



# Education Law eBulletin

A newsletter for educators.

October 2002

**welcome!** You are receiving this inaugural issue of the Shibley Righton LLP Education Law eBulletin because we have identified you as an educator who may have an interest in legal-related news and information. If you find this eBulletin useful, please forward it to your colleagues.

## allow us to introduce ourselves

Shibley Righton LLP's Education and Public Law Group comprises leading civil litigation practitioners who have considerable experience in public law matters, including education law, employment law, labour relations, human rights, constitutional law, administrative law, and judicial review. We have a recognized expertise in representing school boards and educator organizations, and are among the very few lawyers in the Province who can legitimately claim to be Education Law specialists. But unlike others who practice in the education law area, we are backed by the resources of a full-service law firm, and thus can provide a complete range of legal services that is informed by our extensive experience in education matters. Whatever the task, our clients' legal needs are addressed by professionals who are familiar with the operations of educators and the political and financial realities of the education sector. We offer a pro-active and client-focused approach, which provides "24-7 total access" and common sense solutions.

As part of that pro-active approach, we have created this Education Law eBulletin as a means of assisting educators in keeping apprised of the law and important legal developments. We hope you find it interesting and useful.

## current issues

### Boards, Bullying, and Accountability

In *Jubran v. North Vancouver School District No. 44*, a student alleged that throughout his high school years he suffered discrimination and harassment on the basis of sexual orientation at the hands of his fellow students, as a result of which he filed a complaint against the school board under the B.C. *Human Rights Code*. The B.C. Human Rights Tribunal recently released its decision holding the school board liable for the student misconduct, despite rejecting Jubran's contention that the school administration had failed to take effective action to stop the bullying.

Unfortunately, the Tribunal's analysis never truly addresses the central issue before it – whether educators should be held legally accountable for the wrongful acts of high school students. Instead, it asserts the somewhat circular argument that the board is liable for student conduct that violates the *Code* because the school board has a duty to provide an environment free from student conduct that violates the *Code*. However, the Tribunal's analysis omitted one fundamental element of liability: causation. The Tribunal did not explain how the educators' breach of duty *caused* the harm suffered by Jubran. Thus, the Tribunal never really offered a satisfactory justification for holding the educators accountable for the students' unlawful conduct.

The school board has applied to the B.C. Supreme Court for a judicial review of the Tribunal's decision.

*Excerpted from J. Paul R. Howard's article, "Following-Up on Jubran: Boards, Bullying, and Accountability", to be published in the Autumn 2002 issue of Education Canada, the quarterly journal of the Canadian Education Association. Visit [www.acea.ca](http://www.acea.ca).*

## announcements

### Shibley Righton Education Law NetLetter on Quicklaw

The Education and Public Law Group of Shibley Righton LLP has been responsible for the preparation of the Shibley Righton Education Law NetLetter, published on-line by Quicklaw, since its inception in February 2000.

Quicklaw is the pre-eminent Canadian legal publisher of on-line legal reference materials, consisting of more than 2,500 databases, including caselaw, legislation, NetLetters, texts, articles and other materials. NetLetters are current awareness services providing regular updates on developments in different areas of law; they are exclusive to Quicklaw.

The Shibley Righton Education Law NetLetter provides a monthly update on significant caselaw developments relevant to educators and providers of legal services to the education sector. Current decisions of courts, human rights tribunals, and labour tribunals of special interest to school boards and educators are included.

For more information about Quicklaw or to subscribe to Quicklaw's databases including the Shibley Righton Education Law NetLetter, visit Quicklaw's website at [www.quicklaw.com](http://www.quicklaw.com).

