

# Education Law News

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## SERIOUS CONCERNS ABOUT DRUG USE AMONG ONTARIO STUDENTS

### Sobering Statistics

There are disturbing trends regarding increased alcohol and drug use among Ontario youth. A recent report released by the Centre for Addiction and Mental Health indicated that 23% of students reported that they had been offered, sold or were given a drug at school. This percentage represents 219,000 Ontario students.

The 2009 Ontario Student Drug Use and Health Survey, which was released on November 18, 2009, indicated that 16% of all students reported that they were intoxicated at school at least once in the 12 months before the survey. The survey indicated that males (17%) are more likely than females (14%) to report getting drunk or high at school.

The survey focuses on binge drinking as being a particularly serious problem for Canadian youth. It found that 25% of students report binge drinking at least once during the four weeks before the survey. This percentage represents about 250,700 students in grades 7 through 12. About 9% of all students reported binge drinking 2 or 3 times during the past month. It also should be noted that binge drinking increases

significantly with grade. Only 3% of students in Grade 7 were involved in binge drinking, while it climbed to a high of 49% among Grade 12 students. The survey also indicated that one-in-five students (21%) drink hazardously, in that their drinking puts them at risk for current or future physical and social problems.

The survey found that about one-quarter of students report using cannabis in the past 12 months. Cannabis use shows large increases with each grade, from 1% of grade 7 students to 46% of grade 12 students.

Another area of public health concern involves alcohol, drugs and vehicles. The survey indicated that there are about one-in-eight (12%) licensed students who drink and drive. A higher percentage of licensed students report driving after using cannabis. Especially worrisome is that one-quarter (23%) of all students report being a passenger with a driver who had been drinking and 13% rode with a driver who had been using drugs.

### **Possibilities for Prevention**

With respect to prevention, the research has shown that preventing adolescents from using drugs, including alcohol and tobacco, is difficult and, at best, the

effects are usually short term. The survey states that delaying the initiation of use could have a positive effect regarding prevention. Prevention efforts should include a component that target youths beliefs and attitudes about drugs, specifically the risk of physical harm that can occur from use.

The research also shows that attitudes and beliefs about the risk of harm and disapproval are drug specific. Thus, the Centre for Addiction and Mental Health recommends that any prevention effort should provide drug-specific information. The research also suggests a strong relationship between use and availability for certain drugs, such as alcohol, cannabis, ecstasy and LSD. While prevention efforts cannot control access to drugs through peer groups, the availability and accessibility of cigarettes and alcohol can be controlled by stricter government policies. The survey reports that government regulations, such as increased taxes, enforcement of minimum age laws and reducing the number of sales outlets, will have an impact in reducing alcohol and drug use among youth.

Given the results of this survey, principals should consider a school-wide education program regarding drug and alcohol use.

**Principals should consider a school-wide education program regarding drug and alcohol use.**

The program should not only target students and school staff, but should also include the parent community. The education program should specifically address the risks of physical harm that can occur from drug and alcohol use. It should also provide information about the dangers and effects of specific drugs.

### Minimizing Liability

Under the provisions of the *Education Act*, the principal has a duty to maintain proper order and discipline in his or her school. The principal also has a duty to give “assiduous attention” to the health and comfort of students under their care. While the principal and school staff may not be able to prevent students from using drugs and alcohol entirely, in the context of student dances and other social events, there are steps that school administrators can take to reduce the risk of harm to students and others and minimize legal liability. These steps include:

- Make it clear to all students, before school-sponsored events, that drugs and alcohol will not be tolerated and outline disciplinary measures that may result from a breach of the school’s code of conduct. Encourage student leaders, such as student council

representatives, team captains, etc., to act as role models.

- Be proactive by notifying parents before events of school policies regarding student drug and alcohol use, with a particular emphasis on discouraging “pre-parties” where drugs or alcohol will be present.
- Monitor entrances and bathrooms at school dances/formal events. Engage in conversation with students as they arrive at the event.
- Do not turn away a student who shows up to school or a school-related event intoxicated. Instead, call the student’s parent or guardian.
- Do not send intoxicated students home unattended either on foot or in a taxi. Ensure that someone is available to either escort the student home or to receive the student at home upon his or her arrival.
- Ensure that a student who brings a guest to a school-related event



is aware that he/she is responsible for the behaviour of the guest.

- Where appropriate, circulate a “contract” to be signed by students and/or parents for events where intoxication is anticipated to be an issue, such as proms or semi-formals. The contract could include an undertaking by the student to adhere to the school’s code of conduct as well as an outline of the procedures and disciplinary action that may result from a breach of the code.

of the school community about the dangers and risks of drug and alcohol use. By working with students, school staff and parents and taking pro-active measures to address these issues, school administrators will minimize risks to school safety and help preserve a positive and healthy learning environment in their school.

