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Canadian Association for the Practical Study of Law in Education

COMMENTS

SUPREME COURT RULES IN FAVOUR OF BCTF

On Thursday, November 10th, 2016, the Supreme Court of Canada found in favour of the British Columbia Teachers' Federation ("BCTF"), bringing to a close a long-running dispute nearly fifteen years in duration.

In what has been described as a comparatively rare move, the Court ruled from the bench in under an hour, finding the Provincial Government of British Columbia had, in fact, violated the constitutional rights of the BCTF, overturning the British Columbia Court of Appeal's decision that had initially overturned effectively two decisions of British Columbia Supreme Court Justice Susan Griffin.

Background

As outlined in the June 2016 edition of "CAPSLE Comments", the legal challenge originated with legislation passed by the British Columbia Liberal Government in 2002. Most significantly was *Bill 28: Public Education Flexibility and Choice Act* ("the Act"). The Act contained a number of changes to public education but surely the most significant and controversial involved clauses that placed limits on class size and class composition. In effect, the new legislation not only removed those provisions from existing collective agreements it also removed by legislation the right of the BCTF or its locals to attempt even to negotiate those provisions in future bargaining.

In 2011, the Supreme Court of British Columbia found that the Provincial Government had violated collective bargaining rights and struck down those provisions, giving the Government one year to remedy the offending provisions. In 2012, the Provincial Government passed new legislation to address the 2011 decision of British Columbia Supreme Court Justice Griffin, and in so doing, introduced legislation the BCTF declared contained essentially the same provisions already ruled unconstitutional. Justice Griffin agreed, striking down the provisions a second time, declaring that the Provincial Government had negotiated in bad faith with BCTF. The Provincial Government appealed that decision and in April 2015, the British Columbia Court of Appeal overturned Justice Griffin's rulings, sending the matter to the Supreme Court of Canada.

The Impact

That the Supreme Court of Canada found in favour of the BCTF itself may not be terribly surprising, the speed at which the ruling came down certainly was. The speedy finding now places the Provincial Government, the BCTF and schools themselves in the unique position of interpreting how that decision immediately impacts the operation of schools.

In effect, the ruling restores the language removed from collective agreements in 2002. And while the ruling from the Court didn't specify a time by which schools would need to be in compliance with former collective agreement provisions, it is implied by the restoration of that language that change is imminent.

The current collective agreement between the British Columbia Public School Employers' Association (BCPSEA), in effect the negotiating arm of the Provincial Government, and the BCTF was reached following a long and acrimonious job action in 2014. That agreement, that expires in 2019, addressed class size and composition and composition concerns through the establishment of the *Education Fund*, in which the Provincial Government provided set amounts of money to address through consultation with schools, class size and composition concerns. In the 2016-2017 school year, for example, $80 million is

specifically provided to districts to address class size and composition by providing additional teaching positions. However, the agreement also includes a Letter of Understanding that states:

> The…Education Fund is subject to the final appellate judgment on the appeal of the 2014 decision of Justice Griffin. If the final judgment affects the content of the collective agreement by fully or partially restoring the 2002 language, the parties will reopen the collective agreement on this issue and the parties will bargain from the restored language. The Education Fund provisions will continue in effect until there is agreement regarding implementation and/or changes to the restored language.[1]

Thus, while immediate restoration of specific class size, composition and specialist teacher ratios is not necessarily expected, the reopening of the collective agreement to bargaining on these issues begins from the 2002 language. It is therefore likely that significant restructuring of current class size and composition will be required to meet whatever new terms are negotiated. Given the nearly fifteen-year legal battle in which the parties have been engaged, it is not difficult to imagine negotiated limits will not be far removed from the original 2002 language.

This could present, of course, significant challenges for schools and school districts in the short and longer term. While many districts and schools have managed to keep class sizes and composition ratios similar to what existed in previous agreements, the Ministry's own studies indicate there are many hundreds of classes larger than the average size permitted in most local collective agreements (in 2002 intermediate and secondary class sizes varied in different districts; only primary class sizes were set province wide), and many thousands of classes with greater than four students on individual education plans (IEP's).[2]

Schools' and districts' abilities to restructure *current* school year classes to meet new limits would most certainly cause significant disruption to classrooms and students. Not only would timetables need to be in some cases radically altered, schools and districts may not be readily able to even find the number of teachers required to do so. Specialist teachers, in special education or English Language Learning, for example, are already in limited supply in many districts, particularly in rural areas. Training and development for these positions will likely take more time than a quickly negotiated settlement would permit.

The ruling also raises questions about what class size and composition limits and specialist teacher ratios would form the basis of negotiations, given that many of those provisions in 2002 varied between school districts. Another complicating factor is that the criteria for special education designations has changed, in some cases significantly, since 2002, making it challenging to determine if we could placing limits on the number of designated students in a classroom, for example, based on different criteria from those upon which those limits were originally based.

Of course there are steps that could be taken that are less disruptive to existing classes this school year. It might be possible, for example, for some schools in some districts to add specialist non-enrolling teachers whose new positions would not require the reorganizing of existing classes or teaching spaces, in anticipation, perhaps, of ensuring that *next* year's classes are built to meet whatever negotiated limits are reached in the coming weeks and months.

Ultimately, the public messages coming from both parties is a desire to see improved working and learning conditions as a result of the conclusion of this long dispute.

