

November 8, 2018 - Ontario Continues to Keep Students Safer to Provide better Learning

Date : November 8, 2018

[Bill 48](#), the *Safe and Supportive Classrooms Act, 2018*, was introduced by the Minister of Education in the legislature on October 25, 2018. The Bill, if passed, will amend the *Early Childhood Educators Act, 2007*, the *Ontario College of Teachers Act, 1996*, and the *Teaching Profession Act* by expanding the definitions of professional misconduct and sexual abuse and providing for the mandatory revocation of a member's certificate if a discipline committee finds the member guilty of an act of professional misconduct that includes sexual abuse of a child, a prohibited act involving child pornography or a prescribed sexual act. The proposed amendments clarify that sexual abuse of a child does not include touching or behaviour that is a necessary part of an early childhood educator or teacher's professional responsibility or remarks that are pedagogically appropriate. Offenders can apply to have a new certificate issued after five years.

The Bill will also require all new teachers to successfully complete a mathematics proficiency test as a requirement for registration. Lastly, the Bill amends the *Education Act* to provide that the Minister may establish policies and guidelines respecting service animals in schools, and require boards to comply with and develop policies in accordance with those policies and guidelines.

[To know more](#)

LABOUR RELATIONS

Ontario English Catholic Teachers' Association v Hamilton-Wentworth Catholic District School Board, 2018 CanLII 90730 (ON LA)

The Union grieved the employer's alleged failure to accommodate a secondary school teacher, with significant medical restrictions, who requested a gradual return to work following a lengthy absence due to disability. The arbitrator found the employer breached its duty to accommodate following a 2009 RTW meeting when it failed to consider offering to accommodate the grievor in an above-complement position. The employer, who lacked an accommodation/RTW policy, failed to accommodate the grievor in a timely fashion and was found 80% responsible for the delay in returning the grievor to full-time work. The grievor was entitled to damages for lost wages from February 2009 and \$7,500 for injury to dignity, feelings and self-respect under the *Human Rights Code*. The Union's request for punitive damages was denied.

Ontario Secondary School Teachers' Federation District 17 v Simcoe County District

School Board, [2018 CanLII 102217](#) (ON LA)

This case concerned the statutory and contractual limitations on the ability of the Board to use a Long-Term Occasional Teacher (LTO or occasional) to substitute for a regular teacher or contract teacher who is temporarily absent. Both parties agreed that there is a temporal limitation on the Board's ability to utilize LTOs. The Federation's position was that the Board can only use LTOs to substitute for the temporary absence of a regular teacher until the end of the second school year of the regular teacher's absence. If the absence extended beyond that time, a permanent position must be posted and filled. It was the position of the Board that it could continue to use LTOs to substitute for a regular teacher as long as the absence of the regular teacher remained temporary which must be determined on a case by case basis. The Board acknowledged that if the same LTO substituted for the regular teacher for each of the two school years, then that LTO must be replaced with another LTO. The arbitrator found that the legislative intent continued to be to have regular teachers who are temporarily absent replaced by occasional teachers; however, when the absence was no longer temporary, the School Board is required to fill the position with a regular teacher. Arbitrator Steinberg, in relying on the 2015 decision in *Trillium Lakelands*, found that the employer can cover the temporary absence with a LTO and dismissed the grievance.

HUMAN RIGHTS

***Innes v Halton District School Board*, [2018 HRTO 1412](#)**

The matter involved two applications alleging discrimination with respect to services by the School Board on the basis of numerous protected grounds including among others, race, colour, ancestry and place of origin. The Human Rights Tribunal dismissed the applications as an abuse of process due to the applicant's repeated failure to comply with the Tribunal's orders and Rules of Procedure. The School Board also requested the applications be dismissed for abuse of process on the basis of the applicant's conduct toward the Board, its legal counsel and the Tribunal. The Tribunal had warned the applicant four years earlier of his obligation to be courteous and respectful of the Tribunal and other participants and the consequences of such inappropriate conduct. The Tribunal agreed with the School Board that the applicant conducted himself in a vexatious manner which provided further support to dismiss the applications as an abuse of process.

PRIVACY

***Chinook School Division No 211*, [2018 CanLII 94778](#) (SK IPC)**

The School Division received a request for records related to an invitation to tender for the

purchase of 500 or more Chromebooks. The School Division refused access to the responsive records and a complaint was made to the Saskatchewan Information and Privacy Commissioner. The School Division questioned if the *Canadian Free Trade Agreement* (CTFA) applied to preclude the request and whether the records could be released under the *Local Authority Freedom of Information and Protection of Privacy Act* (LA FOIP). The Commissioner found that LA FOIP applied and that the School Division had appropriately applied the exemption in LA FOIP regarding confidential information of third parties to a portion of the responsive record. The Commissioner recommended, in part, that the School Division release the record that contained the names of the third party vendors. The Commissioner also made several recommendations, including that the School Division develop and implement a policy or procedure for the processing of access to information requests and implement mandatory annual access and privacy training for staff.

LANGUAGE RIGHTS

R.L. c Québec (Éducation, Loisir et Sport), [2018 CanLII 89253](#) (QC TAQ)

A mother appealed to the Tribunal administratif du Québec regarding the Minister of Education's decision to place her child in a francophone school under the *Charter of the French Language* ("Charter"). The applicant justified her request on the basis of English instruction received by her own father, the grandfather of the child in question. The Administrative Judge concluded that the Charter does not provide any reference to the grandparents of a child to justify the child's right to English-language instruction. The judge noted that the mother had been taught in French in a province where the language of the majority was English. The appeal was rejected.