BLG

Education Law Newsletter

Spring 2020

Managing the risks of novel coronavirus in schools

Public health officials are warning of the critical role that schools could play in slowing the spread of novel coronavirus, also known as COVID-19.

On February 28, 2020, the Public Health Agency of Canada released new guidelines for schools and child-care facilities to manage the risks of the virus. The agency stated that there is currently no widespread transmission of COVID-19 in Canada; therefore, it recommends that schools take standard respiratory precautions – the same precautions recommended every year for cold and influenza season. The agency also states that, at present, it does not recommend school closures.

Among other things, the guidelines state: “Virus transmission in the school/childcare setting, as well as in the home and community, is amplified as students/children are generally less compliant with effective hand hygiene and respiratory etiquette practices.” The agency indicates that the way children socialize with their peers is likely to increase the risk of transmission.

The guidelines ask schools to boost the availability of hand sanitizers, do away with perfect attendance awards, monitor students for signs of illness and restrict children from sharing food.

Keeping parents/caregivers informed

The guidelines confirm that parents/caregivers will be a major source of comfort and reassurance to their children. “It will be important for the school to keep parents/caregivers informed of what the school is doing to protect their

Contents

1 Managing the risks of novel coronavirus in schools
Eric M. Roher | Chloe Richardson

4 Tribunal dismisses delayed application as abuse of process
Neva Lyn-Kew

7 Underage drinking and the spectre of social host liability
Neva Lyn-Kew

9 Review board criticizes school’s investigation report
Noah Burshtein

12 Layoff out of seniority order not permitted where teacher meets OCT qualification
Madeeha Hashmi

15 Arbitrator affirms that teacher discipline must be assessed on individual facts
Brad Hallowell

17 Arbitrator denies teacher’s request to transfer to a closer school
Elizabeth Creelman

children, including how they are preventing the spread of respiratory infections and what parents can do at home (e.g. reinforce hand hygiene and respiratory etiquette, environmental cleaning and increased reassurance)." Parents/caregivers will be the ones who decide about keeping their children home if they are sick and, as such, open and frequent communication will be important in ensuring that sick children do not go to school.

Respiratory etiquette in school settings includes covering the mouth and nose while coughing or sneezing with a tissue or into the elbow and disposing of used tissues in a plastic-lined garbage can.

If the local public health authority advises students or staff to self-monitor for symptoms or self-isolate at home due to return from travel in an affected area or illness, the school community should make efforts to support families to ensure:

- Sick leave policies are in place and school attendance is flexible;
- Families are treated with respect, fairness and compassion, with a focus on dignity and protection of privacy;
- Steps are taken to reduce the potential for stigma and discrimination;
- If students are self-isolating at home, measures are in place to provide meaningful homework to students so they do not fall behind in their studies. Consider a relaxed approach to missed work due to self-isolation or illness; and
- If students are self-monitoring for symptoms, measures are in place to recognize symptoms while in school and to separate sick students and staff from others if symptoms develop.

Theresa Tam, Canada's chief public health officer, has warned Canadians to prepare for the possibility that schools may need to close. Japan has taken the step of closing its schools for about a month to help contain the spread of COVID-19.

On March 4, 2020, Toronto Public Health confirmed that there has been an increase in cases of COVID-19 in Iran, and a small number of individuals in the community with a recent travel history in this country have contracted the virus. As a result, there is now a new direction for people who have travelled to Iran. If a student or staff member has recently travelled to Iran, Toronto Public Health is asking them to self-isolate for a period of 14 days after their last day in Iran. This is similar to advice for returning travellers from Hubei Province, China.

Toronto Public Health has asked that if an individual has travelled to mainland China, Hong Kong, South Korea, Italy and Singapore, they should monitor for symptoms of COVID-19 for 14 days after leaving the affected area. If students or school staff are making travel plans in the near future, including over the March break, they should consult the Government of Canada website for current travel advice and advisories related to COVID-19. Some countries have entry and exit restrictions.

As of March 8, 2020, 62 cases of COVID-19 were confirmed in Canada, but public health officials have warned that they expect the numbers to rise.

Cancelling school trips

On March 3, 2020, the Toronto Catholic District School Board indicated that it had cancelled all upcoming March Break and Easter trips to Europe. The decision impacts educational trips operated by private tour companies that were planned in 12 Catholic high schools.

The announcement by the board came a day after the Canadian government upgraded the travel advisory for northern Italy. Canadian officials now warn against all non-essential travel there. They advise travellers to "take normal security precautions" in the rest of the country.

School boards and independent schools who are reviewing cancelling school trips should review the cancellation and refund provisions set out in their contracts with the tour operators. In addition, in the event that families have their own travel insurance, the question will arise as to the scope of coverage under the relevant policies. Each case will depend on its own individual facts in light of the language in the individual travel contracts.

There have been about 7,375 cases of COVID-19 in Italy reported as of March 9. Most are concentrated around the northern region, which includes popular tourist destinations such as Milan and Venice. In the rest of the continent, the situation is evolving. Officials warned that the epidemic in Europe will probably get much worse before it is contained, as the number of infections across the continent jumped sharply from fewer than 4,000 on March 4 to well over 11,500 on March 9.

As of March 9, the number of cases in Britain rose to 273, Germany reported 902 cases, Spain reported 589 cases and France had 1,126 reported cases of the virus.

Michael Gardam, chief of staff of Toronto's Humber River Hospital and an infection-control expert, said that Canadians should get used to the fact that this virus will likely be around for the foreseeable future. The next few months will likely bring inconvenience and disruption, but as time goes on, people will figure out how to adjust to the new normal, he said.

Community transmission

On March 5, British Columbia identified Canada's first known case of community transmission of COVID-19. Provincial Health Officer Bonnie Henry stated that the patient, a woman in her 50s, has not recently travelled and has no contact with anyone known to have COVID-19.

Community spread is significant, because it means the virus could be spreading untraced since there is no clear link to the source of the illness.

In response, British Columbia and some hospitals in Ontario have added COVID-19 testing to existing influenza surveillance networks, meaning that a broad range of people with flu-like symptoms are being tested regardless of travel history. Ontario has implemented an enhanced response structure, which includes a "Command Table" as a single point of oversight to provide executive leadership and strategic direction. However, public health officials still currently assess the risk to Canadians as low.

For Ontario schools, the spread of the virus has created confusion, parental concern and questions around the obligations of schools.

Follow the advice of local public health authorities

Schools should follow the advice of Toronto Public Health or other government health authorities in their decision-making. Schools should not be shutting down or quarantining students or staff, unless advised to do so by a government health authority.