David Mushens
Burnaby Principals' & Vice-Principals' Association
Burnaby, British Columbia

1. 2013-2019, Common Provincial Articles – Revised November 2, 2015
2. *Overview of Class Size and Composition in British Columbia Public Schools 2015/2016, Provincial Overview.* December, 2015, British Columbia Ministry of Education, Analysis and Reporting Unit, page 4. Available: http://www.bced.gov.bc.ca/reports/pdfs/class_size/2015/public.pdf

PRESIDENT'S MESSAGE

At the Board, we are busy preparing for our annual face-to-face meeting in Toronto during the first week in December. As I have mentioned previously, the plan is for the Board to leave Toronto with an action plan and very clear deliverables allowing us to move the agenda forward in a few key areas including membership engagement, communication/website and publications. The Board will spend the day in Toronto focusing on these three issues in an effort to better serve the CAPSLE membership.

One of the key areas of focus, in the coming months, will be an effort to re-connect with some key stakeholder groups. Some of the group we will be reaching out to in the near future include law firms who practice on the employer/board side, school board and trustee groups and departments of education. The Board's efforts will be focused on engaging these stakeholders and others to determine how CAPSLE can enhance their participation and deepen their engagement.

I urge all of you reading this to think of others who would benefit from a membership in CAPSLE and encourage you to join up and participate.

This is the time of year when you should be thinking about the Saskatoon Conference. The Conference is scheduled from April 30 to May 2, 2017. I would encourage all of you to join us at this Conference and to bring your colleagues and friends. For anyone whose job involves the intersection of education and the law, the CAPSLE Conference is the best professional development on the market. The presentations are always topical and everyone leaves with information they can apply right away to their own jobs.

CAPSLE is also a place where lifelong friendships are formed; professional connections are made and sustained; and the most compelling and current topics are reviewed in depth. Our Twitter feed, like last year, will share just a taste of the exciting and relevant topics to be addressed at our Conference!

The Saskatoon Conference Committee is working very hard to create a Conference that will continue the CAPSLE tradition of excellent presentations, sprinkled with good food and lots of time for social interaction. Don't miss the fun!

Enjoy the remainder of 2016 and I hope to see you all in Saskatoon at the end of April.

Ian Pickard
CAPSLE President

SEARCH OF VEHICLE ON SCHOOL PROPERTY

We see stories of weapons and illegal drugs found at schools making the news with increasing frequency. In light of these incidents, searches of students, desks, lockers and backpacks are becoming ever more crucial, but what about searches of vehicles on school property? Can principals carry out searches of students' vehicles on school property? What about if the car is owned by a parent? How do searches in the school context and in the criminal context intertwine?

The general rule is that a warrant or other prior authorization is required in order to carry out lawful searches and seizures, and there is a presumption that warrantless searches are prima facie unreasonable.[1] However, the law recognizes that in contexts where obtaining a warrant or authorization prior to a search would be impractical, warrants and/or prior authorization may not be required.[2]

Application of Charter and Reasonable Expectation of Privacy

Case law has determined that the *Charter* will apply to schools and school boards as they constitute an aspect of government.[3] Section 8 of the *Charter* states that "everyone has the right to be secure against unreasonable search or seizure"; in the school context, this means students.

The application of the *Charter* becomes relevant when charges are laid following a search conducted on school property and the accused challenges the admissibility of the evidence on the grounds of a violation of section 8 of the *Charter*.

An individual's right to protection against unreasonable search and seizure pursuant to section 8 will be triggered if the individual has a reasonable expectation of privacy in the item or location of the search. Reasonable expectation of privacy depends on the "totality of the circumstances."[4] When assessing an individual's reasonable expectation of privacy, the following factors must be considered:

1) the subject matter of the alleged search;
2) the individual's interest in the subject matter;
3) the individual's subjective expectation of privacy in the subject matter; and
4) whether this subjective expectation of privacy was objectively reasonable, in the circumstances.[5]

There is a diminished expectation of privacy in schools given the responsibilities of teachers and principals to provide a safe environment and maintain order and discipline.[6] Furthermore, courts have held that vehicles also attract a diminished expectation of privacy given the heavy regulation surrounding the control and operation of vehicles.[7] Although an individual's reasonable expectation of privacy is diminishing in a school setting and also with respect to vehicles, some expectation of privacy remains engaging section 8.[8]

Standard Applied to Teachers /Principals and Reasonableness

Given that students will have an expectation of privacy, albeit diminished, in a vehicle on school property, section 8 of the *Charter* is engaged and teachers and principals will be subject to scrutiny for a search of a vehicle. However, teachers and principals will not typically be subject to the high standards applied to law enforcement when carrying out a search.

Courts have recognized that in circumstances where teachers and principals are not acting as agents of law enforcement, that searches may be conducted lawfully, without obtaining a warrant or prior authorization.

In *R v M(MR)*, [1998] 3 SCR 393 ("*M(MR*)"), the Supreme Court of Canada addressed the unique context of searches in schools at paragraphs 36 and 47:

> 36 It is essential that our children be taught and that they learn. Yet, without an orderly environment learning will be difficult if not impossible. In recent years, problems which threaten the safety of students and the fundamentally important task of teaching have increased in their numbers and gravity. The possession of illicit drugs and dangerous weapons in the schools has increased to the extent that they challenge the ability of school officials to fulfill their responsibility to maintain a safe and orderly environment. Current conditions make it necessary to provide teachers and school administrators with the flexibility required to deal with discipline problems in schools. They must be able to act quickly and effectively to ensure the safety of students and to prevent serious violations of school rules.
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> [...]
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> 47 Yet teachers and principals must be able to act quickly to protect their students and to provide the orderly atmosphere required for learning. If a teacher were told that a student was carrying a dangerous weapon or sharing a dangerous prohibited drug the parents of all the other students at the school would expect the teacher to search that student. The role of teachers is such that they must have the power to search. Indeed students should be aware that they must comply with school regulations and as a result that they will be subject to reasonable searches. It follows that their expectation of privacy will be lessened while they attend school or a school function. This reduced expectation of privacy coupled with the need to protect students and provide a positive atmosphere for learning clearly indicate that a more lenient and flexible approach should be taken to searches conducted by teachers and principals than would apply to searches conducted by the police. [emphasis added]

Courts have recognized that teachers and principals have implied authorization pursuant to their responsibilities and powers under education legislation to maintain safe and orderly learning environments and deal with disciplinary issues.[9] Given the responsibilities of teachers and principals and the need for a more lenient approach to searches on school property, a more relaxed standard will be applied to teachers and principals not acting as agents of law enforcement.

