



# COMMENTS

## *NOVA SCOTIA GOVERNMENT INTRODUCES NEW GUIDELINES FOR SUPPORTING TRANSGENDER AND GENDER NONCONFORMING STUDENTS*

### **Background**

On December 10, 2014, Nova Scotia's Department of Education and Early Childhood Development introduced new Guidelines for Supporting Transgender and Gender nonconforming Students (the "Guidelines"). The Guidelines are meant to assist teachers, students and school boards in including and accommodating transgender and gender nonconforming students in schools across Nova Scotia.

The creation of the Guidelines was largely in response to the 2012 amendments to Nova Scotia's *Human Rights Act*, and a broadly publicized incident in April 2013 which involved the discipline of a transgendered student for using the female washroom in her high school.

In 2012, Nova Scotia's *Human Rights Act* was amended and section (na) "gender identity" and section (nb) "gender expression" were added to section 5(1) as protected grounds.

In 2013 Jessica Durling, a transgendered high school student at Hants East Rural High, in Milford Station, Nova Scotia, began using the female washroom at her high school. Although born a male, Jessica identified as a female.

Jessica's use of the female washroom resulted in other students complaining to the school's Principal and staff. The Principal approached Jessica and issued her a one (1) day suspension for using the female washroom. However, before Jessica served her suspension, the Chignecto-Central Regional School Board intervened and cancelled the suspension.

At the time of the incident, although gender identify and expression were protected grounds pursuant to human rights legislation, there were no provincial guidelines to assist school boards, teachers and educators in the accommodation of transgender and gender nonconforming students.

Following the incident, and the media attention it garnered, a working committee was established and tasked with drafting the new Guidelines. The working committee was comprised of a number of diverse

stakeholders, including Nova Scotia's Department of Education, members of the Province's various school boards, the Nova Scotia Teachers' Union, the Human Rights Commission and the Youth Project (a non-profit charitable organization).

### **The Guidelines**

In the December 10, 2014 Official Press Release, Nova Scotia's Department of Education and Early Childhood Development, states that the new Guidelines are meant to: "...support schools and school boards in protecting and respecting students as they assert their gender identity and right to gender expression."

The Guidelines are meant to make Nova Scotia's schools safe, respectful and supportive of transgender and gender nonconforming students. The Guidelines are meant to be used by school boards, teachers and students alike across Nova Scotia to assist in the accommodation of transgender students, and to help protect them from discrimination.

The Guidelines are 28 pages long and are very accessible. They identify seven (7) principal recommendations, which broadly include:

1. Supporting the student's individual process;
2. Using the student's preferred name and pronoun (without verification of identity, or medical records);
3. Maintaining records consistent with legal practice;
4. Ensuring that dress codes support the full expression of the student's gender identity;
5. Minimizing gender-segregated activities;
6. Enabling the full and safe participation in physical education classes and extracurricular activities (including athletics) in accordance with the student's gender identity; and

7. Providing safe access to washrooms and change-room facilities in accordance with the student's gender identity.

### Across Canada

Over the past few years across Canada, school boards, teachers, parents, students and provincial governments have been discussing, debating and implementing accommodative and inclusive measures for transgendered students and staff in the school environment.

For example, the Edmonton Public School Board issued guidelines for the accommodation of transgendered students in 2011. Additionally in 2011, Canada's largest school board, the Toronto District School Board adopted guidelines for the accommodation of transgender and gender nonconforming students and staff. More recently, in June of 2013, the Vancouver School Board also adopted transgender guidelines.

The adaptation and implementation of transgender guidelines in schools throughout Canada has not been without debate and criticism. Some critics argue that these guidelines undermine parental rights, force teachers into making decisions that should be made in consultation with medical professionals, and politicize the education system. However, despite these critiques school boards across the country are increasingly recognizing the legal obligation to accommodate transgendered and gender nonconforming staff and students, and considering guidelines to assist in these accommodative measures.

### What this Means for Nova Scotia's Educators

The Nova Scotia Guidelines will provide a very helpful starting point and blueprint for frontline educators when faced with accommodative issues relating to transgendered and gender nonconforming students.

However, the Guidelines are exactly that – guidelines. They do not provide a comprehensive response to every imaginable accommodative scenario. Additionally, the Guidelines specifically recognize that in many cases, accommodative measures will have to be assessed and responded to on a “case-by-case” basis.

The Guidelines do provide a more directive list of “roles and responsibilities” for students, teachers, and school boards in creating a safe and supportive culture for transgender students. Some of these include, for teachers:

- To take personal responsibility to educate themselves regarding transgender issues;
- To ensure that curriculum and classroom materials contain positive images and accurate information reflecting transgender and gender nonconforming people; and
- To develop action plans for transphobic incidents.

School Boards are tasked with the responsibility of providing professional development opportunities for school staff and promoting and celebrating transgender and gender non-conforming communities.

Although the Guidelines will not provide all the answers for issues that are sure to arise in schools throughout the province; the Guidelines provide a helpful framework to assist educators in Nova Scotia to ensure the inclusion, safety and accommodation of transgendered and gender nonconforming students in the hallways, classrooms and washrooms of Nova Scotia's schools.

