



## Education Law eBulletin

A newsletter for educators.

October - November 2005

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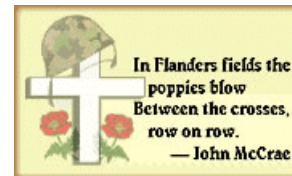
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### labour

#### Mandatory weekly preparation time found in collective agreement

In the April 2005 decision, *School District 75 (Mission) and British Columbia Teachers' Federation/Mission Teachers' Union*, Arbitrator Burke held that teachers had an absolute entitlement to the weekly preparation time specified in the collective agreement, including during those weeks shortened due to a statutory holiday or non-instructional day.

The issue involved an article of the collective agreement which provided: "The maximum weekly instructional assignment for a full-time elementary teacher shall be 1,425 minutes per week, less 90 minutes which shall be provided for the purpose of preparation." The Teachers' Federation argued that not providing the 90 minutes of preparation time during shortened weeks, or re-scheduling the preparation time, violated the collective agreement. Conversely, the school board maintained that the language in the collective agreement was clear and set out the maximum amount of preparation time that could be assigned, not a minimum that would require re-scheduling.

The arbitrator held that the real issue was not rescheduling but whether the clause itself requires the provision to elementary teachers of 90 minutes of time for the purpose of preparation. It was found that the language of the collective agreement was clear and unambiguous. The article in question contained mandatory language in stating that the maximum "shall" be less 90 minutes per week; additionally, another clause under the same article in the collective agreement dealt specifically with the pro-rating of preparation time for part-time teachers. Because the collective agreement contained mandatory language and specifically provided for those instances where prep time was to be pro-rated (which did not include the 90 minutes of prep time for full-time teachers), the arbitrator upheld the grievance.

Finally, the arbitrator held that the school board could not rely on past practice since there was no ambiguity in the collective agreement and there was no uniform or consistent practice by principals regarding the making up of preparation time.

### in the classroom

#### Discipline for teacher-student classroom confrontation

In the decision, *Palethorpe v. God's Lake First Nation* (Canada Labour Arbitration, February 2005), a teacher was discharged following a classroom confrontation with a student. The teacher filed a complaint of unjust dismissal under the applicable legislation.

The incident arose when a 14-year old student allegedly told the complainant-teacher to "f--- off" during class. The complainant reacted by grabbing the student by the hood of his sweatshirt, causing the student to fall on the floor, and then dragging the student to the office. Upon arriving at the office, the complainant shoved the student to the couch and said: "If you ever tell me to f--- off, I'll punch you through the wall to China." Shortly after the incident, the complainant was told by the school's administration that he would, at a minimum, receive a reprimand and the school would be contacting the student's parents about the incident. However, the complainant was ultimately discharged from employment by the Chief and Band Council.

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At arbitration, the complainant testified that, prior to the incident, the student had been disrupting class by wandering around the room, playing with glue clamps, playing with a scroll saw, and instigating foolishness and horseplay with other students that resulted in broken equipment. When the student was confronted by the complainant and told to stop his behaviour, he responded with a vulgarity that was found to be aimed in a derogatory manner toward the complainant.

During the arbitration, it was noted that the complainant, who had 20 years of experience, was respected by his peers and was known to have good relations with his students. Arbitrator D.A. Booth also noted that the complainant had a hearing impairment which seemed to explain the discrepancy between what the complainant heard and what the student actually said. In addition, the complainant admitted to the incident and was remorseful.

The principal testified that he would not have fired the complainant but, because the Chief and Band Council were guardians of the community, he had to respect their decision to discharge the complainant. The arbitrator found that the Chief was pressured by the student's father to discharge the complainant, and had succumbed to that pressure. The arbitrator held that the Band Council should have accepted the recommendation from the school authorities whom they had appointed, and allowed them to enforce reasonable discipline consisting of letters of reprimand. Further, he held that neither the Chief nor the Band Council had any additional reasons or justification for terminating the complainant's employment. Consequently, the arbitrator held that the complainant (who had since gained employment elsewhere) was entitled to damages representing the salary he otherwise would have been entitled to under his contract.

Although the arbitrator held that the complainant had been unjustly discharged, this should not be taken as a condonation of the complainant's actions; notably the arbitrator's comments were confined to the disparity between the school authorities' disciplinary recommendations and the unfounded actions subsequently taken by the Chief and Band Council. It remains that teachers are in positions of authority and must exercise control of their emotions and reactions in classroom environments.

\*Recently it was reported that 4 out of 10 teachers have experienced bullying in the classroom, consisting of verbal abuse, physical threats or intimidation by students; 41% of teachers who were bullied had their personal belongings or property vandalized (*The Globe and Mail*, September 26, 2005).

## caselaw

### ***Baltruweit v. Rubin***

*Ontario Superior Court of Justice, 2005*

The Court dismissed a claim for negligence and slander brought against a student and the Dean of the Faculty of Law stemming from their response to allegations of sexual harassment made against the plaintiff, another student.

### ***D.N. v. Kawartha Pine Ridge District School Board***

*Ontario Superior Court of Justice (Master), 2005*

The Court ordered the production of the OSR, with conditions, of a student alleged to have assaulted another student despite the perceived conflict of interest of the guardian of the student, the Children's Aid Society, who was also a party to the litigation.

### ***University of British Columbia v. Wong***

*British Columbia Supreme Court, 2005*

The Court held that parties can contractually agree to be bound by the terms of the *Employment Standards Act* even if the statute does not govern their profession.

### ***Surrey School District No. 36 (Re)***

*British Columbia Labour Relations Board, 2005*

The Labour Relations Board dismissed a school board's argument that they could deplete their employees' "sick day bank" at a rate of 1 full day of pay for every 0.8 day of sick pay actually paid to the employee because a previous settlement between the board and its employees made implicit reference to that rate.

### ***British Columbia Public School Employers' Assn. (Re)***

*British Columbia Labour Relations Board, 2005*

The Labour Relations Board granted, in part, an application brought by the British Columbia Public School Employers' Association seeking relief against the British Columbia Teachers' Federation regarding actions that had taken place during a school board "in-dispute" because it utilized an American psychological questionnaire to screen candidates.

### ***British Columbia Public School Employers' Assn. v. British Columbia Teachers' Federation***

*British Columbia Supreme Court, 2005*

The Court held that the British Columbia Teachers' Federation was in civil contempt for violating an order of the British Columbia Labour Relations Board and a subsequent order of the Supreme Court enjoining it from participating in strike activities.

*Summaries of these cases and others can be found in the Shibley Righton Education Law NetLetter published by Quicklaw. Visit [www.quicklaw.com](http://www.quicklaw.com).*



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