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EDUCATION LAW NEWSLETTER

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ONTARIO GOVERNMENT ASKS UNIONS TO EXTEND EDUCATION CONTRACTS

The Ontario Government has offered contract extensions to most of the key education unions, in order to achieve labour peace during the next election.[1]

Extensions would likely mean providing additional wage increases and altering terms to ensure most public, Catholic and French elementary and secondary teachers and education workers do not strike before a vote expected in June 2018.[2] The government may have to amend the *School Boards Collective Bargaining Act, 2014* (the "Act") to extend the term of the contracts.

All collective agreements with teachers and other education workers in the province will expire on August 31, 2017.

An internal memorandum which was sent to the Ontario Secondary School Teachers' Federation ("OSSTF") on September 30, 2016 indicated that the union had received the request and was considering it.[3] Local representatives of OSSTF approved a resolution to commence internal discussions on extending the current collective agreement.

It is not clear what the length of the extension would be. A one-year extension would give the Liberal Government labour peace during an election, which is expected to be held in the spring of 2018.[4]

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[1] Adrian Morrow and Caroline Alphonso, "Ontario Liberals offer contract extensions to teachers' unions", *The Globe and Mail* (October 3, 2016) at: http://www.theglobeandmail.com/news/national/education/ontario-offered-contract-extensions-to-education-unions-on-the-sly/article32223050/.

[2] *Ibid.*

[3] Caroline Alphonso and Adrian Morrow, "Ontario quietly asks public high-school teacher's union to extend contract", *The Globe and Mail* (September 30, 2016) at: http://www.theglobeandmail.com/news/national/education/ontario-asks-toronto-high-school-teachers-union-to-extend-contract/article32189745/.

[4] *Ibid.*

During the last week of September 2016, Premier Kathleen Wynne said that the Government was prepared to loosen provincial purse strings for the next round of negotiations with public-sector unions.

The Premier confirmed that the Government will provide more funds in an attempt to reach settlements in the next round of bargaining by lifting the requirement that new deals be net zero.[5]

The Premier stated, "That was in a period of time and we have been through that period. It's been a challenging time in those conversations with public-sector employees." The Premier added, "We have to work with our (union) partners so that they can be supported in the work that they do."[6]

The Ministry of Education committed to reviewing the legislation after the first round of central collective bargaining.

Treasury Board President Liz Sandals, who will oversee labour negotiations across the public sector, recently said that as the province's economy improves, she will be reviewing how much money is available for labour agreements. In 2017, the Government expects to table a balanced provincial budget.

The first round of bargaining under the Act resulted in nine central agreements. Although 456 local agreements have been negotiated with the union locals and school boards across the province, as of September 28, 2016, 14 local agreements were still outstanding.[7] The Act formally introduced a two-tier system of bargaining in education, with financial matters, such as salary, maternity leave and sick leave, to be addressed at the provincial tables, leaving individual boards to reach separate agreements on local issues.

The Ministry of Education committed to reviewing the legislation after the first round of central collective bargaining. In this regard, the Ministry conducted an internal review on the status of the new bargaining process.[8] The education sector is waiting to see if the Government is going to make any revisions to the legislation. We understand that the review of the legislation has gone to the Minister.

During the review process, the Government heard different suggestions on how to improve the legislation, but there was no consensus on how to amend the Act.[9]

In light of the time line for bargaining, if the Ministry decides to make changes to the Act, it is expected they will move quickly to make the amendments.

Under the current provisions of the Act, notice to bargain centrally is notice to bargain locally. This notice can be served in June 2017. The Minister has authority to extend the period by regulation, allowing notice to bargain to be served earlier. The legislation does not set out rules on the timing of central and local bargaining. In the first round of bargaining, the different associations chose different options. For example, in the last round of bargaining, the Ontario English Catholic Teachers' Association ("OECTA") and the Ontario Catholic Schools Trustees' Association ("OCSTA") sequenced local bargaining by agreement, after the central terms were agreed to.

Under the provisions of the Act, the central parties and the Crown must meet within 15 days of notice to commence central bargaining on the issue of

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[5] *Ibid.*

[6] *Ibid.*

[7] Kristin Rushowy, "456 education contracts down – but still 14 to go", *The Toronto Star* (September 28, 2016) at: **https://www.thestar.com/news/gta/2016/09/28/456-education-contracts-down-but-still-14-to-go.html**.

[8] *Ibid.*

[9] *Ibid.*

the scope. Disputes over scope may be referred to the Ontario Labour Relations Board after 45 days from the notice to bargain. The Act does not permit strikes or lockouts on the issue of scope.

Parties to central bargaining are the "employee bargaining agency" (i.e. the existing teachers' union) and the "employer bargaining agency" (i.e. the existing trustees' association).

An employer bargaining agency has exclusive authority for certain bargaining activities, including representing school boards at the central table, exercising rights and privileges of boards under the *Labour Relations Act, 1995* and binding boards to the central terms of their collective agreements.

Crown consent is required before an employer bargaining agency can agree to refer matters to arbitration, authorize lock outs, alter the rates of wages or agree to any other term that is a central term related to central bargaining.

Central deals were reached in August 2015 with OSSTF and OECTA. In September 2015, the French teachers' unions reached a central agreement. The Elementary Teachers' Federation of Ontario reached a central deal in November 2015.

It remains to be seen what amendments to the Act will be made by the Government as a result of its internal review. In light of the fact that 14 local education agreements remain outstanding, it appears that some education workers in the province are close to a perpetual state of bargaining.[10] This has resulted in a significant increase in negotiation costs. It is in the interest of all parties to find ways to speed up the bargaining process.

It will be interesting to see if the teachers, education workers and the Government can agree on terms to extend their current collective agreements. This will be a complex process that will require input and ratification from employee and employer bargaining agencies in the public, Catholic and French school board sectors. The current provisions of the Act do not permit contracts to be extended. In this regard, the Government may have to amend the Act to provide for such extensions.

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Some education workers in the province are close to a perpetual state of bargaining.

[10] Allison Jones, "Teachers' near - 'perpetual state of bargaining' costing Ontario millions", *The Toronto Star* (September 4, 2016) at: https://www.thestar.com/yourtoronto/education/2016/09/04/ontario-teachers-near-perpetual-state-of-bargaining-costing-the-province-millions.html.