*Leah Kutcher*  
**McInnes Cooper**  
Halifax, Nova Scotia

1. *Human Rights Act*, R.S., c. 214, s. 1.
2. See for example, the Guidelines, page 13.

---

## PRESIDENT'S MESSAGE

It is said that there is an ancient Chinese curse that states “*may you live in interesting times*”. There are only British sources that speak to this aphorism, the nearest statement in Chinese is the expression which conveys the sense that it is “*better to live as a dog in an era of peace than a man in times of war.*” One thing is certain; these are interesting times, and one can speculate how they will inform changes to our laws and our education system going forward.

While we have survived Hallowe'en, when you read this message you will be enjoying the holidays and the New Year. The New Year always brings predictions. I

will not make predictions, but I will pose questions for 2015 based on these interesting times.

Nationally, it has not been one of Canada's better autumns:

- The death of two Canadian soldiers in Montreal and Ottawa, Corporal Nathan Cirillo and Warrant Officer Patrice Vincent, have at least the markings of terrorism. How will Canadian laws change? Will Canadian school children be able to stroll the halls of our Parliament again? Under

what conditions? Will school boards require even stricter protocols and release forms to allow field trips to certain sites?

- Jian Ghomeshi. The former CBC radio personality has now been terminated by CBC following allegations of inappropriate behaviour. He now faces criminal charges including multiple counts of sexual assault. This story speaks to a larger conversation for Canada, the growing perception of violence against women, the suggested “date rape” culture on campuses. The news reported today that there will be a trial in the near future for two Ottawa college students who have been charged with sexual assault, an incident that provoked suspension of the school's entire hockey team. As well, the news reported on the upcoming sentencing for a teenage girl charged with running a human trafficking ring in Ottawa. Will changes be required for the reporting of incidents in schools to protect students, or will new harassment protocols be required for the workplace?

- On October 31<sup>st</sup> Justin Bourque was sentenced to 75 years without parole for the murders of RCMP officers in Moncton. This is the harshest sentence handed down in Canada since 1962, the year of the last execution. Has Canada's criminal justice system moved from a focus on rehabilitation to one where punishment is the key? Can we expect stricter/harsher sentences for young offenders? Will there be a strengthening of regulations related to school access for young offenders after sentencing? What new protections, if any, may be put in place to protect schools, staff and students?

Other topics that may impact in the New Year include copyright. While educators heralded the changes in 2012 that finally brought a semblance of certainty for teachers and students as to the legal parameters that must be followed, there is some concern that there are those who are working diligently with opposition MPs trying to gain a commitment to re-visit the legislation should there be a change in government in the next federal election.

Internationally there are a number of issues that could impact our systems:

What will be the protocols when we have our first Ebola case in Canada? Are our Emergency Measures sites ready? Will there

be a call for more scrupulous provisions around quarantine for schools? Families?

What impact will the war in Syria and Iraq have, now with Canadian fighter plane engagement? As new terrorist threats may emerge, will we see new legislation to bolster security? Will it be balanced, or will some fear a further erosion of privacy legislation?

One could continue to ask about the Ukraine. Also one could ask, what about Boko Harum? Are the girls free yet? But my last question on the international front has to do with American politics. As the rich and the powerful continue to attack, we watch with horror the dismantling of the U.S. public education system. What, if anything, is the impact on Canada? While the positive collaborative practices of stakeholders in Canada continue to serve this country well, there are forces in this country who would champion an American educational model, forces like the Koch brothers.

The following quote from Rolling Stone magazine gives one perspective on the Koch brothers:

*“If the Koch brothers didn't exist, the left would have to invent them. They're the plutocrats from central casting – oil-and-gas billionaires ready to buy any congressman, fund any lie, fight any law, bust any union, despoil any landscape, or shirk any (tax) burden to push their free-market religion and pump up their profits.”*

The Koch family of industrialists and businesspeople is most notable for its control of Koch Industries, the second largest privately owned company in the United States (with 2013 revenues of \$115 billion). You may ask what does this have to do with Canada. Well, the Koch brothers export 5% of the total oil exports to the United States from the tar sands, about 250,000 barrels a year. Recently, it was reported that Koch Industries ranks as No. 3 or No. 4 in terms of all tar-sands lease holders, and No. 1 as a non-Canadian holder. Those leases cover at least 1.12 million acres and as many as 1.47 million acres. But most notably for our purposes, it was revealed recently that the Fraser Institute is subsidized by the Koch brothers. In the last several years, \$500,000.00 of

Koch money found its way into the Fraser coffers following a long history of contributions. The Koch position in support of anti-union, pro privatization, pro charter schools education is well established. Will this influence the direction Canadian public education takes? For the sake of our children I hope not.

So what will the New Year bring? Good question. But I must share a very positive moment from the autumn of 2014. As I drove home to Ottawa from Toronto on Oct 24, after attending a very positive CEA conference and AGM, I started to see some unusual activity on the 401. Increasingly I saw people, firetrucks, and other vehicles lining up on over passes and on the side of the highway as I drove east. By the time I reached the 416 to Ottawa, I had it figured out. And when I met the convoy of vehicles transporting the body of Corporal Cirillo back to his home I, like so many others, pulled over to pay my respects. I marveled at the thousands of Canadians I had seen, many waiting for many hours to pay their respects, and there was such a wave of emotion

that washed over me that I carry it yet. O Canada, We Stand on Guard for Thee.