Teachers and principals will be subject to a stricter standard if the search would not have taken place in the form and manner in which it did, but for the involvement of law enforcement.[10] A modified standard will be applied to searches conducted on school property, by teachers and principals within the scope of their responsibility and authority to maintain order, discipline and safety within the school, but will not apply to actions beyond the scope of the authority.[11]

In order to conduct a search on school property, lawfully, without obtaining a warrant, the teacher or principal conducting the search must have reasonable grounds to believe that there has been a breach of school rules and evidence of the breach will be found as a result of the search of the person, item or location in question.[12] Reasonable grounds for belief may include:

- information provided by a credible student;
- information from multiple students;
- observations of teachers or principals; and
- any combination of the above-noted items the individual believes to be credible.[13]

A hunch or suspicion regarding a breach of school rules is not sufficient to establish "reasonable grounds."[14] Failure to demonstrate that the search was conducted based on "reasonable grounds" will render the search unreasonable, thereby violating section 8 of the *Charter.*

Not only must the search be based on reasonable grounds, it must also be reasonable. The search will be reasonable if:

1) the person conducted the search is authorized to do so pursuant to education legislation;
2) the search is carried out in a reasonable manner and was sensitive and minimally intrusive; and
3) the search was reasonable considering all of the surrounding circumstances.[15]

Whether or not a search is carried out in a reasonable, sensitive and minimally intrusive manner and was reasonable in the circumstances will depend on the circumstances of each search.

Violation of Section 8 and Justification

If a search leading to criminal charges is conducted on school property was found to have lacked "reasonable grounds" or have been unreasonable in the circumstances, section 8 of the *Charter* will have been violated and the analysis will then proceed to a determination of whether or not the violation of section 8 was justified in order to determine if the evidence from the search is admissible.

In order for a *Charter* violation to be justified, the Crown would have to establish that the impugned search is reasonable and demonstrably justified in a free and democratic society based on the following criteria:

1) there must be a pressing and substantial objective;
2) proportionality:
   a) the search is rationally connected to the pressing and substantial objective;
   b) there is a minimal impairment of rights i.e. no more than reasonably necessary to achieve the objective; and
   c) the deleterious effects of the impairment must not outweigh the salutary benefits achieved in pursuit of the pressing and substantial objective.[16]

Consent to Search Vehicles on School Property

Consent is not required in order for teachers and principals to conduct a lawful search on school property. However, if valid consent is provided, it may act as a waiver by the individual of their rights pursuant to section 8 of the *Charter*, should the search lead to criminal charges and admissibility of evidence is at issue.

The waiver doctrine has been applied to situations in which an individual has consented to what would otherwise be a warrantless search. In order to establish that the individual in question has waived their rights pursuant to section 8, the following must be established on the balance of probabilities:

1) there was consent, express or implied;
2) the person giving the consent had the authority to give the consent in question;
3) the consent was voluntary;
4) the person giving the consent was aware of the nature of the conduct to which he or she was consenting;
5) the person giving consent was aware of his or her right to refuse to permit the person in question from conducting the search; and
6) the person giving consent was aware of the potential consequences of providing consent.[17]

Who is authorized to consent to the search of a vehicle on school property, whether it be the parent or the student, will depend on the circumstances. Ownership of the item being searched isn't determinative of who can provide consent to search the item on school property.

In a criminal context where law enforcement is conducting a search, law enforcement may receive valid, third party consent. In such cases, whether or not an individual is authorized to consent to the search in question depends on reasonable expectation of privacy. For example, if the vehicle in question is owned by the parent, its use is controlled by the parent, and the student rarely uses the vehicle, the parent will likely have an expectation of privacy in the vehicle and therefore valid consent from the parent must be obtained in order to waive their rights pursuant to section 8. If the student owns the vehicle, or is the individual who uses and controls the vehicle i.e. the parents purchased the vehicle for use by the child, the student will likely have an expectation of privacy in the vehicle and thus the student's consent would be required to waive rights pursuant to section 8.

Whether or not valid consent, sufficient to waive an individual's rights pursuant to section 8 will depend on the circumstances, as will the determination of whether a parent's consent to search a vehicle on school property is required or, if a student's would be sufficient

Conclusion

Teachers and principals who find themselves wrestling with the idea of a search of a vehicle on school property need not fret. The maintenance of student safety and order within a learning environment is paramount, and so long as there are reasonable grounds for the search and it is conducted reasonably in the circumstances, the legality of the search will not be at issue.

Caroline Spindler
McInnes Cooper
Halifax, Nova Scotia

1. *R v M (MR),* [1998] 3 SCR 393 at 41 [*M(MR)*]
2. *Ibid.* para. 44.
3. *Ibid.* para. 25.
4. *R v Spencer*, 2014 SCC 43 at 17 [*Spencer*]
5. *Ibid,* para. 18.
6. *M(MR) supra* note 1 at 33
7. *R v Billings*, 2004 BCSC 392 at 43, 44 [*Billings*]

