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# Morning Recess

January 16, 2020



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# **Managing Parent/Guardian Relationships**

**January 16, 2020**

**Gillian Tuck Kutarna  
Nadya Tymochenko**

# Agenda

1. General principles and legal authority
2. Duty to inform
3. Duty to consult
4. Duty to obtain consent
5. Cases considering parent conduct

# General Principles

## Roles:

- Principle: responsibilities include school community, including all students and staff
- Teacher: responsibility for pupils
- Parent/guardian: best interests of their child.
  - Parent has right to free speech, subject to limited restrictions (Criminal Code, defamation, harassment)

# Authority - General Principles

## School Principals

*Education Act*: a principal is responsible for order and discipline within a school, and by extension the safety and well-being of the students who attend. S.265(1))

Regulation 298 made under the *Education Act*:

*11. (1) The principal of a school, subject to the authority of the appropriate supervisory officer, is in charge of,*

*(a) the instruction and the discipline of pupils in the school;  
and*

*(b) the organization and management of the school.*

# Principal Authority - Premises

Education Act:

*S. 265 (1) It is the duty of a principal of a school, in addition to the principal's duties as a teacher,*

...

*(m) subject to an appeal to the board, to refuse to admit to the school or classroom a person whose presence in the school or classroom would in the principal's judgment be detrimental to the physical or mental well-being of the pupils;*

*S. 212 (1) Every person who wilfully interrupts or disquiets the proceedings of a school or class is guilty of an offence and on conviction is liable to a fine of not more than \$200.*

# Principal Authority - Premises

## Education Act: Access to School premises

**305 (2)** *No person shall enter or remain on school premises unless he or she is authorized by regulation to be there on that day or at that time.*

....

*(4) The principal of a school may direct a person to leave the school premises if the principal believes that the person is prohibited by regulation or under a board policy from being there.*

*(5) Every person who contravenes subsection (2) is guilty of an offence.*

## Reg. 471/07 “Access to School Premises”

- 2. (1) Subject to any restrictions set out in this regulation, the following persons are permitted to be on school premises when the premises are being used for a purpose authorized by the board:**
- 1. A person enrolled as a pupil in the school.*
  - 2. A parent or guardian of such a pupil.*
  - 3. A person employed or retained by the board.*
  - 4. A person who is otherwise on the premises for a lawful purpose.*
- 3. (1) A person is not permitted to remain on school premises if his or her presence is detrimental to the safety or well-being of a person on the premises, in the judgment of the principal, a vice-principal or another person authorized by the board to make such a determination.**

# Trespass to Property Act

*S.1(2) A school board has all the rights and duties of an occupier in respect of its school sites as defined in the [Education Act](#).*

*2. (1) Every person who is not acting under a right or authority conferred by law and who,*

*(a) without the express permission of the occupier, the proof of which rests on the defendant,*

*(i) enters on premises when entry is prohibited under this Act, or*

*(ii) engages in an activity on premises when the activity is prohibited under this Act; or*

*(b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier,*

*is guilty of an offence and on conviction is liable to a fine of not more than \$10,000.*

# Authority – General Principles

## Teachers

*Education Act: Teachers are responsible for the classroom instruction.*

*S. 264. (1) It is the duty of a teacher and a temporary teacher,  
(a) to teach diligently and faithfully the classes or subjects assigned to the teacher by the principal;*

Regulation 298:

*20. In addition to the duties assigned to the teacher under the Act and by the board, a teacher shall,  
(a) be responsible for effective instruction, training and evaluation of the progress of pupils in the subjects assigned to the teacher and for the management of the class or classes, and report to the principal on the progress of pupils on request;*

# Mandatory Attendance

## *Education Act:*

- Student must attend until the 1<sup>st</sup> day in Sept. of the year they turn 18 (S.21) unless an exemption applies.
- Parents must ensure their child's attendance unless the person is 16 and has withdrawn from parental control. (S.21(5))
- S.30(1) parent can be found guilty of an offence unless student is 16 or older

# Right to be Informed

## Required

- Report Cards – 2 per year – teacher/principal
- Access to OSR for custodial/access parents

## Customary

- Parent Teacher Interviews
- Invitation to SRT
- Social media
- Emails/texts

## Neither Required Nor Customary

- Communications with Superintendent, Director, Trustee regarding student progress