*Myles Ellis*  
**CAPSLE President**

1. Julian Brookes, "The Koch Brothers Exposed!" Rolling Stone Magazine, April 20, 2012.
2. See forbes.com/Koch-industries
3. Jeanine Molloff, "Koch Industries, Keystone XL Pipeline....A BP on the Prairie"  
[www.huffingtonpost.com/jeanine-molloff/koch-industries-keystone-\\_b\\_829262.html](http://www.huffingtonpost.com/jeanine-molloff/koch-industries-keystone-_b_829262.html)
4. Meteor Blades, "Yes, critics, Koch bothers do have more leased tar sands acreage than any other U.S. oil company"  
<http://www.dailykos.com/story/2014/04/08/1290568/-Yes-critics-Koch-brothers-do-have-more-leased-tar-sands-acreage-than-any-other-U-S-oil-company>
5. Olivia Ward, "Billionaire Koch Brothers are big oil players in Alberta"  
[http://www.thestar.com/news/world/2014/07/06/billionaire\\_koch\\_brothers\\_are\\_big\\_oil\\_players\\_in\\_alberta.html](http://www.thestar.com/news/world/2014/07/06/billionaire_koch_brothers_are_big_oil_players_in_alberta.html)

## ***BEYOND STICKS AND STONES: SASKATCHEWAN'S ACTION PLAN TO ADDRESS BULLYING AND CYBERBULLYING***

The anti-bullying initiative released late last year by the Government of Saskatchewan's Ministry of Education, *Saskatchewan's Action Plan to Address Bullying and Cyberbullying*, was the culmination of extensive consultations with Saskatchewan residents; a review of the relevant literature on bullying (supported by promising practices found in other jurisdictions to combat bullying behaviours); and by discussions with other Governmental ministries. The Report points to the need for an anti-bullying initiative in Saskatchewan because "*too many children and youth in Saskatchewan are targets of bullying and cyberbullying.*" Further, the Report urges action because the risk bullying poses not only to the well-being and safety of children but also to student engagement in school can minimize the ability of the Province's children and youth to reach their "full potential" in order to achieve present and future success. Linked to the tragic deaths of Canadian teens, bullying and cyberbullying have been catapulted into the national spotlight, and the *Action Plan's* timing follows in the wake of legislated changes around bullying and cyberbullying in other provinces, such as Nova Scotia, Québec, and Ontario. Within this larger context, the Report's six recommendations and the steps to achieve them, should be welcome news for all stakeholders —parents, teachers and school officials, the larger community itself and, by no means least, the children and youth of Saskatchewan.

The *Action Plan's* recommendations are based on themes that emerged from the study:

- building consistency across the system;
- working across government to align priorities;
- supporting students to develop responsible and appropriate online behaviour; and
- engaging children and youth in creating solutions to build positive relationships.

The recommendations, and their corresponding actions, are geared to prevent bullying, to enable children and youth to report bullying incidents, and to ensure there will be timely follow-up and resolution. The Report's recommendations for the Government of Saskatchewan are as follows:

1. Work with education sector partners to establish consistent policies and protocols to identify bullying as well as to report, respond and resolve an incident in multiple contexts, using a restorative approach through the renewal of the Caring and Respectful Schools policy and by using the Office of the Advocate for Children and Youth as an avenue to address

- unresolved bullying issues for children and families.
2. Develop an anonymous smartphone-friendly internet reporting tool and continue to support the toll-free Kids Help Phone.
  3. Direct that the Ministry of Education work with other ministries regarding the upcoming federal legislation and its implications for Saskatchewan.
  4. Work with school divisions to provide teacher instructional supports and student resources to teach appropriate and responsible online behaviour to all Kindergarten through Grade 12 students.
  5. Partner with the Sask Tel “I am Stronger” campaign to house their anti-bullying resources, supports and an anonymous reporting tool on the “I Am Stronger” website.
  6. Work with school divisions and other community partners by engaging youth in creating solutions to address bullying and cyberbullying and to help build positive relationships in our schools and communities.

The *Action Plan* also points to essential learnings gleaned through the consultative process which include the need for consistent, comprehensive, collaborative, and creative policies and practices aimed at preventing, responding to, and intervening in, bullying situations. One focus for the Report is to emphasize that battling bullying requires the commitment of the entire community. As valuable guides, these recommendations will serve to direct policy creation and implementation at both the provincial and the school division levels in order to combat bullying behaviours. While space does not permit a detailed description and analysis of each step identified in the *Action Plan*, a few key proposals should be highlighted.

### **Assessment of Current Provincial Legislation**

Much like the prairie wind, legislation and policy are two unseen but powerful forces which can effect positive change for students, parents, and communities as the Saskatchewan Government seeks to address bullying in the Province's schools indeed, they have been identified as powerful foundational elements that can “set the framework and context for change.” Support for legislative changes to address bullying is not new, and in its proposal to work across government to align priorities,

the *Action Plan* calls for the Saskatchewan Ministries of Education and Justice, along with the Attorney General, to “*assess the appropriate legislative action required to address bullying and cyber bullying, recognizing upcoming federal legislation*” and its proposed changes to the *Criminal Code* with respect to cyberbullying. It remains to be seen whether or not the Federal Government's Bill C-13 will exert any impact on future amendments to Saskatchewan's provincial legislation (including any changes to the *Education Act* such as any enhancements to the powers of school principals to address bullying behaviours).