Ontario's Chief Medical Officer of Health, David Williams, sent a letter to the school community on January 27, 2020. He stated:

> "The health and well-being of Ontarians, including and especially our students and school staff, is Ontario's top priority. Students, parents and school communities should rest assured that the province is working together in close cooperation with its partners in both the education and health care sectors to ensure the continued safety and well-being of students and staff."

He reiterated that the risk to Ontario residents remains low.

As the situation currently stands, schools should focus on ensuring consistent and regular messaging to students, parents and staff, reassuring them that the school is monitoring the situation carefully and following the direction of public health authorities in Canada. The messages should also remind them that, as always, parents should not send their children to school if they feel unwell.

Schools should also take pre-emptive measures such as increasing the frequency of surface cleaning and ensuring that hand sanitizer units are prominent in additional locations throughout the school. Staff should remind students of the importance of washing their hands and the need to cough or sneeze into their elbows or tissues. This could also be an opportunity for school boards and independent schools to consider revising or implementing a pandemic response plan. This plan should clearly delegate and set out responsibilities of school leadership and staff.

The Ontario Human Rights Commission recently issued a statement reminding people that discriminatory action against any persons or communities because of an association with COVID-19, whether perceived or otherwise, is prohibited by the Ontario *Human Rights Code*. COVID-19 is not isolated to people of any particular ethnic origin, citizenship, place of origin or race. In this regard, schools should be careful of privacy obligations, especially surrounding personal health information.

Eric M. Roher
416.367.6004
eroher@blg.com

Chloe Richardson
416.367.6107
crichardson@blg.com

Tribunal dismisses delayed application as abuse of process

On December 2, 2019, the Pay Equity Hearings Tribunal (the Tribunal) released its decision in *Canadian Union of Public Employees, Local 1328, Applicant v. Toronto Catholic District School Board*, (*CUPE v. TCDSB*),[1] in which it dismissed a union's application for review of an order that was filed almost seven years after the order was released. The decision outlines that a party's delay in filing applications with the Tribunal under the *Pay Equity Act* (the Act)[2] can result in a presumption of prejudice, justifying the dismissal of the matter as an abuse of process.

Members of BLG's Education Law Group represented the Board in the litigation of this matter.

Background

The Tribunal's decision arises from a dispute between the Toronto Catholic District School Board (the Board) and the Canadian Union of Public Employees, Local 1328 (the Union) as to the re-evaluation of ten jobs under the Act.

The matter began in 2005, when the Union, which represents a bargaining unit of school-based education support staff, filed an application with the Pay Equity Office's Review Services for the review of ten school-based jobs covered by the Board's Pay Equity Plan. The Pay Equity Commission appointed a Review Officer, who decided in a December 2006 report that re-evaluating the jobs was not warranted. While this initial file was closed in April 2007, the Union filed a new application with Review Services in July 2007, asserting that the results of the December 2006 report were incorrect, and that a re-evaluation of the jobs was necessary. However, by an Order dated February 28, 2008, a Review Officer affirmed that re-evaluation of the jobs was not required (the Order).

Subsequent to the Order, the parties periodically contacted and met with each other to discuss re-evaluating the jobs. These discussions began in April 2008, when the Union first referred to "disputing" and "appealing" the Order. However, no meaningful progress was made to update the relevant job descriptions until March 2009, when the parties agreed to a timeline for the updating process. The parties exchanged drafts of the job descriptions from 2009 to 2011, and on November 22, 2011, the Board sent its final version of the job descriptions to the Union.

In response, on November 29, 2011, counsel for the Union indicated that the Union did not agree with the job descriptions. Notably, the Union stated at that time it was holding its "planned appeal" of the Order in abeyance pending the completion of the updated job descriptions, and would "advise [the Board] of [its] position in due course." However, there was no further progress made to the job descriptions after this communication. While the Board requested an update from the Union on May 2, 2012, and periodically urged the Union to approve the job descriptions thereafter, the Union was never willing to do so and failed to respond to the Board's last email on the subject in January 2015. The Union filed an application for review of the Order under section 22 of the Act on May 1, 2015. Surprised by the Union's application, the Board brought a motion to dismiss the application as an abuse of process in light of the seven year delay between the date of the Order and the Union's application for its review.

Analysis and decision

The Tribunal found that the Union's almost seven-year delay in filing its application was both presumptively and actually prejudicial to the Board, and constituted an abuse of process. The Tribunal dismissed the application on this basis.

As a starting point to its analysis, the Tribunal first acknowledged that there is no time limit to file an application for review of an order under section 22 of the *Pay Equity Act*. However, the Tribunal noted that section 23 of the *Statutory Powers Procedure Act* (SPPA) authorizes it to dismiss an application if a delay amounts to an abuse of process. Examining

1 PEHT Case No 0288-15-PE, 2019 CanLII 116293 (*CUPE v TCDSB*).
2 RSO 1990, c P7 (PEA).

the potential effect of these legislative provisions, the Tribunal considered the factually similar decision in *Beaton v. Brant Haldimand Norfolk Catholic District School Board* (*Brant*).[3] In *Brant*, a union had a filed an application under section 22 of the Act nearly six years after the contested order. In that case, the Tribunal specifically found that "a delay of several years is presumptively prejudicial,"[4] and ultimately dismissed the application as an abuse of process under section 23 of the SPPA.

The Union argued that *Brant* was wrongly decided but the Tribunal specifically rejected this contention, stating that it "[did] not agree with the Union that the Tribunal in *Brant* … was wrong when it found that presumptive prejudice had occurred in the facts before it."[5] Rather, *Brant* was considered a guiding authority for the proposition that a delay can result in presumptive prejudice amounting to an abuse of process in proceedings under the Act.

The Tribunal next considered the Supreme Court's decision in *Blencoe v. British Columbia (Human Rights Commission)*,[6] in which the British Columbia Human Rights Commission took two years to refer sexual harassment complaints made against a former cabinet minister to an adjudicative hearing. While the Union argued that *Blencoe* prohibited the Tribunal from imposing a judicially created limitation period by holding that delay of a certain duration is too long, the Tribunal rejected this argument as well. Instead, the Tribunal distinguished *Blencoe* as relating to institutional delay rather than delays created by and between private litigants, noting the "significant difference"[7] between the two scenarios.