8. *Halsbury's Laws of Canada*, 1st ed, (Toronto: LexisNexis Canada, 2016) at HC2-11, HC2-13
9. *R v D(RM),* 2008 NSPC 52 at 6 [*D(RM)*], *Education Act*, 1995-96, c. 1, s. 1 at s. 26(1)(k),(l) for teachers and s.38(2)(e), (EA) for principals.
10. *M(MR) supra* note 1 at 29
11. *Ibid* at 55
12. *Ibid.* at 50.
13. *Ibid.*
14. *Gillies (Litigation Guardian of) v Toronto District School Board*, 2015 ONSC 1038 at 122 [*Gillies*].
15. *M(MR) supra* note 1 at 54.
16. *R v Oakes*, [1986] 1 SCR 103 as interpreted later by *Dagenais v CBC*, [1994] 3 SCR 835.
17. *R v Lowrey*, 2016 ABPC 131 at 74.[*Lowrey*]

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THE IMPORTANCE OF GOOD INVESTIGATION PROCEDURES IN SCHOOL EMPLOYMENT INVESTIGATIONS

The requirement for school-based investigations has become a fact of life across Canada. Given the prevalence of such investigations, it is important that those tasked with carrying them out have a strong sense of the components of a lawful and defensible investigation, as well as the skills and tools required to carry them out effectively. There are a myriad of potential pitfalls for the unwary, and some recent tribunal and court awards have imposed significant damages when investigations were found to be deficient. This will first canvass the essential requirements of an investigation, and then offer some suggestions for best practices in the conduct of an investigation.

For ease of reference, the person who is being investigated is referred to as the respondent, and the person who brought forward the concerns being investigated is referred to as the complainant.

The essential components

Fortunately, there are some key touchstones that can help investigators to avoid successful challenges to their processes and results. First and foremost, each decision made during a workplace investigation about what to do, when to do it and how to do it should be viewed through the prisms of five key investigation mainstays:

1. *Impartiality;*
2. *Competence;*
3. *Timelines;*
4. *Thoroughness*; *and*
5. *Fairness*.

When these five components guide the decision-making, the potential for the most serious procedural errors will be typically be significantly reduced.

1. Impartiality and neutrality

It is essential that a workplace investigator be – and be reasonably perceived to be - unbiased, independent and open-minded. This can sometimes be hard to achieve in small towns and schools where everyone knows everyone else and some individuals involved may have personal or professional connection(s). This component requires that the investigator have no personal stake in the outcome of the investigation and no close relationship to the parties or the key witnesses in the investigation.

A degree of independence is also important to avoid any allegation of a reasonable apprehension of bias. For example, it would be improper to appoint an investigator who is dependent on the respondent for a promotion, a wage increase, or another form of career advancement. Similarly, it is best if the investigator has no past personal history with any of the parties that might reasonably suggest that the investigator might not have an open mind regarding the validity of the allegations.

2. Competence

It is crucial that the investigator have appropriate skills, training and experience commensurate with the nature and complexity of the investigation. The required training may not be limited to the basics of how to carry out a fair and complete investigation if specialized issues arise. For example, the intricacies of interviewing a young child are different then the norm because children are more susceptible to being influenced by the style and approach of the questioner. There is research to suggest that when leading or suggestive questions are used, a child may simply follow along and agree with the suggestion made even if the question does not accurately reflect their experience. More troubling still, the suggestion in a leading question posed by an adult may then become established in the child's memory as a true reflection of what actually occurred:

> The general conclusion from this research is that although children are capable of providing accurate, reliable, and forensically useful information, they are vulnerable to suggestion. Leading, suggestive, or coercive questioning can not only result in a child making inaccurate statements, it can cause the child to develop a subjectively real memory for an event that never happened. (1, 2, 3). It isn't only preschool children who are suggestible — older children (as well as adults) are also vulnerable to the suggestive techniques used in the studies with preschool children (4). But with proper interviewing techniques, suggestibility can be avoided and even young children can provide accurate information [underlining added].
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> Hollida Wakefield, "Guidelines on Investigatory Interviewing of Children: What is the Consensus in the Scientific Community?", American Journal of Forensic Psychology, 24(3), 57-74 (2006).

Special training may also be appropriate or necessary when dealing with situations of trauma. There is a great deal of data to indicate that trauma victims may have difficulty with memory as well, though in a different way. For some trauma victims, memory may vary over time. Linear memory of the traumatic events can be particularly difficult, making questions that insist upon a linear or chronological path ineffective and potentially harmful. During interviews trauma victims may also demonstrate agitation or heightened reactivity, lack of focus, and/or an inability to recall basic details like the colour of clothing or how much light was present, among other effects. When recounting the traumatic events, a trauma victim may tell multiple versions, and the details described may vary from recitation to recitation and receive differing emphasis as well. In other words, behaviours that investigators have historically been trained to believe indicate dishonesty, including changes in body language, stumbling pauses in speech, lack of eye contact, agitation and memory gaps and changing accounts, may actually indicate signs of trauma as opposed to signs of deception. An investigator who has not been training about these trauma indicators may wrongfully conclude that a complainant is not telling the truth when that is not the case at all.

I have reviewed these two examples to make the case that ensuring that an investigator has the skills and training appropriate to each case is extremely important. If you are the investigator, it is equally important to know your own limitations, and to ensure that you decline to investigate in circumstances where you do not have the necessary skills. Thankfully, most school-based investigations are more straightforward, and can properly be carried out by any investigator with a strong understanding of the components of a fair and complete investigation.

3. Timeliness

It is important that all investigations into potential wrong-going start, continue and end as quickly as possible. This is critical not just for the credibility and fairness of the investigation process - the more delayed an investigation is, the greater the potential for an irremediable prejudice to the respondent to arise - but also because of the significant disruption that a pending investigation can cause in the workplace.

Timelines for investigations may be set out in policy or an applicable agreement, in which case, of course, those timelines should be followed. But even if no timelines are set out, the investigation should move forward as quickly as reasonably possible so that memories are sharp and documents are not lost or destroyed, and the disruption and stress are minimized.