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## safe schools - lessons learned

Ⓜ The *Safe Schools Act* (Bill 81) gives educators jurisdiction to discipline students for conduct “at school” or while “engaged in a school-related activity” (s. 309(1) of the *Education Act*). Many lawyers representing students and parents have argued that the scope of this jurisdiction is limited to the geographic boundaries of the school or to activities approved or controlled by the school. That narrow interpretation is wrong. The *Safe Schools Act* is social policy legislation which should be given a wide and liberal interpretation. As well, the definition of school in the *Education Act* (s. 1(1)) is not limited to geographic boundaries; it includes students and staff without restriction of activity or location. When deciding whether particular conduct of a student can be disciplined, do not be influenced by a narrow definition of activity or location. A suggested test is whether you consider that the conduct of the student is relevant to, or may have an adverse effect on, any aspect of the school, regardless of when or where it occurred. For example, armed robbery by one of your students of a student in a school in another part of the Province is certainly conduct for which you have authority to discipline. Likewise, an assault with a weapon requiring medical attention committed by one of your students, which occurs in a parking lot across the street from the school, is also subject to discipline.

Ⓜ Settlement arrangements between a principal and affected student can be incorporated into an order of the board tribunal which is enforceable as such. Some potential types of settlement are: imposition of a principal's limited expulsion with the parents' agreement not to appeal; reduced duration of a limited expulsion if conditions are met by the student; and, consent to a full expulsion, with a waiver of appeal right, upon entry into a strict discipline program.

Since September 2001, we have amassed extensive experience in representing principals in disciplinary proceedings, more than any other firm in the Province. We have learned many lessons along the way, and intend to share these in this ongoing column to assist you in the administration of the discipline provisions of the *Education Act*.

## case law

### ***Bonnah (Litigation guardian of) v. Ottawa-Carleton District School Board***

*Ontario Superior Court of Justice*

The court dismissed an application for judicial review by a special needs student of a school board's decision to transfer the student to a special needs school due to safety concerns.

### ***K.D. (Litigation guardian of) v. Prince Edward Island Western School Board***

*P.E.I. Supreme Court - Trial Division*

A principal's decision to suspend two students for having assaulted a fellow nine year-old student after school was upheld.

### ***Aitken v. Lambton Kent District School Board***

*Ontario Superior Court of Justice*

A resolution of a school board to close a high school was quashed on the grounds that the “heart of the decision making” was done out of the public view.

### ***Huron East (Municipality of) v. Avon Maitland District School Board***

*Ontario Divisional Court*

The court upheld a decision of a school board to close the only high school in a community.

*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).*

## legislation

### **Bill 101 - Student Protection Act, 2002**

The *Student Protection Act, 2002* (Bill 101) was created in response to Justice Sydney Robins's report entitled “Protecting Our Students: A review to identify & prevent sexual misconduct in Ontario schools”. It amends various education-related statutes to “crack down” on sexual misconduct in schools.

Under Bill 101, school boards are required to report to the College of Teachers when they become aware that a teacher has been charged with a criminal offence involving minors or one which (in the school board's opinion) may place students at risk, instead of simply reporting when a teacher is convicted of such an offence, as was previously the case. School boards will also be required to report a teacher who is being investigated for misconduct who resigns prior to the completion of the investigation or prior to termination. Upon notifying the College of Teachers of the criminal charge, the school board is required to remove the teacher from duties involving students pending resolution of the charge.

Bill 101 amends the *Teaching Profession Act* to remove the requirement that teachers make an adverse report to another member in cases of suspected sexual abuse. This is intended to encourage fellow teachers to come forward with allegations of sexual abuse.

Bill 101 also expands the definition of “sexual abuse” set out in the *Ontario College of Teachers Act, 1996* to include “behaviour or remarks of a sexual nature by a member towards the student.” Sexual abuse is also deemed to be included in the definition of professional misconduct.

Bill 101 was proclaimed in force as of September 3, 2002.

*Excerpted from an article by Jennifer Trépanier.*

We welcome your comments and questions. Send them, and any updated contact information, to [byrdena.macneil@shibleyrighton.com](mailto:byrdena.macneil@shibleyrighton.com). If you wish to unsubscribe to this eBulletin, please send a blank e-mail to [unsubscribe@shibleyrighton.com](mailto:unsubscribe@shibleyrighton.com).