The Tribunal furthered that while normally, parties against whom applications are filed are at least aware that a proceeding has been commenced against them, "[i]n the case of delay in commencing a proceeding, the responding party does not know that legal action is being contemplated."[8] The Tribunal observed that a party that has no idea that litigation is pending cannot reasonably be expected to preserve documentary evidence, speak to witnesses and preserve their evidence, and otherwise prepare for the eventual litigation. The Tribunal stated that "in the context of delay in filing an application…it is incumbent upon applicants to provide compelling explanations for the applicants' own delay in pursuing their rights."[9]

Finally, the Tribunal noted that other adjudicative tribunals, such as the Ontario Labour Relations Board, find presumptive prejudice for delay in situations where there is no statutory time limit in their relevant statutes. The Tribunal emphasized that these tribunals do not automatically dismiss a matter once a delay has occurred, but instead give the party responsible for the delay an opportunity to explain and to rebut the presumption of prejudice. The Tribunal found that "incorporating presumptive prejudice into a delay analysis under the [Act] is equally appropriate so long as the Tribunal is not effectively creating a judicial limitation period."[10]

In light of these considerations, the Tribunal ultimately held that "a party in a pay equity matter has an obligation to move reasonably expeditiously in seeking review of a review officer's order under the Act."[11] The Tribunal further concluded that when considering whether to dismiss a pay equity matter as an abuse of process, it may consider the following non-exhaustive list of factors:

- the length of the delay;
- the explanation for the delay;
- prejudice;
- the nature of the case and its complexity;
- the facts and issues in dispute;
- the purpose and nature of the proceedings;
- the nature of the various rights at stake in the proceedings; and
- the extent to which the responding party contributed to (or waived) the delay.[12]

3 PEHT Case No 3208-12-PE, 2013 CanLII 62327 (*Brant*).
4 *Ibid* at para 29.
5 *CUPE v. TCDSB*, *supra* note 1 at para 51.
6 2000 SCC 44 (*Blencoe*).
7 *CUPE v. TCDSB, supra* note 1 at para 49.
8 *Ibid*.
9 *Ibid* at para 50.
10 *Ibid* at para 54.
11 *Ibid* at para 56.
12 *Ibid* at para 57.

With these principles in mind, the Tribunal proceeded to consider whether it should dismiss the Union's application as an abuse of process. First, the Tribunal noted that even if measured from November 29, 2011, when the Union sent an email to the Board, mentioning the possibility of an appeal of the Order, the Union still took another three and a half years to file its application. Unsurprisingly, the Tribunal characterized this delay as "very lengthy…by any standard."[13]

Second, the Tribunal considered that the Board had done nothing to contribute to the delay, which was instead caused by the Union's "inefficiency and indecision" resulting from various Union president changeovers throughout the years.[14]

Third, and "significantly," the Tribunal found that the Union provided no compelling explanation for the three-and-a-half year delay and was not justified in waiting until 2015 to file its application, since there was no change in circumstance that would have prompted the Union to finally appeal the Order.[15]

Fourth, the Tribunal held that "a delay of three and half years is presumptively prejudicial to a... proceeding."[16] Notably, while the Tribunal declined to decide at what point a delay becomes presumptively prejudicial, it observed that other tribunals have found this to be the case after one year.[17]

Lastly, the Tribunal found that the Board had suffered actual prejudice due to the Union's delay. Noting that 11 key personnel and witnesses had either retired or resigned from their positions with the Board, and that another had passed away, the Tribunal found that the prejudice arose

> "…from the number of individuals with knowledge of the relevant events who are now disengaged from the workplace, and the fact that the [Board's] ability to rely upon their institutional knowledge to prepare for the hearing, and to have them speak to the processes and activities that took place at the relevant time is compromised."[18]

In concluding its decision, the Tribunal emphasized that the Board was not under the obligation to remain prepared for a potential appeal indefinitely. Reiterating that the Act "does not include a record keeping obligation, much less require an employer to maintain records indefinitely so as to defend itself in the event that an applicant seeks review of an Order several years after the fact,"[19] the Tribunal dismissed the Union's application under section 23 of the SPPA.

The takeaway

The Tribunal's decision affirms that a party's delay in filing an application under section 22 of the Act can be presumptively prejudicial and ultimately lead to dismissal of an application as an abuse of process. While the decision leaves the question of when a delay becomes presumptively prejudicial for another day, it encourages parties to seek review of the orders made under the Act in a timely way.

Neva Lyn-Kew
Articling Student
nlynkew@blg.com

13 *Ibid* at para 64.
14 *Ibid* at para 65.
15 *Ibid* at para 66.
16 *Ibid* at para 67.
17 *Ibid* at para 67.
18 *Ibid* at para 68.
19 *Ibid* at para 69.

Underage drinking and the spectre of social host liability

With the end of the school year in sight and festivities like prom approaching, educators, parents, and students alike will be planning well-deserved celebrations to mark the end of another chapter. Prohibited by schools but sometimes permitted by parents, underage drinking has been known to occur. Parents should be aware of the potential liability they may face as social hosts should there be an injury arising from underage drinking on their property.

Relevant legislation

As most are aware, the legal drinking age in Ontario is 19. This is established by the *Liquor Licence Act*,[1] which provides that no person shall knowingly sell or supply liquor to a person who is or appears to be under 19 years of age,[2] and expressly prohibits those under 19 years old from having, consuming, attempting to purchase, purchasing, or otherwise obtaining liquor. There is, however, an exception to these rules: parents or legal guardians of a minor may give them alcohol in a residence or in a private place.[3] The minor must consume such alcohol at the place where it is supplied.[4] This exception allows parents to provide alcohol to their own minor children in their private home, but does not extend to minors over which an adult does not have legal custody, for example, teens at a party in their home.

Educators and parents wishing to host social functions or parties should also be aware of their duties and potential liability under Ontario's *Occupiers' Liability Act*.[5] Pursuant to section 3 of that Act, an occupier of a premises has a duty of care to ensure that anyone on the premises, as well as any property those persons bring, are reasonably safe. This duty is imposed on persons in physical possession of a premises, who have responsibility for and control over the premises or the activities taking place, or who have control over persons allowed to enter the premises. As such, this duty may apply to adults who allow minors to drink alcohol on their property.

Should an occupier fail to meet the duty of care and a person is injured on their property, they may be liable for negligence. The essential elements of a negligence claim are that the defendant owed and breached a duty of care to the plaintiff, that the breach of this duty caused the plaintiff's injury, and that the plaintiff suffered actual damage or loss as a result.

A key consideration in determining liability for negligence is the foreseeability that the injury would occur. In assessing the liability of adults who have allowed minors to drink alcohol on their property, a court will consider what that party knew or ought to have known in the circumstances, what reasonable steps, if any, were taken to reduce the risk of injury, and whether the adults engaged in negligent or reckless conduct themselves. While adults are not required keep minors under constant supervision, they are required to ensure the safety of those on their property and will likely be responsible for any injury should they fail in this duty.

