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EDUCATION LAW NEWSLETTER

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AN EDUCATOR'S GUIDE TO WELCOMING SYRIAN REFUGEE CHILDREN

On November 24, 2015, the federal government announced its plan to welcome 25,000 Syrian newcomers to Canada. As of January 20, 2016, 11,613 Syrian newcomers had arrived in Canada on 44 government-organized flights. There were 5,833 refugee applications finalized, but they had not yet travelled to Canada. There were 14,733 refugee resettlement applications in progress.[1]

In preparation, the Ontario government has been working with municipalities to identify provincial resources to support the settlement of the newcomers. Of particular importance will be integration of the new permanent residents into Ontario's education system.[2]

By the end of 2016, it is expected that approximately 10,000 new Canadians will resettle in areas such as the GTA, Hamilton, Mississauga, London and Ottawa. In terms of financial assistance, the government of Ontario is investing $10.5 million over the next two years to deliver support for refugees and organizations that are privately sponsoring them. In addition, the provincial government has already provided $330,000 to Lifeline Syria, which assists in the recruitment and training of private refugee sponsors.[3]

CIVIL WAR IN SYRIA

Syria is a country in the Middle East with a population of 22 million. It is very diverse, both ethnically and religiously. Most Syrians are ethnic Arab and will follow the Sunni branch of Islam, however, there are also minorities such as ethnic Kurds, Christian Arabs and some Jewish Arabs.[4]

[1] Government of Canada, "#Welcome Refugees", at: <http://www.cic.gc.ca/english/refugees/welcome//>.

[2] Ontario Government, "Ontario Preparing to Welcome Syrian Refugees", November 24, 2015 <https://news.ontario.ca/mci/en/2015/11/ontario-preparing-to-welcome-syrian-refugees.html>.

[3] *Ibid.*

[4] CMAS, *Caring for Syrian Refugee Children (2015)* at page 5 ["Caring"] <http://cmascanada.ca/wp-content/uploads/2015/12/Supporting_Refugees/Caring%20for%20Syrian%20Refugee%20Children-final.pdf> at p. 5.

The UN reports that more than 10 million people have fled Syria since the civil war began in 2011, most of them women and children.[5] This represents one of the largest refugee movements in recent history. A March 2015 report published by the UN estimated that four out of five Syrians were living in poverty.[6]

The majority of Syrian newcomers are living in Jordan and Lebanon, the region's two smallest countries, which are under enormous stress. An increasing number of refugees are fleeing across the border into Turkey, creating considerable tensions and overwhelming host communities.[7]

School age children from Syria may have had years of lost or interrupted schooling. The Syrian children who have attended school in asylum countries may have been targets of bullying, violence and prejudice.[8] Children who were born in refugee camps may have health issues, poor nutrition, limited food and inadequate hygiene for prolonged periods of time.

Entering a new culture is often very traumatic to young children.

Syrian life centers around family life, with particular value placed on children. The separation of children into the education system, even only during the day, may be extremely difficult for some children and parents.

CULTURE SHOCK IN YOUNG REFUGEE CHILDREN

A publication by Childminding Monitor Advisory & Support ("CMAS") entitled "Caring for Syrian Refugee Children: A Program Guide for Welcoming Young Children and Their Families" reviews the impact of the refugee experience on children.

The CMAS Guide indicates that entering a new culture is often very traumatic for young children.[9] Research indicates that emotional regression is very common.

> "Children's emotional expression may be quite volatile or they may experience extreme anxiety when separating from their parent. The child may use physical force or act aggressively when fearful. Alternatively, they may become very apathetic even when strongly provoked. They may easily tune out adults who try to guide their behaviour."[10]

The research indicates that in the early stages of culture shock, children are often unable to play and may be disinterested in the play of others. From an intellectual perspective, a child may have weak concentration and become easily frustrated. Secondly, a child may become dependent on one caregiver and seem unable to build a relationship with others.[11] The research indicates that the children may be fearful, especially in the early stages of settlement.

The CMAS Guide also confirms that a child's self-esteem is impacted by culture shock. "This may decrease their confidence to try new things. They may look for more assistance and reassurance from adults about how to play with things. Children who feel insecure may also need extra support."[12]

The research indicates that because many Syrian children have witnessed violence or were victims of violence, they may have some form of Post-Traumatic Stress Disorder.[13] The CMAS Guide states that traumatized children may be unresponsive and almost catatonic and may not have words to express their trauma. "Children who are 'wooden' and despondent are more at-risk than those who cling to their parent and cry for

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[5] Caring, at p. 7.
[6] *Ibid.*
[7] Caring, at p. 9.
[8] *Ibid.*
[9] Caring, at p. 15.
[10] *Ibid.*
[11] *Ibid.*
[12] Caring, at p. 16.
[13] *Ibid.*

attention. Traumatized children may refuse touch or other comfort, even from family members."[14]

The CMAS Guide indicates that education was highly valued in Syria, and many families may become anxious for their children to succeed in school. In light of interruptions to the schooling of most Syrian children caused by the war, it is anticipated that many Syrian school age children may be at an increased risk for failure.[15] The CMAS Guide states:

> "They may have difficulty focussing, listening and absorbing information, even in their home language. They may show outward signs of understanding (e.g., smiling, head nodding) but they may not be absorbing anything."[16]

CREATING A SAFE AND WELCOMING ENVIRONMENT

Educators will play a significant role in the newcomers transition from refugees to permanent residents. Under the *Education Act,* a principal has a duty to maintain proper order and discipline in the school.[17] The principal also has a duty to provide for the supervision of pupils during the school day.[18]

School board policies on equity and inclusive education are designed to foster a positive school climate that is free from discriminatory or harassing behaviour.

A positive and inclusive school climate is one where all members of the school community, including the new Syrian children, feel safe, included, welcomed and accepted.

Refugee children coming into Ontario schools face a range of significant challenges, such as a language barrier, anxiety issues and dramatic cultural and social differences. Their new school will be completely foreign to them and, as they must adapt, so must the other students. School administration and school staff should monitor the attitudes and behaviours of other students to ensure that the new students are not the subject of bullying, harassment or xenophobia. Some students may make inappropriate comments that while not typically bullying, can be extremely detrimental to the new student's development (i.e. asking the child if any member of their family has died or what the child has seen in their home country). In this regard, it is important for school leaders and teachers to ensure that the new students feel welcome, included and accepted and encourage empathy and compassion for these new Canadians.