**Make it clear to all students before school-sponsored events that drugs and alcohol will not be tolerated.**

### **Conclusion**

The reality of drug and alcohol use among students is such that it will continue to be a challenge for schools across Ontario. School administrators should initiate school-wide education programs informing students and parents and other members

**Eric M. Roher**

**Tel: (416) 367-6004**

**[eroher@blgcanada.com](mailto:eroher@blgcanada.com)**

**Sarah Stiner**

**Student-At-Law**

**[sstiner@blgcanada.com](mailto:sstiner@blgcanada.com)**

# BILL 177 RECEIVES ROYAL ASSENT

Student achievement as a top priority for all education stakeholders is now firmly entrenched in Ontario's statutory landscape.

Bill 177: *Student Achievement and School Board Governance Act*, (which amends Ontario's *Education Act*), received Royal Assent and came into force on December 15, 2009, after a year long legislative process. During the Bill's public hearings, the legislature heard from thirty-eight individuals and organizations, including school boards, trustee associations, individual trustees, parent organizations, unions and education advocacy organizations, on the potential merits and impact of Bill 177. From its inception, Bill 177 has generated strong opinions. Similarly, its final assent and proclamation into force have been received with mixed reviews by the education community.

## Purpose of Public Education

Section 1 of Bill 177 sets out the important values underlying the *Education Act* as a whole. Subsection 1.01(1) provides that a strong public education system "is the foundation of a prosperous, caring and civil society." Subsection 1.01(2) specifically states that the purpose of the public education system "is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society."

Subsection 1.01(3) provides that enhancing student achievement and well-being is a collective responsibility among all partners in the education sector.

While student achievement is the overarching purpose of Bill 177, the term itself has not been defined in the *Education Act*. It therefore remains to be seen how these laudable student achievement goals will be carried out in practice.

## School Board Governance

The thrust of Bill 177 is to clarify the current regulatory framework governing the operation of school boards. Section 218.1 enumerates the duties of board members, which includes maintaining focus on student achievement and well-being. It provides:

A member of a board shall,

- (a) carry out his or her responsibilities in a manner that assists the board in fulfilling its duties under this Act, the regulations and the guidelines issued under this Act, including but not limited to the board's duties under section 169.1;
- (b) attend and participate in meetings of the board, including meetings of



board committees of which he or she is a member;

- (c) consult with parents, students and supporters of the board on the board's multi-year plan under clause 169.1 (1) (f);
- (d) bring concerns of parents, students and supporters of the board to the attention of the board;
- (e) uphold the implementation of any board resolution after it is passed by the board;
- (f) entrust the day to day management of the board to its staff through the board's director of education;
- (g) maintain focus on student achievement and well-being; and
- (h) comply with the board's code of conduct.

Subsection 218.1(e) provides that members of a school board are required to act collectively once a decision has been made. Indeed, at Second Reading of Bill 177 on September 15, 2009, the Minister of Education Kathleen Wynne (as she then was) stated as follows:

“...once a board has made a final decision, trustees would be expected, as members of that board, to uphold the board's decisions. This was a recommendation of the governance review committee. Trustees could obviously explain to their constituents that they may not have supported the decision at the board table and they may continue to disagree, but that once the decision has been made, they should uphold that decision fully.”

Section 218.4 further enumerates additional duties of the board chair, including maintaining the board's focus on its mission and vision. The amendments seek to promote good governance practices and sound financial management by establishing audit committees and parent involvement committees.

The Provincial Government is also given significant latitude in determining by regulation the respective roles and responsibilities of school boards and their trustees. Section 218.2 enables school boards to establish a provincial code of conduct for trustees, and the Minister may regulate the imposition of a code of conduct and the matters to be addressed by a code of conduct under this section. Enforcement provisions at

**Enforcement provisions will set out sanctions to be imposed on board members who breach the board's code of conduct.**

section 218.3 enumerate sanctions to be imposed on board members who breach the board's code of conduct, including:

- censure of the member;
- barring the member from attending all or part of a meeting of the board or a meeting of a committee of the board; and
- barring the member from sitting on one or more committees of the board, for the period of time specified by the board.

While these provisions provide the government with unilateral authority in respect of trustees' codes of conduct, it represents a significant dilution of the regulatory oversight previously included in earlier versions of the Bill. "What has come back is a bill with more consensus," said Liz Sandals, parliamentary assistant to Minister of Education Kathleen Wynne. "There's still an intent to do the public-interest regulations – the minister is committed to this and I've spoken to school-board association presidents on this."

There remains a pervasive concern among stakeholders, however, that school boards will become local offices of the Ministry of Education rather than local governing bodies responsible to their electors as part of the democratic process.

## School Board Responsibility for Student Achievement

Section 169.1 enumerates school boards' responsibility for student achievement and effective stewardship of resources. According to subsection 169.1(f), boards must develop a multi-year plan which includes specific measures to be met by the board that are to be specified in future regulations. While this regulation has not been finalized, a Ministry of Education Provincial Interest Regulation Public Consultation Paper, published in the summer of 2009, proposes that the regulation have two kinds of measures:

- (i) Those for which a board is responsible to the public, as outlined in its annual report; and
- (ii) Those for which the government will hold boards responsible and which could, after all other efforts and supports have been exhausted, "trigger" a process that could result in the supervision of a board.

