



Education Law eBulletin

A newsletter for educators

February 2010

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Private School Without a Lease Agreement Has No Claim to Possession of Land

School Boards are often under intense pressure from parents and parent organizations to make hasty decisions regarding land improvement. In some cases, promises may be made before land use agreements can be established. A recent decision entitled *Initiate School of the Canadian Rocky Mountains Ltd. v. Wolfenden Ventures Ltd.*, [2010] B.C.J. No. 17, demonstrates the risks of these actions.

In 2008, the Initiate School of the Canadian Rocky Mountains Ltd. (the "School") had secured the defendant land owner's permission to use its property for a two-week retreat. Following the retreat, the School unsuccessfully attempted to negotiate a lease of the land. Despite the fact no lease was ever finalized, the School continued to use the land and reportedly expended \$300,000 on improvements to the land notwithstanding that the land owner had, on several occasions, required the School to vacate the premises. The School brought an application for an interim injunction when the land owner attempted to oust the private school from the property. The School claimed compensation on the basis that the land owner had been unjustly enriched by the improvements. The School also sought a declaration of constructive trust, claiming that because the defendant had allowed it to stay on the property and operate its business there, the principle of estoppel applied and prevented the defendant from insisting on its right to take possession of the land.

In hearing the injunction application, the British Columbia Supreme Court acknowledged that if the injunction were not allowed, the School would suffer irreparable harm. However, the Court also noted that the School was a squatter on the property and had simply refused to comply with repeated demands that it vacate the land. The Court found that the School had remained on the property without colour of right and was therefore not entitled to injunctive relief. Given this finding, the Court ordered that the land owner was entitled to possession of the land and issued an Order accordingly.

In our opinion, this decision is noteworthy as it serves as a reminder to all school board administrators to ensure that land use agreements are negotiated and in place prior to expending resources on improving land. School boards can often be pressured by parent groups to act immediately in order to provide students with immediate benefits; this decision serves as a useful warning that such actions cannot be recommended.

Workplace Harassment and Violence – Bill 168

Workplace harassment and violence are not only about human rights anymore. They are also issues of health and safety.

Employers should be aware of their new obligations under *Bill 168*, which amends Ontario's *Occupational Health and Safety Act* with respect to violence and harassment in the workplace. The amendments come into force on June 15, 2010. As of that date, affected employers will be required to develop and communicate workplace violence and harassment policies and programs to workers, and to review those policies annually. They will be required to assess the risk of workplace violence and take reasonable precautions to protect their workers from possible violence, including domestic violence, in the workplace. The new legislation also allows workers to remove themselves from

harmful situations if such workers have reason to believe that there is a risk of danger as a result of workplace violence.

The new legislative provisions define “workplace violence” and “workplace harassment” as follows:

“Workplace Harassment” means engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome.

“Workplace Violence” means,

- (a) the exercise of physical force by a person against a worker, in a workplace, that causes or could cause physical injury to the worker,
- (b) an attempt to exercise physical force against a worker, in a workplace, that could cause physical injury to the worker,
- (c) a statement or behaviour that it is reasonable for a worker to interpret as a threat to exercise physical force against the worker, in a workplace, that could cause physical injury to the worker.

What is interesting to note is that under the new provisions, employers have an obligation to ensure that their workers are free from harassment which may not be based on a prohibited ground under the Ontario *Human Rights Code*. “Workplace harassment” could include unwelcome vexatious comment or conduct regarding a workers' height, choice in music or preferred pastimes, for example. This harassing comment or conduct would not be prohibited under existing human rights legislation.

Workplace violence under the new legislation deals primarily with an exercise, attempt or threat of physical force. What will be surprising for some employers to learn is that the new legislation also requires employers to take every precaution reasonable for the protection of their workers from *domestic violence* in the workplace. The employer has an obligation in this regard only if the employer becomes aware, or reasonably ought to be aware, that domestic violence would likely expose the worker to physical injury in the workplace.

Although many affected employers may already have policies aimed at workplace violence and harassment pursuant to the Ontario *Human Rights Code*, it will be necessary for such employers to review existing policies to ensure they comply with the new legislative regime under the *Occupational Health and Safety Act*. In the circumstances, all affected employers will now have to address the issue of workplace violence and harassment prevention from both a health and safety perspective as well as from a human rights perspective.

Court Finds that Contributory Negligence Does Not Apply to a Four-Year-Old Plaintiff

At times, some issues are raised before courts that may raise eyebrows. In a rather unsurprising decision issued in December 2009, the Nova Scotia Supreme Court found that the doctrine of contributory negligence did not apply to a four-year-old child.

In 1994, an accident occurred in which a kindergarten student was hit by his school bus. The student's parents subsequently sued the Annapolis District School Board for damages. In its pleadings the School Board argued that contributory negligence was a live issue; this was disputed at trial and the student's counsel submitted that the issue of contributory negligence should not be brought before the jury given that the child was of “tender years” and, therefore, that the doctrine of contributory negligence did not apply.

In reviewing the applicable jurisprudence, the trial judge noted that there is no legal authority to support the submission that the doctrine of contributory negligence cannot apply to a child of “tender years.” In fact, the court noted that “mere age is not in itself the test, but rather the capacity of the infant to understand and appreciate” the nature of the child's actions. After considering the child's age, and that the child had “neither sufficient experience nor maturity to understand any warnings”, the child was incapable of being negligent as he was unaware of the risks associated with his actions. The issue of contributory negligence was therefore withdrawn from the jury.