IMMUNIZATION AND HEALTH CONCERNS

Each student is required to be immunized against certain designated diseases in accordance with the *Immunization of School Pupils Act.* Parents are expected to ensure that their children are immunized before being admitted to school, unless an exemption for medical, religious, or conscientious reasons applies.[19] The principal has a duty to give assiduous attention to the health and comfort of students under his/her care.[20]

The immunization of newcomers can be challenging due to the lack of medical records, language barriers in explaining medical history, and a home country's different vaccination schedule.[21] Getting a newcomer's immunizations up-to-date is critically important as a Canadian study showed that one third of new immigrants/ refugees, particularly women, are susceptible to vaccine preventable diseases, such as measles, mumps, or rubella. All refugees will receive

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[14] *Ibid.*
[15] Caring, at p. 11.
[16] *Ibid.*
[17] R.S.O. 1990, c. E2, section 265(1)(a).
[18] R.R.O. 1990, Regulation 298, section 11(3)(e).
[19] R.S.O. 1990, c. I.1.
[20] R.S.O. 1990, c. E2, section 265(1)(j).
[21] Public Health Agency of Canada, "Canadian Immunization Guide" (September 4, 2013) <http://www.phac-aspc.gc.ca/publicat/cig-gci/p03-11-eng.php>.

medical check-ups and be screened for infectious diseases before they arrive, but vaccinations will have to be completed after they relocate.[22] The Canadian Collaboration for Immigrant and Refugee Health has emphasized that vaccination will be a key health initiative and they are expected to vaccinate widely as soon as the refugees begin arriving.

The World Health Organization says that children who have been living in refugee camps outside Syria are considered to be a risk for chronic disease and "psychosocial and violence-related illness" due to the lack of medicine and poor conditions in some camps.[23] It is expected that children will require health services as they have likely missed basic check-ups and vaccinations during the war in Syria and while living in refugee camps.

Many of the Syrian students may have special needs beyond those ordinarily received in the school setting.

Educators should follow their normal process regarding immunizations. Public health agencies across Ontario are working closely with other health care providers to ensure they can support the Syrian newcomers the way they support all their patients. The Ministry of Health is developing a registry of health care providers who are able to provide health care to the Syrian newcomers. In this regard, there is a multi-lingual, 24/7 Refugee HealthLine (1-866-286-4770) to connect refugees to health care providers for transitional health care and services.

SPECIAL EDUCATION ISSUES

Some students have special needs that require support beyond those ordinarily received in a school setting. In Ontario, students who have behavioural, communicational, intellectual, physical or multiple exceptionalities, may have educational needs that cannot be met through regular instructional and assessment practices. These needs may be met through accommodations and/or an educational program that is modified above or below the age-appropriate grade level expectations for a particular subject or course.

The *Education Act* requires school boards to provide special education programs and services for its exceptional students. Specific procedures for the identification and placement of exceptional pupils are set out in Regulation 181/98. Under the legislation, school boards are required to develop an Individual Education Plan ("IEP") for every identified student. School boards also have the discretion to develop an IEP for students who have not been formally identified as exceptional but who are receiving special education programs and services.

School-age children coming from Syria have usually had many years of lost or interrupted schooling. The high level of stress and trauma suffered by these children could have long-term consequences and could have an impact on their learning skills.[24]

In light of the cultural shock these children have gone through, they may have weak concentration, and difficulty focussing, listening and absorbing information. Researchers indicate that another sign of cultural shock is extreme anxiety. In certain cases, separating from a parent may be an intense and traumatic experience.[25]

Many of the Syrian students may have special needs that require supports beyond those ordinarily received in the school setting. In this regard, educators will need to undertake a thorough assessment of the student's strengths and needs that affect their ability to learn. Where appropriate, an IEP will be prepared describing a special education program and/or services required by a particular student. In some cases, a student's program will include, in part or in whole, expectations derived from an alternative program, such as social skills, communication or behaviour management.

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[22] *CTV News,* "What kinds of health-care needs will Syrian refugees have?" (November 24, 2015) <http://canadaam.ctvnews.ca/what-kinds-of-health-care-needs-will-syrian-refugees-have-1.2672167>.

[23] *Ibid.*

[24] Caring, at p. 9.

[25] Caring, at p. 17.

The school leader will work in concert with school board personnel, such as speech and language pathologists, educational assistants, child and youth workers and/or social workers to provide supports required for relevant children. The principal will also meet with parents or guardians to inform them about the services, accommodations and programs that are available based on the individual needs of their children.

In communicating with parents about school services, principals may suggest that a family member or friend attend the meeting to assist as an interpreter. It is recommended that the school leader try not to overwhelm the parents with too much paperwork and enrollment information.

WELCOMING REFUGEE FAMILIES

After the trauma of fleeing their home country, it is important that Syrian families feel that the school is a safe and welcoming environment. Practical steps that school leaders can take to reduce stress and help ease the difficult transition for families are as follows:

- Ensure all staff have the information they need on what to expect regarding these new Canadians. Provide information to the staff on culture shock, its stages and strategies to address it.
- Assign one staff member to take the lead with the family.
- Identify strategies for communicating with parents. Take the time to learn some words in Arabic or other languages spoken by the Syrian refugees in the program, to support early communication with parents and children.
- Have translated materials available to parents, written in simple English or with visuals.
- Find out basic information about the child but avoid asking too many questions or being intrusive about their past.
- Share simple information on the child's activities, mood and achievements. Match your language to that of the family. Keep your speech simple and speak slower for parents with less English.[26]

On December 10, 2015, when Prime Minister Justin Trudeau greeted the first group of Syrians who arrived in Canada, he spoke eloquently about the values of Canadians. The Prime Minister said, "This is something that we are able to do in this country because we define a Canadian not by a skin colour or a language or a religion or a background, but by a shared set of values, aspirations, hopes and dreams that not just Canadians but people around the world share."[27]

Consistent with these values and aspirations, our schools are committed to working diligently to welcome Syrian refugee families to Canada and help them settle successfully. Children coming from Syria as refugees at this time will have experienced traumatic events that will affect them in many different ways. School boards should provide their administrators, teachers and school staff with the knowledge and facts they will need to better understand and respond to the unique experiences and needs of these new Canadians.

Our schools are committed to working diligently to welcome Syrian refugee families to Canada.

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[26] Caring, at p. 19-20.

[27] *New York Times,* The Editorial Board, "Canada's Warm Embrace of Refugees" (December 11, 2015) at: <http://www.nytimes.com/2015/12/12/opinion/canadas-warm-embrace-of-refugees.html?_r=0>.