One of the proposed triggers is where a board has 40% or more of its schools in the bottom 20% of the schools in the province based on EQAO Grades 3 and 6 scores in reading, writing and math. Other triggers include a board's failure to develop and make public its annual report and insufficient meetings with the Parent Involvement Committee.



**There is a concern that school boards are being held accountable for matters over which they do not have ultimate control.**

School boards argue that their ability to satisfy many of the potential triggers is directly correlated with its resources. As school boards are entirely dependent on provincial funding, there is a serious concern that school boards are being held accountable for matters over which they do not have ultimate control.

### **Conclusion**

The purpose of Bill 177 is to strengthen school board governance and to inject school board accountability for student achievement into Ontario's educational paradigm. The Ministry of Education maintains that it will continue to provide supports to school boards to improve student outcomes, reduce gaps and enhance public confidence in public education. With significant

public interest regulations remaining to be drafted, the practical meaning of "student achievement" and the manner in which it is to be measured by the Ministry remains to be seen.

**Wendy Litner**

**Tel: (416) 367-6039**

**[wlitner@blgcanada.com](mailto:wlitner@blgcanada.com)**

# RESPONDING TO THE HELICOPTER PARENT

School councils, advisory committees and community partnerships are examples of the trend towards increased parental involvement in the education system.

Funding cutbacks have resulted in more and more parents participating as volunteers in the day-to-day operation of schools.

Parental involvement in the education of children is of paramount importance.

Proper values are instilled early in life and need to be supported and nurtured by schools and parents working as a team.

Generally, parents are encouraged to attend meetings, co-operate with school personnel and do their part to assist their children.

A 'helicopter' parent<sup>1</sup> may hover during the school year. When an incident or issue arises involving their child, the helicopter parent may land and attempt to navigate through relevant teachers and school administration with respect to the needs and interests of his or her child.

Many of these parents can be vocal and involved, all of which can be positive qualities. However, from time to time, there are some parents who consistently refuse to follow the rules. The question then arises as to what the response of a teacher or principal should be when a

parent makes excessive demands. What steps should a school official take when a parent stirs up discontent or behaves in an inappropriate manner? What actions can an educator take when a parent attempts to threaten or intimidate?

In preparing an appropriate response, the school should consider the following:

- *Communicate early in the process* — Whether or not the complaint comes to the teacher or the principal, they should speak to each other early in the process. A teacher who anticipates a problem should consult with his or her principal and, where appropriate, the relevant superintendent of education. The teacher should not wait until the situation gets out of control before contacting school officials.
- *Provide backup and support to the teacher and principal* — A complaint heard from time to time is that the school board considers these issues to be the responsibility of the principal alone and does not provide sufficient backup. Senior

<sup>1</sup> The term "helicopter parent" appears to have been coined by Dr. Foster W. Cline & Jim Fay in their book *Parenting With Love and Logic: Teaching Children Responsibility* (Colorado Springs: Pinon Press, 1990), p.23.



**In a meeting with the parents, the administrator should permit them to ventilate their concerns and fully outline their position.**

administration should remember that principals are acting on behalf of the board. A strategy for responding to the concerns raised should be developed consensually between the principal and appropriate superintendent. Senior administration should attempt to ensure consistency in responding to situations across the board's jurisdiction. The principal should inform the relevant superintendent of education of the nature of the allegations and keep the superintendent informed as events unfold. Parents will often solicit the support of individual trustees as part of their campaign. It is important for school board administration to be aware of events in order to respond effectively to trustee concerns.

- *Document* — School administrators should carefully document all telephone calls and meetings. In preparing notes, educators should be objective, factual and accurate in setting out a description of events. School personnel should avoid language which appears to make judgments or inferences. Educators should also record the dates and times of events and

make note of the names of individuals who attended relevant meetings.

- *Contact professional association* — The teacher may contact his or her professional association for assistance. The association can be of assistance in providing counselling, advice and support.
- *Investigate allegations* — Where appropriate, the principal should undertake an investigation into the parent's allegations. Principals should interview the complainant and meet with relevant witnesses. If there is more than one complainant, the principal should meet with each one individually. The principal may ask the parents if they have raised these issues directly with the teacher. In appropriate circumstances, the principal should suggest that the parents speak to the teacher directly to review a particular concern. The principal should also meet with the teacher and obtain his or her response to the allegations. The principal should take notes of these meetings and, where appropriate, consult with the relevant superintendent of education.

