





**EDITOR**

Marisa Celenza

**MANAGING EDITOR**

Nelly Kelders

**ART DIRECTOR**

Ania Czupajlo

**ADVERTISING AND SALES**

John Nijmeh  
Gaby Aloï

**PRESIDENT**

Paul Lacalamita

**INTERIM EXECUTIVE DIRECTOR**

Dan Tighe

**CONTRIBUTORS**

Deborah Celemencki, Karen Drago, Victoria Girling, Mary Lynn Hamzo, Nelly Kelders, David Kraemer, Paul Lacalamita, Rocchina Leone, Fr. Scott M. Lewis S.J., Barbara McMorrow, Mike O'Neill, Patty Orecchio, David Overholt, Eric M. Roher, Michael Salvatori, JoAnne Shea, Dan Tighe, John Ulicny, Robert W. Weir

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How to reach us:

The Catholic Principals' Council of Ontario  
400 - 161 Eglinton Avenue East  
Toronto, Ontario M4P 1J5

Toll Free: 888 621 9190  
Phone: 416 483 1556  
Fax: 416 483 2554  
E-mail: info@cpco.on.ca  
Website: www.cpco.on.ca

**CPCO STAFF**

**Paul Lacalamita**  
*President*

ext. 22  
president@cpco.on.ca

**Dan Tighe**  
*Interim Executive Director*

ext. 23  
director@cpco.on.ca

**Nelly Kelders**  
*Member Services Director*

ext. 38  
nkelders@cpco.on.ca

**Barbara McMorrow**  
*Professional Learning Director*

ext. 37  
bmcorrow@cpco.on.ca

**Patty Orecchio**  
*Program Director*

ext. 29  
porecchio@cpco.on.ca

**Gaby Aloï**  
*Office Supervisor*

ext. 26  
galoï@cpco.on.ca

**Vanessa Kellow**  
*Professional Learning Assistant*

ext. 31  
vkellow@cpco.on.ca

**Maria Cortez**  
*Administrative Assistant*

ext. 32  
mcortez@cpco.on.ca

**Allison Wadge**  
*Receptionist*

ext. 21  
awadge@cpco.on.ca

**Ania Czupajlo**  
*Sr. Graphic Designer*

ext. 25  
aczupajlo@cpco.on.ca

**Marisa Celenza**  
*Editor*

ext. 27  
editor@cpco.on.ca

**John Nijmeh**  
*Advertising Manager*

ext. 28  
events@cpco.on.ca

**Chris Jung**  
*IT Supervisor*

ext. 34  
jkstree@cpco.on.ca

**Jay Jung**  
*IT Support*

ext. 24  
jjung@cpco.on.ca

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**On the cover**  
**First Day of School**

# BE CAREFUL WHAT YOU SAY AND DO! SOME LEGAL PITFALLS TO AVOID

By **Victoria Girling**, Vice-president  
STERLON Underwriting Managers Ltd.

## WORKPLACE HARASSMENT

Last year there was an alarming increase in the number of workplace harassment complaints brought against administrators. Any member who faced such a complaint can attest to the tremendous stress and emotional rollercoaster he/she experienced. These are complaints raised by staff members, who appear to be using this forum to undermine the administrator's function, since the matters invariably appear to relate to a management style.

Boards seem to be finding it difficult to differentiate between *harassment* issues and *management style* issues. Some boards have a workplace harassment policy while others have no policy at all. Our experience has shown that neither situation is ideal. The policies are often convoluted and call for an independent investigator, which has led to lengthy investigations that have mushroomed from a single allegation to 16 pages or more of allegations, after all staff have been interviewed and allowed to raise matters that often go back many years. If there is no policy the member has no understanding of how the investigation will be run. It is hard to feel any comfort in such a situation. Some boards will provide specific and detailed allegations in writing, while others offer generic and non-specific allegations. In almost all cases the member is advised that the result of the investigation could lead to disciplinary measures up to and including dismissal. Anyone who is told this is likely to feel very insecure and vulnerable.

