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COMMENTS

A TWO-POINT PERSPECTIVE: WHEN DISCRIMINATION INTERSECTS WITH THE BULLY AND BULLIED

Bullying has become an epidemic in recent years and has garnered much attention across the country after tragic incidents in several schools. Victims of bullying are usually vulnerable students, often belonging to minority groups. Some legislatures have responded with laws toughening sanctions on bullies while school boards and school districts have launched various programs and initiatives aimed at curbing the problem by intervening on multiple levels and targeting the many parties involved in bullying incidents. School boards are striving to reach a delicate balance between protecting their vulnerable students, minimizing their potential liability vis-à-vis bullying victims, and ensuring the bullies are dealt with fairly. Two Ontario cases illustrate the importance of considering human rights issues when dealing with either the bully or the bullied.

In *B.C. v. Durham Catholic District School Board*, 2014 HRTO 42, a 16-year-old high school student who self-identified as an African-American female, alleged that her race, colour and/or ethnic origin were a factor in the school board's decision to suspend her. The Applicant had allegedly slapped and bullied another female student, prompting the school to suspend her. She was ultimately arrested by the police as a result of this incident and filed human rights applications before the Ontario Human Rights Tribunal against the School Board, the police and the officer who arrested her.

The evidence at the hearing was voluminous and confusing, creating some difficulty for the Tribunal to reach a clear verdict as to what facts had transpired in the course of this altercation. The Tribunal ultimately found that the School Board had provided a legitimate, non-discriminatory explanation to support the suspension decision and the human rights application was dismissed against all three respondents.

The Vice-Principal had carried out an investigation to determine what had happened before suspending the Applicant. Witnesses were interviewed, including the student who had been allegedly slapped, and the Applicant was given an opportunity to explain her version of events. The Applicant acknowledged during her interview that she had slapped the other student, but added that it was part of a "play fight". There was, in other words, a fair process undertaken to gather information regarding the incident.

Interestingly, despite finding no discrimination and recognizing it had no authority to order public policy remedies in this circumstance, the Tribunal took the unusual step of making detailed recommendations regarding the School Board's discipline policies. The Tribunal recommended that the School Board conduct a review encompassing the three most recent school years for offences for which students were suspended or expelled to determine the representation rates among Black, racialized and White students. The Adjudicator made this recommendation because the Applicant presented expert evidence during the hearing to show the disparities that arose from the application of school discipline policies and how they affect students of racialized groups. The Applicant brought this evidence in an effort to contextualize the application of discipline at the school.

The expert, Dr. David Osher, reviewed the discipline mechanisms under the Ontario *Education Act* and the discipline policies developed by the School Board. He identified both as having a "zero tolerance" approach to eliminating misconduct in schools. He testified that, based on research in the United States, zero tolerance policies have increased the rates of suspension and expulsion of students and that Black students have been more particularly affected. He pointed out that, based on certain studies, Black students have a two times greater chance of experiencing discipline than White students. Some of the factors explaining the disparity include stereotype priming or aversive racism, which originates from unconscious racial bias from school administrators.

Dr. Osher noted that the studies in Canada on this issue are often qualitative and anecdotal rather than quantitative because data on student race is not collected in Canada. However, Dr. Osher conducted a sample study for the school in question to provide some data. In the 2007-08 school year, 21 students were suspended for fighting or bullying. Of these students, 10 were identified as Black, 12 were identified as racialized (which includes Black students), and 9 were identified as White. These

rates were then compared with the school population, comprising of 165 Black students, 288 racialized students (which includes Black students) and 1,149 White students. Dr. Osher concluded that Black students were 7.7 times more likely to be disciplined for fighting and/or bullying than White students in the 2007-08 school year.

This case leads to striking parallels with larger societal issues which pervade criminal justice systems and the incarcerations landscape in North America. Could the issues affecting the adult and young adult populations find roots in our school systems? Can unconscious biases explain the disparity between punishments wrought on different groups? These are hard questions to answer but the Tribunal's lengthy decision suggests that it is alive to the issues and will consider evidence of tendencies in discrimination, whether they affect bullies or victims. School boards and school districts would be well advised to give some thought to these potential latent biases in their disciplinary policies to avoid potential systemic discrimination issues in the future.