- *Meet parents at early stage* — The school administration should attempt to intervene at an early stage. Where appropriate, the principal or relevant superintendent could attempt to meet with the parents or the ringleader of the parent group in order to mediate a resolution of the dispute. In organizing this meeting, school officials would provide a forum for the legitimate expression of the parents' concerns. Before this meeting is organized, the parties should understand and agree to pre-determined ground rules. Such ground rules would include the location and time of the meeting, the purpose of the meeting and the parties who will attend (such as whether a translator, legal counsel or family friend will accompany the parents and whether the superintendent or relevant teacher will attend with the principal).

- *Three "V"s* — In the meeting with parents, the educator should consider practising the three "V"s: ventilate, validate and verify. The administrator should permit the parents to ventilate their concerns and fully outline their position. The educator should validate that the school board recognizes that the parents have certain concerns, listen carefully and acknowledge that he or she

understands the parents' position. The administrator should also verify the importance of the parent-teacher relationship, that both parties are working in the best interests of the student. The administrator should also outline possible steps which can be taken to resolve the issue.

- *A timely letter* — In some cases, a letter to the parent or parents from the principal, superintendent of education or director explaining the circumstances can resolve certain issues. In circumstances where the parent requests an apology, but the principal and/or teacher have done nothing wrong and do not believe an apology is warranted, in the spirit of reconciliation, the principal may consider preparing a "letter of regret". In this letter, the principal would indicate her or his regret regarding the circumstances which gave rise to the complaint.

- *Maintain confidentiality* — A letter of complaint directed at a particular teacher should be kept in confidence, subject to the school's ability to conduct a full investigation. It is important not to widely disclose the letter's contents. In general, the contents of the letter should be shared on a need-to-know basis. The principal or



**School administrators should respond to issues raised by parents in a timely fashion.**

superintendent should determine early on who will be included when sharing information. Where there has been wide distribution of an anonymous letter with derogatory or personal comments, it may be prudent to advise the school staff as to what is being done.

- *Summarize outcome of meetings and course of action* — The school administration should confirm the outcome of the meetings or its course of action in a letter to the relevant parents. This letter should provide a summary of the events, confirm the school's position and set out the results of what the parties have agreed to. Such letter must be carefully drafted with respect to tone and content to ensure that it does not create additional hostility and further provoke the parents. In addition, school administration should inform the teacher, who was the target of the complaint, of the outcome or terms of resolution of the incident.

In addition to the remedies of negotiation and mediation, depending on the individual circumstances, there are a range of other, more severe remedies a school board may consider in dealing with a difficult parent. These remedies include exercising one's rights under the Ontario *Education Act* or *Trespass to Property Act*, the commencement

of a civil action and/or proceedings under the *Criminal Code*.

Overall, it is important to confirm to parents that they play an important role in the education of their children. In particular, parents should recognize that in accordance with the Provincial Code of Conduct, released by the Ministry of Education on October 4, 2007, they are recognized as members of the school community. The Code of Conduct outlines specific roles and responsibilities for parents. For example, the Code provides that parents fulfil their role when they:

- ensure their child be neat, appropriately dressed, and prepared for school;
- ensure that their child attends school regularly and on time;
- promptly report to the school their child's absence or late arrival; and
- show that they are familiar with the board's code of conduct and school rules;
- encourage and assist their child in following the rules of behavior and;
- assist school staff in dealing with disciplinary issues involving their child.

In navigating the helicopter parent through an issue, it is important to be open, consultative and inclusive. School administrators should respond to these issues in a timely fashion. If parents believe that their concerns are not being addressed, they may become increasingly frustrated and angry. School administrators should confirm that proper values are instilled early in the life and need to be supported and

nurtured by the school and parents working as a team. In being pro-active in responding to and mediating a parent's concerns, the goal, where possible, is to bring these issues to a soft landing.

**Eric M. Roher**  
**Tel: (416) 367-6004**  
**[eroher@blgcanada.com](mailto:eroher@blgcanada.com)**

## SCHOOL BOARDS REQUIRED TO COMPLY WITH NEW ACCESSIBILITY STANDARDS

On January 1, 2010, school boards, universities and colleges and other public sector organizations are required to be in compliance with Regulation 429/07 under the *Accessibility for Ontarians with Disabilities Act, 2005* (the "Act"). Other providers of goods, services and facilities will be required to comply by January 1, 2012.

The primary purpose of the *Act* is to develop mandatory accessibility standards that will identify, remove and prevent barriers for people with disabilities. The government intends to achieve the *Act's* purpose through five regulations establishing "accessibility standards". Each regulation is based on the activities of any given organization, namely whether an organization:

(a) provides goods, services or facilities;

(b) employs persons in Ontario;

(c) offers accommodation;

(d) owns or occupies a building, structure or premises; or

(e) is engaged in a prescribed business, activity or undertaking or meets such other requirements as may be prescribed.

The Customer Service Standard addresses the provision of "goods, services and facilities". It is the first regulation to come into force, with the remaining four regulations to be developed and enacted in due course.