# Duty to Inform/Consult: IPRC

## Identification and Placement Review Committee (“IPRC”)

- Regulation 181/98: a parent of a pupil and, where the pupil is 16 years of age or older, the pupil, is entitled to **receive notice of, be present at, and participate in**, all committee discussions about the pupil, and to be present when the committee’s identification and placement decisions are made. (S.5(1))
- Same right to be present if an IPRC decision is appealed to the special education appeal board. S.5(2)
- IPRC must **consider** whether placement in a regular class, with appropriate special education services, would meet the pupil’s needs, and would be **consistent with parental preferences**. (S.17(1))
- Consultation highly recommended
- Parent right of appeal to SEAB and SET
- IPRC Guide (S.13(1))

# Duty to Inform/Consult: IEP

## Individualized Education Plan (“IEP”)

- Principal is responsible for developing and reviewing the contents of the IEP, and for its implementation.
- Regulation 181/98: in developing and reviewing an IEP, a principal must **consult** with the parent and, where the pupil is 16 years of age or older, the pupil (S.6(6)(a) and 7(3)(a)).
- Special Education Plan will likely reference duty to consult and seek parent input about program development and implementation.

# Duty to Inform/Consult: Behaviour Plan

## Behaviour/Safety Plan

- Neither a Behaviour Plan or a Safety Plan requires parental **consent**.
- A Safety Plan is developed under the authority of the Principal (S.265(1)(j) and (m)) - does not require parent consultation.
- Note duty to consult on IEP: A Behaviour Plan may form part of the IEP or be an extension of the IEP.
- “*Caring and Safe Schools in Ontario*” (Ministry of Education 2010) directs staff to “**initiate discussions with parents** to learn more about students’ circumstances and needs”.
- Ongoing communication regarding the needs of the student is always best practice

# Duty to Inform/Consult: Discipline

## Student Discipline

- *Education Act* Part XIII: a principal must **inform** a pupil's parent/guardian when considering whether to suspend a student, (S.308(1)) and if conducting an investigation must **make all reasonable efforts to speak with the parents of a student** (S.311(1)), unless:
  - the pupil is at least 18 years old, or
  - is 16 or 17 years old and has withdrawn from parental control.
- Regulation 472/07: requires a consideration of mitigating and other factors, which will likely be incomplete without parent consultation.
- Failure to consult could provide grounds for a successful appeal.
- Following consultation, it is solely the Principal's decision as to whether and for how long to suspend a student, or whether to recommend the student's expulsion to the Board.

# Duty to Obtain Consent – MFIPPA

## *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”)

- an institution shall not disclose personal information in its custody or under its control, unless one of the statutory exemptions apply. For example:
  - personal information may be disclosed in compelling circumstances affecting the health or safety of an individual (S.32(h)); or
  - for compassionate reasons (S.32(i)).
- Personal information may also be disclosed “*if the person to whom the information relates has identified that information in particular and consented to its disclosure*”. (S.32(b)).
- The **custodial** parent of a child who is less than 16 years of age **can consent** on their child’s behalf. (S.54(c)).

# Duty to Obtain Consent: PHIPA

## *Personal Health Information Protection Act (“PHIPA”)*

- applies to Board employees such as Social Workers, Speech and Language Pathologists, OT/PT’s, and Psychologists, who meet the statute’s definition of a “Health Information Custodian”. (S.3)
- Health Information Custodians are prohibited from collecting, using and disclosing health information without consent. Under PHIPA, a student is deemed to have the capacity to give consent if he or she is able:
  - a) to understand the information that is relevant to deciding whether to consent to the collection, use or disclosure, as the case may be; and
  - b) to appreciate the reasonably foreseeable consequences of giving, not giving, withholding or withdrawing the consent. S.21(1)(a) and (b).
- CYC’s and CYW’s who report to HIC (not Principal) also need consent

# Duty to Obtain Consent: Medication

## Administration of Medication

- *Regulated Health Professions Act 1991, the Health Care Consent Act 1996, the Ontario Human Rights Code, and Ontario Ministry of Education Policy/Program Memorandum 81:*
- Board staff have the legal authority to administer prescription medications where to do so is necessary in order for a student to be able to attend school.
- Should only be undertaken with parental **consent**.