In contrast to the recent B.C. matter, the Tribunal had the opportunity to examine a school board's handling of alleged racial bullying incidents in *S.T. v. Toronto District School Board*, 2009 HRTO 1074. This Application was brought forward by the litigation guardian (grandmother) of a 9-year old student who had been the victim of bullying. She alleged that her granddaughter had been the victim of racial name-calling and that the school, School Board, and the teachers involved had failed to take appropriate steps to address the issue. The School Board, the student's teachers, and the acting principal were all named as respondents in the Application.

To find liability on the part of the respondents, the Adjudicator needed to find that the comments were made, that the respondents were (or ought reasonably to have been) aware of the comments, and that they failed to take appropriate steps to respond to them. Most of the allegations related to racial name-calling on the bus or in the classroom. Fatal to the grandmother's case was a finding that most of these bullying incidents had not been raised with anyone at the school. There could be no finding of discrimination in such circumstances.

However, in other instances, the Respondents had become aware that the student felt she was being bullied at school. The Tribunal found that the Respondents had been made aware of two separate incidents of racial name-calling. The Adjudicator reviewed the evidence and found that, on the whole, the School Board or the individual respondents had not discriminated against the student. Significantly, the Tribunal believed the respondents had taken appropriate measures to address the individual incidents of racial name-calling and took the necessary broader steps to address concerns about bullying, name-calling, and lack of inclusiveness in the school.

The decision suggests that school boards and school districts could potentially avoid liability for such discriminatory bullying claims if they are diligent in their interventions to address and prevent bulling behaviour. Indeed, the Tribunal made it clear that the School Board and the personal respondents (teachers) were under a positive duty not only to address the specific incidents brought to their attention, but also to take broader steps to address the school environment.

In the first incident, a teacher called the parents of the boy who made a racial comment and the parents assured the teacher that they would discipline him at home without further discipline being required at school. The teacher had also followed up with the boy after the comments were made. In the second incident, another student who made racial comments was given an "in school" suspension and he was required to apologize to the Applicant.

The school also took broader measures to address bullying and inclusiveness. The school held a "no put down" day, and the Applicant's teacher held a community circle where they discussed put downs. The acting principal held a staff meeting to discuss inclusiveness and every class in the school also participated in an exercise about how the school would look if it were inclusive.

The S.T. decision offers valuable examples of measures to address discriminatory bullying and to protect students. These insights, in turn, could help school boards and school districts defend against bullying cases brought by victims.

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SAVE THE DATE!

April 26-28, 2015

CAPSLE's 26th Annual Conference - Grand Okanagan Resort, Kelowna, BC

PRESIDENT'S MESSAGE

The weather could have been more co-operative but the warmth of the hospitality was second to none again as Charlottetown hosted the landmark 25th CAPSLE Conference April 27-29, 2014. It was noteworthy that this landmark coincided with one for PEI as a Province itself: the CAPSLE Conference was held on the 150th anniversary of the Charlottetown Conference of 1864. Originally intended to be a Maritime Conference to discuss a union of British colonies on the Atlantic coast, a transplanted Scotsman by the name of John A. MacDonald had another idea, inveigled an invitation to Charlottetown for Canadian delegates and convinced the majority of attendees to broaden the discussion to the potential of a larger union. The rest, as they say, is history. They call PEI the Cradle of Confederation; many of us would agree. Still further, I believe that Law and Education are fundamental cradles of Democracy.

Again, it was a wonderful Conference. Co-chairs Shaun MacCormack and Bob Andrews, along with their Committee, are to be congratulated for another great program. From the plenary speakers to the breakouts, to the compelling entertainment and hospitality, the Conference must be considered another success. I happen to know from inside sources that Sue Ferguson and her team have already completed amazing advance work in preparation for the 2015 conference in Kelowna. All the signs portend another amazing event in 2015!

Each conference brings with it a measure of excitement as new people join the Board and a tinge of sadness as fine people leave. This year we said a reluctant good bye to Cory Schoffer who had completed back-to-back 2-year terms. Cory's contribution was very well received, and he will be missed. I hope to see Cory back on the Board in the future. We also said good-bye to one of the great Board members over the years, Martha MacKinnon. Martha completed her second term on the Board and Executive, contributing an amazing amount of energy and expertise over twenty odd years. Regrettably Martha could not attend this year, but we say thanks Martha, be well, you are missed.