4. Thoroughness

I once met with a respondent who provided me with a lengthy proposed witness list that included, among others, his 7th grade teacher. He was over 30 years old at the time**.** It should be no great surprise that I did not interview the teacher. The requirement for thoroughness in an investigation does not require that you interview every witness proposed by the parties or accept into evidence every document provided. The key determination is that of relevance to the matters in issue. A proper investigation will seek out and consider all evidence that is relevant to the allegations within the investigation scope or to assessing the credibility of the witness testimony. This may require multiple interviews with some witnesses as new evidence is collected that needs to be explored and tested. The investigation should not be closed until the investigator is confident that all relevant information has been received.

For clarity, is critical that all relevant evidence is considered and not just evidence that confirms the validity of the allegations. The investigator must be equally diligent throughout the investigation in searching for evidence that exonerates the respondent or explains or mitigates the alleged wrongful behaviour.

5. Fairness

Administrative investigations are subject to a requirement of procedural fairness. Just what that entails may vary depending on the context. But at a minimum it mandates that the respondent must know the substance of the case to be met and be afforded a reasonable opportunity to answer it. This typically requires that the Respondent be provided with a summary of the allegations, usually in writing, (and often in the form of a written complaint) and

have sufficient time after receipt of the allegations to prepare a response. It also requires that the respondent have sufficient time and opportunity with the investigator to explain his or her version of events, and to identify any potential mitigating factors that may apply.

While the right to procedural fairness is perhaps most critical with respect to the respondent, it is also important that the complainant be treated fairly. As a result, if evidence is collected during the investigation that contradicts or brings into question the evidence of the complainant, the complainant should be informed of that and be given a chance to respond as well.

Other elements of fairness that may arise in the school context include respect for privacy rights and for the protection from unreasonable search and seizure. These can be quite technical from a legal perspective, so if they arise it may be appropriate to seek expert advice before proceeding.

Another aspect of fairness that must be considered is the policy or collective agreement right that frequently allows respondents, and sometimes complainants, to be accompanied by a union representative when being interviewed. Where this right exists, it is very important that it be respected. But even if the collective agreement is silent on the right to representation, it is often good practice to allow a union representative or other support person to be present, as long as they understand that their role is (primarily) to observe, and not to intervene. The purpose of investigations interviews is to collect relevant information, so any reasonable measure that makes a witness more likely to cooperate and to respond honestly to questioning should be considered, including allowing the presence of a support person (with appropriate guidelines regarding appropriate behaviour on his or her part.)

Understanding the importance of these five investigation requirements will greatly assist investigators to avoid potential pitfalls during an investigation. But, there are some core skills and process techniques that are worthy of discussion as well. These include:

1. Proper preparation for the investigation;
2. use of effective interview techniques during the investigation; and,
3. (Where required) drafting a clear, cogent and convincing report.

Preparing for the investigation

It is generally fair to say that most of the work of a good investigation takes place outside the interview room. The importance of preparing in advance for each interview, and taking the time to consider the information gathered during an interview and its possible implications for questions to other witnesses, after each interview, cannot be overstated. That preparation will help ensure that no steps are missed, that all relevant information is conveyed and explored, and that every evidentiary and fairness box is "ticked." There are six steps that can assist to ensure that an investigator is adequately prepared for each step of the investigation.

Step 1

Ensure that there is a clear, well-defined scope of investigation. This is often achieved through the existence of a written complaint or an appointment letter, which set out the precise allegations involved. However it is done, no investigation should commence without the investigator knowing exactly what it is that must be investigated. This simple step is often overlooked, and can result in the dreaded "scope creep", where suddenly new allegations are pouring forward and insidiously get added to the inquiry without proper vetting and without being properly communicated to the respondent. That kind of scope creep can quickly undermine the perception of the fairness of the investigation.

Step 2

Review all relevant statutes. Regulations, policies, procedures, guidelines and collective agreements and take note of any mandated requirements regarding process, time limits, the right to union representation or support persons, any mandatory components of the final report, who is entitled to see the final report, etc.

Step 3

Consider whether the police or child protection or other regulatory bodies may also be (or need to become) involved in the matter. If so, coordinate with them to ensure that the school investigation does not interfere with or undermine the other investigations. Securing legal advice is often wise in such circumstances.

Step 4

Consider whether the integrity of the investigation process or concerns regarding safety and health require removing the respondent or any other affected employee or stakeholder, from the workplace during the investigation or transferring them to a different work location. Here again it is important to be intimately familiar with any collective agreement provisions that may apply and to consider securing legal advice before proceeding.

Step 5

Prepare an investigation plan. This step is often over-looked, but it is a powerful tool in ensuring an effective investigation.

Consider whether there should be a 2nd investigator to serve as note-taker/observer during the interviews.

Also important is where the interviews will take place. The location should be away from normal work areas and away from prying eyes. If the chosen room has windows present, there should be a means of covering them to avoid people passing by looking in. Ideally, interviews should take place in settings where the people being interviewed feel comfortable and free to speak. This may entail holding interviews away from the work site, if feasible. If one or more employee has been placed on leave during the investigation an interview room away from the work site will be essential.

Perhaps the more important part of the investigation planning process is to create a list of potential witnesses and a summary list of the relevant areas of information each might be able to provide evidence about. My practice is to create a file for each witness, including a "cheat sheet" for every interview that sets out the witness' name and title, whether they are entitled to a support person, the areas and subjects that need to be canvassed with them during the interview, any specific issues or factual assertions that must be addressed, and any documents that should be reviewed. I ensure that these "cheat sheets" are updated as needed whenever new evidence and documents are collected during the investigation.