In its quest to create the conditions for consistent practices, procedures, and responses to bullying behaviours, the Report notes the difficulty in forging a definition of bullying that is all-encompassing. Nonetheless, the *Action Plan* does provide a definition which, it concludes, may require future revision to ensure its continued applicability to the unique Saskatchewan context. Arguably, embedding a definition in the Preamble to any legislative amendments, accompanied by any common belief statements around bullying behaviours (such as the *Action Plan*'s identification of restorative principles rather than punitive approaches), could help to provide guidance and direction in determining appropriate responses to bullying and cyberbullying.

### **Reporting of Bullying Incidents**

Since the *Action Plan* identifies the need for greater opportunities “*to report bullying incidents across the Province*,” a key strategy is the proposed establishment of a partnership with internet service provider Sask Tel's “*I Am Stronger*” campaign and the use of its website not only as a repository for anti-bullying resources but also as an anonymous reporting tool. The *Action Plan* envisions the mobile-enabled online tool as facilitating a timely response to reports of bullying incidents through follow-up by ministry officials in collaboration with school division officials. Building upon this recommendation for anonymous reporting, the tracking of these incidents could discover if bullying trends or patterns exist throughout the Province and could also assist in determining the magnitude of the problem. At the same time, data collection and the monitoring of incidents could serve to inform bullying prevention and intervention strategies and to direct future resource development and program planning.

### **Establishment of Safe School Coordinator**

Embedded in the strategies designed to build consistency across the system, the *Action Plan* endorses

the appointment, at the Ministry-level, of a Safe School Coordinator who would help school divisions investigate reports of bullying. Additionally, a second proposal suggests that a “*provincial advisory body*” be created whose mandate is to provide recommendations that “*renew and align school division bullying and student safety policy and protocols.*” Both proposals have the potential to address bullying in a much-needed and more coherent and unified fashion through the development and coordination of programming, resources, and services, at the Provincial level, with a focus upon school safety. Additionally, the involvement of the Advocate for Children and Youth would provide not only education but also support for conflict resolution in issues of bullying. Noting that “*student safety and security practices,*” such as school codes of conducts and restorative practices, are being examined nation-wide, the recommendation for an advisory board to consider safety policies and practices would help to align the province with other jurisdictions in terms of school safety protocols.

### Implications for In-School Administrators and Educators

Specific actions to “*establish guidelines, additional tools and training to better prepare people working within the education sector to prevent and respond to bullying*” are essential steps in the Action Plan which have implications for educators and school administrators in their daily work with students. Strategies such as training in restorative practices for those who work within the educational community, supplying funding for “*basic risk assessment training*” in school divisions throughout the Province, and promoting human rights and citizenship education and resources in schools, in addition to providing educators with in-service opportunities and guidelines for teaching and modelling digital citizenship and the responsible use of technology, are outlined. As well, the Report proposes that schools throughout the Province should support the establishment and maintenance of Gay-Straight alliances (GSAs) in order to support “*safety, inclusion and respect for human diversity.*”

### Conclusion

While the Government of Saskatchewan's *Action Plan* is indeed shorter than the eighty-five recommendations suggested by the comprehensive Nova Scotia Task Force Report, nonetheless, it provides a solid foundation for the work it proposes and upon which the Student First initiative can build in order to support student safety and well-being in Saskatchewan. The *Action Plan's* recommendations hold much promise. As

the actions outlined in the Report are actualized and implemented, they will be instrumental in helping to meet the needs of Saskatchewan children and youth with respect to anti-bullying, using strategies that are corrective, educative, equitable, and supportive.

Nora M. Findlay  
Regina Public Schools  
Regina, Saskatchewan

1. Government of Saskatchewan. Ministry of Education. Saskatchewan's Action Plan to Address Bullying and Cyberbullying, November 14, 2013, online [www.education.gov.sk.ca//Anti-Bullying/campeau-report.pdf](http://www.education.gov.sk.ca//Anti-Bullying/campeau-report.pdf) (hereafter Action Plan).
2. Ibid., p. 5.
3. Ibid., p. 10.
4. For example, S. Shariff, A. Wiseman, and L. Crestohl, “Defining the Lines Between Children's Vulnerability to Cyberbullying and the Open Court Principle: Implications of A.B. (Litigation guardian of) v. Bragg Communications Inc.,” (2012) 22(1) Education Law Journal point to the suicide of British Columbia teenager Amanda Todd, in October, 2012, which was attributed, in part, to cyberbullying at 3–4.
5. See, for example, Bill 61, Cyber-safety Act, S.N.S. 2013, c.2; Bill 56, An Act to Prevent and Deal with Bullying and Violence in Schools, 2012, Québec National Assembly, 2nd Sess, 39th Leg.; and Bill 13, The Accepting Schools Act, S.O. 2012, c. 5.
6. Supra note 1 at 6.
7. Saskatchewan Learning. (2004). Caring and Respectful Schools. Regina, SK: Government of Saskatchewan.
8. Supra note 1 at 11–12.
9. Ibid., at 7.
10. A. W. MacKay, Respectful and Responsible Relationships: There's no App for That (Halifax, NS: Nova Scotia Task Force on Bullying and Cyberbullying 2012) at 44, online: <http://www.ednet.ns.ca/taskforcereport.shtml>
11. For example, J. McKinlay, R.J. Konopasky, A. Konopasky, A.W. MacKay, & T. Barrett. Bullying: Finding schools liable changes everything. In Roderick C. Flynn (Ed.), CAPSLE 2011: Rights & Reason: Shifting Tides in Law and Education. Proceedings of the Twenty-Second Annual Conference of the Canadian Association for the Practical Study of Law in Education, held in St. John's, NL, May 1-3, 2011 (Toronto: CAPSLE, 2012) who note that while litigation alone is not enough to enact the necessary change in the culture, discourse, and perceptions of bullying, “legislation” is one of the necessary forces of change they cite at 144.
12. Supra, note 1 at 17. A brief overview of the federal