On the happy side we welcomed two "new" Board members. Maria Gergin is a first time Board member and she continues a long tradition of volunteerism and skilled support from individuals associated with Borden, Ladner, Gervais, LLP. Welcome Maria! And the other "new" member is Judy Begley, returning for a second stint on the Board. Who will forget Judy's emotional acceptance of the Life Membership Award in Charlottetown? This simply speaks to the passion and commitment that Judy has always brought to CAPSLE. What a wonderful addition!

And I would be remiss if I did not welcome our new Executive member, Secretary Paul Clarke. Paul's dedication and expertise will continue to prove invaluable, welcome Paul!

So what will the next year bring? Will the Supreme Court make further Charter rulings that speak to collective bargaining rights, or will they be too busy fending off chastisements from our Prime Minister? Will there be new judgements that speak to addressing the diverse needs in our classrooms? Canada is already recognised as a world leader in taking children from where they are and helping them succeed in spite of challenge; the Organization for Economic Cooperation and Development (OECD) refers to this as resiliency. In general, Canada is recognised as having one of the very best public education systems in the world, especially when you take out the silly comparisons to islands and cities…Macau, Singapore, Shanghai, Hong Kong etc. And for that you deserve credit! This is one of the things I like best about CAPSLE; we get together, we argue, we agree or disagree, but all of us contribute to a common cause, public education, the backbone of a civilized society. Give yourselves a pat on the back, you deserve one, and occasionally it is a nice change from strident criticism.

Enjoy the spring, as it slowly emerges from a relentless winter, and have a great summer.

Myles Ellis
CAPSLE President

ACCEPTABLE USE OF TECHNOLOGY POLICIES: HOW TO MANAGE EMPLOYEE PRIVACY EXPECTATIONS WITH RESPECT TO PERSONAL USE OF SCHOOL TECHNOLOGY

When school employees are permitted to use their work computers for personal purposes, they are entitled to a reasonable expectation of privacy. While the exact scope of that privacy right is not entirely clear, the adoption by schools of an acceptable use of technology policy applicable to staff members is one factor that courts will consider in determining the extent to which employees' privacy rights should be protected.

Many schools provide teachers with laptops or computers owned by the school for work-related uses, and permit them to use the laptops or computers for incidental personal uses. The legal issue that arises is whether a staff member has an expectation of privacy with respect to personal information he or she uses or accesses on the work-owned computer and, if so, what steps a school can take to monitor and inspect the staff member's personal use of the computer.

In the 2012, Supreme Court of Canada decision in *R. v. Cole*[1], the Supreme Court found that a high school teacher could reasonably expect a measure of privacy in his personal information stored on a work-issued laptop. The use of the laptop was governed by the School Board's Policy and Procedures Manual, which allowed for incidental personal use of the school board's information technology, and provided that email correspondence was private, but did not address other types of files. Use of the laptop was also governed by the school's Acceptable Use Policy, which warned users not to expect privacy in their files. At issue was the seizure of a folder on the teacher's laptop containing nude pictures of an underage student. The Supreme Court found that even taking into account the relevant workplace policies, the employee expected a measure of privacy in his personal information on the laptop, but that it was a diminished expectation of privacy.

The Supreme Court considered the School Board policy governing employee use of technology in assessing the "totality of the circumstances" to determine whether privacy is a reasonable expectation in the particular situation. Ironically, the Court found that the school's policies weighed both for and against the reasonable expectation of privacy: for, because the policy permitted use of the laptop for personal use, and against, because the policy deprived the teacher of exclusive control and access to the personal information recorded on the computer.

The findings in the case suggest that acceptable use policies may not be determinative, but they will still be important in determining the scope of the employee's privacy rights. It does not appear that the policies in question were as robust as might have been expected (not addressing the privacy of data other than email, for example). Accordingly, schools should develop comprehensive acceptable use policies that are specifically applicable to teachers and other staff members, and not just to students.

The Acceptable Use policy should specifically provide that staff members do not have a reasonable expectation of privacy in their use of the computer, and in any data or messages stored on the computer or accessed or sent by the computer. It should also provide that the school may inspect the computer at any time with or without notice to the employee, including inspecting the content of any messages sent by the staff member. It is also advisable to include a statement that staff members should use their own personal devices not connected to the school's computer systems if they wish to access data or communicate privately.