SEXUAL VIOLENCE AND HARASSMENT ACT IN FORCE IN ONTARIO

The Ontario Government introduced the *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment, 2016* (Bill 132 for short) on October 27, 2015. On March 8, 2016, Bill 132 received Royal Assent in Ontario. Bill 132 amends a number of existing statutes, including the *Limitations Act, 2012,* the *Ministry of Training, Colleges and Universities Act* and the *Occupational Health and Safety Act* (the "OHSA").

The definition of workplace harassment is expanded to include the new workplace sexual harassment definition.

Bill 132 takes a comprehensive approach to sexual violence and harassment in Ontario society. It builds on the harassment and bullying reforms introduced in 2009 under the OHSA. It seeks to address sexual violence and harassment in college, university and private college settings, requiring these institutions to implement sexual violence policies. It eliminates the statutory limitation period for civil sexual assault claims. The preamble to Bill 132 announces:

> The Government will not tolerate sexual violence, sexual harassment or domestic violence. Protecting all Ontarians from their devastating impact is a top Government priority and is essential for the achievement of a fair and equitable society.
>
> All Ontarians would benefit from living without the threat and experience of sexual violence, sexual harassment, domestic violence and other forms of abuse, and all Ontarians have a role to play in stopping them.

To achieve this laudable intention, the Government requires employers, such as school boards and independent schools, to do their part in the workplace. For employers, the most significant amendments are those to the OHSA. The significant changes include:

- The existing definition of workplace harassment, established under Bill 168, is expanded to include the new workplace sexual harassment definition.
- The new workplace sexual harassment definition is:
  - (a) engaging in a course of vexatious comment or conduct against a worker in a workplace because of sex, sexual orientation, gender identity or gender expression, where the course of comment or conduct is known or ought reasonably to be known to be unwelcome, or
  - (b) making a sexual solicitation or advance where the person making the solicitation or advance is in a position to confer, grant or deny a benefit or advancement to the worker and the person knows or ought reasonably to know that the solicitation or advance is unwelcome.
- Employers will have an obligation to advise employees who allege workplace harassment by a supervisor of the measures and procedures that they can follow.
- Procedures will have to be put in place to maintain the confidentiality of information

obtained about an incident or complaint of workplace harassment, unless the disclosure is necessary for the purposes of investigating or taking corrective action with respect to the incident or complaint, or is otherwise required by law.

- Policies will need to be updated to set out how an employee who has allegedly experienced workplace harassment and the alleged harasser, if he or she is an employee, will be informed of the results of the investigation and of any corrective action that has been taken or that will be taken as a result of the investigation.
- The general obligation to protect employees from workplace harassment has been strengthened. In addition to the above, employers must ensure that an investigation is conducted into incidents and complaints of workplace harassment that is appropriate in the circumstances.
- Finally, Ministry of Labour inspectors are given enhanced powers. An inspector may order an employer to cause an investigation into workplace harassment to be conducted, at the expense of the employer, by an impartial person possessing such knowledge, experience or qualifications as are specified by the inspector and to obtain, at the expense of the employer, a written report by that person.

These changes came into force on September 8, 2016. As of September 8, 2016, employers, such as school boards and independent schools, were required to amend their existing workplace violence and harassment policies and procedures to reflect the above changes. Those policies and procedures must now be reviewed on an annual basis after September 8, 2016.

The OHSA is also amended to provide employers with a quasi-defence to claims of workplace harassment. The OHSA expressly provides that a reasonable action taken by an employer or supervisor relating to the management and direction of employees or the workplace is not workplace harassment. Consequently, claims that a manager is harassing an employee because of a negative performance review, for example, will not constitute workplace harassment, although employers presumably will have to investigate those complaints to make this determination.

In 2015, the Human Rights Tribunal of Ontario ordered the employer of two women who had been abused, harassed and sexually assaulted by the owner and principal of the employer to pay them $150,000 and $100,000 respectively for injuries to their dignity, feelings and self-respect. The women, temporary foreign workers from Mexico with little or no command of English or their legal rights, were forced to engage in numerous unwanted sexual acts, all the while being threatened with deportation if they did not comply. The case shows that sexual harassment and sexual violence continues to occur in workplaces in Ontario. Bill 132 should go some distance to stopping this type of conduct once and for all.

As of September 8, 2016, employers were required to amend their existing workplace violence and harassment policies and procedures.

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COURT DISMISSES TRACK STUDENT'S NEGLIGENCE LAWSUIT AGAINST SCHOOL BOARD, TRACK COACH AND PRINCIPAL

On August 2, 2016, the Ontario Superior Court of Justice issued a decision dismissing a lawsuit against Peel District School Board, a principal and track coach. In *Peters v. Peel District School Board et al.*[1], former high school student and track team member Tiffany Peters sued the Board, the principal, two vice-principals and the track coach for negligence after she was injured during a long-jump practice in 2005. The litigation had been dismissed against the two vice-principals in earlier proceedings.

The application of the standard of care will vary from case to case.

Ms. Peters was injured during a track practice after school on April 19, 2005. The parties agreed on some of the basic facts, including that Ms. Peters reported having hurt her left knee during the practice and had an operation eight months later to repair a tear in the lateral meniscus on her left knee. She alleged that after the injury and surgery, her condition deteriorated and although she entered university, she ultimately did not succeed in her dream of being a singer, dancer or actor.

In her lawsuit, she alleged that the Board and its employees had been negligent and caused permanent disability, leaving her unable to pursue her career goals. The Court dismissed her case and rejected her claim for damages.

SCHOOL BOARD MET STANDARD OF CARE

The Court in *Peters* applied the landmark Supreme Court of Canada decision from 1981 on the standard of care in claims of school board negligence, *Myers v. Peel County Board of Education*.[2] A school board and its employees owe a duty of care to students known as the standard of a careful and prudent parent. The Supreme Court explained how to apply the standard in individual cases in the following excerpt from *Myers:*

> [I]t remains the appropriate standard for such cases. It is not, however, a standard which can be applied in the same manner and to the same extent in every case. Its application will vary from case to case and will depend upon the number of students being supervised at any given time, the nature of the exercise or activity in progress, the age and the degree of skill and training which the students may have received in connection with such activity, the nature and condition of the equipment in use at the time, competency and capacity of the students involved, and a host of other matters which may be widely varied but which, in a given, case, may affect the application of the prudent parent standard to the conduct of the school authority in the circumstances.[3]

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[1] 2016 ONSC 4788.

[2] [1981] 2 S.C.R.

[3] [1981] 2 S.C.R. at para 31.