Of great concern to CPCO is the reluctance of some boards to make a decision at an early stage that the allegations do not fall within the definition of *harassment*, but rather are a series of complaints more akin to *personality* issues. The latter may need to be investigated as part of a performance appraisal process, but it should not be open season for staff to malign their administrator under the guise of harassment.

Another concern for CPCO occurs when a board keeps the administrator at home on full pay during the investigation process. In our view this seriously undermines the member's position and professional standing.

Unless STERLON is concerned that a matter has serious employment or disciplinary implications, a lawyer is not appointed to deal directly with the board, but legal advice is provided to the member who is then able to represent himself or herself based on such advice. This ensures that the issues do not escalate into something too formal. However, it has been necessary this past year for legal counsel to represent many of the members during some workplace harassment investigations, since there has been a greater emphasis by boards to conduct comprehensive investigations and lawyers have been appointed by some boards as the investigators.

### COULD THIS BE YOU?

Here are just a few examples of some of the actions that staff cite to support a workplace harassment complaint. The school administrator:

- used a nasty tone;
- had a mean face;
- glared in a really mean manner;
- used a derogatory tone;
- belittled me by his comments;
- gave a dirty look;
- was negative, controlling and demeaning;
- yelled at me;
- verbally assaulted me;
- turned down her mouth and gave a condescending glare;
- berated me with his tone;
- demanded in a condescending tone of voice;
- spoke loudly and rudely;
- did not respond;
- constantly used verbal abuse; and
- followed and watched me.

### FACTS

- Last year only four per cent of STERLON's files related to workplace harassment complaints against members. This year that number has increased to 24% of all files.
- One case is entering its 16th month from the time the complaint was filed and is still unresolved.
- One case took eight months for the investigation to be completed during which time the member was removed from the school.
- One case raised issues dating back three years.
- In many of the cases an allegation of harassment by one person quickly developed into multiple allegations, which were elicited during the investigation process of other staff members.
- Boards do not provide legal support for school administrators in these situations.
- The number of grievances were reduced this year.



# WHAT YOU NEED TO KNOW ABOUT REPORTING CHILD ABUSE

By **Eric M. Roher**, Partner and National Leader of the Education Law Group, Borden Ladner Gervais LLP;  
**Robert W. Weir**, Partner, Borden Ladner Gervais LLP

*In most Canadian jurisdictions there is legislation placing a general duty on people to report the abuse and neglect of children to the appropriate authorities. This general duty correspondingly applies in the school context. However, many child protection statutes also place a greater duty on educators to make reports where they gain information regarding abuse. In Ontario, legislative changes effective March 31, 2000,<sup>1</sup> have expanded the duty to report, which was previously reserved for persons performing professional or official duties with respect to children to all members of the public. Failure to make proper reports as required by the Ontario Child and Family Services Act (CFSA) can lead to penalties, which may include fines.*

In late 2007 a former principal and two vice-principals with the Toronto District School Board were charged under the CFSA for failing to report a serious incident against a student. This related to allegations of a sexual assault on a Muslim female student in a washroom at a Toronto high school. The incident was said to have occurred in October 2006.

Section 72 of the CFSA sets out the duties of all members of the public to report to a children's aid society if they have reasonable grounds to suspect that one of a list of circumstances exist and those circumstances can be attributed to the care (or lack thereof) of the person responsible for the child, or the direct actions of that person. These circumstances include situations where there is risk of or actual emotional, physical or sexual harm or pattern of neglect by the person having charge of the child. A child is defined in the legislation as a person actually or apparently under the age of 16.

The report must be made by the person who has the duty to make the report and that duty cannot be delegated. In addition, a report must be made despite the confidential nature of some of the information, which may be communicated, including information contained in the Ontario Student Record. The statute protects a person coming forward with a report of abuse by preventing a lawsuit against that person unless the person acted maliciously or without reasonable grounds for the suspicion.