# Duty to Obtain Consent - Assessments

## *Education Act* regulations:

- prohibit the administration of an intelligence or personality test unless:
  - the parent and student have been informed; and
  - the parent (or the student if 18 or older) has given written consent. (Reg. 298, S.11(3) (m)).
- Other forms of testing or assessment (eg. speech and language or psycho-educational assessments) are health services pursuant to the *Regulated Health Professions Act*
- involve the collection and use of personal information/personal health information
- cannot be conducted without informed consent.

# Parent Conduct – Duty to Accommodate

*R.B. v. Patricia Keewatin* DSB HRT0 2013

R.B. a grade 3 student with multiple diagnosis: Mild Intellectual Disability, ADHD, Pervasive Developmental Delay, manifested with expressive and receptive language delay and gross and fine motor delays.

Parents divorced. Ongoing custody and access issues. Mother awarded sole custody.

Board argued that mother's conduct should be taken into account in determining whether Board met duty to accommodate. Board cited:

- R.B.'s Mother failed to advise school R.B. had gone off medication.  
**Held:** this did not interfere with Board's ability to accommodate.
- Mother alleged that R.B. was being bullied by students, and segregated by teachers.  
**Held:** Verified by evidence.
- Mother sent R.B. to school with recording device.  
**Held:** only after school failed to consult on IEP, issued trespass or and communication ban, and refused to meet. Recording device incident didn't prevent Board from accommodating student.

## R.B. (cont.)

- Board attempted communication with father.  
**Held:** Mother was the custodial parent.
- Mother's report of EA conduct to police  
**Held:** Principal failed to take her complaint seriously.
- Mother alleged she had been bullied by school/board staff.  
**Held:** "not unfounded".

"Mother a fierce advocate for her son... The school responded negatively to her advocacy....The more she was shut out, the more she spiralled out of control".  
The context of her actions cannot be ignored.

"R.B. was denied meaningful access to the education provided to students in Ontario **because of the Respondent's relationship with his mother** and not because the respondent was unable to meet his needs."

\* Mother's conduct did not prevent the Board from accommodating R.B.

## **Kahn v. UGDSB: CFSRB**

- Student with ASD expelled from FI school only, for violent behavior.
- Parent appealed to CFSRB, and brought HRTTO application.
- CFSRB upheld expulsion.
- Considered that expulsion likely to have a positive effect on education, as parent had refused any other school or program but FI, and student needed fresh start.

# Kahn v. UGDSB: HRTO

## Parent Conduct:

- Multiple incidents of swearing and verbal abuse of staff, often in presence of students.
- Accused school of “engaging in a form of psychological manipulation”
- “not one person in that school that ... would not like to see me dismantled 100%.”
- Accused school of lying about supports they were providing
- Applicant’s family indicated they would not accept any transition plan that did not include the provision of “Tier 3 ABA at school”

# Accommodation to Point of Undue Hardship

HRTTO Held: Ms. Kahn did not meet her obligation to cooperate in the accommodation process.

- Refused to attend meetings to discuss re-entry following expulsion.
- parents do not have the right to dictate the accommodations - must accept reasonable accommodations
- No evidence to support Ms. Kahn's insistence that Grayson required Tier 3/comprehensive ABA to access education.
- No evidence that board's failure to provide comprehensive ABA was the cause of Grayson's deregulation.
- had a "duty to facilitate the implementation" of a reasonable accommodation

**Application Dismissed**

# Harassment

## Occupational Health and Safety Act (“OHSA”)

*S.1(1) “workplace harassment” means,*

*(a) engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome, or*

*(b) workplace sexual harassment;*

S.32 Employer has a duty to:

- protect a worker from harassment,
- prepare a workplace harassment policy, and program to implement policy, including:
- Identify means to report and investigate complaints
- *Merrifield v. Canada (Attorney General) 2019 ONCA 205*

# Summary

- The *Education Act* and Regulation 298 assign responsibility for instruction, training, evaluation, class management, safety and discipline to school administrators and teachers.
- individuals in these roles must exercise their best professional judgment in delivering appropriate education programs and services.
- in forming that judgment, there are circumstances in which there is an obligation to inform and/or consult with a parent/guardian, and some situations where parent/guardian consent must be obtained.

# Summary (cont.)

- A parent's right to be on school premises is subject to Principal's discretion re: safety and well-being.
- Kahn Decision relating to parental conduct consistent with R.B. v. Keewatin-Patricia District School Board 2013
  - Parental conduct cannot interfere with Board's ability to provide accommodations
- Board employees have a right to a workplace free of harassment

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