



Education Law eBulletin

A newsletter for educators

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School Boards' Liable for Students' Loss

Schools and their administrators use every tool available to them in order to increase students' enthusiasm towards school. Some have allowed students to bring their own personal property to school (for example, musical instruments, art supplies, auto or wood shop tools and materials) for the purposes of participating in different events or for the purpose of completing projects. In so doing however, schools may expose themselves to potential liability, especially in instances when there is prior knowledge that the school cannot be completely secured.

On May 15, 2006, the British Columbia Provincial Court held that a school board in British Columbia should be held liable for a student's loss of personal property. As part of an educational requirement of his auto mechanics class, a grade 12 student in British Columbia was required to rebuild an engine. With the permission of his shop teacher, this student brought in his own engine outfitted with expensive upgrades purchased with his own money to complete the educational requirement. The Plaintiff was a star pupil and surpassed all expectations. In fact the shop teacher and school administration was so impressed with the Plaintiff's work that it was arranged to have the engine moved out of the shop area and into the school for display, including during a parent-teacher night. Subsequently, during a long weekend, a person or persons broke into the school through the motor mechanic shop window and stripped the engine of all the expensive upgrades. The Plaintiff sued the Board for the cost of his stolen parts.

In finding the Board liable for the student's loss, the Court held that thieves gained access to the school through a fence gate that was known to be secured only on occasion and broke into an unalarmed window that the school knew was unsecured. The Court held that the Plaintiff's engine and its expensive add-on parts were on school property by permission and that the defendant displayed the Plaintiff's showy rebuilt engine for its own purposes and to its own benefit. This, in turn, acted to heighten any obligation to safe keep the claimant's property. Finally, although the court held that the school was not an insurer and perfection is not expected in terms of providing security to property owned by a student in the school, the court found that the window through which the thieves entered provided so little security that it might as well have been left open. Accordingly, the Court found for the Plaintiff and ordered that the Board reimburse the student for the stolen property.

The decision in *Bailey* demonstrates that school administrators must be cautious when encouraging students to bring their own expensive equipment (including mechanical devices, personal musical instruments, expensive art supplies, etc.) for school purposes (art shows, course completion, assemblies or music concerts). Although the decision in this case will not likely result in wholesale liability regarding students' belongings, school authorities should ensure that the school is properly secured and any security issues should be addressed as soon as their existence is made known to the administration in order to attract as little liability as possible.

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.

Disqualification of Trustees

In 2006, the Alberta Court of Queens Bench heard an action commenced by a school board to have a Trustee disqualified from remaining as a Trustee of the Board. (*Calgary Roman Catholic Separate School District No. 1 v. O'Malley*, 2006 ABQB 364).

In 2004, when the Defendant was first elected, he was extremely critical of the Board and its Chief Superintendent, complaining that the system delegated excessive authority to the administration and wrongly restricted a Trustee's role in governance. His views brought him into immediate conflict with the other Trustees and resulted in a censure motion passed by the majority of the Trustees. In 2005, the Trustee commenced an action against the Board alleging that the Board's policy statements and regulations contravened the *Canadian Charter of Rights and Freedoms*. This action was eventually discontinued. The Trustee then commenced, on three separate occasions, applications for judicial review alleging, among other things, that Board policies contravened the *School Act*. The first judicial review was heard and dismissed. The second judicial review was abandoned after the Trustee was ordered to pay costs when he lost an interim injunction to restrain the Board from any budget work. The Trustee then abandoned the third judicial review attempt when the Board brought and passed a motion, in which he participated and voted against, to bring an action against the Defendant to disqualify him from remaining as a Trustee.

Specifically, s. 83 of *School Act*, R.S.A. 2000, c. S-3, provides that when a Trustee has a pecuniary interest in a matter before the Board he or she must disclose the nature of the pecuniary interest and abstain from voting in the matter. Any contravention of that procedure results in the disqualification of the Trustee from the Board. The pecuniary interest on which the Board relied was the Defendant's exposure to costs resulting from his failed injunction.

The Court relied on previous case law which indicates that it is incumbent upon a person not to place him or herself voluntarily in a position in which, the person would have a private interest that might be opposed to the unbiased performance of an official duty. The Court held that the Board duly notified the Defendant of the appropriate sections of the *School Act*, that the motion would affect his pecuniary interest, and that he should seek legal advice prior to participating in the vote. Accordingly, the Court held that the Defendant knowingly participated and voted on a matter in which he had a pecuniary interest, and that he could not rely on the saving provision in the legislation that his participation was inadvertent in the sense that it was due to an oversight or lack of attention.

Moreover, the Court held that the *School Act* was not a complete codification of the common law as to disqualification of a Trustee. Accordingly, the Board could also rely on long-established common law principles to disqualify a Trustee, such as the Trustee having an interest that is so personal and substantial that a reasonably well-informed person would conclude that it might influence the exercise of the public duty owed by that Trustee. The court held that both discussing and voting on a motion to commence proceedings to remove a Trustee are themselves disqualifying events for the Trustee concerned. Additionally, the court held that Trustees have a collective public duty to advance the work of the Board in which they are elected, and by personally engaging his Board in litigation, the Defendant placed his private interest before his public duty and was in breach of his common law duty of good faith.

CASELAW

Greater Essex County District School Board v. Elementary School Teachers' Federation of Ontario
Ontario Superior Court, June 26, 2006

The Court dismissed a school board's application for judicial review regarding an arbitration award in which the Arbitrator held that it had violated the collective agreement in failing to pay supplementary employment benefits to two employees on pregnancy leave during the summer break.

Plews v. Pausch

Alberta Court of Queen's Bench, August 8, 2006

The Court dismissed an action initiated by doctoral thesis student against his former advisor and the University of Alberta which alleged that by publishing an article the advisor breached a duty of confidentiality and a fiduciary duty he owed to his former student.

Deputat v. Edmonton School District No. 7

Alberta Court of Queen's Bench, July 21, 2006

The Court held that 12 months was insufficient notice with respect to the termination of a 56-year-old Senior Mechanical Coordinator who had been employed for approximately 23 years.

Warrington v. Lunenburg (Municipality)

Nova Scotia Court of Appeal, June 28, 2006

The Court allowed an appeal finding that the results of an election for a school board position could not be saved due to irregularities that violated the *Municipal Elections Act*.

C. v. Board of Trustees of School District No. 8

British Columbia Human Rights Tribunal, August 10, 2006

The tribunal dismissed a complaint of sexual harassment against the school board wherein a mother alleged that her daughter had been subjected to unwanted sexual behaviour from a 12 year-old boy.

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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