legislation is presented by I. Pickard and K. Amos, “Cyberbullying: Lessons Learned from the Nova Scotia Experience and What It Means for Educators” (2014). Paper presented at the Canadian Association for the Practical Study of Law in Education Conference, held in Charlottetown, P.E.I., April 27-29, 2014, at 16.

13. Criminal Code, R.S.C. 1985, c. C-46.

14. Bill C-13, Protecting Canadians from Online Crime Act, 2013, 2nd Sess, 41st Parl., received Second Reading on April 28, 2014.

15. The *Education Act*, S.S. 1995, c. E-0.2.

16. It is worthwhile noting that in its submission on Bill C-13, Protecting Canadians from Online Crime Act, (May 2014), Ottawa, ON, the Canadian Bar Association argues “the criminal law should be considered a tool of last resort when dealing with young offenders, and not all incidents of cyberbullying by youths should be characterized as criminal acts” at 3, online: [www.cba.org/cba/submissions/pdf/14-33-eng.pdf](http://www.cba.org/cba/submissions/pdf/14-33-eng.pdf).

17. Supra, note 1 at 9. For an insightful analysis of the challenges that crafting a definition of bullying present, see supra, note 10, at 39-47.

18. For example, supra note 5, Bill 61, Cyber-safety Act, S.N.S. 2013, c.2. For a perspective on whether a definition should be included in legislation, see Coordinating Committee of Senior Officials (CCSO) Cybercrime Working Group, Report to the Federal/Provincial/Territorial Ministers Responsible for Justice and Public Safety, Cyberbullying and the Non-consensual Distribution of Intimate Images (June 2013) at 4, online [www.justice.gc.ca/eng/rp-pr/other-autre/cndii-cdnii/pdf/cndii-cdnii-eng/pdf](http://www.justice.gc.ca/eng/rp-pr/other-autre/cndii-cdnii/pdf/cndii-cdnii-eng/pdf)

19. Supra note 1 at 9; see also supra, note 10, at 62-64.

20. For a concise overview of provincial and territorial legislative and non-legislative responses to bullying, see supra, note 18, Coordinating Committee of Senior Officials (CCSO) Cybercrime Working Group, at 6-8.

21. Supra, note 1, at 14.

22. See “I Am Stronger” at [www.iamstronger.ca](http://www.iamstronger.ca).

23. The Action Plan claims “72 percent of students would report cyberbullying if it could be done anonymously,” supra note 1 at 14. As well, the Supreme Court of Canada affirmed the need for anonymous reporting in *A.B. v. Bragg Communications Inc.*, 2012 SCC 46. [2012] 2 S.C.R. 567. The Sask Tel anti-bullying reporting tool was officially launched on June 24, 2014, see online at <http://iamstronger.ca/uploads/editor/Online%20reporting%20tool%20Letter%20-%20english.pdf>

24. Supra note 1, at 14.

25. See, for example, supra note 10, at 19-21, which explores the need for data collection.

26. Supra note 1, at 14; compare to supra, note 10, at 36, for example.

27. Supra note 1, at 14.

28. Ibid.

29. Ibid., at 24

30. Ibid., at 13.

31. Ibid. For e.g., the Ontario Ministry of Education, (5 December, 2012), Policy/Program Memorandum No.128, requires school boards to align their own code of conduct with the existing provincial Code of Conduct, with standards for behavior that are applicable to students, parents and community members, and outlines the roles and responsibilities of all stakeholders in developing effective practices, at 5-7; it is worthwhile to note the Ontario provincial Code of Conduct prohibits bullying behaviors, at 4, online at <http://www.edu.gov.on.ca/extra/eng/ppm/128.pdf>. Additionally, S. Shariff and D.L. Hoff (2007) “Cyberbullying: Clarifying Legal Boundaries for School Supervision in Cyberspace,” *International Journal of Cyber Criminology* 1(1) maintain research has indicated bullying can be reduced by 50% if adolescents contribute to the rule-making, at 85, online at <http://www.cybercrimejournal.com/shaheenhoff.pdf>