In addition to addressing the staff members' rights of privacy, an acceptable use of technology policy applicable to staff members should generally address:

- Obligations on staff members to use the technology in a lawful manner;
- Examples of conduct that violate the policy;
- Whether the staff member is permitted to install software on the school computer;
- Prohibition on copyright infringement;
- Prohibition on disclosure of passwords;
- Responsibility of staff members for content of messages sent;
- Limitations on the rights of staff members to use the computer (this may include a prohibition on using the computer for spamming or business activities unrelated to the school);
- Rights of the school to revoke the staff member's access to the school information services network;
- Consequences for violation of the policy, which should include termination of employment and notification of law enforcement officials.

Schools should also have acceptable use policies governing the use of technology by students. While there will be overlap in the content of the policies, schools should adopt two separate policies: one for students and one for staff. There are sufficient differences in the relationship between a school and its students and a school and its employees that two separate policies are advisable.

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1. [2012] S.C.J. No. 53

ONTARIO DIVISIONAL COURT RULES ON EXEMPTIONS FOR NON-CATHOLIC STUDENTS FROM "SUBSTANTIALLY" RELIGIOUS MANDATORY ACTIVITIES

On April 4, 2014, the Ontario Divisional Court ruled in *Erazo et al. v. Dufferin-Peel Catholic District School Board*[1] that, pursuant to the Ontario *Education Act*, non-Catholic students of Catholic public schools are entitled to exemptions, upon request, from some religious activities, such as mass and religious retreats.

Given that the operative provision had not previously been judicially considered, this decision will be of interest to all Catholic school boards in the province (and across the country).

The Facts of the Case

Section 42(13) of the Ontario *Education Act* (the "Act") provides as follows:

> […] no person who is qualified to be a resident pupil in respect of a secondary school operated by a public board who attends a secondary school operated by a Roman Catholic board shall be required to take part in any program or course of study in religious education on written application to the Board of,
>
> (a) the parent or guardian of the person;
>
> (b) in the case of a person who is 16 or 17 years old who has withdrawn from parental control, the person himself or herself;
>
> © in the case of a person who is 18 years old or older, the person himself or herself.

The provision applies to "Open Access" students only (i.e., "persons who are qualified to be resident pupils in respect of a secondary school operated by a public board who attend a secondary School operated by a Roman Catholic Board").

In 2012, Oliver Erazo (on behalf of his son, Jonathan Erazo Reyes), and Amilcar Erazo (on his own behalf), both applied for an exemption from religious studies. At the time, both Jonathan and Amilcar were "Open Access" students at Notre Dame Catholic Secondary School in Brampton.[2]

After some discussion with the school and the Board, the Board wrote to the Erazo family advising that Jonathan would be exempt from taking a mandatory religious education course for one year, but would be expected to attend and be respectful of all other religious observances.

After some further discussion, the Erazo family requested a further exemption from mandatory attendance at mass and religious retreats. It was the position of the Board that such activities did not fall within the scope of the exemption provision at section 42(13) of the Act, as they did not in the Board's view constitute "*….programs or courses of study in religious education*".

The Erazo family commenced an application for judicial review of the Board's decision before the Ontario Divisional Court. The family was seeking a declaration that Roman Catholic liturgies and religious retreats are programs in religious education from which they are entitled to an exemption under section 42(13) of the Act. They also sought an order directing the Board to provide alternative arrangements for Jonathan and Amilcar during the time period of any liturgy or religious retreat.

The issue before the Court was therefore whether liturgies and religious retreats fall within the scope of section 42(13) of the Act – that is, whether they are "programs or courses of study in religious education". The Court's analysis may be summarized as follows:

- "Program" is not defined in the Act. The Court referred itself to a dictionary definition of "program": a planned series of future events, items or performances. In the Court's view, liturgies and religious retreats fall within the scope of "programs".[3]

- The uncontested evidence before the Divisional Court was that liturgies and retreats "*contain a substantial component of ritual and prayer led by Catholic priests,*" and "*have as their central purpose the provision of religious experiences and education to the students who attend them*", and therefore are "*religious*".

- The Court held that this interpretation is consistent with the "*evident purpose*" of section 42(13): to "*…give relief to students who may respect may Catholic*

> *principles and observances but do not wish to participate in Catholic, or perhaps any, form of worship, even at a minimal level*."

The Court therefore held that the Applicants were entitled to an exemption under section 42(13) of the Act from attendance at liturgies and religious retreats.

Implications of the Case

Section 42(13) leaves it to each Ontario Catholic School Board to interpret when it is and is not appropriate to provide an exemption, upon request, to an "Open Access" student.[4] The Erazo decision provides Boards with some additional guidance on how that determination is to be made.

