Catholic District School Board Ontario Labour Relations Board

The OLRB found, *inter alia*, that a teacher's union has no duty to represent the teacher at an Ontario College of Teachers hearing, as the union's statutory duty of fair representation does not apply to such proceedings.

Parsons Pond Foundation Ltd. v. Corner Brook/Deer Lake/ St. Barbe School District #3

Newfoundland and Labrador Supreme Court

A school board's earlier decision not to close an elementary school could not support injunctive relief preventing the school board from changing its decision.

Summaries of these cases and others can be found in the Shibley Righton Education Law NetLetter published by Quicklaw. Visit www.quicklaw.com.

We welcome your comments and questions. Send them, and any updated contact information, to byrdena.macneil@shibleyrighton.com. If you wish to unsubscribe to this eBulletin, please send a blank e-mail to unsubscribe@shibleyrighton.com

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