At the trial in *Peters,* the Board did not concede that Ms. Peters tore her left meniscus on April 19, 2005 and submitted to the Court that it could have occurred any time prior to an MRI conducted on September 16, 2005. However, the Court concluded on a balance of probabilities that Ms. Peters tore her lateral meniscus in her left knee on April 19, 2005 during the track practice. The questions for the Court then became:

(1) whether the Board was negligent prior to, at the time of, or after the accident;

(2) what was Ms. Peters' current physical condition and prognosis, and

(3) whether her current physical condition was causally related to the April 19, 2005 accident.

It is worth noting that the Trial Judge found significant inconsistencies in Ms. Peters' evidence and decided it was not reliable. In many instances, other evidence, including Ms. Peters' own prior statements given at examinations for discovery, contradicted her testimony. On the other hand, the Board's witnesses and testimony (given by the Track Coach and Principal) were found to be credible and reliable.

The Court concluded that the Board was not negligent prior to the accident nor at the time of the accident. This conclusion was based largely on the testimony of the Track Coach and another track student and the following key facts:

1. The Track Coach was on the field when Ms. Peters' injury occurred. The Track Coach was complying with the OPHEA[4] guidelines for supervision.
2. The Track Coach properly instructed Ms. Peters on long jump, and instructed her only to perform "run-throughs", i.e. omitting the final part of the jump where the student takes off from the track and lands in the pit.
3. The Track Coach properly inspected the long jump pit.

The Court also reviewed what occurred after Ms. Peters' injury and found the Board met the standard of care of a prudent parent. The Track Coach, the Principal, Ms. Peters and Ms. Peters' family members who cared for Ms. Peters after the injury gave evidence.

The Trial Judge concluded that the Track Coach assessed Ms. Peters' injury and determined the best treatment was "RICE" – Rest, Ice, Compress, Elevate, which she communicated to Ms. Peters. She accompanied Ms. Peters and another student into the school and confirmed that arrangements had been made for a ride home for Ms. Peters. At that point, she returned to the field to put equipment away. In the circumstances, her actions met the standard of a prudent parent.

One of Ms. Peters' allegations was that she had been left alone at the school after the injury. However, the facts did not support her allegations. The Principal gave testimony about his practice of leaving his door open to the foyer so he could actively supervise students and intervene when necessary. On the evening of the injury, the Principal spoke with Ms. Peters and heard that she was waiting for a ride. She did not appear to be in distress. The Court found that the Principal's interaction with Ms. Peters met the standard of care of a prudent parent.

The Court found that the Track Coach and Principal did not breach the standard of care of a prudent parent in their dealings with Ms. Peters prior to the injury, at the time of the injury or following the accident when Ms. Peters was

The Court found that the Track Coach and Principal did not breach the standard of care of a prudent parent.

[4] Ontario Physical and Health Education Association. See www.ophea.net.

picked up and taken home. The claim was therefore dismissed.

DAMAGE ASSESSMENT

As is standard practice, the Trial Judge in *Peters* assessed the damages even though the claim was dismissed. The Trial Judge reviewed extensive medical evidence and concluded that Ms. Peters' post-accident condition was not causally related to the injury on April 19, 2005, but was more likely related to her excessive weight gain. The other difficulty with her claim was that Ms. Peters self-reported pain that could not be objectively quantified or verified.

Ms. Peters claimed that the injury had diminished her employment prospects and her aspiration to become an actor, dancer and singer. However, the evidence showed that she undertook little preparation to achieve her dreams. For example, she did not, at any point, enroll in competitive programs for acting, dancing or singing.

LESSONS FOR EDUCATORS

This case confirms that the courts will continue to apply *Myers* and the standard of care of a careful and prudent parent in cases of school board negligence. The application of that standard depends on the nature of the activity and students. In this case, it was highly relevant that the Track Coach was consistent in the training and supervision of her long-jump students and that she followed the OPHEA guidelines applicable to track and field. Both the Principal and the Track Coach provided an appropriate level of care and attention to Ms. Peters after her injury.

The courts will continue to apply the standard of care of a careful and prudent parent in cases of school board negligence.

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ONTARIO INTRODUCES NEW EXECUTIVE COMPENSATION FRAMEWORK

On September 6, 2016, the Ontario Government introduced Regulation 304/16: Executive Compensation Framework (the "Framework") under the *Broader Public Sector Executive Compensation Act, 2014* ("BPSECA") for broader public sector executive compensation. The Framework sets out requirements that all designated employers must follow for establishing and posting executive compensation programs. It also caps salary and performance-related payments for designated executives, such as supervisory officers and directors of education. The Framework becomes effective with respect to a designated employer when the designated employer posts a compliant executive compensation program on its website which must be no later than September 5, 2017.

The Government has also published an Executive Compensation Framework Guide (the "Guide") which provides designated employers with further information and guidance on the requirement established by the Framework.

DESIGNATED EMPLOYERS AND EXECUTIVES

The Framework applies to designated employers and designated executives under the BPSECA. Designated employers include school boards, public hospitals, universities, colleges, all community care access corporations, independent Electricity System Operator and Ontario Power Generation, Ornge, and other prescribed public bodies.

Designated executives are employees or office holders who are entitled to receive or could potentially receive cash compensation of $100,000 or more in a calendar year, including the head of a designated employer regardless of title (such as a CEO, or president), vice-president, chief administration officer, chief operating officer, chief financial officer, holder of any other executive position, the director of education or a supervisory officer of a school board.

RESTRICTIONS ON COMPENSATION

The Framework provides that a designated employer shall not provide an element of compensation, other than salary and performance-related pay, to a designated executive unless the element is also generally provided, in the same manner and relative amount, to non-executive managers. Non-executive managers are defined in the regulation as employees and office holders who exercise managerial functions and who directly report to one or more designated executives.

The Framework strictly prohibits the following types of compensation, unless required for the performance of the executive's job or for critical business reasons:

- signing bonuses;
- retention bonuses;
- cash housing allowances;
- insured benefits that are not generally provided to non-executive managers; and
- payments or other benefits in lieu of perquisites.

It also caps the following elements of compensation:

- termination payments that equal more than 24 times the average monthly salary of the designated executive;
- termination or severance payments that are payable in the event of termination for cause;
- paid administrative leave may only be provided to the head of a college or university or another designated executive who is part of or will return to the faculty at a college or university;
- paid administrative leave cannot be accrued at a rate that exceeds 10.4 paid weeks per year; and
- administrative leave may not be paid out in lieu of time off.