I also make use of an interview introduction "cheat sheet" of all the things that need to be explained at the start of each interview. This cheat sheet generally includes a bullet point check list of the following elements"

- Introduce yourself and your background.
- Explain that you are neutral and independent, and are not there to advocate for anyone.
- Explain that you are a fact-finder and are not the person who will make the final decision about what happens next (assuming that is the case).
- Introduce the purpose of the inquiries without violating confidentiality regarding the subject or subject-matter of the investigation.
- Review the Policy and/or collective agreement rules and responsibilities that apply to the interview, with particular emphasis on the duty to cooperate, to answer honestly, and the right to be protected from retaliation, as well as the duty of confidentiality.
- Be clear and candid that you cannot offer confidentiality in return. Explain that there is an over-riding duty of procedural fairness that may require that you disclose the information gathered and/or identify the witness as the source of that information. Explain (if you are writing a report) that you may also summarize their evidence in a report that could be disclosed to the respondent.
- Explain (in a general way) the process you plan to follow during the interview.
- Answer any questions, but do not give any more information about the subject of the investigation than you have to in order to collect relevant information from the witness.

Once the preliminary witness list is determined, the next bit of business is to decide order in which the interviews will be conducted. This is especially important if there is a concern that evidence might become tainted. Arrange to interview the most important witnesses first where possible. Consider whether witnesses/parties may share information before and after interviews when establishing the witness order.

It is important to try to ensure that the interview schedule allows enough time between interviews to avoid the witnesses running into each other and to ensure that the complainant or respondent do not run into witnesses or parties they perceive as hostile or adverse to them. It is also important to build in time between interview to review your notes, to identify required follow-ups and to update the interview "cheat sheets" for future witness interviews.

When setting the tentative schedule, be open to the potential that you will need to expand the witness list as new information is collected.

Finally, before launching into the investigation interviews, it may be important to arrange to secure known relevant documents, especially if they are in electronic form. This may require IT support and /or legal advice if a search or seizure is involved.

Step 6

Contact the parties and the witnesses (either yourself or through an approved intermediary) to inform them of the date, time and location of the scheduled interview, and follow a script to ensure that all necessary information is conveyed and only necessary information is communicated so as to respect the privacy rights of those involved. The script may include the following items:

- Explain that an inquiry is underway and identify the investigator in charge of it.
- When speaking to witnesses, confirm that the witness is not the subject of the inquiries but may have relevant information to share;
- Explain that the investigation is a confidential process and the witness not allowed to not discuss the investigation or the fact that they will be interviewed. (There can be some exceptions for union representatives and family members/friends who provide personal support outside the workplace.)
- Consider outlining existing Employee Assistance options to the complainant and respondent.
- Explain right to protection from retaliation and that any act of retaliation will be viewed as a disciplinary offence.
- Re-affirm the date, time and location of the interview.
- Explain the right to bring support person/union representative (if applicable).
- Explain whom to contact in case the person has questions/concerns in the interim.

The Interviews

In terms of the interviews themselves, there are two key objectives of investigation interviews:

(i) to gather relevant information; and
(ii) to assess credibility.

Every technique applied during an investigation interview should be directed at achieving either or both of these objectives. It is essential that the investigator be, and appear to be, neutral, objective and open-minded throughout the interview process. It is also essential that the investigator be personable and non-threatening so that the witnesses will be more likely to speak candidly during the interviews, and to stay objective, calm, professional and respectful at all times.

In terms of the sequence of interviews, I suggest beginning with the complainant, if there is one, or the manager or other individual who brought forward the concern that is the subject of the investigation. The purpose of this interview is to flesh out the details of allegations, to identify potential witnesses, and to identify potentially relevant documents. By the end of this interview, the allegations should be sufficiently

clear to develop a summary of allegations if one has not already been provided to the respondent.

Next consider holding a preliminary interview with the respondent to introduce yourself and to explain the anticipated process and time-lines, to identify additional potential witnesses and documents, and to receive evidence from the respondent of their preliminary response to the allegations.

Witness interviews come next, during which it is important to share only as much information as is necessary to elicit relevant evidence.

Once the witness interviews are complete, the primary respondent interview can take place. Review all of your notes and the documents in evidence before you conduct the primary respondent interview and prepare an interview "cheat sheet" to ensure that you put all relevant adverse allegations and evidence (documentary and verbal) to respondent for response.

Frequently, the respondent also raises factual assertions or allegations that require further inquiry involving existing or new witnesses or follow-up questioning of the complainant. The investigator must continue to interview the relevant people until all pertinent information is gathered and all parties have had chance to respond to the adverse evidence and allegations against them.

Anything you may rely upon in reaching a decision should be conveyed for a response to the complainant, the respondent, the involved witness, or some or all of them. Remember that fairness is a driving factor. If you might want to base your decision on a particular assertion, you need to communicate it to the person to whom it relates and give that person a chance to respond. Go back to prior witnesses with new information as often as necessary to ensure you have collected all needed information and key players have had chance to respond to all conflicting information

During each interview, take thorough notes (or have some other form of reliable record-keeping) and, where possible, review them with the interviewee at the end, or at staged during the interview if the interview is a long one. Notes should be as close to verbatim as possible, and should be dated with the name of the witness and time of interview noted. It is good practice to number pages sequentially and to fasten the notes for an interview together in some way. Do not include any extraneous commentary. Always remember that the notes may become an exhibit in a future proceeding.

Keep track of any documents received during an interview. Develop a clear method of identifying the documents referenced, who provided them and when, to which allegation they relate, and with which other witnesses they may need to be discussed.

Effective interview techniques

Dealing with reluctant witnesses can be one of the most challenging issues in an investigation. To help assuage that reluctance, it may be necessary to take the time at the start of the interview to build rapport with the person being interviewed and to create a reasonably comfortable atmosphere that is conducive to the witness being willing to cooperate and speak candidly. I typically start by talking myself before I ask the witnesses to begin sharing. I then review my "introductory cheat sheet" and answer any preliminary questions the witness might have, so it is me on the "hot seat" at the beginning instead of the witness. When I begin asking questions, I keep them simple and easy to answer until the witness begins to become used to the question and answer back and forth. For example, I will have the witness describe their work role and their years of service with the employer.