PORNOGRAPHY IN THE WORKPLACE: TRENDS AND DEVELOPMENTS

In a 2013 Forbes article, Cheryl Conner noted that 25% of working adults admit to looking at pornography on a computer at work. Also interesting to note is that 70% of all online pornography access occurs between 9:00 a.m. and 5:00 p.m. Older statistics indicate that two-thirds of human resources professionals have discovered pornography on employee computers, and that 28% of surveyed workers had downloaded sexually explicit content from the web while on the job.

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Against this backdrop, employers face an increased concern over the propriety of employees' digital conduct at work. In the school context, especially, it is essential that student safety is protected and the school's reputation is upheld.

Labour arbitrators in Canada have addressed these issues in the context of employees accessing pornography on work-issued computers, during work hours, and/or with students as the subjects of the images. While the principles in the decisions are similar, the outcomes have varied depending on a range of circumstances.

DISCIPLINING EMPLOYEES

Two cases involving a Vancouver school board address an employer's ability to dismiss employees who access pornography at work. In *Vancouver School District No. 39 v. U.A., Local 170* (2011), 212 L.A.C. (4th) 248 (B.C. Arb.), Arbitrator Sanderson considered the dismissal of a maintenance coordinator who was sending and receiving pornographic emails on a daily basis using work computers. Similarly, in *Vancouver School District No. 39 v. C.J.A., Local 1995* (2010), 197 L.A.C. (4th) 421 (B.C. Arb.), Arbitrator Ready addressed the school's dismissal of a carpenter who repeatedly viewed and distributed pornography that he stored on a work computer and shared using a school board email address.

In both cases, the dismissal was upheld. In assessing whether the trust relationship between employer and employee had been irrevocably broken, the arbitrators considered many of the standard factors in a discipline case:

- the employee's length of service;
- the employee's disciplinary record;
- whether the employer fairly warned the employee;
- whether the discipline was consistent with the employer's treatment of other employees; and
- the employee's degree of cooperation and remorse.

The arbitrators also noted that the grievors' use of work-issued computers and email addresses, and their accessing pornography during work hours, had contributed to the irreparably harmed trust relationship between grievor and employer.

In *Alberta (Department of Children's Services) v. A.U.P.E.* (2005), 138 L.A.C. (4th) 301 (A.B. Arb.), a case upholding the dismissal of a child and youth worker at a residential treatment facility, the Arbitration Board laid out a number of factors that should be considered in the context of wrongful internet use specifically:

- the offensive character of the pornographic material itself;

- the individual's perseverance and time spent viewing the sites;
- the use made of the material within the workplace and whether it was saved, downloaded, or shared with coworkers;
- the workplace culture and whether the activities poisoned the environment or made the person's reintegration problematic; and
- the known employer policies respecting internet use.

The unique position of a school also proved relevant in assessing the appropriateness of dismissal as a penalty for accessing pornography at work. Arbitrator Sanderson wrote:

> If the nature of his misconduct had become known publically, it could have done significant harm to the school board's reputation as the protector and educator of children.

Arbitrator Ready also emphasized the school's special position:

> A school district is entrusted with the care and education of students from early childhood through development to their young adult years. The grievor's actions clearly and reprehensively violated that trust on a continuing basis for a significant period of time.

Not every instance of viewing pornographic material at work will end in a dismissal being upheld; context and proportionality continue to be crucial facets of the analysis. In *Asurion Canada Inc. v. Brown,* 2013 NBCA 13, two call centre employees were fired after they received pornographic materials in their work email. The emails were either deleted or forwarded to a personal email address, and were not shared within the workplace.

Although the employer argued that the trust relationship had been broken due to a violation of its internet use policy, the New Brunswick Court of Appeal found that dismissal was a disproportionately severe penalty in the circumstances. Because the emails were unsolicited, they did not contain illegal images, the employees had clean disciplinary records, and neither had been clearly warned about the "zero tolerance" approach to pornography in the workplace, the dismissals were found to be wrongful and the damages awards made by the lower courts were upheld.

In *Andrews v. Deputy Head (Department of Citizenship and Immigration),* 2011 PSLRB 100, a senior government employee was found to have spent about 50% of his work time surfing the internet, including a large percentage of that time looking at, commenting on, and distributing pornography. Adjudicator Rogers stated that "measuring the level of offensiveness of the images seems to me both subjective and irrelevant." Her analysis focused mainly on the issue of time theft rather than pornography, and she ordered the employee to be reinstated based on his very long service, clean record, good performance, and acceptance of responsibility.

IMPORTANCE OF PROPER POLICIES

The employees in *Asurion Canada* were successful in court partially because they were not made aware of their employer's strict policy on internet usage. It is crucial that employers develop, publicize, and enforce reasonable policies on computer and internet use.

In one case, *N.S.T.U. v. Chignecto-Central Regional School Board* (2004), 126 L.A.C. (4th) 267 (N.S. Arb.), a school board dismissed a teacher who had taken inappropriate photos of female students and saved them to a school computer, which was left accessible to students along with a large amount of pornography saved to floppy disks. The school had internal policies governing appropriate internet usage, which were distributed on the first day of school and were required to be posted in the classroom. Arbitrator Ashley wrote that the fact that "teachers were

It is crucial that employers develop, publicize and enforce reasonable policies on computer and internet use.

not required to 'sign off' on the internet policy, does not lead to a conclusion that the policy was not enforced or enforceable." It was also not problematic that the policy did not specifically detail the consequences of breach.

In some cases, particularly in the school context, the lack of a clearly-communicated policy may not be fatal to an employer's position. Arbitrator Ready opined that even though the school board had no formal rules on computer or internet use, the carpenter's decision to access pornography while working in a school reflected a lack of common sense:

> The grievor's actions demonstrate an ongoing patent lack of the application of common sense when he used the Employer's computer to receive, send and store pornographic emails. It should have been obvious to him that such material would not be acceptable to the business of a school district…
>
> The principles outlined in the jurisprudence clearly place responsibility on employees to exercise common sense and use good judgment. They serve to defeat the Union's condonation defense which fails to recognize any positive duty on the part of an employee.

Similarly, Arbitrator Ashley wrote that "in any event, common sense would dictate that the conduct was wrong and that it would not be tolerated by the employer, whether there were specific policies or not."

Accessing pornography at work is generally seen as significant misconduct for which discipline is usually warranted.

IS PORNOGRAPHY ADDICTION A DISABILITY?

In some cases, an employee who has been dismissed for accessing pornography may argue that he suffers from a pornography addiction, and that this addiction is a disability on the grounds of which he cannot be dismissed.