WRITTEN EXECUTIVE COMPENSATION PROGRAM

Designated employers are required to establish a written executive compensation program setting out the compensation that may be provided to its designated executives. The program must include information on the compensation philosophy, salary and performance-related pay caps,

Designated employers are required to establish a written executive compensation program.

comparative analysis details and other elements of compensation.

The Framework regulation caps salary and performance-related payments for designated executives at no more than the 50th percentile of at least eight appropriate comparators. The process for determining maximum salary and performance-related pay involves selecting appropriate comparators and conducting a comparative analysis. For each designated executive position or class of designated executive positions, comparable positions must be selected for analysis from at least eight different organizations. The regulation sets out criteria to assist with the selection of comparator organizations and comparable positions. Comparators can also be from the private sector and/or outside of Canada if there is a demonstrable need to use comparator organizations from outside the Canadian public sector or broader public sector. In all cases, at least one Canadian public sector or broader public sector comparator organization must be included in the comparative analysis.

The Framework becomes effective when the employer posts a compliant executive compensation program to its website, no later than September 5, 2017.

Approval from the Minister responsible for the administration of BPSECA (President of the Treasury Board) must be sought before comparator organizations from outside the Canadian public sector or broader public sector can be used. There is a process in place to obtain approval. To seek approval, designated employers must submit a business case completed on the "Request For Approval To Use Private Sector and/or International Comparators form" (available from the Treasury Board Secretariat) to their overseeing ministry setting out the reasons why the designated employer cannot be compared solely to organizations in the Canadian public sector or broader public sector. Overseeing ministries will be responsible for reviewing the application with the Centre for Public Sector Labour Relations and Compensation at the Treasury Board Secretariat. The decision to approve will be made by the President of the Treasury Board.

PUBLIC CONSULTATIONS

When implementing a new executive compensation program, designated employers must ensure compliance with any existing government approval mechanisms for executive compensation and must consult the public on the manner in which executive compensation elements are determined.

Designated employers are required to post draft executive compensation programs on their website for a minimum of 30 days to allow a reasonable opportunity for members of the public to comment on the manner in which the designated employer determines the compensation it provides to designated executives. Designated employers are also required to establish a process for collecting feedback for consideration when finalizing executive compensation programs and retaining such feedback until the conclusion of the compensation program and two subsequent programs in the event that it is requested by the overseeing Ministry or the Treasury Board Secretariat.

EFFECTIVE DATE AND GOING FORWARD

The Framework becomes effective when the designated employer posts a compliant executive compensation program to its website, no later than September 5, 2017. The existing freeze on salaries for executives under the Broader Public Sector Accountability Act, 2010 remains in effect until the designated employer posts its final executive compensation program to its website.

The Guide indicates that once the Framework is in place, designated employers may need to provide salary increases to executives based on either the

initial calculation of caps or the recalculation of caps. In all other cases, the average rate of increase in salary for designated executives in a given year must not exceed the average rate of increase in salary for nonexecutive managers in that year.

Under BPSECA, once the Framework is in effect for a designated employer, newly hired designated executives and existing employees who change designated executive positions will be subject to the terms of the Framework. After the third anniversary of the posting of a designated employer's first compensation program under the Framework, all compensation elements for all designated executives must fall within the limits permitted by the Framework. There is therefore a three-year grand-parenting period for designated executives hired prior to the effective date into a role.

COMPLIANCE

Designated employers are required to submit reports attesting that the compensation for their designated executives complies with the Framework. The BPSECA includes audit and penalty provisions that may be used to ensure compliance with the Framework. A failure to comply could therefore lead to penalties.

WHAT DESIGNATED EMPLOYERS SHOULD DO NOW

If you are a designated employer, you should consider the following steps:

1. Identify the designated executive positions that will be subject to the terms of the Framework, and who the non-executive managers are for the purposes of assessing.
2. Identify and carefully consider who your appropriate comparators should be. Seek approval if comparators outside of the Canadian public sector or broader public sector are required.
3 Begin developing an executive compensation program in compliance with the Framework.
4. Post a draft executive compensation program on your website for a minimum of 30 days to allow a reasonable opportunity for members of the public to comment.
5 Collect feedback from the public for consideration in the final executive compensation program and retain such feedback.
6. Post a compliant executive compensation program to your website by no later than September 5, 2017.

The Act includes audit and penalty provisions.

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ONTARIO OMBUDSMAN'S OFFICE MARKS ONE YEAR OF SCHOOL BOARD OVERSIGHT

On August 18, 2016, the Ontario Secondary School Teachers' Federation welcomed Ontario Ombudsman Paul Dubé as its keynote speaker at the Summer Leadership Conference in Ottawa. The timing of the speech is significant, as September 2016 marks one year since the Office of the Ontario Ombudsman (the "Office") assumed responsibility for overseeing Ontario's school boards. Mr. Dubé described this oversight relationship as having been long-awaited by the Office:

> **[…] successive ombudsmen have called for oversight of the broader public sector ever since our office was established in 1975. In fact, we have always received complaints about municipalities, universities, and school boards, but we have not had the mandate to look into them until this year.**

"Since September first, we have received almost 700 complaints about school boards. "

The Office's oversight over Ontario's 72 school boards came into effect on September 1, 2015, following the passage of Bill 8, the *Public Sector and MPP Accountability and Transparency Act.* Bill 8 introduced various changes that, as described in Ontario's legislature, were intended to "strengthen accountability and oversight" in various areas of the public sector – including the regulation of public sector compensation and the extension of the Office's oversight powers to municipalities and universities[1] in addition to school boards. In light of this change, the Office became the sixth Canadian ombudsman's office to oversee school boards.

Like these oversight powers, Mr. Dubé is, himself, new to the Office.[2] Accordingly, the progression of his term as Ontario's Ombudsman will dovetail with the development of a new relationship between school boards and the Office.

Addressing his experience with school board oversight during his first months at the Office, Mr. Dubé described a strong working relationship in the making – largely owing to open lines of communication between school boards and the Office to ensure that complaints are dealt with efficiently and expediently:

> Since September first, we have received almost 700 complaints about school boards. I'm happy to report that so far, we have received excellent co-operation from most boards, which has allowed us to resolve many difficult issues. […] About one-third of all complaints are resolved by our staff simply providing information and referrals.

