

December 6, 2018 - Bill 47, Making Ontario Open for Business Act, 2018, Receives Royal Assent

Date : December 6, 2018

Bill 47, *Making Ontario Open For Business Act, 2018* received Royal Assent on November 21, 2018. The Bill amends the *Employment Standards Act, 2000* (the “ESA”) and the *Labour Relations Act, 1995* (the “LRA”) repealing many of the changes implemented by the former Liberal government’s Bill 148, the *Fair Workplaces, Better Jobs Act, 2017*. The ESA amendments, with one exception, will come into force on January 1, 2019. The amended LRA provisions came into force on November 21, 2018.

[Find out more](#)

LABOUR RELATIONS

Ontario Secondary School Teachers’ Federation and Trillium Lakelands District School Board, 2018 [CarswellOnt 16289](#)

After 42 days of hearing, the majority of a Board of Arbitration chaired by Arbitrator Howe ruled that a teacher’s employment was terminated for just cause following the Teacher Performance Appraisal (TPA) process. The School Board was required to demonstrate, and the majority of the Board found, that:

- the essential elements of the mandated TPA process were followed;
- the essential elements of fairness built into the TPA process to enable the grievor to demonstrate his competence as a teacher were applied;
- the TPA process was carried out without discrimination, arbitrariness or bad faith; and
- the three successive overall performance ratings of “unsatisfactory” were reasonable and based on supporting facts.

The School Board’s technical breach of the TPA process, in not providing the grievor with written notice that he was “on review”, did not warrant overturning the grievor’s termination. The evidence indicated that the grievor was made fully aware of the potential consequences of being “on review” and he did not suffer any prejudice as a result.

HUMAN RIGHTS

JL as represented by his Litigation Guardian SL v. Toronto District School Board, 2018 HRTO 1435

The School Board sought to have the application before the HRTO deferred pending the outcome of a civil proceeding commenced by the applicant against the Board and its staff, arguing that the issues in the civil matter would overlap with those before the HRTO. The matters at issue surrounded the decision by the school principal to impose a suspension that the applicant alleged was discriminatory. In denying the request, the HRTO stated that it generally considers the following factors in determining whether to defer consideration of an application: the subject matter of the other proceeding, the nature of the other proceeding; the type of remedies available in the other proceeding; and whether it would be fair overall to the parties to defer the application having regard to the status of each proceeding and the steps that have been taken to pursue them.

BP v. Toronto Catholic District School Board, 2018 HRTO 1602

The applicants, an elementary school student and his mother, alleged discrimination on the basis of disability and of association with a person with disabilities. The School Board requested removal of the named respondents, the School's principal and two superintendents. In noting that the unnecessary naming of personal respondents is a practice to be discouraged, the Tribunal removed the two superintendents, but maintained the School principal as a respondent. It ruled that the alleged conduct of the School principal was a central issue in the case and the nature of the alleged conduct may make it appropriate to award a remedy specifically against her if an infringement of the Code is found.

JS v. Dufferin-Peel Catholic District School Board, 2018 HRTO 1284

The applicant, a 7 year-old student was diagnosed with Autism Spectrum Disorder (ASD) at the age of 3. His mother filed an application on his behalf when he was enrolled in junior kindergarten with the School Board. The application alleged discrimination with respect to goods, services and facilities on the ground of disability and that the applicant required Applied Behavioral Analysis/Intensive Behavioral Intervention therapy ("ABA/IBI") therapy delivered in the classroom, by persons trained and certified in those therapies, in order to have meaningful access to education.

The School Board opposed the application stating that the applicant was on the high-functioning end of the ASD spectrum, did not require ABA/IBI therapy to have meaningful access to education, and ABA/IBI therapy is not an educational service school boards are required to provide.

The HRTO found that the applicant did not make out a *prima facie* case of discrimination and dismissed the application. The evidence clearly demonstrated that the applicant was an extremely bright and intelligent child who was able to thrive at school and master the school curriculum. The Tribunal emphasized that school boards are responsible to provide meaningful access to education. The evidence demonstrated that the School Board was ready, willing and able to

provide meaningful access to education to the applicant, and what the applicant's parents were seeking was more in the nature of therapeutic treatment for his ASD.

PRIVACY

Halton District School Board (Re), [2018 CanLII 103289](#) (ON IPC)

The School Board received a request under MFIPPA for all records pertaining to the proposed closure of a high school, including all email communications, text messages, memos, briefing notes, presentations and materials, investigations and minutes of any and all meetings and any all correspondence. The Board denied access to certain records found on the Board's website applying the exemption under the Act for information that is published or available to the public. The Board responded to the request and provided a fee estimate of \$1625 due to the size of the request, more than 2600 email conversations spanning the requested 10 year timeline. The appellant claimed further responsive records existed and disputed the Board's fee estimate. In absence of representations from the appellant, the adjudicator was not satisfied there was a reasonable basis for his belief that further responsive records existed. The adjudicator, in dismissing the appeal, upheld the Board's fee estimate and its search of responsive records as reasonable.

ONTARIO COLLEGE OF TEACHERS

On November 26, 2018, the Ontario College of Teachers [released](#) the report from an independent professional review of its governance structure and processes. [The Governance Review Report](#) provides 37 recommendations, including, among others: a smaller, balanced Council of 14 members, 7 from the profession and 7 from the outside; selecting council members from a pool of qualified professional applicants following a robust, transparent process; and renaming the College to better reflect its statutory authority and duty to regulate teachers. The College's Council will receive the report's findings and recommendations at its December 6th meeting.