In terms of interview question techniques, I suggest following the "funnel" technique in which you start with broad, general questions and slowly focus in towards the specific details and clarifications.

Do not ask leading questions that suggest the answer that you are looking for. Instead, start with open-ended questions like, "What can you tell me about the morning of October 27?" That kind of prompt will generally illicit the evidence you need without inadvertently suggesting the answer you expect. If additional prompting is required, you can continue with, "What happened next?" or "What else should I know about that morning?" or "What other details can you recall?"

Once you have a general sense of the witness' evidence, you can ask more precise and detailed questions to fill in any "who, what, where, when, how" information gaps. It is particularly important also to clarify whether the witness is speaking from personal knowledge, or is speculating or repeating gossip or hearsay. Many witnesses

recount gossip as though it is fact carved in stone unless and until they are asked about the source of their knowledge or belief.

Be mindful also of witnesses using vague adjectives and adverbs. You need to follow up with questions to clarify what those descriptors mean to that particular witness. For example, words like "loud," "rough," and "tall" can mean very different things to different people. So, too, can concepts like "bullying" and "harassment." You need to ask questions to ensure that you clearly understand what the witness means by the words s/he used.

Another potential pitfall involves witnesses who recite conclusions, assumptions or extrapolations as though they couched as facts. For example, a statement by a witness that the respondent was angry or upset during an altercation is an inference and/or a conclusion, and not a fact. What did the witness see or hear that led him/her to conclude that the respondent was angry or upset? Was the respondent's face red or fists clenched, was her voice louder than usual, did he kick a garbage pail across the room?

It can be very useful to regularly reframe and repeat back evidence to the witness. This ensure that that you clearly understand what the witness has conveyed and also confirms for the witness that you are paying close attention to their evidence.

Before ending the interview, always ask a question such as "What else should I know?" You would be amazed how often new relevant information is divulged as a result.

As well, before completing the interview, review your interview "cheat sheet" to ensure that you have covered all the areas that you identified in the investigation planning stages.

Finally, when wrapping up the interview, it is wise to remind the witness about the duty of confidentiality and the protections against retaliation, and it is good form to thank the witness for his or her time.

Writing the Report

Writing a good investigation report is a lot like writing a good paper in high school. The purpose of the report is to summarize the evidence, communicate your thought process regarding how and why you have reached the conclusions that you reached, and to summarize and explain what those conclusions are. It is best practice to re-read all interview notes and to review all documents thoroughly at least once before starting to sketch out the framework for the report.

Typical reports are separated into sections, although there are many different approaches to the report writing process. There is no particular magic to the set up of the report, as long as it meets the requirements of the applicable policy, and allows the reader to clearly understand the evidence collected and the investigator's reasoning. One approach is to include the following sections:

- Background information –a short summary of the scope of the investigation, the identity of the parties and their roles in the organization.
- Process – set out when and how the investigator was appointed or retained; include a copy of the appointment letter, identify the applicable policy, if any; identify the number of witnesses interviewed and the dates the interviews were conducted; set out the introductory comments and cautions given during each interview, etc.
- Applicable policy/procedure/guideline – quote key provisions on which you will rely.
- Summary of Complaint (attach complaint documents as appendices).
- Summary of response (if any – attach as appendix).
- Summary of other evidence collected - can be chronological, or by allegation or by witness or some combination of them all. The key is that the evidence be set out in a way that makes it comprehensible for the reader.
- Analysis of evidence, including assessment of credibility – Set out your thought process for what evidence to deem important and why, for who you find credible and why, for why you prefer some evidence over other evidence, and the basis on which you have reached your findings.
- Findings of Fact – the applicable standard is balance of probabilities: based on the totality of the relevant evidence, what is more likely than not to have occurred? Summarize all factual findings that

are necessary to determine whether misconduct has occurred or not. Ensure that all elements of any applicable definitions and standards are considered and specifically addressed.

· Conclusions – based on the findings of fact, has there been a violation of policy or has some other form of misconduct occurred. If so, what is it?

· Recommendations (optional, include if part of the investigation mandate. This part should not include recommendations re. discipline).

However the report is set up, what is important is that when it is read it should be clear to the reader:

· what evidence was collected;
· why some evidence was preferred over other evidence;
· why one witness was believed and not another;
· how the findings of fact were reached and
· what those findings are.

By the time the reader reaches the conclusions, they should seem inevitable.

Conclusion

Workplace investigations can be fraught with potential traps for the unwary and the unprepared. But with careful planning and attention to detail, and with a focus on the five critical components of impartiality, competence, timeliness, thoroughness, and fairness, many of those pitfalls can be avoided. The tips outlined in this article cannot guarantee that an investigation will be immune from successful challenge. But they should serve to help minimize the potential process flaws that can put the results of a workplace investigation at risk.

Judith K. Begley
Begley Landry
Moncton, New Brunswick

VANCOUVER BOARD MEMBERS FIRED

On Monday, October 17, 2016, British Columbia's Education Minister, Mike Bernier, fired the trustees of the Vancouver District School Board ("the Board").

Under the British Columbia *School Act*, an elected school board is required to submit an annual budget by June 30 of each year in which the *"estimated expenditures in the annual budget must not exceed estimated revenues."*[1] By October, the Board had yet to adopt a balanced budget for the 2016-2017 school year and was terminated by the Minister.