The decision clarifies that Catholic Mass and religious retreats fall within the scope of section 42(13) of the Act. Therefore, an application to a Catholic Board by or on behalf of an Open Access student for an exemption from mass and/or religious retreats which is otherwise compliant with section 42(13) must now be granted.

The decision also provides some guidance with respect to other types of activities:

> · A school event which falls within the scope of "*…a planned series of future events, items or performances*" is likely to be interpreted to fall within the scope of a "program" under section 42(13).
>
> · Any such "program" which has a "*…substantial component of prayer and ritual*" and/or has "*…as its central purpose the provision of religious experiences and education to the students who attend*" it is likely subject to the exemption at section 42(13) of the Act.

The decision does not provide any definitive guidance with respect to what may or may not fall within the scope of "*courses of study in religious education*", as opposed to "*programs in religious education*", under section 42(13) of the Act. The decision is also silent with respect to the degree to which the Board is required to provide supervision or "*alternative arrangements*" for students during the time that "religious programs" from which they are exempt are taking place.

Ontario Catholic school boards may wish to consider developing a consistent approach or policy with respect to section 42(13) exemption requests from "Open Access" students for events which will occur frequently during the school year (e.g. school masses, religion classes, religious retreats, non-religious retreats, non-religious assemblies, etc.), recognizing that there will be events which will have to be considered on a case-by-case basis.

In communicating with a student who qualifies for an exemption, school administrators could confirm that although the relevant exemption will be granted to this student for a particular school year, there will not be any alteration in the religious or moral education that infuses the remainder of the student's timetable and school observances.

In communications with the student and his or her family, school administration could confirm that notwithstanding the exemption in the case of this student, the historical mandate of the Catholic school system in Ontario is to model the entire syllabus of the school on the life and teachings of Jesus Christ. School administrators could also confirm that throughout the province, Catholic school boards have been using the Ontario Graduate School Expectations as a foundation reflective of the vision of all learners and the strong sense of distinctiveness and purpose that is publicly-funded Catholic education.

The school could also indicate that it is the school board's view that all students admitted to the Catholic system will benefit from these values and teachings. School administration could also confirm that it is the school board's position that such values and teachings are important in forming students into responsible, reflective and well-rounded citizens.

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1. 2014 ONSC 2072 (CanLII).
2. However, Amilcar was in his fifth year, and was therefore not required to take any mandatory religion course.
3. The Court observed at paragraph 29 of the decision that liturgies and religious retreats may also fall within the scope of "courses of study" under section 42(13) of the Act, and may therefore be subject to an exemption request on that basis as well, although it was not asked to rule on this issue.
4. The exemption is not automatic; a written application must be made to the Board, by the student's parent or guardian, or the student him or herself (if he or she falls within the scope of subsections (b) or (c)).

ONTARIO HUMAN RIGHTS TRIBUNAL RULES ATHEISM INCLUDED IN THE MEANING OF "CREED"

In *R.C. v. District School Board of Niagara*, 2013 HRTO 1382, the Ontario Human Rights Tribunal (the "HRTO") was asked to determine if a policy of the District School Board of Niagara (the "Board") discriminated against R.C. and S.C., the Applicants, on the basis of creed. The Canadian Civil Liberties Association and the Ontario Human Rights Commission were both granted intervenor status in this case. In the decision, which was released on August 13, 2013, the HRTO granted the Application, finding that the Board's policy, as drafted at the time, allowing the distribution of religious materials in the school after school hours, was discriminatory.

Factual Background

There were two versions of one Board policy at issue in this case. The first version of the policy was adopted from the Board's predecessor and permitted only the Gideons International In Canada to distribute their version of the New Testament to Grade 5 students in Board schools, if the principal - in consultation with the school council - agreed, and if parental consent forms were signed. The Gideons would also make a presentation to the students whose parents signed the consent forms.

When the Applicant S.C., a Board student, was in Grade 5, she brought home a consent form pursuant to the Board's policy. Her family identifies as atheist.

After receiving the Board's consent form, and following his attendance at the Gideons' presentation, S.C.'s father, R.C., contacted the school's principal and asked to distribute a book entitled "Just Pretend: A Freethought Book for Children", which promotes atheism. R.C. explained to the HRTO that his intentions were not to promote atheism in the school, but to make the point that asking parents to consent to the distribution of his materials or the Gideons' materials might be upsetting, and to encourage a change in the Board's policy. As a result of R.C.'s actions, S.C.'s school decided it would not allow the distribution of any materials under the policy that year.