This somewhat novel argument has not yet proved to be grounds for overturning discipline. Currently, pornography addiction is not listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM) and it has no official diagnostic tools. However, some arbitrators have suggested that with proper expert opinion to support the argument, they could conclude that pornography addiction is a disability.

Employers should be sure to properly consider the possibility of a pornography addiction before taking any significant disciplinary steps. If an employee succeeds in proving, through expert opinion, that he or she suffers from a disability, the *Human Rights Code* could prevent an employer from disciplining the employee on the grounds of that disability.

CONCLUSION

Arbitrators appear to be taking a fairly strict approach to pornography in the workplace. While traditional labour principles of employee history, employer warnings, and proportional responses are still central, accessing pornography at work is generally seen as significant misconduct for which discipline is usually warranted. Each case will be assessed based on its individual facts and circumstances.

However, employers must handle incidents with proper protocols and measured responses. Although the school context requires strong protection regarding student safety and well-being, teachers and school staff are still entitled to fair treatment to properly protect their livelihoods.

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NOVA SCOTIA COURT STRIKES DOWN CYBER-BULLYING LEGISLATION

In 2013, Nova Scotia became the first jurisdiction in Canada to implement legislation aimed at protecting victims of online harassment or 'cyber-bullying'. On December 11, 2015, the Supreme Court of Nova Scotia struck down the *Cyber Safety Act* (the "Act") in *Crouch v. Snell*[1] [*Crouch*] stating that it was contrary to the *Canadian Charter of Rights and Freedoms* (the "*Charter*") and calling the legislation a "colossal failure".

LEGISLATIVE CONTEXT

The Act was proclaimed on August 6, 2013. It was drafted under heightened public scrutiny and in the months following the death of 17-year-old high school student Rehtaeh Parsons who was bullied, attempted suicide and subsequently died on April 4, 2013.

The Act was a multi-faceted attempt by the Government of Nova Scotia to make it easier for individuals to report bullying and to give the courts increased authority to protect victims of cyber-bullying. The main provisions of the Act are as follows:

- Greater powers and responsibilities to principals and school boards through amendments to the *Education Act;*
- Parental responsibility for cyber-bullying in some circumstances;
- Creation of a cyber-investigative unit;
- Victims of cyber-bullying may apply for a protection order from the court; and
- New statutory tort of cyber-bullying which permits individuals to sue for damages or obtain an injunction.

In addition, the Act provided a broad definition of cyber-bullying that included both adults and minors (under 19 years of age). The Act defined cyber-bullying as:

> [A]ny electronic communication through the use of technology including, without limiting the generality of the foregoing, computers, other electronic devices, social networks, text messaging, instant messaging, websites and electronic mail, typically repeated or with continuing effect, that is intended or ought reasonably be expected to cause fear, intimidation, humiliation, distress or other damage or harm to another person's health, emotional well-being, self-esteem or reputation, and includes assisting or encouraging such communication in any way.

BACKGROUND

Giles Crouch and Robert Snell were former business partners. Their business relationship ended in late 2013 when Mr. Crouch resigned from the company and forfeited half of his shares in the venture amid allegations by both parties of unprofessionalism and misappropriation of funds. The business relationship ended tumultuously. Mr. Crouch and Mr. Snell were both avid users of social media and Mr. Crouch alleged that in the months following his resignation, Mr. Snell began a "smear campaign" against him on social media.

The court held that the *Cyber Safety Act* violated sections 2 and 3 of the *Charter.*

[1] 2015 NSSC 340.

Mr. Crouch filed an application for a Protection Order under the Act and it was granted by a Justice of the Peace on December 11, 2014 (the "Protection Order"). The Protection Order was granted on an *ex parte* basis, without notice to Mr. Snell. However, Mr. Snell was later served a copy of the Protection Order, which included the following prohibitions:

- The respondent [Mr. Snell] be prohibited from engaging in cyberbullying of the subject.
- The respondent be restricted (or prohibited) from directly or indirectly communicating with the subject.
- The respondent be restricted (or prohibited) from, directly or indirectly, communicating about the subject.
- Any comments on any social media sites whereby the respondent has made reference to the applicant [Mr. Crouch], either directly or indirectly, are to be removed. Further, any comments on any social media sites directed toward an unnamed or unspecified person(s) are to be removed.

The court concluded that the Act was arbitrary, overbroad and not procedurally fair.

THE COURT'S DECISION

In *Crouch,* the court was asked to consider (1) whether to re-confirm the Protection Order under the Act, and (2) whether the Act violates the *Charter* by infringing on an individual's freedom of expression or by violating an individual's right to life, liberty and security of the person.

First, the court confirmed that, assuming the Act to be *Charter* compliant, Mr. Snell had engaged in cyberbullying of Mr. Crouch as that term is defined in the Act, and that the behaviour was likely to continue. Therefore, the Protection Order was upheld by the court under the Act with certain minor modifications. The court also reviewed the broad definition of cyber-bullying under the Act and stated that it does not require 'malice' on the part of the person posting comments to social media or elsewhere online.

Second, the court held that the Act violated both sections 2 and 7 of the *Charter* guaranteeing freedom of expression and an individual's right to life, liberty and security of the person. The court concluded that the purpose of the Act was to control or restrict expression. Specifically, the court stated that, "prevention of cyberbullying is a purpose that aims to restrict the content of expression by singling out particular meanings that are not to be conveyed, i.e. communication that is intended or ought reasonably be expected to cause fear, intimidation, humiliation, distress or other damage or harm to another person's health, emotional well-being, self-esteem or reputation."[2] Furthermore, the court concluded that the Act does not provide sufficiently clear standards to avoid arbitrary and discriminatory applications. Rather, the legislature has given a plenary discretion to Justices of the Peace to do whatever seems best in a wide set of circumstances. This was also unsatisfactory under the *Charter.*

In light of the punishments available under the Act, including fines of up to $5,000 or imprisonment for a term up to six months, the court further held that the Act infringed on an individual's right to life, liberty and security of the person. In addition, the court concluded that the Act was arbitrary, overbroad (in particular, its definition of cyber-bullying) and not procedurally fair. Therefore, the infringements on an individual's right to life, liberty and security of the person could not be justified under the *Charter.*

In light of the above, the court concluded that, "The act must be struck down in its entirety… To temporarily suspend the declaration of validity would be to condone further infringements of charter-protected rights and freedoms."[3]

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[2] *Crouch* at para 112.

[3] *Crouch* at para 220.

As such, the Act was struck down in its entirety and the Protection Order was declared void and of no effect.