32. Supra, note 1, at 13.

33. For example, the identification of the principal's role as being pivotal in addressing bullying issues is highlighted on PREVNet (2014, October 23), Fact Sheets: The Role of Teachers & Other Staff in Bullying Prevention, which claims successful bullying prevention and intervention programs have a “proactive [school] principal who prioritizes the program and supports staff to devote time to the program” and that a commitment by the principal to time and resources to prevent bullying is “associated with improvements” (n.p.), online at <http://www.prevnet.ca/research/fact-sheets/the-role-of-teachers-and-other-staff-in-bullying-prevention>

34. It is worthwhile to consider that in arguing for “restorative practices” as part of schools' disciplinary framework, K. Waters “Overcoming legal barriers to using restorative practices in Ontario schools” in Roderick C. Flynn (Ed.), CAPSLE 2010: The Rocky Road Ahead: Balancing Competing Interests/Concilier les interest divergents une périlleuse escalade. Proceedings of the Twenty-First Annual Conference of the Canadian Association for the Practical Study of Law in Education, held in Calgary, AB, April 25-27, 2010, (Toronto: CAPSLE, 2011) notes that since Ontario's Education Act, S.O. 1990, c. E-O requires the “consideration and application of the mitigating and other factors” in every case of student misconduct, “administrators need resources, training, skills and support” in order to find appropriate consequences in disciplinary issues, at 252. This notion is echoed in PREVNet, (2014, October 23), Fact Sheets: Bullying and School Climate, where research has found that “school administrators need enhanced

training in the implementation of effective, educational discipline practices” (n.p.), online at <http://www.prevnet.ca/research/fact-sheets/bullying-and-school-climate>

35. *Supra*, note 1, at 14.

36. *Ibid.*, at 13–15, 19–20.

37. *Ibid.*, at 21; a point of comparison is *supra*, note 5, Bill 13, The Accepting Schools Act, S.O. 2012, c. 5, where the provision for GSAs is encased in legislation.

38. *Supra*, note 10.

39. Introduced in summer, 2013, the goal of the Student First approach is “to ensure that all students in Saskatchewan, in every corner of the Province, have the education and skills to succeed when they graduate from high school. This approach also reflects a commitment to achieving education targets outlined in Saskatchewan’s Plan for Growth,” Government of Saskatchewan, Ministry of Education, Annual Report for 2013-2014, at 3.

The extensive Student First consultative engagement process with students, teachers, parents, and community members was held Province-wide from November, 2013, to June, 2014. The findings are contained in the Student First Engagement Discussion Guide (September 2014), prepared by R.A. Malatest & Associates Ltd., where “the intent is to use the findings to inform our work moving forward and to continue putting the student at the forefront of the education system,” Student First Engagements (24, October, 2014), online <http://www.saskatchewan.ca/government/have-your-say/student-first/student-first-engagements>

40. The Action Plan notes its recommendations will inform the Student First “engagement process,” and, in turn, the Student First consultations “will inform and further prioritize the key actions associated with student safety using a Student First perspective,” *supra*, note 1, at 6.

---

## *RECOMMENDATIONS STEMMING FROM THE AUDIT OF THE TRI-COUNTY REGIONAL SCHOOL BOARD*

A recent Audit of the Tri-County Regional School Board (“Tri-County”) in Nova Scotia contained a number of recommendations for improvement at the board and senior management levels. In doing so, the Audit provides guidance that may be helpful to education stakeholders across the country. The issues flagged by the Audit Report to the House of Assembly (“the Report”) may well be familiar challenges to many of you.

The recommendations are set out at pages 28-44 of the Report. In accordance with the Auditor General Act, the Auditor General of Nova Scotia delivered the Report to the Speaker of the House of Assembly on November 19, 2014. All of the information provided in this article is sourced from that Report.

### **The Tri-County Regional School Board**

The Tri-County Regional School Board is one of eight school boards in the Province. It serves approximately 6,100 students in 28 schools over 7,000 square kilometers. The Tri-County region is a bilingual area with French Immersion and French Second Language programs provided. Eleven members sit on the governing board. Each member also sits on the Education Committee, a standing committee of the governing board. (Page 29)

As is the case elsewhere, the Superintendent of Tri-County is responsible for the overall operation of the Board’s head office and schools and the supervision of the Board’s employees, including 47 head office

staff, 466 teachers and principals and 351 non-teaching staff. Operational and management decisions at the school level are the responsibility of the principals and vice-principals.

### **Audit Objectives and Process**

The objectives of the Audit, which was conducted in the summer of 2014, were to determine if “the Tri-County Regional School Board’s:

- governing members are providing adequate oversight related to the delivery of educational services within the Board’s schools: and
- management team provides adequate planning and monitoring of educational services delivered at the school level.”

### **Summary of Conclusions**

The over-all conclusion of the Audit with respect to Tri-County was that, “[n]either the governing Board nor management at the Tri-County Regional School Board is fully meeting their respective responsibilities in the oversight and monitoring of the delivery of educational services in their schools.” This conclusion is, of course, a serious one, going to the very heart of the duties expected of each entity.