Case law

Canadian courts appear increasingly willing to hold parents responsible for injuries that occur where minors have become intoxicated on their property. This is a facet of social host responsibility, the leading case on which is the Supreme Court of Canada's decision in *Childs v. Desormeaux* (Childs).[6] In *Childs*, the defendants hosted a New Year's Eve party at their home. The party was a "Bring Your Own Booze" event, and the defendant hosts served only a small amount of champagne at midnight. One of the guests, defendant Desormeaux, consumed about twelve beers over the two and half hours he was at the party, but proceeded to drive

1 RSO 1990, c L19.
2 *Ibid* at s 30.
3 *Ibid* at s 13.
4 *Ibid*.
5 RSO 1990, c O2.
6 *Childs v. Desormeaux*, 2006 SCC 18.

home with two passengers at the end of the night. He was involved in a head-on collision which killed one passenger in the other vehicle and seriously injured the three others, rendering the plaintiff a quadriplegic.

The plaintiff sued both Desormeaux and the party hosts, arguing that the hosts had a duty of care to third parties who may be injured by intoxicated guests. The Supreme Court of Canada dismissed the action, and held that social hosts will not ordinarily owe a duty to of care to third parties injured by intoxicated guests. However, the court left open the possibility that social hosts could be liable for the actions of their intoxicated guests where the hosts themselves contribute to the risk of injury, stating:

> [a] social host at a party where alcohol is served is not under a duty of care to members of the public who may be injured by a guest's actions, unless the host's conduct implicates him or her in the creation or exacerbation of the risk.[7]

Ontario courts have used the reasoning in *Childs* to allow actions against parents who have served or allowed minors to consume alcohol on their property. Such was the case in *Wardak v. Froom*,[8] where two defendant parents hosted a 19th birthday party for their son at their home. A number of guests attended the party, some of whom were underage. While the defendants did not serve alcohol themselves they were aware that guests brought their own alcohol, and that several guests were not legal drinking age.

Most of the party took place in the basement of the home, where guests were reportedly drinking and playing beer pong. By contrast, the defendants stayed on the main floor to monitor guests' coming and going, though they did visit the basement periodically. At some point in the evening, the 18-year-old plaintiff became intoxicated, and the defendants noted him wobbling and exhibiting odd behaviour when he came upstairs to use the washroom. Notably, the parents did nothing to prevent the plaintiff from continuing to drink. Eventually, when the defendants had momentarily gone upstairs, the plaintiff walked home, got into his car, and began driving. He drove over a fire hydrant and hit a tree, sustaining significant injuries that left him a quadriplegic with cognitive impairments.

The plaintiff subsequently sued the defendants for negligence, arguing that they had a duty to ensure his safety as a guest. The defendants brought a motion for summary judgment dismissing the action, contending that they could not be liable as hosts because they had not served the guests alcohol. Relying on *Childs*, the Ontario Superior Court dismissed the defendant parents' motion. Noting that the serving of alcohol is "relevant... [but] not, by itself, determinative of social host liability,"[9] the court held that nothing precluded a finding of a duty of care in the circumstances. Ultimately, the court ruled that the matter presented a genuine issue requiring trial. In other words, the court acknowledged that the defendants *could* be found liable as social hosts in this situation. This finding affirms the risk that parents could be liable for any injuries that occur after they have served or allowed minors to drink alcohol on their property.

Takeaways for educators and parents

The above cases remind educators and parents that while celebration is in order at this time of year, there can be significant personal and legal consequences arising from underage drinking. Both educators and parents should refuse to permit a minor to attend a school function while intoxicated. In particular, parents should be encouraged to supervise any house parties or social events that occur on their properties, to forbid the consumption of alcohol at such events, and to limit the size of such parties if necessary to maintain proper supervision.

Neva Lyn-Kew
Student-at-Law
nlynkew@blg.com

7 *Ibid* at para 47.
8 *Wardak v. Froom*, 2017 ONSC 1166.
9 *Ibid* at para 54.

Review board criticizes school's investigation report

In a recent appeal filed under section 311.7 of the *Education Act*, the Child and Family Services Review Board (the CFSRB) overturned and quashed the expulsion of a student (the Student). The Student allegedly committed sexual assault, sexual harassment, bullying, and was alleged to have contributed to an "underground culture" of sexualized behaviour and talk that pervaded a Grade 8 classroom.

In reaching its decision, the CFSRB weighed two important takeaways for students: the need to deter inappropriate behaviour involving sexual violence, and the right of every accused individual to be afforded a fair and just proceeding that allows him or her to challenge any allegations made against them. Ultimately, the CFSRB found that the case put forth by the responding Halton District School Board (the School Board) was rife with "inherent unreliability" due to a foundation built upon "double hearsay and triple hearsay," deciding in favour of the Student.[1]

Facts

In March 2019, a female pupil (the Female Complainant) under the care of the School Board alleged that she was the victim of a months-long course of sexual assault and harassment, which included sexualized talk, behaviour, and a "don't tell" mentality.[2] The pupil complained of inappropriate and unwanted touching off-campus, as well as at lunch and recesses when teachers were not present, with other peers acting as lookouts to protect their friends. The Female Complainant described a pervasive, overtly sexualized and unsafe atmosphere that seemed to have taken over a Grade 8 class. Four boys, all of whom were expelled (including the Student), directed the vast majority of these events.

Specifically, the Female Complainant alleged that there were:

- two instances of inappropriate touching of her body by the Student;
- several instances in which sexually inappropriate comments and sexist jokes were made at her expense by the Student and others;
- consistent questions from the Student about what the complainant "had done" sexually; and
- sexualized physical gestures and sounds made by the Student and others towards the Female Complainant.[3]

This inappropriate behaviour caused significant mental distress for the young female, who was unable to return to class for a length of time, and was forced to complete the remainder of her Grade 8 schooling by doing work in the office and at home. She is now enrolled at a Grade 9 program in a different town.

In April 2019, the school principal expelled the Student, after an internal investigation substantiated an allegation that the Student had participated in unwanted sexual conduct towards another student, violating the School Board's Safe School Policy. Following the investigation, the principal exercised his right under section 310 of the *Education Act*, which provides for the immediate suspension of an individual who has participated in, among other things, sexual assault or bullying such that the pupil's continued presence in the school creates an unacceptable risk to the safety of another person. The principal then expelled the Student, along with three other students.

While all four of the expelled students transferred to different school boards, the Student appealed his expulsion and sought to expunge it from his Ontario Student Record (OSR). As such, the CFSRB conducted a *de novo* hearing, where witnesses provide direct evidence about the events at issue. At such a hearing, the School Board bears the onus of establishing that, on the balance of probabilities, the student should be expelled.