CONCLUSION

In light of the decision, the Government of Nova Scotia has not announced how it plans to respond. Nova Scotia Justice Minister Diana Whalen has confirmed that the department is considering whether to appeal the decision, rewrite the law or draft new legislation from scratch.[4] In the meantime and as emphasized by the court in its decision, individuals who are confronted with cyber-bullying will have to seek redress through traditional avenues, namely civil remedies for causes of action, such as defamation or applicable criminal charges.

The decision in *Crouch* will likely serve as a caution for other provinces looking to introduce legislation intended to protect individuals, in particular children, from online harassment and cyber-bullying. This decision makes clear that courts will not uphold legislation that is far-reaching and overly broad, but rather will uphold the protections for freedom of expression and life, liberty and security of the person afforded to individuals under the *Charter.*

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[4] Brett Ruskin, "Court strikes down anti-cyberbullying law created after Rehtaeh Parsons's death" *CBC News* (December 11, 2015). Available at: http://www.cbc.ca/beta/news/canada/nova-scotia/cyberbullying-law-struck-down-1.3360612.

LIBERALS VOW TO REPEAL SECTION 43 OF THE *CRIMINAL CODE*

In promising to enact all of the recommendations of the Truth and Reconciliation Commission ("TRC"), the federal Liberals have agreed to remove the section in the *Criminal Code* that permits teachers and parents to use reasonable force to correct the behaviour of children in their care.[1]

The Truth and Reconciliation Commission, which heard thousands of stories of physical abuse inside Indian residential schools, said in its final report that "corporal punishment is a relic of a

[1] Gloria Galloway, "Liberals agree to revoke spanking law in response to TRC call", *The Globe and Mail,* December 20, 2015, online: <http://www.theglobeandmail.com/news/politics/liberals-agree-to-revoke-spanking-law-in-response-to-trc-call/article27890875/>.

discredited past and has no place in Canadian schools or homes." The repeal of section 43 of the *Criminal Code* was No. 6 on a list of 94 "calls to action" included in the report.[2]

Parliament has recognized the fact that educators may be justified in using force against a student in special circumstances. A teacher who applies physical force in the course of disciplining a student may be subject to a criminal charge of assault. The *Criminal Code* provides a defence, however, for teachers, parents and persons standing in the place of a parent who use reasonable force against a child for the purpose of correction. Section 43 of the *Criminal Code* provides:

> "Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances."

Teachers cannot use any form of corporal punishment.

In 2004, the Supreme Court of Canada ruled that physical force was acceptable within certain bounds – it cannot be used on children under the age of 2, it cannot involve implements, such as a paddle or a belt, and blows to a child's head are not allowed.[3]

Teachers cannot use any form of corporal punishment, the court ruled, although they may restrain students to gain compliance with their instructions.

The court stated, "Substantial societal consensus, supported by expert evidence and Canada's treaty obligations, indicates that corporal punishment by teachers is unreasonable."[4]

The court ruled that section 43 will protect a teacher who uses reasonable, corrective force to restrain or remove a child in appropriate circumstances.

The court concluded that section 43 provides "parents and teachers with the ability to carry out the reasonable education of the child without the threat of sanction by the criminal law."[5]

Teachers praised the 2004 Supreme Court decision, saying that educators need flexibility in certain circumstances to remove a child from a classroom or break up a fight in the school yard.

When asked if Prime Minister Justin Trudeau's promise to act on every TRC recommendation meant repealing section 43 of the *Criminal Code,* a spokesman for Justice Minister Jody Wilson-Raybould confirmed that the government is committed to implementing all of the commission's calls to action.[6]

Heather Smith, president of the Canadian Teachers' Federation, said that she would be open to section 43 being repealed so long as it was replaced with another provision that specifically protected educators who may feel the need to use physical force as defined by the 2004 Supreme Court decision in carrying out their duties.[7]

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[2] *Ibid.*

[3] *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* (2004), 234 D.L.R. (4th) 257.

[4] *Supra,* at para. 38.

[5] *Supra,* at para. 59.

[6] Gloria Galloway, footnote 1.

[7] *Ibid.*

"There are times that teachers need to physically intervene with students", Ms. Smith stated. "Section 43 certainly does not give teachers or any other adult a licence to abuse, but what it does do is provide some protection if physical intervention is required."[8]

From an education perspective, section 43 of the *Criminal Code* is seen as protecting teachers against frivolous or vexatious allegations.

Those who oppose section 43 argue that there is a principle in law called *de minimis* that prevents Crown attorneys from prosecuting trivial offences.[9] This is a legal doctrine by which a court will not consider trivial matters that are not worthy of judicial scrutiny.

It is argued that if a parent called a children's aid society after witnessing a teacher physically intervene to break up a schoolyard fight between two students, an investigation would be unlikely to go forward if there were no other signs of maltreatment or evidence of excessive use of force.

The concern arises that if section 43 of the *Criminal Code* is repealed and is not replaced by another provision protecting educators, there may be enhanced exposure to teachers involved in physical contact with students to a criminal charge of assault.

Despite the protections in section 43, it is recommended that teachers and school administrators refrain from using physical contact as a means of correction. As a society, we should encourage the use of educational measures to promote better ways of disciplining children. In a school context, educators should consider using peer mentoring, restorative justice conferences, review of expectations, conflict mediation and time-outs as proactive ways to manage and monitor student conduct. These programs are commonly used by schools to promote and support positive student behaviour. It is hoped that such programs will lead to improved student communication skills, increased self-confidence and taking responsibility for one's own actions.

Furthermore, teachers, administrators and school staff play an important role in supporting students and contributing to a positive learning environment. Schools where respectful interactions are encouraged and modelled are integral to supporting students in developing positive behaviours.

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From an education perspective, section 43 of the *Criminal Code* is seen as protecting teachers against frivolous or vexatious allegations.

[8] *Ibid.*

[9] Joanna Smith, "Liberals vow to scrap 'spanking' law, *Toronto Star,* December 22, 2015, online: <http://www.pressreader.com/canada/toronto-star/20151222/textview>.

ONTARIO INTRODUCES LEGISLATION TO ESTABLISH CONCUSSIONS ADVISORY COMMITTEE

On November 25, 2015, Ottawa-area MPP Lisa MacLeod introduced Bill 149, *Rowan's Law Advisory Committee Act, 2015* ("Rowan's Law") in the Ontario Legislature. Although a private member's bill, Rowan's Law has received all-party support (including support from the Premier and the Minister of Tourism, Culture and Sport). Rowan's Law received Second Reading on December 10, 2015 and was referred to the Standing Committee on the Legislative Assembly where it will be considered before being returned to the Legislature for Third Reading and Royal Assent.