Mr. Dubé's keynote address illustrated his intentions that such dialogue and open lines of communication remain a keystone of his tenure

[1] These oversight powers took effect on January 1, 2016.

[2] Mr. Dubé assumed the role of Ontario's Ombudsman on April 1, 2016. He replaced acting Ombudsman Barbara Findlay and his tenure follows that of Ontario's previous full-term Ombudsman, André Marin.

as Ontario's Ombudsman. He indicated that the Office would remain open to involvement and input from school boards as *stakeholders,* with the corresponding expectation that school boards will familiarize themselves with the role of the Office and its processes:

> I have made it a priority to get out to events like this, as often as possible, to meet and educate stakeholders and help them get to know what an Ombudsman does and how we work. And also to learn from stakeholders about the issues you deal with, and the challenges you face in your day-to-day work.

The Office expects that schools and school boards, as part of their role in this new partnership, will take the lead in developing processes and policies to address complaints, with the Office playing a supporting role as needed in more serious matters. As set out by the Office in its website message to those seeking to file a complaint respecting a school or school board:

> The Ombudsman is an office of last resort, so you should attempt to resolve your complaints directly with the school board first. You may wish to discuss your concerns with a teacher, vice-principal or principal. If that does not resolve the matter, you may wish to speak with a school board superintendent or other board official.

Schools and school boards are well-advised to take proactive measures that ensure appropriate internal processes are established to receive and address any complaints that would otherwise be brought to the Office for investigation. To the extent that this is achieved, school boards may retain control over the development of solutions and policies that, where necessary, address issues raised by their stakeholders and community members. Even in cases where individuals bypass such internal processes and bring complaints directly to the Ombudsman, school boards with established processes will be better equipped to take the lead in generating solutions when the Office calls. As stated by Mr. Dubé:

> We are not judges or enforcers – we review facts, and recommend solutions.

In general, the Office is able to address complaints regarding special education supports, school board policies, customer service provided by board staff and other matters within the purview of individual school boards. Although the Office's authority under Ontario's *Ombudsman Act* allows it to carry out investigations and make recommendations accordingly, these recommendations are not binding and the Office cannot overturn the decisions of school boards or otherwise issue penalties. However, the *Ombudsman Act* nevertheless requires school boards to co-operate with the Office in responding to a complaint. School boards contacted by the Office regarding complaints are well-advised to work with the Office to resolve the complaint, while recognizing that the resolution that is adopted need not be the specific resolution proposed by the Office.

The *Ombudsman Act* requires school boards to co-operate in responding to a complaint.

Where complaints are made specifically against school boards, the Office will apply the following process:[3]

- The Ombudsman will assess all complaints and refer them to local school board officials for quick resolution, wherever possible.
- If local mechanisms are unsuccessful, the Ombudsman may attempt resolution and may contact the school board for more information.

[3] Office of the Ontario Ombudsman, "Complaints about School Boards," available at <https://www.ombudsman.on.ca/Files/sitemedia/Documents/Complaints-about-SCHOOL-BOARDS-EN-Accessible-PDF.pdf>.

- If an investigation is necessary, the school board will receive written notice and will be required to provide relevant information and documents.
- If the Ombudsman makes recommendations, the school board will have a chance to respond before any report is made public.
- The Ombudsman will follow up on relevant recommendations to ensure they are implemented and have the desired effect.

The Office also exercises its discretion not to investigate some complaints on the basis of factors that include (i) the age of the complainant; (ii) whether the complainant has sufficient personal interest in the subject matter; (iii) whether or not there is an alternative remedy for the complaint; and (iv) whether the complaint is considered frivolous or vexatious or if the matter involves a broader public policy issue.

The Office will value having school boards take the lead in addressing complaints.

School boards may take comfort in the fact that the 700 school board complaints received by the Office in the past year pale in comparison to the 20,000 overall complaints that the Office receives annually. Due to this high volume of complaints received by the Office, all of its teams focus on carrying out triage work to ensure that complaints are dealt with as soon as possible. It can be expected that the Office will value having school boards take the lead in addressing complaints where responsible processes have been developed for this purpose.

There are four areas where developing such processes for the management of complaints would be particularly valuable. According to Mr. Dubé, the most common themes in complaints regarding school boards are: (i) student safety and security; (ii) special education; (iii) school staff; and (iv) busing. Given that these areas generate the bulk of complaints that will otherwise be received by the Office, school boards may take these themes as a starting point for shoring-up policies and processes, as needed, to enable effective solutions to be generated regardless of whether a complaint is received directly from a community member or indirectly through the Office.

In managing their new oversight relationship with the Office, it will be particularly important for school boards to ensure that measures are in place to address issues whose systemic effects may be experienced by multiple students. In his speech, Mr. Dubé described the Office as becoming more involved in matters where trends in complaints indicate a single problem affecting many people. In such instances, the Office may undertake a *systematic investigation* – which entails extensive evidence-gathering and the publication of a public report.

As announced by various news sources on September 9, 2016, the Office has assigned staff to investigate whether such a systematic investigation will be undertaken with respect to a shortage of busing services being made available to students attending school in Toronto and Hamilton.

The Office's present investigation remains an opportunity for school boards to develop a solution to the busing shortages. Whatever the outcome, the interface between school boards and the Office in tackling this issue is likely to be significant to setting the tone for the continued development of this oversight relationship in coming years.

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SCHOOL BOARDS MOVING TO REVIEW HEAD LICE POLICIES

The Toronto District School Board ("TDSB") has begun the process of reconsidering its strict policy on requiring children with head lice to remain home from school.[1] TDSB spokesperson Ryan Bird described the reconsideration process as geared towards inclusion in the classroom:

> **"I think that many people believe that as long as it's being treated, that shouldn't be a barrier to come to school for days at a time."**

Commonly known as "no nit" policies, the strict exclusion of children with head lice from classes has been adopted by numerous schools throughout Canada, Australia and the United States. Such policies maintain strict caution against the spread of lice – requiring children found with traces of live head lice or lice eggs in their hair to remain at home until their scalps are completely lice-free.[2] In many cases, children are sent home regardless of whether they are found with one louse or many, and regardless of whether the lice are viable or not. Even a single "nit" amounting to an empty egg casing with no live louse and presenting no possibility of transmission may result in a child being sent home from school. Depending on the course of treatment, the resulting exclusion from school usually ranges between 2 and 14 days.[3] Up until 2006, health authorities in both Canada and the United States recommended such policies as a best practice among school boards.[4]

However, these recommendations have recently changed. This change has created a disparity in school boards' policies towards addressing lice infections – with some school boards continuing to maintain a strict "no nits" approach and others adopting more relaxed approaches.