1 2019 CFSRB 81 (CanLII) at paras 16, 56.
2 *Supra* at para 8.
3 *Supra* at para 10.

The process of such a hearing is as follows: first, the CFSRB determines whether the alleged incident(s) took place and whether the activity is one for which a school board may expel a student. Once this is established, the CFSRB may consider any mitigating or other factors set out in the *Education Act* to determine if expulsion was the appropriate penalty.

Evidence on appeal

At the appeal hearing, the School Board described the school environment as "toxic", and provided testimony from the Safe Schools superintendent, and the vice principal and superintendent as witnesses who spoke to the details contained in the principal's investigation report. The principal himself was unable to attend. This report, which formed the basis of the School Board's case, contained many details provided to the principal by virtue of second or third-hand knowledge. As such, the School Board's case was almost entirely based on hearsay, double hearsay and triple hearsay evidence that could not be "tested" or questioned on cross-examination by the Student or his counsel. In conducting its case as such, the School Board avoided forcing the Female Complainant to have to endure the difficult experience of giving testimony, and chose not to call her classmates to give evidence.

The CFSRB allowed the School Board to present its case as such, given the relaxed standard for admitting hearsay evidence under the *Statutory Powers and Procedure Act* that governs CFSRB hearings. Unfortunately for the School Board, not calling direct evidence proved to be the deciding factor in the appeal.

The decision

Ultimately, the CFSRB elected to quash the Student's expulsion, as the "inherent unreliability" of the hearsay evidence presented by the School Board did not persuade the CFSRB that the Student actually committed the incidents as alleged.

In providing reasons for its decision, the CFSRB relied heavily upon a recent summary of the risks of hearsay evidence compiled by Justice Stanley Sherr, a family and child protection judge of the Ontario Court of Justice, which quotes from the cases of *R. v. Khelawon*,[4] *R. v. Starr*,[5] *R. v. Baldree*,[6] and *R. v. Nurse*.[7] These cases are all criminal law cases that address the opportunity for an accused to challenge the evidence against them, and the potential issues that may arise when relying upon hearsay evidence. Justice Sherr listed these issues as follows:

- "First, the declarant may have misperceived the facts to which the hearsay statement relates;
- Second, even if correctly perceived, the relevant facts may have been wrongly remembered;
- Third, the declarant may have narrated the relevant facts in an unintentionally misleading manner; and
- Finally, the declarant may have knowingly made a false assertion."[8]

The CFSRB repeated Justice Sherr's concerns, stating that the School Board had every opportunity to present direct evidence from the Female Complainant (with protections, such as a screen, allowed), the other perpetrators, or other classmates. Given that the School Board did not do so, the CFSRB stated that it could not substantiate the allegations against the Student, quashing the expulsion and expunging any record of it from his OSR.

4 2006 SCC 57.
5 2000 SCC 40.
6 2013 SCC 35.
7 2019 ONCA 260.
8 *Supra note* 1 at para 32.

The takeaway

This decision serves both as a warning to school boards and a means of highlighting Justice Sherr's commentary regarding the importance of providing first-hand evidence in matters before the CFSRB where a factual dispute or the credibility of a witness are at stake. While the importance of procedural fairness is a longstanding element of Canadian administrative law, the implications in a case such as this one are complicated by the difficulty in asking a complainant to relive an experience involving sexual harassment or sexual assault through giving testimony. It is difficult to criticize the School Board's handling of the hearing – instead, school boards should pay attention to the CFSRB's commentary regarding the investigative report that the School Board initially prepared.

The CFSRB's comments implied that, in compiling an investigative incident report, the principal or school officials involved should seek to rely on first-hand knowledge, and to avoid allowing a "chain of information" to become a "chain [of]…double or triple hearsay" that the Board will ultimately deem to be "not reliable."[9]

In concluding its reasons, the CFSRB agreed that it is important to teach students that sexual assault and violence are unacceptable, but procedural fairness for the accused requires providing an opportunity to challenge the evidence against them. As the CFSRB stated:

> "…it is also very important for students to learn that our legal system (including discipline hearings) requires that an accused person be permitted to challenge allegations made against him or her, and that every person has a right to a fair and just proceeding."

This lesson is one that school boards should heed carefully in preparing for future appeals of expulsion.

Noah Burshtein
416.367.6364
nburshtein@blg.com

9 *Supra note* 1 at para 49.

Layoff out of seniority order not permitted where teacher meets OCT qualification

In *Keewatin-Patricia District School Board v. Ontario Secondary School Teachers' Federation*, 2019 ONSC 7102, the Ontario Divisional Court dismissed an application for judicial review of Arbitrator Michael Lynk's decision upholding the grievance of a teacher alleging that she was laid off out of seniority order. The court rejected the Keewatin-Patricia District School Board's (the Board) position that the arbitration award was unreasonable because it misapprehended the Board's obligation to provide the "best possible educational program" as stipulated in subsection 19(1) of Regulation 298 under the *Education Act*.

Facts

Due to declining enrollment following the 2012-2013 academic year, the Board was required to reduce six full-time positions at Beaver Brae Secondary School (Beaver Brae or the School) for the 2013-2014 year. In making its decisions about who to lay off, the Board retained Kim Remus (Ms. Remus), a junior teacher, over Karen Edwards (Ms. Edwards), a more senior teacher, in the 2013-2014 academic year. The Ontario Secondary School Teachers' Federation (OSSTF) grieved Ms. Edwards' layoff out of seniority order, relying on a collective agreement provision that required that layoffs be in order of seniority, except where a junior teacher possessed "current qualifications" that a senior teacher lacked for a required area of teaching.

Board's submissions at arbitration

In the arbitration proceedings, the Board argued that its decision to retain Ms. Remus was guided by the statutory obligation to provide the "best possible program" and was justified due to the particular skills and experience she possessed to teach Beaver Brae's Community Life Skills (CLS) course – in particular, her training in American Sign Language (ASL) and Picture Exchange Communication System (PECS). Ms. Remus did not possess an Ontario College of Teachers (OCT) recognized qualification for ASL and her certificates in ASL and PECS were not recognized by the OCT.

The CLS course is a non-credit "sub-program" of special education for low-verbal and non-verbal students, developed by Ms. Remus and two other teachers who were no longer teaching at the School. The course was designated as a special education course and ASL and PECS were two of a non-exhaustive list of a variety of communication modes identified as appropriate for the course in the course manual.