Following the school's decision not to allow distribution of *Just Pretend* or the Gideons' materials, R.C. continued to advocate for a change in the Board's policy. The Application was filed in January 2010, and delivered to the Board in March 2010. Before it received the Application, the Board changed its policy in February, in an attempt to make it more inclusive. The new policy did not restrict the distribution of materials to any specific religion and simply stated that any requests for the distribution of religious publications must be approved by the school, in consultation with the school council and with pre-approved parental consent.

After the policy was amended, R.C. made a second request to distribute *Just Pretend*. The Board refused his request, taking the position that atheism was not a religion and that *Just Pretend* was a secondary publication and not a recognized sacred text or authoritative source of any religion. Thus, the Board contended, his materials could not be distributed under the policy.

The Decision

In its decision, the HRTO undertook an analysis of whether atheism falls under the protected ground of creed in the Ontario *Human Rights Code* (the "*Code*"). The HRTO noted that the rights provided for in the *Code* are to be interpreted broadly and exceptions to those rights interpreted narrowly. With respect to whether atheism is included within the definition of creed, the HRTO stated the following:

> In my view, a purposive interpretation of the prohibition on discrimination because of "creed" in the *Code* includes a prohibition on discrimination because a person is atheist. To accept the respondent's submissions would be to find that the *Code* only protects core beliefs about oneself, humankind and nature linked to one's self-definition when they accept the existence of a deity or have particular practices. The purpose of prohibiting discrimination because of creed includes ensuring that individuals do not experience discrimination in employment, services and the other social areas in the *Code* because one rejects one, many or all religions' beliefs and practices or believes there is no deity.

The HRTO also noted that it is well-established that "creed" encompasses discrimination because of religion. The HRTO found that the protection against discrimination because of religion must include protection of the belief that there is no deity. These beliefs relate to religion, and they engage the *Code*'s purpose of ensuring equal treatment regardless of one's views on religious matters. The HRTO further stated that the exclusion of atheism from "creed" would "*…allow discrimination against persons because they do not accept a particular religion, so long as they are not adherents of another set of beliefs and practices*."

Relying, in part, on Supreme Court of Canada decisions addressing freedom of religion, statutory interpretation principles, and a dictionary definition of "creed", the HRTO concluded that "a liberal and purposive interpretation of the prohibition on discrimination because of "creed" includes atheism and that discrimination because a person is atheist is prohibited by the *Code*."

In the end, the HRTO found that both versions of the Board's policy were discriminatory. The first policy was discriminatory in permitting students to receive literature in public schools from the Gideons only, and not others. The second version of the policy was discriminatory because: it was inconsistently applied in a discriminatory manner; it did not provide clear guidance on decisions regarding which materials may be distributed; and permitted judgment on a case-by-case basis of the validity of particular religions and religious texts.

Remedy

The Board's policy was declared invalid and the Board was ordered not to allow distribution of religious materials unless it developed a policy that was compliant with the *Code*. The HRTO further ordered that the Board provide any new policy to the intervenors and the Applicants, at which time they may write to the HRTO if they see any Code compliance issues with the draft policy.

Take-Away

Public school boards that presently have in place, or are considering drafting, a policy allowing the distribution of religious materials in their schools after school hours should be mindful of the following in reviewing, updating or drafting such policies:

- The HRTO commented in this case that when a public school is not neutral with respect to creed, it discriminates against parents and children accessing the school's services and whose creed is marginalized.

- Boards that have similar policies in place should make some effort to encourage a diversity of literature and awareness of the policy. There should be a clear statement in communication with parents confirming that all creeds are permitted to distribute materials with parental consent.

- Make efforts to publicize the policy and make all students and parents aware of its contents.
- The policy should be consistently applied and should not restrict the manner in which a creed must convey core beliefs. Creeds convey their messages in different ways.

While this decision does not prohibit optional religious activities in public schools outside the instructional day, all creeds must be treated equally in any optional religious activity. There must be no subtle or formal coercion to participate in such activities and schools must make clear that they are not favouring any creed. As noted by the HRTO in this decision, under a carefully developed policy that ensures equality between all creeds, public schools can permit distribution of religious and creed literature outside the school day with parents' consent.

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