At present, there are no laws governing concussions or related risks in Canada.

Rowan's Law is named for 17-year old Rowan Stringer, an Ottawa secondary school student who passed away from concussion-related injuries on May 12, 2013. In the spring of 2015, an inquest was held into Rowan's death. The verdict of the Coroner's Jury was released on June 3, 2015, and it contained 49 recommendations that would affect a variety of governments and organizations, including school boards.[1]

Some of the salient Coroner's Jury recommendations that relate to school boards include the following:

1. Adoption of legislation that governs all youth sport, and establishes the International Concussion Consensus Guidelines (Zurich) on Management of Concussion in Sports as the standard of practice for concussion management;
2. Ministry of Education funding to school districts to support the full implementation of Provincial Policy Memorandum 158 ("PPM 158"), including the costs associated with Ontario Physical and Health Education Association safety guidelines and coaching/first aid certifications;
3. Development of a Ministry of Education evaluation program to ensure compliance with PPM 158;
4. Development of a PPM 158 for private schools;
5. Revision of the Ontario curriculum to ensure concussion awareness and management is a mandatory part of elementary and secondary curriculum, specifically the Ontario Grade 9 Health and Physical Education program, integrated into science, health and physical education;
6. Adoption of an annual awareness opportunity or module in Ontario elementary and secondary schools to ensure awareness among all students;
7. Development by the Ministry of Education and the Ontario School Boards' Insurance Exchange (OSBIE) of a system for tracking student concussion injuries;
8. Requiring school boards to ensure that all students, parents/guardians, teachers, school administrators, coaches, trainers, and referees are educated about the symptoms and signs of concussion;

[1] Verdict of the Coroner's Jury dated June 3, 2015, online: <http://www.mcscs.jus.gov.on.ca/stellent/groups/public/@mcscs/@www/@com/documents/webasset/ec168381.pdf>.

9. Requiring school boards to confirm that, before the start of any higher risk school team sports activity, parents and athletes sign an agreement confirming that they have participated in a pre-season concussion awareness and management session related to engaging in higher risk sports activities;
10. Mandating the use of codes of conduct for all players, coaches and parents, which seek to foster a culture of fair play in youth sport;
11. Adoption of pre and post game/practice mechanisms to identify injuries or concerns about a player's well-being; and
12. Adoption of a practice whereby athletes are held out of games if they are believed to have a concussion.[2]

The Coroner's Jury verdict also contained various recommendations directed at other organizations, including the Ontario Physical and Health Education Association, the Royal College of Physicians and Surgeons of Canada and the Ontario Ministry of Health.

PURPOSE OF ROWAN'S LAW

If passed, Rowan's Law will establish the Rowan's Law Advisory Committee (the "Committee"). The Committee will consist of the following members:

(a) at least three members appointed by the Minister of Children and Youth Services;
(b) at least three members appointed by the Minister of Education;
(c) at least three members appointed by the Minister of Health and Long-Term Care; and
(d) at least three members appointed by the Minister of Tourism, Culture and Sport.

The Committee is required to:

(a) review the recommendations of the Coroner's Jury;
(b) make recommendations on how to implement those recommendations; and
(c) make any other recommendations the Committee "deems advisable with respect to head injury prevention or treatment."

The Committee's report will be provided to the Minister of Tourism, Culture and Sport within one year of Rowan's Law coming into force. Rowan's Law will come into force three months after the day it receives Royal Assent.

CURRENT LAW AND POLICY RELATING TO CONCUSSIONS

At present, there are no laws governing concussions and related risks in Canada. Ontario sought to require school boards to comply with policies and guidelines respecting head injuries and concussions of students when then-Minister of Education Laurel Broten introduced Bill 39, *Education Amendment Act (Concussions), 2012* on March 6, 2012. That legislation died on the order paper when then-Premier Dalton McGuinty prorogued the Legislature in October 2012.

In March 2014, the Ontario Ministry of Education introduced the Policy/Program Memorandum 158[3] (PPM 158), "School Board Policies on Concussion". This Policy advised school boards to develop strategies to raise awareness of the seriousness of concussions, strategies for the prevention and identification of concussions, management procedures for diagnosed concussions, and training for board and school staff. The policy applies to publicly-funded elementary and secondary schools in Ontario.

PPM 158 requires school boards to implement a policy on concussion management.

[2] S*tringer (Re),* 2015 CanLII 65870 (ON OCCO).
[3] Ministry of Education, "School Board Policies on Concussion", Policy/Program Memorandum No. 158 (Ottawa: MOE, 19 March 2014).

More specifically, PPM 158 requires school boards to implement a policy on concussion management. The policy must include strategies aimed at the development of awareness, the prevention and reduction of risk of sustaining a concussion, the safe removal of an injured student and the identification of a concussion, management procedures for a diagnosed concussion, and training of school board employees and volunteers. School boards were expected to have their policies fully implemented no later than January 30, 2015.

PPM 158 makes individual school boards responsible for the design and implementation of concussion programs. The Ministry of Education is available to assist, if a school board reports issues implementing its concussion program. In all other situations, the school board is responsible for tracking and evaluating implementation.

If passed, Rowan's Law will likely result in further requirements for school boards relating to preventing concussions.

Although none of the provinces and territories currently have concussion safety legislation, the legislature of British Columbia attempted to pass a similar bill in 2011, known as Bill M 206. Health Minister Terry Lake recently stated that the province will not be following in Ontario's footsteps and will be taking an education-based approach before pursuing legislative change.[4]

Other jurisdictions have taken active steps to mitigate the risks associated with concussive injury. All 50 U.S. states have enacted laws to deal with youth concussions, the first of which was adopted in 2009 in the state of Washington.[5] Such laws are premised on three action steps: (1) the education of coaches, parents and athletes, (2) the removal of an injured athlete from play, and (3) the requirement that the injured athlete obtain permission to return to play.[6]

CONCLUSION

If passed, Rowan's Law will likely result in further requirements for school boards, and other organizations involved in youth sports, relating to preventing concussions and educating students, parents, teachers and coaches about the symptoms and management of concussion injuries. We will continue to monitor the progress of Rowan's Law and any recommendations for further legislation and/or policy that will affect school boards and independent schools.

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[4] "Ontario's proposed youth concussion law needed in B.C., says football association", *CBC News British Columbia* (28 November 2015), online: <http://www.cbc.ca/news/canada/british-columbia/football-bc-ontario-proposed-youth-concussion-law-1.3340598>.

