



Education Law eBulletin

A newsletter for educators

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Centrally Assigned Principals Even if Managerial Ruled Part of Teacher Bargaining Unit

Arbitrator Brian Keller has just issued an award in *OECTA v. St. Clair Catholic District School Board* that has ramifications for all school boards across the province who use “Principals” to perform duties, including managerial duties, in roles other than being assigned to a school to perform the duties of a Principal in that school.

Previous arbitral decisions have consistently found that work of persons identified as “Supervising Principals,” “Curriculum Principals” etc. is bargaining unit work as it is substantially the same work as that of consultants and coordinators. “Principals” not assigned to perform the duties of a Principal in a school are not “Principals” in accordance with the definition in section 1 of the *Education Act* but are simply teachers with principal qualification.

Prior to the Keller decision, it was believed that if the work being performed by such “Principals” was managerial in nature as established in accordance with the *Labour Relations Act* and the jurisprudence under that *Act*, such “Principals” (by whatever title) would be excluded from the bargaining units in accordance with general labour relations principles.

The Keller decision, however, states that because of the definitions of “Principal” and “teacher” in the *Education Act* and the requirements of s.1 of the *Act*, all teachers, unless specifically excluded in the legislation, must be a member of one of the designated bargaining units. Traditional managerial exclusions pursuant to the established tests under the *Labour Relations Act* are irrelevant.

Arbitrator Keller is careful to point out that this is not necessarily a good thing from a labour relations perspective, but it is the result of the application of the plain meaning of the statutory provisions.

The decision raises the obvious question: What is the current status of incumbents in these positions? If they are members of the bargaining unit and were never really “Principals,” i.e., assigned to a school to perform the duties of a Principal, is their seniority deemed never to have been broken? If they had been Principals of a school before accepting central positions, are they now members of the teachers’ bargaining unit at the bottom of the seniority list?

There is the further issue of whether the decision may be successfully judicially reviewed, and/or whether there will finally be necessary amendments to the *Education Act* to make it clear that any “teacher” with or without Principal’s qualifications who performs “managerial” duties for a Board is not a member of a bargaining unit.



Reliance on Portion of OSR may lead to Production

In Ontario, section 266 of the *Education Act* provides that the Ontario Student Record ("OSR") is a privileged document which may not be relied upon in any hearing without the consent of the student or the student's parent or guardian.

A recent interim decision by the Ontario Human Rights Tribunal illustrates a clear exception to the above-mentioned restriction. In *Prieur v. Ottawa Catholic District School Board*, 2009 HRTO 1702, the school board sought an Order from the Tribunal authorizing it to disclose all or part of an applicant's OSR for the purposes of responding to an allegation that the school board had failed to accommodate the applicant's exceptionalities. The applicant's litigation guardian had previously relied on portions of the OSR which were submitted to the Tribunal, and had consented to the production of only those documents. In a prior Interim Decision, the Tribunal held that it was unfair for the applicant to rely on portions of the OSR and withhold her consent for the respondents to rely on other parts. The applicant's litigation guardian subsequently withdrew her intention to rely on any part of the OSR in an attempt to avoid any disclosure of OSR materials.

However, the Tribunal had also previously ordered the applicant to disclose the OSR to the Tribunal. Upon reviewing the documents, it became evident that the Identification, Placement and Review Committee ("IPRC") and Individual Education Plan ("IEP") documents were necessary to understand the applicant's needs. Ultimately, the adjudicator held that the IPRC and IEP documents were crucial both to the respondent in order to allow it to properly address the complaint and to the Tribunal in order that it be able to hold a fair and just hearing. Therefore, the Tribunal ordered the litigation guardian to produce all of the IPRC and IEP documents notwithstanding the withdrawal of consent for disclosure of the OSR records.

In our view, it is important to recall that courts and administrative tribunals, including the Human Rights Tribunal, have the authority to control their own hearings. Notwithstanding the legislative restrictions governing the use of OSRs, the Tribunal appropriately ordered the production of documents which were clearly relevant to the issues in question to ensure a fair hearing.

Should you have any questions regarding the production of OSR materials, please feel free to contact us at 1-866-422-7988.

CASES

An infant was injured during a sparring session at a martial arts school; the defendant school brought a motion to dismiss a subsequent claim for damages on the basis that the parent had signed a waiver. The British Columbia Supreme Court dismissed the application, finding that there was a triable issue as the *Infants Act* does not permit a parent or guardian to bind an infant to an agreement waiving the infant's right to bring an action in damages or tort. *Wong (Litigation guardian of) v. Lok's Martial Arts Centre Inc.*, [2009] B.C.J. No. 1992.

The Supreme Court of Canada declared that subsections 73(2) and (3) of the Charter of the French Language were unconstitutional, but suspended the finding of unconstitutionality for one year to provide the province with an opportunity to rework the legislation. *Nguyen v. Quebec (Education, Recreation and Sports)*, [2009] S.C.J. No. 47.

The Ontario Court of Appeal granted leave to the applicants to amend their pleadings to claim that a College breached its fiduciary to its students by promoting religious values in conflict with the Anglican faith. *Cavanaugh v. Grenville Christian College*, [2009] O.J. No. 4502.

When a school board refused to associate with a basketball coach who had previously been convicted of sexually assaulting teenage members of a basketball team, the Saskatchewan Court of Appeal upheld a decision to strike the coach's counterclaim against the school board alleging defamation, injurious falsehood and conspiracy to injury, among other torts, on the basis that the pleadings failed to demonstrate a reasonable cause of action. *Hall v. Board of Education of Regina School, Division No. 4*, 2009 SKCA 118.

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

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