I should pause to note that the Report makes clear that both the Tri-County Board and management

acknowledged the deficiencies that had been identified, and accepted the recommendations of the Audit while affirming an intention to implement the recommendations to the extent possible within the context of the limited resources available. The constraints posed by limited resources are certainly a hurdle that will be familiar throughout the education sector across Canada. In fact, some or all the deficiencies identified by the Audit team will mirror the challenges faced in many contexts across the country. Many of the touchstones for the audit team are vulnerable areas which are affected by lack of time, personnel, resources or other factors. Nonetheless, all of the areas reviewed in the Audit Report are matters of importance which should not be overlooked.

### Board Issues

In terms of the more specific areas of concern involving the Board, the Audit Report noted commented as follows:

“The governing Board has not clearly defined its role and responsibilities in comparison to those in management,” and that it “has not defined and communicated its information needs in order to effectively carry out its responsibilities.”

The Audit took note of the fact that the Board “does not have a process to assess its own performance and modify, as necessary, how it operates.” More particularly, the Audit concluded that the Board:

“...[did] not receive sufficient information or spend appropriate effort on the fundamental role of educating students. The Board does not request or receive important information to know whether schools are planning and making sufficient progress towards achieving business plan goals, the academic performance of students is meeting expectations, and the development needs of teachers and principals are met. Roles and responsibilities need to be clearly defined so that they are understood by both the governing board and management.”

To address these concerns, the Audit recommended the following:

#### Recommendation 3.1

The governing Board of the Tri-County

Regional School Board should define its role and responsibilities and the information required from management in order to fully carry out its duties in educating students. Board members should also complete an annual self-assessment of their performance and address any identified weaknesses in a timely manner.

The Audit then flagged the fact that, although the Board had identified “improving student achievement in numeracy and literacy as priorities,” it had “not undertaken an in-depth analysis to determine the root causes in its schools which are contributing to the underachievement of students in these two areas,” and it was “not effectively overseeing educational results.”

More specifically, the Audit Report identified a deficiency in the monitoring of and response to student progress in the priority area of numeracy, as well as in other non-priority subject areas, and of students with individualized program plans. The Report noted that the Board had not requested or received any information regarding students with individualized program plans, and rarely discussed student performance at either Board or Education Committee meetings.

To address this deficiency, the Audit recommended that:

#### Recommendation 3.2

The governing Board of the Tri-County Regional School Board should request that management determine and address the reasons for the unsatisfactory performance of its students in literacy and numeracy. In addition, the Board should regularly review reports on student performance, including students with individualized programs, to hold management accountable for the delivery of educational services to its students.

Next, the Audit Report noted that, “[a]lthough management directed schools to create annual school improvement plans, the goals outlined in the plans did not always align with the Board’s priorities,” and that “[r]eporting by schools on progress towards their goals was limited.”

This observation led to a third recommendation:

#### Recommendation 3.3

The governing Board of the Tri-County Regional School Board should ensure that appropriate school improvement plans align

with Board goals and oversee whether expected results are being achieved.

Fourth, the Audit noted that the Board did not oversee teacher and principal evaluations and did not regularly receive summary information about those evaluations. As a result, the Board was “...not fully aware of staff development needs, whether evaluations are completed according to policy, and whether schools are adhering to the public school program as required by the Education Act.”

To address this cluster of challenges, the Audit Report includes the following recommendation:

**Recommendation 4**

The governing Board of the Tri-County Regional School Board should ensure that teacher and principal evaluations are completed according to Board policy, that teachers are adhering to the provincial program of studies, and that staff development needs are being met.

Finally, with respect to the Board, the Report identified that the Board did not appropriately evaluate the performance of superintendents. In the view of the Auditors, the process followed by the Board “...did not link the Superintendent's performance to the responsibilities of the positions under the Education Act or the Board business plan.” As a result, the Audit Report recommends the following:

**Recommendation 5**

The governing Board of the Tri-County Regional School Board should evaluate the Superintendent's performance against the responsibilities of the position and take any necessary action.

**Management Issues**

With respect to the management team, the Audit Report first identified a concern that management did not effectively monitor the school improvement process. More specifically, the Audit stipulates that, “it is management's responsibility to direct and assist schools to develop goals and action plans that align with the Board's goals and report periodically on progress in meeting those goals.”

To address these concerns, the Audit set out the following recommendation, which is once again quoted directly from the Report.

**Recommendation 6**

Tri-County Regional School Board management should ensure that school improvement plans and annual reports are completed on a timely basis, include specific goals and strategies to address Board and school priorities, and report progress on achieving goals.

Next, the Audit Report reiterated the identified deficiency in the monitoring and response to student progress in the priority area of numeracy, in other non-priority subject areas, and students with individualized program plans. Accordingly, through two recommendations, it tasked management with fulfilling its role in that regard:

**Recommendation 7**

Tri-County Regional School Board management should regularly monitor the performance of students in all subject areas and take the required action to ensure student achievement meets expectations. (Page 40)

**Recommendation 8**

Tri-County Regional School Board management should appropriately monitor the performance of students with individualized program plans and take needed action to ensure those students progress as expected.