### Application to Education Sector

Designated public sector organizations are



required to comply with the Customer Service Standard effective January 1, 2010. For the purpose of the regulation, the following are designated as “public sector organizations” under the regulation:

- every district school board as defined in section 1 of the *Education Act*;
- every college of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act, 2002*;
- every university in Ontario, including its affiliated and federated colleges, that receives operating grants from the Government of Ontario.

As noted earlier, providers of education goods, services and facilities outside the public sector will be required to comply with the Customer Service Standard by January 1, 2012.

### **Main Requirements**

Compliance with the Customer Service Standard require organizations to establish and review policies, practices and procedures that are consistent with the following principles:

1. The goods or services must be provided in a manner that respects the dignity and independence of persons with disabilities.

2. The provision of goods or services to persons with disabilities and others must be integrated unless an alternate measure is necessary, whether temporarily or on a permanent basis, to enable a person with a disability to obtain, use or benefit from the goods or services.
3. Persons with disabilities must be given an opportunity equal to that given to others to obtain, use and benefit from the goods or services.

Furthermore, the policies must deal with the use of assistive devices by persons with disabilities to obtain, use or benefit from the organization’s services or the availability, if any, of other measures which enable them to do so.

The Customer Service Standard requires organizations to communicate with a person with a disability in a manner that “takes into account the person’s disability.” This will necessarily require a case-by-case assessment of how to best communicate with a person given his or her particular disability.

#### *Presence of service animals*

The use of service animals by persons with disabilities must also be addressed in policies, practices and procedures. Where a person with a disability is accompanied by a “guide dog or other service animal”, the organization shall permit the person

**Employees and volunteers must receive training about providing services to persons with disabilities.**

to enter the premises with the animal and keep the animal with him or her, unless the animal is otherwise excluded by law from the premises. The situations in which an animal may be excluded by law include provincial and municipal laws concerning dangerous dogs, as well as health and safety legislation.

Where a service animal is excluded by law from the premises, the organization must ensure that other measures are available to enable the person with a disability to obtain, use or benefit from the education provider's services.

It should be noted that a service animal is not limited to a "guide dog" as defined in the *Blind Persons' Rights Act*, but also includes a service animal that is used by a person with a disability "for reasons relating to his or her disability" and where the person has provided a "letter from a physician or nurse confirming that the person requires the animal for reasons relating to the disability." The Customer Service Standard also imposes new requirements regarding a support person who accompanies a person with a disability to assist him or her with access to goods or services. This may be of some interest to school boards in terms of accompaniment on excursions or specific cases of daily accompaniment.

#### *Training for staff*

Employees and volunteers must receive training about providing services to persons with disabilities. Such training must

include a review of the purposes of the *Act*, the requirements of the Customer Service Standard and instruction about the following matters:

1. How to interact and communicate with persons with various types of disability.
2. How to interact with persons with disabilities who use an assistive device or require the assistance of a guide dog or other service animal or the assistance of a support person.
3. How to use equipment or devices available on the provider's premises or otherwise provided by the provider that may help with the provision of goods or services to a person with a disability.
4. What to do if a person with a particular type of disability is having difficulty accessing the provider's goods or services.

Training must be provided as soon as practicable after the employee or volunteer is engaged, and must also be provided on an ongoing basis.

The organization must prepare a document describing its training policy, including a summary of the contents of the training and details of when training is to be provided. Furthermore, the organization is required to keep records of the training provided, including

the dates on which training is provided and the number of individuals to whom it is provided.

#### *Documents to be made available*

The following documents must be provided upon request:

- a document describing its policies, practices and procedures regarding services for persons with disabilities,
- a document describing its policies, practices and procedures with respect to service animals and support persons,
- a document that sets out the steps to be taken in connection with a temporary disruption, and
- a document describing the organization's feedback process regarding service to persons with disabilities.

#### *Notice of availability of documents*

The organization is required to provide notice that documents required by the Customer Service Standard are available upon request. The notice may be given by posting the information at a conspicuous place on the premises, by posting it on the organization's website or any other "reasonable method in the circumstances."

#### *Format of documents*

Where the Customer Service Standard requires an organization to provide a copy of a document to a person with a disability (e.g. a copy of the policies, practices and procedures), the organization must give the person a document in a format that "takes into account the person's disability."

### **Other accessibility and disability obligations**

The *Accessibility for Ontarians with Disabilities Act, 2005* is another layer of obligations with respect to accommodating disabilities. School boards, colleges and universities remain obligated to comply with the *Education Act*, the *Ontario Human Rights Code*, collective agreements, the *Occupational Health and Safety Act* and the *Employment Standards Act, 2000*, all of which impose requirements and obligations respecting disability, workplace injury and accommodation issues for employees as well as those who receive education services. While the Customer Service Standard adds another layer of policy and procedure, the overarching principles of inclusion and accommodation for persons with disabilities is a familiar theme and one with which the education sector has significant experience.

