



Education Law eBulletin

A newsletter for educators

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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 R. Howard
paul.howard@shibleyrighton.com

Thomas McRae
thomas.mcrae@shibleyrighton.com

Jennifer E. Trépanier
jennifer.trepanier@shibleyrighton.com

Bryce Chandler
bryce.chandler@shibleyrighton.com

Accessibility for Ontarians with Disabilities Act - Request for Review and Feedback

On October 23, 2006, the Minister of Community and Social Services announced that:

(1) the first proposed standard developed under the *Accessibility for Ontarians with Disabilities Act* regarding customer service is available for public review and feedback (which may be submitted before a 60 day period); and (2) recruitment has begun for a new standards development committee on accessible information and communications

More details regarding this announcement and a summary of the accessibility standard on customer service is attached to this eBulletin as a separate PDF document.

Please direct any questions to Jennifer E. Trépanier at 1-877-214-5200.



Still Awaiting Changes to Ontario's Safe Schools Regime

The future of the *Safe Schools Act* remains uncertain as we await the Ministry of Education's reaction to the recent report of the Safe Schools Action Team, released this summer.

The *Safe Schools Act* has led to significant controversy since its inception in 2000 and was recently placed under governmental scrutiny when the Ministry of Education requested that the Safe Schools Action Team review the Act and related policies and programs in December 2004.

The Action Team undertook a province-wide public consultation in November and December 2005 and this past summer released a report entitled "Safe Schools Policy and Practice: An Agenda for Action" (the "Report"). In the Report, the Action Team identifies the following eight themes for priority action: (1) Prevention, (2) Progressive Discipline, (3) Community and Parental Involvement, (4) Application of the Safe Schools Act, (5) Programs for Suspended / Expelled Students, (6) Education and Training, (7) Communication, and (8) Provincial Safe Schools Framework.

Essentially, the Report recommends a pro-active approach to student discipline involving early intervention and a framework of progressive discipline, with improved coordination between schools and communities. The Report proposes various changes to the *Safe Schools Act* and recommends continuous learning for students under expulsion or long-term suspension, including treatment programs and reintegration strategies to prepare for their successful re-entry into school. The Report further recommends a review of strict discipline programs to assess whether they meet students' needs and support successful student re-entry. The Report also recommends significant training of staff, students and communities through the Ministry and school boards on the *Safe Schools Act*, related materials and issues, in order to help ensure consistency and fairness in the application of the Act.

PROPOSED REVISIONS TO THE *SAFE SCHOOLS ACT*:

The proposed changes to the *Safe Schools Act* are as follows:

- expand the number of mitigating factors to be considered before discipline is imposed (e.g. age, grade, language acquisition)
- remove the power from teachers to suspend
- consider having one day suspensions served in schools
- have exclusions of students under s. 305 of the *Education Act* subject to appeal and the student may be able to attend another school
- only one kind of expulsion would exist (minimum 21 days) which would be imposed only by boards;
- the board must offer an alternative program to be completed by the student before re-admission (the program should address academic, behavioural and treatment needs)
- the Ministry of Education should work in close partnership with other ministries to ensure services for children and youth are aligned (e.g. mental health, child welfare, substance abuse, anger management)

The trend away from a 'zero tolerance' approach to a more flexible approach of progressive discipline appears to be - at least in principle - a reversion to the previous regime of student discipline. In fact, most of the proposed changes to the Act itself echo back to the pre-*Safe Schools Act* days, including removing the power of teachers to suspend; returning the power to expel solely to boards and having s. 305 'denials of access' subject to appeal (which has always been the case with exclusions under s. 265(1)(m) of the *Education Act*). It remains to be seen, however, what revisions will in fact be implemented, if any, and in what form.

PROPOSED EDUCATION AND TRAINING

Another significant recommendation in the Report concerns the education and training of principals, administrators, teachers, parents and students on the requirements, application and procedures related to the *Safe Schools Act*. The Report recommends the following:

- (1) That the Ministry provide training and resource materials on the application and procedures regarding the *Safe Schools Act* and related policies.
- (2) That the Ministry and boards provide training for school staff on:
 - cultural awareness,
 - the benefits of diversity,
 - the needs of students experiencing mental health challenges,
 - the needs of students protected by the *Child and Family Services Act*,
 - students with special needs, and,
 - students who experience violence at home.
- (3) That Boards provide ongoing training for:
 - all staff and students on the application and procedures regarding the *Safe Schools Act*, the *Ontario Human Rights Code*, and board and local school policies,
 - for teachers and administrators on mitigating factors and the school's incident investigation process to ensure that all students are treated fairly, and,
 - for all staff in schools on behavioural management of students.