In support of the Board's position, the principal at Beaver Brae testified at the arbitration hearing that none of the nine more senior teachers to Ms. Remus that possessed OCT qualifications to teach special education were, in his view, qualified to teach the CLS course because they lacked training in ASL and PECS. In his opinion, having training and skills in these two communication modes was important to the success of the CLS course because of the predominance of non-verbal and low-verbal students. He also cited concerns about the other more senior teachers being unwilling to teach the course and the reaction of parents and students if a teacher assigned to the CLS course was unable to communicate through ASL and/or PECS.

Arbitration decision

Arbitrator Lynk upheld the grievance, finding that the relevant collective agreement provision only permitted a junior teacher to be retained where the teacher possessed "current qualifications" that a senior teacher lacked, and because "current qualifications" were defined in reference to the *Ontario College of Teachers Act* and its Regulations, only OCT qualifications could be considered. As Ms. Remus' ASL and PECS qualifications were not recognized by OCT, her qualifications were equivalent to the other teachers senior to her who possessed special education qualifications.

With respect to the Board's argument that they could not provide the "best possible program" if teachers could not communicate with students because they lacked ASL and PECS, Arbitrator Lynk found that there was no conflict between the relevant collective agreement provision and the statutory obligation to provide the "best possible program." He held that there was no evidence that the teachers senior to Ms. Remus lacked the basic ability to communicate with the CLS course students. In coming to this conclusion he noted, *inter alia*, that ASL and PECS were only two of a non-exhaustive list of different communication modes identified as appropriate for the CLS course.

Judicial review decision

In its application for judicial review, the Board submitted that Arbitrator Lynk made reviewable errors by:

- failing to articulate in an intelligible, transparent and justifiable way how the principal erred in making teacher assignments;
- unreasonably concluding that teachers without the basic ability to communicate with students could be put in a position to teach those students; and
- failing to exercise jurisdiction to make factual findings regarding to what extent ASL and PECS are essential qualifications for teaching the CLS course.

The court rejected all of the Board's arguments.

With respect to the first argument, the court found that Arbitrator Lynk had identified flaws in the principal's decision to retain Ms. Remus. In its analysis on this point, the court first accepted that Arbitrator Lynk's interpretation of the relevant collective agreement provision was reasonable.

The court identified the flaws Arbitrator Lynk had found with the decision to retain Ms. Remus. The most significant being the Board's failure to consider the implication that the statutory obligation to provide the "best possible program" is to be read in conjunction with the Ministry of Education publication "Teaching Assignments in Ontario Schools: A Resource Guide" (the Resource Guide). Arbitrator Lynk found that considering the Resource Guide demonstrated that Ms. Edwards should have been retained. The court accepted Arbitrator Lynk's findings and summarized his comments as follows in paragraph 22 of the decision:

> "Arbitrator Lynd [sic] went on to hold that Ms. Edwards would have been able to teach courses within her designated qualifications, past experience and competency that had been assigned to some of the nine more senior teachers who possessed qualifications in special education, one of whom should have been assigned to teach the CLS course. He held that applying the primary consideration of surplusing by seniority in a complementary fashion to the statutory factors led to the conclusion that Ms. Edwards was laid off out of seniority in a manner contrary to the collective agreement and the applicable law. I find nothing unreasonable in the Arbitrator's approach which was intelligible, transparent and justifiable."

Related to the above analysis, the Board submitted that Arbitrator Lynk misapprehended the key issue of "best possible program." However, the court found that Arbitrator Lynk's interpretation of the "best possible program" objective was reasonable and consistent with the jurisprudence. Arbitrator Lynk identified the following principles that informed his analysis on the "best possible program" objective and the court accepted his reliance on these principles:

1. Although legislation is supreme, in an industrial relations setting, legislation and collective agreements should be read as complementing one another, unless there is an obvious clash.
2. The Resource Guide explicitly expresses the complementary nature of ensuring teachers are qualified in the subjects they teach and providing the "best possible" program: a teacher's qualifications are an indication that he or she has the knowledge and skills to provide the best possible program.
3. Canadian courts will not set aside or ignore collective agreement requirements around seniority unless there is "a clear collision with a statute."
4. With respect to providing the "best possible program," the use of the word "possible" implicitly recognizes limitation, including those that emerge from the statutorily rooted and Charter-protected process of collective bargaining.

5. There is no legal principle [in s. 19(1)] requiring an arbitrator to interpret controversial Collective Agreement language in a manner that best promotes the employer's objectives even if they are statutorily prescribed.
5. The *Education Act* and the *Ontario College of Teachers Act* create a mandatory connection between a teacher's qualifications as recorded on their OCT certificate and the subjects they can be assigned to teach. This is subject to only limited exceptions.
6. In preparing a school timetable, principals can be constrained by collective agreement language to which their employer has agreed which requires surplus decisions to be made by seniority. Exceptions to that rule should be read narrowly.

With respect to the second argument, the court reviewed Arbitrator Lynk's comments concerning Ms. Remus and the other nine more senior teachers' qualifications. His findings noted that Ms. Remus did not have OCT recognized qualifications in ASL and PECS and that ASL and PECS were only two of a non-exhaustive list of different communication modes appropriate for the CLS course. The court held that there was no evidence supporting the other nine teachers more senior than Ms. Remus lacked a basic ability to communicate with the students in the CLS course. The Board's submissions that it was unreasonable to conclude any teacher with special education qualifications can fulfill the obligation to provide the best possible program to non-communicative students in a specially designed course were rejected by the court.

Lastly, the court found no merit to the Board's argument that Arbitrator Lynk failed to make findings about whether skills in ASL and PECS were required to teach the CLS class. The court found Arbitrator Lynk's finding that having OCT qualifications in a particular subject or program area means a teacher is qualified to teach that course was not unreasonable.

Comment

This decision serves as a twofold authority for future arbitrators to hold:

- where a collective agreement provision only allows retaining junior teachers where they possess required qualifications that senior teachers lack, the assessment of qualifications should be based on OCT qualifications; and
- the "best possible program" objective is met when a course is taught by a teacher that possesses the OCT qualifications to teach that course.

More broadly, the decision is also a reminder that both arbitrators and courts will be reluctant to interpret statutory obligations in a way that overrides negotiated collective agreement provisions unless there is a clear and obvious conflict, in which case the legislation will reign supreme. School boards should keep this reluctance in mind when relying on statutory obligations in the grievance resolution process.

Madeeha Hashmi
416.367.6121
mhashmi@blg.com

Arbitrator affirms that teacher discipline must be assessed on individual facts

In *Halton District School Board v. Elementary Teachers' Federation of Ontario*, 2019 CanLII 96517, an arbitral award released on October 15, 2019 (the Award), Arbitrator James Hayes dismissed a two-day suspension imposed on a teacher who failed to confirm the safe transfer of a Junior Kindergarten student to their family member.