**Kate A. Zavitz**  
**Tel: (416) 367-6039**  
**[kzavitz@blgcanada.com](mailto:kzavitz@blgcanada.com)**

**The organization is required to provide notice that documents required by the Customer Service Standard are available upon request.**

# A USERS GUIDE TO BLOGGING AND SOCIAL NETWORKING

In light of the dramatic changes with respect to social computing, more and more school board employees are choosing to create or participate in a blog, wiki, online social network or other form of online publishing or discussion. These emerging online collaborative platforms are fundamentally changing the way school employees work and engage with each other. Furthermore, these means of communication are shaping how employees interact with members of the school community, personal friends and others.

A major objective of public education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to society. In achieving this goal, schools are inherently a marketplace of ideas. As an organization based on continuous learning and enhanced student achievement, schools recognize the importance of open exchange and learning between school administrators, teachers, students, parents and the world at large.

The rapidly growing phenomenon of user-generated web content – blogging, social web-applications, and networking – are important new arenas for this type of engagement and learning. Online social networking includes existing and emerging networking sites such as Facebook, YouTube, MySpace, MSN and Twitter.

School boards respect the legal rights of their employees to create or participate in a blog, wiki or online social network. In general, what employees do on their own time is their affair. However, activities in and outside of work that affects their school board job performance, the performance of others and/or the rights and privacy of others are the proper focus of school board policy.

The Ontario Provincial Code of Conduct, which was released by the Province's Ministry of Education on October 4, 2007, ("the Code of Conduct"), sets out clear provincial standards of behaviour. These norms apply not only to students, but to all individuals involved in the publicly-funded school system, including teachers and other staff members, whether they are on school property, at school-related events or activities, or in other circumstances that could have an impact on the school climate.

As part of the Code of Conduct, all members of the school community must:

- respect differences in people, their ideas and opinions;
- treat one another with dignity and respect at all times, and especially when there is a disagreement;
- respect and treat others fairly, regardless of, for example, race,

ancestry, place of origin, ethnic origin, citizenship, religion, gender, sexual orientation, age or disability; and

- respect the rights of others.

The Provincial Code of Conduct also provides that all members of the school community must not engage in bullying behaviours or engage in hate propaganda and other forms of behaviour motivated by hate or bias.

In this regard, we recommend the responsible involvement and participation of school board employees with respect to networking and social web-based applications.

With respect to responsible use of blogging and online social networking, we suggest the following guidelines:

1. School staff should not use social networking sites as a means to communicate with students. It is inappropriate to have students at “friends” on these sites and any invitations from students to join a social network site should be declined. All communication with current students should be through the usual communication vehicles available through the school (i.e. email, regular mail and course software).
2. In using social networking sites, school staff should be encouraged

to make sure their privacy settings for both content and photos are set. Staff members should carefully screen who can post on their site.

3. All inappropriate references to the school or school personnel, students, parents or any other member of the school community, in computer-related mediums, such as social networking sites, blogging, web pages or e-mail, represents a contravention of Board policy.
4. Know and follow the school board's appropriate use of technology policy. The same principles and guidelines that apply for staff regarding the appropriate use of technology will apply to the activities of school staff and members online, including blogs, websites, wikis, user-generated video and audio and social networks.
5. School staff members who have a personal blog or website which indicate that they work at the school, should discuss any potential conflicts of interest with the principal or appropriate school administrator. Similarly, staff members who want to start blogging - and wish to say that they work at the school - should discuss any potential conflicts of interest with the principal or appropriate administrator.

**School staff should not use social networking sites as a means to communicate with students.**

6. Personal blogs and websites should not reveal confidential information about the school, or personal information about its staff, students, parents or other members of the school community. This might include student or staff information, photographs or videos of students or staff, curricular information, financial information, school plans, and school development information. Confidential school information should not be placed on a personal blog without the express consent of the principal or appropriate administrator.
7. Personal blogs and websites should not be used to attack, threaten, or abuse colleagues. Staff members should respect the privacy and the feelings of others.
8. Staff members should ensure that their blogging activity does not interfere with their work commitment.
9. Staff members should be reminded that what they post on their blog or online social networking site, speaks to their character and reputation. Material that staff members post will remain in cyberspace for years and can be viewed by anyone around the world.

10. Staff members should show proper respect for the laws governing copyright and fair use of copyrighted material owned by others. It is generally good blogging practice to link to others work.

Online social networking, blogs and other forms of social discourse are primarily a form of communication among individuals. When the school board or school wishes to communicate publicly, whether to the school community or to the general public, it has well-established means to do so. School board employees should recognize that only those officially designated by the school board or school have the authority to speak on behalf of these organizations.

School boards across Canada are exploring how technology and social computing can empower school board employees as both innovators and global citizens. These emerging online platforms are fundamentally changing the way school employees engage with each other and the world at large. The objective is to achieve responsible involvement and participation with respect to networking and social-based applications. The challenge for school boards involves balancing an employee's right to freedom of expression with the need to ensure a respectful and positive learning and teaching environment.