A SIMILAR DEBATE IS TAKING PLACE IN THE UNITED STATES

As of 2004, approximately 60 percent of schools in the United States reported having adopted strict "no nit" policies.[5]

Research on the costs of maintaining such "no nit" policies in the United States has nevertheless challenged their value. One group of researchers estimated that parents missed an average of five working days when a child was sent home to be treated for lice. This resulted in lost wages of up to $2,720.00 per family per active infestation,[6]

Parents missed an average of five working days when a child was sent home to be treated for lice.

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[1] Alison Auld (Jan 13, 2016) "Toronto school board's plan to review head lice policy sparks debate" *The Globe and Mail* [Globe and Mail].

[2] Kosta Y Mumcuoglu, Terri A Meinking, Craig N Burkhart and Craig G Burkhart, "Head Louse Infections: the "no nit" policy and its consequences" (2006) 45 International J Dermatology 891 [Mumcuoglu].

[3] JH Price JH, CN Burkhart CN, CG Burkhart CG, et al. "School nurses' perceptions of and experiences with head lice." (1999) 69 J Sch Health 153.

[4] *Ibid.*

[5] Patricia Sciscione, "No-Nit Policies in Schools: Time for Change" (2007) 23 J Sch Nursing 13 at 16 [Sciscione].

[6] S Gordon "Shared vulnerability: A theory of caring for children with persistent head lice" (2007) 23 J Sch Nursing 283 [Gordon].

and a total annual loss of approximately $6 billion in earnings across the United States.[7] At the same time, children in the United States lost an estimated 12 to 24 million school days and,[8] as a result, schools lost $280 to $325 million in funding due to absences attributable to head lice.[9]

For many Americans, however, these costs are unquestionably worthwhile – particularly when considered against the costs that would result from lice transmission becoming more common in classrooms. Parents who have endured the distress and effort involved in meticulously removing lice from children's hair and fabrics have attested to the importance of taking all possible measures to ensure that such experiences are avoided.[10]

The Canadian Paediatric Society adopted a revised position statement that favoured the inclusion of students with head lice in classrooms.

Critics of "no nits" policies have nevertheless countered that simple treatment by insecticide shampoos and acid vinegar for the weeks after contamination is sufficient to remove lice from most children with minimal distress.[11] However, Deborah Z. Altschuler, president of the United States National Pediculosis Association, states that policies allowing children with lice to attend classes give rise to a lack of vigilance on the part of parents and an overreliance on treatment by pesticides that may, in themselves, place children in further jeopardy.[12] The Canadian Paediatric Society confirms that although commonly-used insecticides "have favourable safety profiles," stronger second-line insecticides such as Lindane have potential for neurotoxicity and bone marrow suppression.[13]

CHANGED RECOMMENDATIONS FROM THE MEDICAL COMMUNITY IN CANADA

Following updates to international guidelines for the control of head lice infections in 2007,[14] the Canadian Paediatric Society (CPS) adopted a revised position statement that favoured the inclusion of students with head lice in classrooms.[15] The most recent version of the CPS position statement sets out the basics of head lice infestations and transmission as follows:

The infestation

An infestation with lice is called pediculosis, and usually involves less than 10 live lice. Itching occurs if the individual becomes sensitized to antigenic components of louse saliva that is injected as the louse feeds. On the first infestation, sensitization commonly takes four to six weeks. However, some individuals remain asymptomatic and never itch. In cases with heavy infestations, secondary bacterial infection of the excoriated scalp may occur. Unlike body lice, head lice are not vectors for other diseases.

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[7] Mumcuoglu, *supra* at 893.

[8] Sciscione, *supra* at 13.

[9] Gordon, *supra.*

[10] For example, see Tamara Flannagan, "Send Students With Lice Home Before it Gets out of Control" (October 15, 2015) *New York Times.*

[11] Mumcuoglu, *supra* at 894.

[12] Deborah Z. Altschuler, "No Nits or Lice, No Chemicals, No Excuses" (October 15, 2015) *New York Times* [Altschuler].

[13] CPS Policy Statement, *supra.*

[14] "Pediculosis Management in the School Setting," National Association of School Nurses Position Statement (Revised 2011) online at: <http://www.nasn.org/PolicyAdvocacy/PositionPapersandReports/NASNPositionStatementsFullView/tabid/462/ArticleId/40/Pediculosis-Management-in-the-School-Setting-Revised-2011>.

[15] J Finlay, NE MacDonald; Canadian Paediatric Society (CPS), "Head Lice Infestations: A Clinical Update" (Originally issued in 2008, reaffirmed in February 2016), online at <http://www.cps.ca/documents/position/head-lice> [CPS Policy Statement].

> Transmission of head lice
>
> Head lice are spread mainly through direct head-to-head (hair-to-hair) contact. Lice do not hop or fly, but can crawl at a rapid rate (23 cm/min under natural conditions). There continues to be controversy about the role fomites play in transmission. Two studies from Australia suggest that in the home, pillowcases present only a small risk, and in the classroom, the carpets pose no risk. Pets are not vectors for human head lice.

Based on its assessment of the limited potential for head lice to spread between children in classrooms or to cause serious adverse side effects, the CPS adopts the view that schools' "no nit" policies do not have a basis in medicine:

> Exclusion from school and daycare due to the detection of the presence of 'nits' does not have sound medical rationale. Even the detection of active head lice should not lead to the exclusion of the affected child. Treatment should be recommended and close head-to-head contact should be discouraged pending treatment. The American Academy of Pediatrics and the Public Health Medicine Environmental Group in the United Kingdom also discourage 'no nit' school policies.
>
> Families of children in the classroom where a case of active head lice has been detected should be alerted that an active infestation has been noted, and informed about the diagnosis, misdiagnosis and management of head lice, and the lack of risk for serious disease. [emphasis added]

Similar positions have been adopted by the United States' Centre for Disease Control, and National Association of School Nurses.[16]

RESPONSES FROM COMMUNITY STAKEHOLDERS

Like their American counterparts, Canadians who support strict "no nit" policies have cited concerns over the potential for lice to spread in the classroom, and the resulting stress and lost work time for parents who are then required to treat their children and prevent the further spread of lice in their homes.