Background

The parties did not dispute the facts that led to the suspension of the teacher, Snjezana Vukaljevic (the Grievor). On September 12, 2016, the Grievor was dismissing students at the end of the school day with the assistance of an Early Childhood Educator (ECE). Several of the Grievor's students were leaving to attend a YMCA after-school program, including student C.[1]

As the Grievor was tending to an ill student, she noticed C at the exit doors. The Grievor approached C and asked him if the man outside was his grandfather, to which C nodded "yes." The Grievor then proceeded to dismiss C out the exit doors at 3:12 pm without waiting to confirm the transfer of C with the safe transition wave.

Shortly after the end of the school day, YMCA staff realized that C had not appeared for the after-school program. Consequently, YMCA staff called C's family and C's grandfather found C at approximately 3:49 p.m. in a children's park area adjoining the school. While C's parents were understandably upset, fortunately no harm came to C.

Investigation and discipline

Following the incident, the Halton District School Board (the Board) conducted an investigation. The investigation revealed that the Grievor did not perform the routine 'wave' to signal the safe transition of C because the Grievor was distracted and worried about the ill student who had cried out as she was dismissing C. In response to the Grievor's failure to follow protocol, the Board issued a two-day suspension and provided the Grievor with a letter that included the following:

> Snjezana, the Board has significant concerns with these events. The incident, as reported and investigated, demonstrates a serious lack of judgment on your part, and a complete disregard for your professional and ethical responsibility for the well-being of your students. We do however, appreciate your candor in discussing these events, and that you have shown remorse for the situation.

After reviewing the facts and submissions of the parties, Arbitrator Hayes acknowledged that:

> [15] … an arbitrator should be loath to modify employer discipline - having regard to the offence, the individual concerned, and the particular workplace – so long as it falls within a zone of reasonableness. An employer effort to maintain legitimate expectations of employees, supported by consistency in application of discipline, should not be undermined by arbitrator hair splitting.

While Arbitrator Hayes recognized that a two-day suspension might be seen as modest in appropriate circumstances, he concluded that each situation must be assessed on its individual facts. Based on the present circumstances, Arbitrator Hayes disagreed that the Grievor demonstrated a "complete disregard" for her professional and ethical responsibilities. By focusing exclusively on the Grievor's failure to confirm the transfer of C to a family member, Arbitrator Hayes found that the Board missed the other important context, such as:

- the Grievor's 16 years of experience without any disciplinary record;
- the Grievor was neither careless or reckless;

1 The child's name was replaced with 'C' throughout the Award.

- the Grievor was honest and remorseful;
- another young child in the class was ill and was known to have had a previous seizure;
- there was a supply ECE charged with the YMCA group who contributed to what unfolded;
- C confirmed to the Grievor, by nodding, that the man standing outside, not many steps away, was his grandfather; and
- simultaneously, the Grievor was distracted by a cry from the child known to be ill.

Based on the foregoing, Arbitrator Hayes concluded that the two-day suspension was not reasonable. Accordingly, he allowed the grievance with compensation.

Lessons for educators

This award does not diminish the legitimate expectations of school boards and parents that teachers will take the utmost care of small children entrusted to them. Rather, it is a reminder that appropriate discipline for teachers is driven by the particular facts of each case. As Arbitrator Hayes made clear:

> [16] …not every employee mistake, failure or misadventure deserves or requires a disciplinary response. The employer obligation to demonstrate just cause is not a trivial burden. It may or may not be satisfied by simple identification of error. The particular facts will always matter. The employment record of a grievor will almost always matter.

Brad Hallowell
416.367.6111
bhallowell@blg.com

Arbitrator denies teacher's request to transfer to a closer school

In a recent labour arbitration decision, a teacher claimed that her lengthy commute to school aggravated the symptoms of her multiple disabilities, and requested to transfer to a school closer to home. When the Toronto District School Board (the Board) refused her request, the teacher grieved the decision, claiming discrimination on the basis of disability. The arbitrator ruled in favour of the Board, finding that a transfer may be a required accommodation in some circumstances, but that this particular teacher had not established that her disabilities were the true reason for her transfer request.[1]

Background

The teacher in question taught economics and English as a second language at a Toronto school. She had multiple chronic conditions, including fibromyalgia, chronic fatigue syndrome, asthma, sleep apnea, seasonal affective disorder, scoliosis and irritable bowel syndrome. She was provided with several accommodations at work, including a classroom close to the washroom and access to the school elevator.

The teacher had previously lived close to the school, but in 2006, her family moved to Markham. For several years, the teacher drove 35 minutes to 1 hour and 50 minutes in each direction, depending on traffic, as part of her new commute. On August 29, 2012, just a few days before the start of the new school year, the teacher requested a transfer to a school closer to her home, claiming that her lengthy commute from Markham aggravated the symptoms of her disabilities.

Because the teacher could not find a teacher willing to trade assignments, and because she did not wish to wait until the end of the school year to transfer, the teacher applied for an accommodation-based transfer, to take place on an expedited basis.

During the accommodation process, the Board found the teacher's medical documentation insufficient and grew frustrated with her insistence on a transfer to the exclusion of all other suggested adjustments or accommodations. After lengthy consultations, the Board refused the teacher's transfer request. The union grieved the transfer denial.

Decision and analysis

At arbitration, the union argued that the teacher had been subject to discrimination on the basis of disability, contrary to the Ontario *Human Rights Code* (the Code).

In denying that it had discriminated against the teacher, the Board argued that:

1. An employer does not have control over an employee's commute and, therefore, a commute cannot be a source of discrimination;
2. In the alternative, a commute can only be a source of discrimination if the employer took an action to make it so. In this case, the teacher's commute was caused by her own actions through her move to Markham;
3. In any event, the adverse affects in this case were the product of the teacher's refusal to adjust her commute, and not a product of her disability.

The arbitrator ultimately disagreed with the Board's first two points, but agreed with the third point and dismissed the grievance on that basis.

Firstly, the arbitrator found that a commute can be a source of adverse treatment that is discriminatory. In making this finding, the arbitrator rejected American jurisprudence in favour of recent Canadian decisions.[2]

Secondly, the arbitrator rejected the Board's argument that, if a commute can be a source of discrimination, it can only be so if an employer's action caused a change to the commute. In rejecting this "employer-action" approach, the arbitrator found that, although the circumstances giving rise to an employee's request for accommodation in their commute are relevant, they are best considered as part of the entire factual matrix when determining if a given situation results in discrimination.