**Eric M. Roher**  
**Tel: (416) 367-6004**  
**[eroher@blgcanada.com](mailto:eroher@blgcanada.com)**

# LABOUR UPDATE: CENTRALLY ASSIGNED PRINCIPALS

## Introduction

In a previous Education Law News (Winter 2007), Robert W. Weir reported on the status of the centrally assigned principal. That article followed upon the then-recent release of an award by arbitrator Gerald Charney on July 12, 2006. The Charney award departed from two previous arbitration decisions on this issue (the Watters and Shime awards), both of which held that only principals assigned to specific schools are excluded from the teacher bargaining unit defined by the *Education Act*. Arbitrator Charney disagreed, and held that centrally assigned principals whose core duties were managerial in character were also excluded from the teacher bargaining unit.

Since that time, one court decision and two further arbitration awards have been released dealing with this topic. Each of these will now be examined in turn.

### ***Dufferin-Peel Catholic District School Board v. OECTA***

On January 8, 2008, the Ontario Divisional Court released its decision following upon an application for judicial review of the Charney award by the Dufferin-Peel CDSB. The Board had asked the Court to set aside arbitrator Charney's decision that the core

functions of the two centrally assigned principal positions in that case were not supervisory or managerial in nature, and therefore fell within the teachers' bargaining unit.

Before the Court, OECTA argued that arbitrator Charney had interpreted the collective agreement, the *Education Act* and its regulations a meaning that each could reasonably bear and that was consistent with prior arbitral decisions. The Court agreed, and upheld the Charney award. The Court's decision provided support to those boards who maintained that centrally assigned principals could be excluded from teacher bargaining units, at least insofar as their core functions were managerial in nature.

### ***Ottawa-Carleton Catholic District School Board v. Ontario English Catholic Teachers' Association***

On August 26, 2008, arbitrator Russell Goodfellow released an interim award in *Ottawa-Carleton CDSB v. OECTA*. In that case, arbitrator Goodfellow found that the Board's centrally assigned Principal of Elementary Programs could not be a "principal" within the meaning of the *Education Act* and was therefore not excluded from the teachers' bargaining unit.

**Arbitrator Keller concluded that, although he understood the Board's desire for flexibility, the legislature left him no discretion to expand the definition of "principal".**

In reaching this conclusion, arbitrator Goodfellow agreed with arbitrators Shime and Watters. The Board's contention that the position was excluded from the bargaining unit because of the managerial nature of its core duties was not considered by arbitrator Goodfellow in this interim award, although the Board retained the right to raise this defense when the arbitration hearing resumed.

### ***St. Clair Catholic District School Board v. Ontario English Catholic Teachers' Association (Principals at Large)***

On November 11, 2009, arbitrator Brian Keller released an interim award in *St. Clair Catholic DSB v. OECTA*. In that case, St. Clair CDSB and OECTA put a specific preliminary legal question to the arbitrator, as to whether the exercise of managerial duties could result in an exclusion from the bargaining unit under the current legislative scheme. The arguments were based on a common assumption, that each of the three positions in issue requires the exercise of authority that would be considered "managerial" under clause 1(3)(b) of the Ontario *Labour Relations Act*. The positions in issue in St. Clair were Principal of Literacy, Principal of Catholic Curriculum and Principal of Special Education.

OECTA maintained that the award of arbitrator Charney, issued in 2006 and upheld by the Divisional Court in 2008,

was incorrectly decided on this point. Arbitrator Keller agreed. He reasoned that the exclusions to the teacher bargaining units under the *Education Act* are specifically enumerated, and do not provide for a managerial exclusion either explicitly or by incorporation of clause 1(3)(b) of the *Labour Relations Act*.

Arbitrator Keller held that the exclusion of principals from the bargaining unit is limited to those principals who are assigned to perform the duties of a principal in respect of a school. Arbitrator Keller concluded that, although he understood the Board's desire for flexibility, the legislature has left him no discretion to expand the definition of "principal" prescribed by the legislation. It is not anticipated that this arbitration award will be contested by way of judicial review.

### ***Sudbury Catholic District School Board v. Ontario English Catholic Teachers' Association (Bargaining Unit Work), December 18, 2009***

On December 18, 2009, arbitrator Stephen Raymond released his award in *Sudbury Catholic DSB v. OECTA*. In that case, the Board had eliminated the position before the arbitration proceeding convened. Arbitrator Raymond held that the elimination of the position (School Effectiveness Lead/Assistant to the Superintendents) did not bring an end to the grievance. He decided that there was no



basis for a managerial exclusion and declared that the Board violated the collective agreement by not placing the position in the bargaining unit. As a remedy, arbitrator Raymond ordered the Board to pay union dues for the period the position ought to have been in the bargaining unit. One issue remains to be determined by arbitrator Raymond: OECTA has asked for an award of “damages for lost opportunity”. That issue will be determined at a later date.