The Hastings and Prince Edward District School Board's recent revision of its formerly strict "no nits" policy received a "furious" response from some of the parents in its community.[17] A Facebook page launched to protest the change of policy received the support of nearly 400 individuals who signed up as members over the course of a single weekend. In an interview with *The Globe and Mail*, the parent who launched the page stated, "now our children who don't have head lice are now prone to it on a daily basis… it's like our kids' rights have been taken away from them."[18] As *The Globe and Mail* highlighted, however, not all parents who joined the online Facebook discussion shared a common point of view on the necessity of strict "no nits" policies. The disagreement is evident in the following two postings:

Not all parents who joined the online Facebook discussion shared a common point of view on the necessity of strict "no nits" policies.

[16] Centers for Disease Control and Prevention, *Head lice information for schools* (2010) Online at <http://www.cdc.gov/parasites/lice/head/index.html>; "Pediculosis Management in the School Setting;" National Association of School Nurses Position Statement (Revised 2011) online at: <http://www.nasn.org/PolicyAdvocacy/PositionPapersandReports/NASNPositionStatementsFullView/tabid/462/ArticleId/40/Pediculosis-Management-in-the-School-Setting-Revised-2011>.

[17] Luke Hendry (January 12, 2016) "Parents furious over head lice decision" *The Belleville Intelligencer,* online at <http://www.intelligencer.ca/2016/01/11/parents-furious-over-head-lice-decision>.

[18] *The Globe and Mail, supra.*

> "This is ridiculous! Send them to school so they can give it to all the other students!"
>
> "I am outraged!!! I have been through this x 5 and wasted an entire summer picking nits and had to cut all my girls hair off short...nuisance my ass!"

Faced with such competing views, school boards have been left to determine the appropriate policy measures to balance medical recommendations against many parents' voiced concerns and lived experiences.

THE DIFFERING APPROACHES OF SCHOOL BOARDS ACROSS CANADA

In developing a balanced approach to policies addressing head lice in the classroom, the minimization of harm is key.

Across Canada, a single, consistent policy approach for addressing head lice remains elusive, as different school boards continue to adopt different approaches to striking the balance between the views of medical professionals and their community stakeholders. While most school boards continue to maintain some form of a "no nits" policy, the strictness of enforcement varies. On the strict end of the spectrum, the Simcoe County District School Board requires children with head lice to be removed from school and, before the child may return, parents must to sign a form confirming that recommended head lice treatments have been completed.[19] Toward the opposite end of the spectrum, Vancouver public school boards notify parents when lice or nits are spotted in the classroom but do not otherwise require students to be kept out of school.[20] Closer to the center of the spectrum, school boards in Calgary and Halifax encourage parents to remove their children from classes but do not expressly require them to do so.[21]

The possibility that Canada's largest school board may relax its own "no nits" policy may serve to significantly shift the balance in this spectrum of approaches.

CONSIDERATIONS FOR STRIKING AN APPROPRIATE BALANCE

In developing a balanced approach to policies addressing head lice in the classroom, the minimization of harm is key. The challenge for school boards is to strike a balance that assigns appropriate weight to sorts of harms that concern the medical community as against the sorts of harms that concern their community stakeholders.

An entry point in this respect may be both communities' shared concern over ensuring against (i) unnecessary harm to the health of children; and (ii) unnecessary time away from school.

These shared concerns may be best reflected in head lice policies designed to avoid misdiagnosis and overdiagnosis of head lice infections. As stated by Sciscione:[22]

> Misdiagnosis of head lice infestation occurs frequently and causes inappropriate exclusion from school and unnecessary treatment with pediculicides [i.e., insecticides].

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[19] Cheryl Browne, "Debate brewing is students suffering from head lice should be nit-free when they return to class," (January 14, 2016) Barrie Examiner.

[20] Hannah Hoag (April 11, 2015) "The new lice wars" Macleans; See also *The Globe and Mail, supra.*

[21] *The Globe and Mail, supra.*

[22] Sciscione, *supra* at 16.

[23] Mumcuoglu, *supra* at 893.

Indeed, research cited by Kosta Mumcuoglu estimates that, in the United States, 4.2 to 8.3 million children are unnecessarily sent home each year to be treated for lice infections that they do not have. Such uninfected children are just as likely as infected children to be treated with strong insecticides.[23] In Canada, the CPS policy statement similarly cites concerns over research finding that head lice is frequently overdiagnosed and misdiagnosed when the strict application of "no nits" policies are not matched with investment in necessary resources for ensuring that lice infections are accurately diagnosed.[24]

One solution to these concerns is to provide training that enables school staff to take proper care in determining whether a child is truly infected with live lice that may be passed on to others. The United States' National Pediculosis Association, while supporting policies to send children with lice home from school, also supports prevention efforts to ensure that such outcomes are as rare as possible. Included among these prevention efforts is a "comprehensive" policy of continuous community education to ensure that parents and others play a role in detecting lice and minimizing the risk of infections in the first place.[25] As described by Deborah Altschuler, such education ensures against the sort of complacency that may adversely impact on children who experience its consequences:

> The mentality that head lice are only a nuisance keeps children unnecessarily vulnerable and chronically infested.

While medical professionals and community stakeholders have differed in the weight they attach to different harms arising from the application of "no nits" policies, all sides agree that the safety and well-being of children must be paramount in any policy addressing head lice in the classroom.

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The safety and well-being of children must be paramount in any policy addressing head lice in the classroom.

[23] Mumcuoglu, *supra* at 893.

[24] CPS Policy Statement, *supra.*

[25] Altschuler, *supra.*

ALBERTA COURT UPHOLDS HUMAN RIGHTS DECISION AGAINST INDEPENDENT SCHOOL

On August 10, 2016 the Court of Queen's Bench of Alberta released its judgment upholding an Alberta Human Rights Commission ("AHRC") decision related to students praying on an independent school's campus. The Court upheld $26,000 in damages awarded to two high school students (the "Students") as a result of their private school, Webber Academy Foundation ("Webber Academy"), prohibiting them from conducting their prayers on campus. This case reinforces a school's obligation to provide reasonable accommodations for students' religious beliefs and practices.

The Students argued that it would not have imposed undue hardship on Webber Academy to accommodate them.