1 Ontario *Secondary School Teachers' Federation v. Toronto District School Board*, 2020 CanLII 673 (ON LA).
2 See *Catholic District School Board of Eastern Ontario and Ontario English Catholic Teachers' Association* (Elderkin) (2008), 176 L.A.C. (4th) 193 (E. Newman).

The fact that a longer commute is the result of an employee's own choices will not automatically negate the employer's duty to accommodate.

Specifically, an employee's commute involves factors that are within the employer's control, such as the location of the work and the timing of the commute. However, a commute also involves factors that are within the sole control of the employee, such as the method of transportation and route taken. The choices the employee makes can have a significant impact on the outcome for the employee and must be taken into account in the analysis.

In the case at hand, the teacher's longer commute was caused by her own decision to move to Markham. While this did not automatically negate the Board's duty to accommodate her, it was a relevant factor in the analysis.

Further, the teacher had refused to consider numerous proposed accommodations and adjustments that could have shortened the length of her commute or made it less physically arduous. Such accommodations and adjustments could have included:

1. adjusting her work schedule so that she could commute during periods of lighter traffic;
2. carpooling with her husband;
3. taking the toll highway 407;
4. taking public transit; or
5. breaking her drive into shorter segments, pulling over, and stretching.

Also relevant was the teacher's admission that one of the reasons she desired a transfer was to stop working alongside a new principal with whom she clashed. The teacher did not allege that she was subject to workplace harassment, but did admit that the personality clash at work was one of her reasons for requesting a transfer.

The arbitrator ultimately found that, while the teacher's commute may not have been ideal, the evidence showed that the teacher sought to change schools primarily because she preferred a shorter drive and because she wished to get away from colleagues with whom she clashed, and not because of her disabilities. The teacher's own choices and preferences had led to that adverse impact, including her refusal to take the 407, her refusal to break her drive into short segments and stretch, her refusal to adjust her commute to drive during periods of lighter traffic, and her decision to relocate to Markham in the first place.

For these reasons the arbitrator found that the teacher's disability was not a factor in the adverse impact caused by her commute.

Takeaways for school boards

Although based on the facts of this particular case the teacher was not entitled to transfer to a closer school; this decision suggests that a commute can be a source of discrimination.

However, this case also demonstrates that arbitrators will be reluctant to grant accommodation-based transfers where the teacher has not been adequately cooperative in the accommodation process, where alternative adjustments to their commute could provide adequate accommodation, or where they appear to be using the accommodation process as an excuse to transfer away from disagreeable colleagues.

Elizabeth Creelman
416.367.6447
ecreelman@blg.com

BLG Education Law Group

Leaders

Eric M. Roher | National Leader
416.367.6004 | eroher@blg.com

Robert Weir | Toronto
416.367.6248 | rweir@blg.com

Duncan Marsden | Calgary
403.232.9722 | dmarsden@blg.com

Mark Phillips | Montréal
514.954.3198 | mphillips@blg.com

Yves J. Menard | Ottawa
613.787.3518 | ymenard@blg.com

Sean Muggah | Vancouver
604.640.4020 | smuggah@blg.com

Montréal

François Longpré
514.954.2543
flongpre@blg.com

Mark Phillips
514.954.3198
mphillips@blg.com

Patrick Trent
514.954.3154
ptrent@blg.com

Ottawa

Yves J. Ménard
613.787.3518
ymenard@blg.com

Sara Lemieux
613.787.3581
slemieux@blg.com

Jessica Sheridan
613.369.4771
jsheridan@blg.com

Toronto

Madlyn Axelrod
416.367.6168
maxelrod@blg.com

Andrew Baker
416.367.6250
abaker@blg.com

Elizabeth Creelman
416.367.6447
ecreelman@blg.com

Kate Dearden
416.367.6228
kdearden@blg.com

Maria Gergin
416.367.6449
mgergin@blg.com

Adam Guy
416.367.6601
aguy@blg.com

Madeeha Hashmi
416.367.6121
mhashmi@blg.com

Michelle Henry
416.367.6531
mhenry@blg.com

Ewa Krajewska
416.367.6244
ekrajewska@blg.com

Maciej Lipinski
416.367.6555
mlipinski@blg.com

Natasha Miklaucic
416.367.6233
nmiklaucic@blg.com

J. Pitman Patterson
416.367.6107
ppatterson@blg.com

Victoria Prince
416.367.6648
vprince@blg.com

Chloe Richardson
416.367.6107
CRichardson@blg.com

Eric M. Roher
416.367.6004
eroher@blg.com

Robert Weir
416.367.6248
rweir@blg.com

Stephanie Young
416.367.6032
syoung@blg.com

Vancouver

Sean Muggah
604.640.4020
smuggah@blg.com

Michelle Maniago
604.640.4139
mmaniago@blg.com

Shelley-Mae Mitchell
604.640.4160
smitchell@blg.com

Steve M. Winder
604.640.4118
swinder@blg.com

Calgary
Centennial Place, East Tower
520 3rd Ave S W, Suite 1900
Calgary, AB, Canada T2P 0R3
T 403.232.9500 | F 403.266.1395

Montréal
1000 De La Gauchetière St W, Suite 900
Montréal, QC, Canada H3B 5H4
T 514.879.1212 | F 514.954.1905

Ottawa
World Exchange Plaza
100 Queen St, Suite 1300
Ottawa, ON, Canada K1P 1J9
T 613.237.5160 | F 613.230.8842 (Legal)
F 613.787.3558 (IP) | ipinfo@blg.com (IP)

Toronto
Bay Adelaide Centre, East Tower
22 Adelaide St W, Suite 3400
Toronto, ON, Canada M5H 4E3
T 416.367.6000 | F 416.367.6749

Vancouver
1200 Waterfront Centre
200 Burrard St, P.O. Box 48600
Vancouver, BC, Canada V7X 1T2
T 604.687.5744 | F 604.687.1415

BLG Consulting (Beijing) Limited
11A16, East Wing, Hanwei Plaza
No. 7 Guanghua Road, Chaoyang District
Beijing, 100004, P.R. China
T 86 010.8526.1820 | F 86 010.6512.6125

blg.com | Canada's Law Firm
Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.

This newsletter is prepared as a service for our clients and other persons dealing with education law issues. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavour to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP (BLG). This newsletter has been sent to you courtesy of BLG. We respect your privacy, and wish to point out that our privacy policy relative to newsletters may be found at http://www.blg.com/en/privacy*. If you have received this newsletter in error, or if you do not wish to receive further newsletters, you may ask to have your contact information removed from our mailing lists by phoning 1.877.BLG.LAW1 or by emailing* unsubscribe@blg.com*.*

© 2020 Borden Ladner Gervais LLP. BD9596–03–20

BLG
Borden Ladner Gervais