### **Additional Developments**

Additional grievances by OECTA pertaining to centrally assigned principals are moving forward in many school boards in the province. In addition, the Ontario Secondary School Teachers’ Federation has begun to grieve centrally assigned principal assignments. We are not aware of any grievances on this issue by the Elementary Teachers’ Federation of Ontario or by l’Association des enseignantes et des enseignants franco-ontariens. We note that the twelve French-language school boards

have entered a letter of understanding with AEFO on this issue as a result of the 2008 provincial agreement.

### **Conclusion**

Based on the jurisprudence to date, school boards are vulnerable in respect of any member of the Ontario College of Teachers assigned to perform administrative duties, except (a) principals and vice-principals performing duties in respect of a school, and (b) supervisory officers in positions approved by the Minister of Education under subsection 285(2) of the *Education Act*. We anticipate that this will continue to be the case unless the *Education Act* is amended.

**Additional grievances by OECTA pertaining to centrally assigned principals are moving forward in many school boards in the province.**

**S. Margot Blight**  
**Tel: (416) 367-6114**  
**[mblight@blgcanada.com](mailto:mblight@blgcanada.com)**

# Borden Ladner Gervais Education Law Group

## LEADERS:

Toronto Office	Eric M. Roher, National Leader	416-367-6004	eroher@blgcanada.com
Calgary Office	Julio N. Arboleda	403-232-9601	jarboleda@blgcanada.com
Montréal Office	Jean-René Ranger	514-954-2548	jranger@blgcanada.com
Ottawa Office	Noëlle Caloren	613-787-3536	ncaloren@blgcanada.com
Vancouver Office	Clive S. Bird	604-640-4103	cbird@blgcanada.com

## CALGARY

Julio N. Arboleda	403-232-9601	jarboleda@blgcanada.com
Michael R. Whitt	403-232-9571	mwhitt@blgcanada.com

## MONTRÉAL

Geneviève Bergeron	514-954-3142	gbergeron@blgcanada.com
Thomas M. Davis	514-954-3133	tdavis@blgcanada.com
Valérie Dufour	514-954-2567	vdufour@blgcanada.com
Jean-René Ranger	514-954-2548	jranger@blgcanada.com

## OTTAWA

Noëlle Caloren	613-787-3536	ncaloren@blgcanada.com
Yves J. Ménard	613-787-3518	ymenard@blgcanada.com

## TORONTO

S. Margot Blight	416-367-6114	mblight@blgcanada.com
Naomi E. Calla	416-367-6129	ncalla@blgcanada.com
Lisa C. Cabel	416-367-6217	lcabel@blgcanada.com
Heather Douglas	416-367-6177	hdouglas@blgcanada.com
Jennifer Fantini	416-367-6726	fantini@blgcanada.com
Melany V. Franklin	416-367-6091	mfranklin@blgcanada.com
Michelle S. Henry	416-367-6626	mhenry@blgcanada.com
Wendy Litner	416-367-6039	wlitner@blgcanada.com
Jeff Mitchell	416-367-6226	jmitchell@blgcanada.com
Morton G. Mitchnick	416-367-6413	mmitchnick@blgcanada.com
Eric M. Roher	416-367-6004	eroher@blgcanada.com
Susan E. Sorensen	416-367-6017	ssorensen@blgcanada.com
Melanie Warner	416-367-6679	mwarner@blgcanada.com
Robert Weir	416-367-6248	rweir@blgcanada.com
Kate A. Zavitz	416-367-6535	kzavitz@blgcanada.com

## VANCOUVER

Clive S. Bird	604-640-4103	cbird@blgcanada.com
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**Borden Ladner Gervais LLP**  
Lawyers • Patent & Trade-mark Agents

**Calgary**  
1000 Canterra Tower  
400 Third Avenue S.W.  
Calgary, Alberta, Canada T2P 4H2  
tel.: (403) 232-9500 fax: (403) 266-1395

**Montréal**  
1000 de La Gauchetière Street West  
Suite 900, Montréal, Québec, Canada H3B 5H4  
tel.: (514) 879-1212 fax: (514) 954-1905

**Ottawa**  
World Exchange Plaza  
100 Queen St., Suite 1100  
Ottawa, Ontario, Canada K1P 1J9  
tel: (613) 237-5160 1-800-661-4237  
legal fax: (613) 230-8842 IP fax: (613) 787-3558

**Toronto**  
Scotia Plaza, 40 King Street West  
Toronto, Ontario, Canada M5H 3Y4  
tel.: (416) 367-6000 fax: (416) 367-6749

**Vancouver**  
1200 Waterfront Centre  
200 Burrard Street, P.O. Box 48600  
Vancouver, British Columbia, Canada V7X 1T2  
tel.: (604) 687-5744 fax: (604) 687-1415

**Waterloo Region**  
Waterloo City Centre  
100 Regina Street South, Suite 220  
Waterloo, Ontario, Canada N2J 4P9  
tel: 519 579-5600 fax: 519 579-2725  
IP fax: 519 741-9149

[www.blgcanada.com](http://www.blgcanada.com)

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