The Report then turned to the issue of teacher and principal evaluations, noting that although the evaluations are completed, improvements were needed. In particular, more specific recommendations were sometimes needed, and follow-up was not always made to confirm that the recommendations had been implemented and to ascertain whether performance had improved. As a result, the Audit made the following recommendation:

**Recommendation 9**

Tri-County Regional School Board management should ensure the evaluation process includes recommendations for improvement that are specific and that timely follow-up is completed to determine if appropriate progress has been made. (Page 42)

Finally, the Audit identified areas for improvement regarding teacher and principal Professional Growth

Plans. The Audit found limited evidence of review of teacher plans by principals, and inadequate linkage between the contents of those plans and the school improvement plan or Board priorities

### **Recommendation 10**

Tri-County Regional School Board management should ensure that professional growth plans are completed and that plans link to Board and school improvement goals.

As can be seen from a review of the summary of concerns and recommendations made, four key areas of deficiency identified in Tri-County were: (i) clear identification of Board versus management responsibilities; (ii) ensuring timely access and review of relevant information; (iii) oversight and evaluation and follow-up; and (iv) monitoring of progress towards meeting identified goals.

Boards and management across the country should focus on all of the areas reviewed in the Audit Report. It might be prudent for board and management stakeholders to conduct a self-assessment - using the factors identified in the Tri-County Audit Report section - to ensure that each

of these issues is receiving appropriate attention in every region.

*Judy Begley*  
**Begley Lordon**  
Moncton, New Brunswick

1. Audit Report, p.29.
2. Ibid., p.30.
3. Ibid., p.28.
4. Ibid., p.31-32.
5. Ibid., p.32.
6. Ibid. p.32-33.
7. Ibid., p.28, 33 and 34.
8. Ibid., p.35.
9. Ibid., p.35.
10. Ibid., p.36.
11. Ibid., p.36.
12. Ibid., p.36.
13. Ibid., p.37.
14. Ibid., p.37.
15. Ibid., p.38.
16. Ibid., p.40.
17. Ibid., p.41.
18. Ibid., p.42.
19. Ibid., p.42-43.

---

## **THREE TOP REASONS TO ATTEND THE NEXT CAPSLE CONFERENCE**

If you come to Kelowna, B.C. for our next CAPSLE Conference from April 26-28, 2015, you will surely enjoy the fine hotel, the renowned scenic wine country, opportunities for wine tasting and buying, as well as Saturday's event choices - a vineyard tour or a nine hole golf game.

While these are all great reasons to come to Kelowna, I believe the three best reasons to attend the Conference are its value, its relevance, and the networking opportunities it provides.

CAPSLE stands for The Canadian Association for the Practical Study of Law in Education. Quite simply, CAPSLE offers the best value in professional development for those of us whose work relies on our knowledge of 'law in education.' Professional development can be very pricey. You would be hard pressed to find a similar conference - with so many excellent presenters and timely topics to choose from, for nearly three days, for the (approximately) \$600 registration.

We need relevant information. We need to stay current. Arbitrations and court cases can change

the landscape and affect labour-management conversations. It is at the CAPSLE Conference that we can hear intelligent, differing perspectives on the implications of arbitration decisions and statutes.

And exactly who are 'we'? Who attends CAPSLE conferences? Anyone who works in a school system in Canada, whose work is informed by current law as it relates to education. We can meet superintendents, teachers' union officers and staff, HR managers, principals, elected trustees, lawyers and grievance officers. Each year, our circle of associates can grow as we meet people in the same role as us, or from the other side of the 'table'.

As a law conference for educators, Kelowna 2015 promises to provide meaningful professional development at a reasonable cost in a lovely scenic setting.

Did I mention the wine?

*Kerry Richardson*  
**British Columbia Teachers' Federation**  
Vancouver, British Columbia

## *YOUR EXPERIENCES; YOUR COMMENTS; YOUR CAPSLE!*

A recent survey of CAPSLE members revealed an astonishing 15% of responding CAPSLE Members had no awareness that they could submit an article to CAPSLE Comments.

As CAPSLE Comments Editor, I am here to tell you: you can submit an article to CAPSLE Comments and moreover, you should!

You don't have to be a lawyer (but comments from lawyers are welcome). You don't have to be an educator (but comments from educators are welcome!) You don't even have to be a CAPSLE member (but that would certainly help!)

CAPSLE thrives on the engagement and participation of members like you. The members who attend our Conferences; read our publications; who day-in-and-day out live the professional experiences – in law and in education -that CAPSLE was founded to share.

CAPSLE wants to hear from you. In writing. Soon!

Articles for CAPSLE Comments range from short (up to 250 words) to longer (3-5 pages). The subject matter of our articles extends from sharing news about a particular project or initiative (e.g. libraries projects in Africa); to case comments; to reflections upon personal experiences (in education or the law) or current trends in schools (online bullying or text use). Any reasonable subject matter touching education and/or the law will be considered.

I invite you to share 2015 (and beyond) with CAPSLE Comments and let CAPSLE Comments share the New Year with you!

Please send your submissions for consideration to [info@capsle.ca](mailto:info@capsle.ca).

Thank you! Best wishes for a Happy Holiday Season and Prosperous 2015!

---

may  
**PEACE, JOY, HOPE and**  
**HAPPINESS**

be yours during this  
**HOLIDAY SEASON**  
and throughout the  
**NEW YEAR!**



- your CAPSLE Editor, Secretariat and Board of  
Directors