For all persons subject to the CFSA, the requirement of reporting must be carried out *forthwith*. The timely reporting of abuse serves to protect the child and, in some cases, may prevent the contamination of a child's evidence.

It is not the duty of the teacher or principal to assess the severity of the abuse. It is mandatory for teachers and principals to report

any and all cases where there are *reasonable* grounds to suspect that abuse has occurred, regardless of whether the injury is minimal. It is not the role of the principal to investigate or to confirm whether, in fact, abuse has occurred. The use of the word *reasonable* in subsection 72(3) suggests that the test regarding the duty to report is an objective one. This means that an educator should report if a reasonable educator in similar circumstances would believe or suspect that a child was the victim of abuse.<sup>2</sup>

Because of the serious consequences of child abuse or neglect, "any doubt as to whether particular circumstances constitute abuse or neglect should be resolved in favour of the child."<sup>3</sup>

## Suspected Abuse Involving Peers

Whether there exists a duty to report abuse of a student by his or her peer has been the subject of some recent debate. While this duty is not as clear as the duty to report abuse at the hands of a person having charge of the child, section 64 of the *Legislation Act, 2006*<sup>4</sup> requires that legislation be given a "fair, large and liberal interpretation as best ensures the attainment of its objects." A liberal reading of the CFSA reveals that the Act does impose such a duty in certain circumstances.

Section 72(1) of the Act imposes a duty to report in specifically enumerated situations. Paragraphs 3 and 4 of section 72(1) state that:

*3. The child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child.*



# LEARNING BLOCKS

## Using Time to Make a Difference

By **David Kraemer** and **David Overholt**  
Student Achievement Officers  
The Literacy and Numeracy Secretariat

*Where does the time go ....  
... especially in schools?*

*We often lament that we do not have enough time to cover the curriculum and to have the impact we want on student learning. Where does the time go and what can we do about it?*



Time is a resource schools cannot afford to waste. According to Mike Schmoker, if time were “used wisely, it would be enough to promote unprecedented levels of success” (p. 90). Referring to the classroom observation study, *Learning 24/7*, he suggests that significant learning time is frequently eroded by non-instructional activities (p. 18).

### **One School’s Story**

St. Gregory School in Powassan in the Nipissing-Parry Sound Catholic DSB has taken some important steps to ensure that instructional time is kept focused on student learning and achievement. The school has implemented large blocks of uninterrupted time for literacy and numeracy at predictable time slots during the day. Principal Mike Courchesne says, “Staff can’t believe how quickly the day seems to go by. Learning blocks have contributed to a sense of calm learning and student success, which we celebrate!”

Over the past year, student achievement officers from the Secretariat shared resources and acted as critical friends during school visits and conversations. They partnered with staff to pose questions, to discuss issues, and to identify routines and procedures that promised to have a positive impact on learning and achievement.

### **Making a Commitment to Learning Blocks**

According to an Ontario study, “the most effective school districts are demonstrating a commitment to uninterrupted time for learning (Campbell, Fullan & Glaze, 2006, p. 23). At St. Gregory,

the commitment to learning blocks is a key part of the school improvement plan. Large daily blocks of time are devoted to specific instruction and practice in literacy (100-120 minutes) and numeracy (60-75 minutes). Literacy and numeracy development is also embedded in activities throughout the day and integrated into all subject areas.

St. Gregory students know that their teachers are intent on protecting their learning time from distractions. Non-academic events such as announcements, transitions between activities and collecting money for field trips or pizza days are carefully controlled to minimize unwanted

impact on instructional time. By abandoning “the microphone fantasy - the belief that the person in a school holding the microphone holds the attention of students and teachers” (Reeves, 2006, p. 109), the school has found precious time for teaching and learning.

In collaboration with teachers, the principal ensures that learning blocks are given priority when planning schedules. Using a backward design planning model and considering a variety of factors such as gym availability and special education support, they develop and monitor routines and practices that support uninterrupted learning time as non-negotiable.

*Schools should make every effort to convey the message that class time is sacred time and should be interrupted for important events only.*

Marzano, 2003, p.31