[5] *Ibid.*

[6] "Get a Heads Up on Concussion in Sports Policies: Information for Parents, Coaches, and School & Sports Professionals", National Centre for Injury Prevention and Control, online: <http://www.cdc.gov/headsup/pdfs/policy/headsuponconcussioninsportspolicies-a.pdf>.

ONTARIO PASSES POLICE RECORD CHECKS LEGISLATION

On December 1, 2015, the Ontario government unanimously enacted the *Police Record Checks Reform Act, 2015* (the "Act"). The Act limits the types of information that can be released in each of three different types of police record checks. Notably, it prohibits disclosure of mental health records and records from police "carding" checks and other non-conviction records, except in limited circumstances. It also standardizes the disclosure procedure.

The Act is not yet in force, but will come into force on a date to be named by proclamation of the Lieutenant Governor. The Act will impact the information made available to employers, such as school boards and independent schools, when obtaining background checks, and may change the system in place for requesting them.

The Act prohibits disclosure of mental health records and records from police "carding" checks.

BACKGROUND

The Act was introduced after lobbying efforts from various civil liberties advocacy groups, who protested the broad scope and inconsistent practices of police record check disclosure. These checks had included more than convictions: they disclosed records of suicide attempts, mental health detentions, complaints where charges were never laid, withdrawn charges, and acquittals. This information became available when individuals attempted to cross the US border or when checks were conducted for volunteer, employment, educational, or licensing applications. The release of these non-conviction records was viewed as creating barriers to education, employment, volunteering, and other opportunities, and was criticized as counter to the presumption of innocence.

APPLICATION

The Act generally applies to checks conducted as part of applications for employment, volunteering, licencing, office, group membership, and education. It does not affect searches conducted for child custody, youth criminal justice, change of name, juries, firearms, or Crown prosecution purposes.

The Act authorizes police forces to conduct three defined types of police record checks: (1) criminal record checks, (2) criminal record and judicial matters checks, and (3) vulnerable sector checks (performed when an individual is in a position of trust or authority over vulnerable persons like children or the elderly). Each category has specific disclosure permitted and standardized, as discussed below.

LIMITED DISCLOSURE PERMITTED

The Act sets out a schedule that outlines when disclosure is permitted. The schedule addresses information relating to mental health orders, convictions, absolute and conditional discharges, outstanding charges or arrest warrants, pardoned convictions, and other non-conviction information. Generally, the most disclosure is permitted for vulnerable sector checks, while the least disclosure is permitted for standard criminal record checks.

School boards are most often conducting vulnerable sector checks, as employees and volunteers will usually be working with children. Subject to certain temporal and other limits, most "non-conviction information" – meaning discharges, outstanding charges, court orders, and not criminally responsible findings – would be

disclosed in a vulnerable sector check, but not for a standard criminal record check.

The Act's most significant limitation on disclosure is in the areas of mental health and non-conviction information. Non-conviction information (such as complaints where no charges were laid, acquittals, etc.) can only be disclosed in a vulnerable sector check and only if it meets the test for exceptional disclosure, discussed below.

Court orders made under the *Mental Health Act* or Part XX.1 of the *Criminal Code* generally may not be disclosed under any of the three types of records check. Criminal offences for which the individual has been found not criminally responsible on account of mental disorder generally may only be disclosed under a vulnerable sector check that is made within five years of the finding. Restraining orders made under the *Family Law Act, Children's Law Reform Act,* or *Child and Family Services Act,* and court orders relating to charges that have been withdrawn, generally may not be disclosed under any type of check.

The Act also prescribes a system for how to disclose information in record checks.

However, there are provisions in the Act for exceptions to these disclosure rules for vulnerable sector checks. Non-conviction information may be disclosed in a vulnerable sector check if it meets the test for "exceptional disclosure". This test requires police to consider factors such as how long ago an incident took place, if the record relates to predatory behaviour around a vulnerable person, and whether the records show a pattern of such behaviour before deciding whether to release those records in a vulnerable sector check.

STANDARDIZED DISCLOSURE PRACTICES

In addition to limiting disclosure, the Act also prescribes a system for how to disclose information in record checks. It lays out requirements for how to request a record check, how to respond, selecting which type of check is to be performed, obtaining consent, proper scope and manner of disclosure, implementing a process for correcting errors, tracking statistics, and holding third parties accountable.

One significant implication of the Act's disclosure process is that the subject of the check has an opportunity to review the results of a check before it may be disclosed to another person or organization. The results of a check may not be provided to the employer who requested the check unless the individual subject of the check provides his or her written consent after receiving the results.

ENFORCEMENT

A person or organization that willfully contravenes certain provisions of the Act is guilty of an offence, and is liable to a fine of not more than $5,000. A prosecution cannot be commenced unless the Minister of Community Safety and Correctional Services consents.

LOOKING AHEAD

While the Act is not yet in force, it will likely be proclaimed in the near future. Given the implementation of different types of checks that carry different disclosure permissions, as well as the opportunity for the check's subject to review the results before consenting to their disclosure, there may need to be changes to the system for requesting background checks. This means that school boards and independent schools should be prepared for new logistical and organizational steps in order to adapt.

Employers requesting record checks will no longer be provided with information about mental health orders or non-conviction records, except in limited circumstances.

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IT'S NEVER OKAY: ONTARIO GOVERNMENT RELEASES AN ACTION PLAN TO COMBAT SEXUAL VIOLENCE AND HARASSMENT

In March 2015, Ontario Premier Kathleen Wynne released a 35-page Action Plan called, "*It's Never Okay: An Action Plan to Stop Sexual Violence and Harassment.*" The $41-million, three-year initiative aims to tackle sexual violence and harassment from a number of perspectives. The most ambitious of the sweeping measures proposed are directed towards creating a sustainable culture of consent.

Statistics from recent Canadian studies compelled the Ontario government to act on the "deep-rooted and widespread" problem of sexual violence. For example, these studies found that:

- one in three women will experience some form of sexual assault in her lifetime;
- 47% of violent crimes against girls under the age of 12 are sexual in nature;
- Girls aged 12 to 17 are eight times more likely than male youth to be victims of sexual assault or another type of sexual violence; and
- 99% of sexual assaults involve a male perpetrator.

Among other things, the Action Plan indicated that raising public awareness of sexual violence and harassment is a key to change. The Action Plan confirms the importance of teaching our children about healthy, equal relationships and the critical role of the "bystander" to intervene when they see this behaviour and stop it before it happens.

Along with the release of the Action Plan, the government is launching a multimedia public education and awareness campaign to engage Ontarians in a discussion about how to prevent sexual violence and harassment.