AHRC DECISION[1]

On February 13, 2012, two complaints were filed to the AHRC against Webber Academy, alleging discrimination against the Students contrary to ss. 4(a) and 4(b) of the *Alberta Human Rights Act* (the "Act"). The sections provide:

> 4. No person shall
>
> a) deny to any person or class of persons any goods, services, accommodation or facilities that are customarily available to the public, or
>
> b) discriminate against any person or class of persons with respect to any goods, services, accommodation or facilities that are customarily available to the public[2]

The complainants alleged that Webber Academy discriminated against the Students by not allowing them to perform short prayers on campus in accordance with their religious beliefs. They argued that they hold sincere religious beliefs and that it would not have imposed undue hardship on Webber Academy to accommodate them. Webber Academy refused to re-enroll the Students for another school year for failure to follow its policies and procedures as a result of their praying on campus. Further, the Students argued that by refusing to re-enroll them, Webber Academy acted contrary to s. 4 of the Act.

Webber Academy argued that "the provision of prayer space" is beyond the scope of s. 4 of the Act and, in any event, there was no differential treatment of the Students as compared to other students. It argued that being non-denominational is an integral part of Webber Academy's identity, and prayers on campus challenged this identity. Webber Academy claimed it offered accommodation by allowing the Students to miss class to leave campus to pray.

The AHRC concluded that the services and facilities Webber Academy customarily offered to

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[1] *Amir and Nazar v Webber Academy Foundation,* 2015 AHRC 8, 2015 CarswellAlta 2574 ["AHRC Decision"].

[2] *Alberta Human Rights Act,* RSO 2000, c A-25.5, at s 4 ["The Act"].

the public (the student body in this case) included educational programs and other supportive services and facilities, including the use of the campus. The Students highlighted that the student body is reliant on Webber Academy to meet their needs during the day, while Webber Academy argued it has discretion in the delivery of the services offered. The AHRC concluded that Webber Academy did not have an "unfettered discretion" to summarily refuse a student's request to perform a religious obligation on its campus.[3] The discretion did not extend to allow Webber Academy to deny the use of facilities or services in a discriminatory fashion.

The AHRC accepted oral evidence given by the Students and acknowledged the sincerity of their beliefs related to the practice of prayer in the manner and at the times they requested. The Students highlighted the adverse impact of not being able to pray on campus, specifically, they were refused re-enrollment. There was clear evidence that the reason not to re-enroll the Students was based on the fact that they wanted to pray on campus. As a result, the AHRC found the Students had been subject to *prima facie* discrimination by Webber Academy.

Webber Academy argued that any discrimination was reasonable and justified pursuant to s. 11 of the Act and should, therefore, be deemed not to contravene s. 4. Section 11 provides:

> 11. A contravention of this Act shall be deemed not to have occurred if the person who is alleged to have contravened the Act shows that the alleged contravention was reasonable and justifiable in the circumstances.[4]

The AHRC accepted that the discrimination would be "reasonable and justified" if the standard in question was rationally connected to the function being performed, was adopted in good faith and was reasonably necessary to accomplish the particular purpose or goal.[5]

The AHRC accepted that Webber Academy's purpose was to foster a non-denominational learning environment free from religious influences, and found a rational connection between this goal and the prohibition against the Students praying on campus. The AHRC also accepted that Webber Academy adopted this position in good faith, believing it was necessary to accomplish its goals of being secular. The AHRC did not accept that being a non-denominational school could reasonably be interpreted as meaning that no prayer or religious practice would be allowed. Further, there was no evidence to establish that the Students' prayers would be a religious influence on any other individuals or that the Students aimed to impose their beliefs on others at Webber Academy. They only wished to quietly and discretely fulfill their religious obligations.

The AHRC highlighted that the duty to accommodate goes as far as "undue hardship."[6] The AHRC concluded that the Students' request was quite easy to accommodate. The Students required little space to do their prayers, no

Students highlighted the adverse impact of not being able to pray on campus, specifically, they were refused re-enrollment.

[3] *AHRC Decision, supra* note 1 at para 51, citing *University of British Columbia v Berg,* 1992 Canlii 89 (SCC), [1993] 2 SCR 353.

[4] The Act, *supra* note 2 at s 11.

[5] *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights),* [1999] 3 SCR 868, 1999 CanLII 646 at para 20.

[6] *Central Okanagan School District No. 23 v Renaud,* 1992 Canlii 81 (SCC), [1992] 2 SCR 970.

special equipment, and the location for prayers was flexible. A philosophy of secularism was not a reasonable and justifiable reason to refuse the Students' request.

The AHRC also noted that Webber Academy accommodated religious head coverings and facial hair. Webber Academy commented that this was different than praying because the latter is an "activity". The AHRC rejected this distinction and found that Webber Academy's proposal to allow time for the Students to pray off campus did not meet the reasonableness threshold. Allowing the Students to pray off campus was not a reasonable alternative because it could be unsafe for the Students.

The Court affirmed a school's obligation to accommodate religious beliefs.

In conclusion, the AHRC held that Webber Academy's policy of maintaining a non-denominational educational environment did not preclude Webber Academy from accommodating the students. It would not have created undue hardship for Webber Academy to do so. The AHRC awarded the Students a total of $26,000 in damages for distress, injury and loss of dignity.

COURT OF QUEEN'S BENCH DECISION[7]

The Court undertook a judicial review of the decision of the AHRC. Webber Academy argued that prayer space was not something "customarily" offered. Further, if an accommodation requested is not customarily available to the student body, it is not within the requirements of s. 4 of the Act.

The Court agreed with the AHRC that Webber Academy's policy discriminated against the Students. In his decision, Poelman J. wrote, "The law prevents Webber Academy from adopting, or applying, policies that result in discrimination on prohibited grounds, unless they can show the discrimination was reasonable and justifiable."[8]

The Court did not find the discrimination to be reasonable or justifiable. Rather, it concluded that, "There was no demonstrated hardship, let alone undue hardship, motivating this policy."[9] The Court refused to interfere with the AHRC's award of damages, and held that it was within the range of reasonable past awards by tribunals and courts.

CONCLUSION

Schools must consider their obligations to accommodate the religious practices of students to a point of undue hardship. In this case, Webber Academy's desire to foster a non-denominational identity and learning atmosphere was not prioritized over the sincere religious beliefs of its students. As such, the Court affirmed a school's obligation to accommodate religious beliefs, as well as a school's role in emphasizing the importance of multiculturalism and promoting tolerance and respect for diversity.

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[7] *Webber Academy Foundation v Alberta (Human Rights Commission),* 2016 ABQB 442, 2016 CarswellAlta 1498.

[8] *Ibid* at para 105.

[9] *Ibid* at para 123.

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