The Report further recommends increased and improved communication between schools and communities regarding particular students' behaviour, the *Safe Schools Act*, related materials, as well as the discipline processes.

It remains to be seen how the Ministry of Education will respond to these proposed recommendations¹. During the summer, the Ministry indicated that it planned to study the Action Team's recommendations and develop a "response" slated to be released this fall. To date, there has been no indication as to what this response may be, but we understand that the Ministry still intends to meet this deadline. Accordingly, we will continue to await the Minister's response to the Report and will update you as details become available.

1. One recent change (unrelated to the Report) in the safe schools regime has been the implementation of an updated Policy/Program Memorandum No. 130 ("PPM 130") which deals with programs for expelled students in school boards who are not providers of government approved strict-discipline programs. The revised PPM 130 is in effect until June 30, 2007, but simply extends the same requirements as were set out in the previous PPM 130 (with essentially no changes to its substance).

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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Blogging in the Workplace

Web logs, or “blogs”, are becoming a popular means by which people express their own personal thoughts, likes, dislikes and opinions online on personalized web pages. This practice, while perhaps therapeutic for the author, may lead to employment-related problems for the “blogger” if he or she begins writing about life in the workplace or voices controversial opinions that reflect poorly upon his or her employer. When a person participates in such activity, the blogger may expect repercussions from his or her employer that could ultimately result in discipline, including termination. The list of fired bloggers is growing, with employers citing misuse of company time and assets and disclosure of confidential business information.

Although blogs take place in an online forum, and although there are not many Canadian cases of employees being fired for blogging (and fewer, if any, decisions), employment principles that govern employee-employer relations apply to these online diaries. Specifically, if an employee is misusing company time by writing his or her blog during work hours, this is akin to persons being terminated for “surfing the net” or running a side business. Decisions regarding running a side business may be appropriate because, if a blog is popular enough, it will attract online advertisers providing income for the blogger. Additionally, a blogger may be terminated if his or her online commentaries divulge confidential business information or depict the employer in an unfavourable light that may affect the employer’s interests or reputation. Moreover, if the employer has policies in place regarding the use of technology or a code of conduct, the blogger may run afoul of these policies.

Although blogs are not yet considered mainstream, their existence is steadily on the rise. Consequently, employers should be aware of this practice and may wish to establish blogging policies to remind employee bloggers of their responsibilities and duties to their employer.

In the teaching context, any blogging policies or notes should remind teachers that they are held to a higher standard of conduct, whether it be on school grounds or on their own time.¹ As online publications can be easily accessed by anyone at any time, teachers should be cautioned to give pause prior to publishing online content that may harm the school environment or undermine the public’s confidence in the public school system.

The Education and Public Law Group at Shibley Righton LLP would be pleased to answer any questions you may have regarding blogging incidents or how to establish a policy in this respect.

upcoming conference

LexisNexis Conference Series is hosting “The Second Annual School Principals’ Summit” to be held in Toronto on Friday, November 10, 2006. The Conference will examine a number of hot-button issues, including steps to be followed when dealing with serious discipline incident; when to call in the police in school-related incidents; key human rights issues in dealing with the Ontario Human Rights Commission; the difference between exclusion and discipline, and when is it appropriate for a principal to use either in dealing with a student with special needs; how does the duty to accommodate under the *Human Rights Code* impact discipline decisions; “workplace harassment” policies and whether a principal’s “management style” can give rise to a complaint of “workplace harassment”; and, how school administrators can use a 5-step process to manage conflict early and appropriately. Presenters at the conference include partners Sheila M. MacKinnon and J. Paul R. Howard of our Windsor office. For more information, please see the attached PDF brochure. There are early-bird discounts (before October 20, 2006) and group discounts available.

1. See *Kempling v. British Columbia College of Teachers*, 2005 BCCA 327 for recent commentary regarding off-duty teacher liability.

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