Among other things, the government is committed to:

- updating the Health and Physical Education curriculum to help students from grade 1-12 understand root causes of gender inequality, and healthy relationships and consent;
- ensuring that students learn concepts related to issues such as physical and emotional well-being, mental health, online safety, sexual orientation, equity and inclusion;
- developing resources for teachers and parents;
- creating activities and resources to raise student awareness; and
- providing students with the opportunity to lead projects and research that will support healthy relationships and a safe and inclusive school environment.

Together, these proactive efforts are intended to teach young people respectful behavior from an early age.

MORE TRAINING FOR EDUCATORS

To bolster the efforts above, the Ontario government intends to provide educators with training materials to demystify the complex issues surrounding sexual violence and harassment. Among the various topics covered, an emphasis will be placed on training educators to respond appropriately and sensitively to the survivors of

Raising public awareness of sexual violence and harassment is a key to change.

sexual violence. Special materials will also be developed for new teachers to help them better understand the root causes of sexual violence and harassment.

These training initiatives are part of an overall scheme to raise awareness among Ontario professionals to ensure that survivors of sexual violence feel safe when accessing various services.

CREATING A SAFER WORKPLACE FOR EDUCATORS

As part of its multi-pronged approach, the government is also targeting sexual harassment and violence in the workplace. The proposed measures will inevitably affect educators in their respective workplaces.

The Action Plan confirms the importance of teaching our children about healthy, equal relationships.

These measures include:

- introducing a definition of sexual harassment to the *Occupational Health and Safety Act* (OHSA) to clearly define the parameters of consent;
- introducing legislation establishing clear requirements for employers to investigate and address workplace harassment complaints, including the duty to make every reasonable effort to protect workers from harassment, including sexual harassment, in the workplace;
- creating a new Code of Practice for employers under the OHSA so that employers know what steps to take to make their workplaces safer for employees;
- establishing a special enforcement team of inspectors who will be trained to address complaints of workplace harassment and enforce the OHSA across the province; and
- developing educational materials to help employers create a harassment-free work environment.

Collectively, these changes attempt to better ensure the safety and security of educators while they, in turn, teach their students about consent and respect.

INTRODUCTION OF REVISED CURRICULUM

On September 1, 2015, the revised curriculum for Health and Physical Education for Grades 1 to 12 was introduced in school boards across Ontario. The purpose of the revised curriculum is to give students accurate information that will keep them safe and healthy. Among other things, the curriculum is intended to help students to develop an understanding of the root causes of gender inequality.

It should be recognized that the majority of the Health and Physical Education curriculum has been taught in Ontario schools since 1998. Some of the updates address current issues relevant to student health and well-being and better reflect Ontario's growing and diverse population. These updates include topics concerning healthy relationships, consent, mental health and online safety.

In May 2015, the Ministry of Education started providing a professional development and training for specialized school board staff across Ontario. Classroom teachers will have professional learning opportunities to support their teaching of the revised curriculum.

The Ministry has developed additional resources to assist teachers implement the new curriculum and help parents support their child's learning.

In discussions with parents, it is important for school boards to confirm that it is the role of the Ministry to develop the curriculum and it is the role of the school board to implement it. If a parent has a question or concern about the learning in their child's classroom, they should raise the concern directly with the teacher or principal so that a discussion can take place to clarify the concern and receive information about the curriculum content.

While the government's Action Plan may impose additional obligations on school boards and teachers, it is important to remember that these efforts are intended to secure a safer Ontario for educators and students alike.

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ARE YOU COMPLIANT WITH AODA STANDARDS EFFECTIVE JANUARY 1, 2016?

The next phase of *Accessibility for Ontarians with Disabilities Act* (the "AODA") compliance came into effect on January 1, 2016. Private and not-for-profit organizations and small and large public organizations, including public school boards and independent schools, had to comply with requirements under the *Integrated Accessibility Standards Regulation* (the "Regulation") as of the New Year.

Public sector organizations must provide accessible formats and communication supports for persons with disabilities, upon request.

1. Small organizations (with fewer than 50 employees in Ontario) must ensure training is provided on the requirements of the standards set out in the Regulation and the *Human Rights Code* as it pertains to persons with disabilities. Training must be provided to all employees, volunteers, all persons who participate in developing the organization's policies, and all other persons who provide goods and services on behalf of the organization. Training must be appropriate to each individual's duties, and it must be provided as soon as practicable, and on an ongoing basis as changes are made to the organization's accessibility policies.

2. Small organizations must ensure processes for receiving and responding to feedback are accessible to persons with disabilities by providing or arranging for the provision of accessible formats and communication supports, upon request. Notice must be given to the public about the availability of accessible formats and communication supports.

3. Small designated public sector organizations and large organizations (with 50 or more employees in Ontario) must provide or arrange for the provision of accessible formats and communication supports for persons with disabilities, upon request, in a timely manner,

taking into account the person's needs, and at a cost that is no more than the regular cost to other persons. Organizations must consult with the person making the request in determining the suitability of an accessible format or communication support. Notice must be given to the public about the availability of accessible formats and communication supports.

4. Large organizations must comply with various Employment Standards set out in the Regulation. There are a number of detailed requirements, including:

    - providing external and internal notification of the accommodation of persons with disabilities during the recruitment process;
    - informing employees of the organization's policies in support of persons with disabilities;
    - developing and implementing a process for the creation of individual accommodation plans and a documented return to work process for employees who have been absent from work due to a disability; and
    - ensuring that the organization takes into account the accessibility needs of employees with disabilities when implementing performance management, career development, advancement or redeployment processes.

5. Large designated public organizations must also comply with requirements related to the design of public spaces that are newly constructed or redeveloped.

The Ministry of Economic Development, Employment and Infrastructure has been very active in monitoring compliance with the AODA.

Public school boards in Ontario are considered designated public sector organizations. As such, depending on the number of employees each public school board has, it has to comply with the requirements applicable to small or large designated public organizations. Independent schools should be complying with the requirements applicable to small or large private organizations, depending on how many employees they have.

The Ministry of Economic Development, Employment and Infrastructure has been very active in monitoring compliance with the AODA over the last few months. We are seeing more enforcement efforts in respect of organizations that are not compliant to date, particularly in the form of spot audits, including a "retail blitz", targeting large retailers in October, 2015.

In order to get ahead of any enforcement efforts and to ensure timely compliance, Ontario's public school boards and independent schools should be thinking about these requirements and they should be taking steps to meet their obligations in a timely manner.

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