To say that the Board and the Ministry of Education had a *strained* relationship is perhaps an understatement. For a number years, the Board, like many public school jurisdictions, has struggled to meet its obligations to balance the school budget with the resources provided by the Provincial Government. In contrast to many of its counterparts, the Board has, particularly in recent years, has been vocal about those struggles and its trustees have been at the forefront of conversations about the impacts of the cuts it has felt necessary to make in order to balance the budget each year.

In the spring of 2016, the Board was presented with a proposed budget by its senior leadership team that would meet the Ministry's requirements of being in balance for the coming school year. The Board declared that the cuts to programming and staffing that would be required were no longer possible without causing significant and direct impact to the teaching and learning in the classrooms, and refused to adopt the budget. Thus, on April 28th, the Board voted 5-4 to reject a proposed budget that would have cut some $24 million, much of which was felt to be in direct service to students.

The Ministry recommended the Board divest itself of commercial property holdings in order to provide revenues to address budget shortfalls. The Board owns the Kingsgate Mall, a shopping centre housed on land that many years previously had been home to an elementary school. The value of this commercial property is assessed at approximately $80 million, which could be used to offset budget shortfalls if sold, though the School District currently receives $750,000 in annual revenue from the mall, which is used as part of the District's operating budget.

The Ministry had also recommended the Board review a number of schools it believed were underutilized due to consecutive years of decreasing enrollment. Indeed, the Board initially began a process to consider closing several schools. However, in the fall, several members of the District's senior leadership team, including the Superintendent, the Secretary Treasurer and three Associate Superintendents, all took medical leave, prompting the British Columbia School Superintendents' Association to write to the Minister with allegations of the School Board creating a toxic working environment. The Minister forwarded those concerns to WorkSafeBC, the agency responsible for workplace health and safety in British Columbia. With most of its senior leadership team on medical leave, the Board opted to halt the school closure review.

In the late spring, the Minister had ordered an audit of the Board's finances and operations, a process the Ministry had also ordered in previous years as well, in an attempt to find efficiencies in the Board's budget the Ministry felt may have permitted the board to balance its budgets with less dramatic program and staffing cuts. In October, the Minister received the audit and fired all of the trustees, appointing former Delta School District Superintendent, Dianne Turner as lone Board member for a period of at least one year. The dismissal came on the day the Board was planning to adopt the balanced budget that had previously been proposed, despite the cuts necessary to reach a balanced budget.

Though it's not common, it isn't the first time the British Columbia Government has dismissed a locally-elected school board in the Province, nor even the first time Vancouver's trustees been given the axe. The elected members of the Board previously faced the wrath of the Province in 1985. Similarly, North Vancouver and Comox Valley School Boards have been fired -the latter twice, for failing to pass and submit the balanced budget required by provincial law.

This most recent firing has raised questions by advocates and local media not only about provincial funding for education, but also about the roles of locally-elected school boards. The audit by the Province's former deputy Minister of Finance, Peter Millburn, alleges the Board not only had budgeting and financial practices that contributed to its challenging financial picture, but also focused more on advocacy and agitating against the provincial government than it did on stewardship of the school district. For some, this is precisely the role the Board ought to be taking, while others argue the prominent and vocal School Board deserved its fate. The firing has also raised questions in local media about the veracity and constitutionality of a democratic process in which a duly elected level of government can be summarily dismissed by another.

For the time being, at least, those are larger questions that will wait to be tackled another day, once the Vancouver School District is able to adopt, pass and manage a budget that will see it through this and the coming school year.

David Mushens
Burnaby Principals' & Vice-Principals' Association
Burnaby, British Columbia

1. *School Act*, R.S.B.C. 1996, c. 111, s. 3.,4.

PRINCIPLES APPLICABLE TO EMPLOYEE DISCIPLINE FOR THE INAPPROPRIATE USE OF SOCIAL MEDIA

There is ample case law that supports the principle that what employees write in their Facebook postings, blogs, and emails, if publicly disseminated and destructive of workplace relationships, can result in discipline. ... (Canada Post Corp., 2012 CLAD 85, para. 100)

General Discipline Criteria

[Wm. Scott & Company, 1977 BCLRBD 98 (Weiler)]

1. Has the employee given just and reasonable cause for some form of discipline by the employer?
2. If so, was the employer's decision to dismiss [or discipline] the employee an excessive response in all of the circumstances of the case?
3. Finally, if the arbitrator does consider discharge [or discipline] excessive, what alternative measure should be substituted as just and equitable? (para. 13)

Off Duty Conduct Criteria

[Millhaven Fibres Ltd., 1967 OLAA 4 (Anderson)]

… if the discharge [or discipline] is to be sustained on the basis of a justifiable reason arising out of conduct away form the place of work, there is an onus on the Company to show that:

1. the conduct of the grievor harms the Company's reputation or product,
2. the grievor's behaviour renders the employee unable to perform his duties satisfactorily,
3. the grievor's behaviour leads to refusal, reluctance or inability of the other employees to work with him,
4. the grievor has been guilty of a serious breach of the Criminal Code or of a Human Rights Policy or Code, thus rendering his or her conduct injurious to the reputation of the Company and its employees. (Toronto (City), 2014 CanLII 76886, pp. 9-10),
5. [the grievor's behaviour] places difficulty in the way of the Company properly carrying out its function of efficiently managing its Works and efficiently directing its working forces. (para. 20)

Test for Employer Reputation

[Ottawa-Carleton District School Board, 2006 OLAA 597 (Goodfellow)]

… The test, so far as possible, is an objective one: what would a reasonable and fair-minded member of the public (in this case, the school community) think if apprised of all of the relevant facts. Would the continued employment of the grievor, in all of the circumstances, so damage the reputation of the employer as to render that employment impossible or untenable? (para. 17)

[Bell Aliant Regional Communications LP, 2010 CLAD 419 (Archibald)]

… [The (2003) Money's Mushrooms Ltd arbitration decision held] that it may be necessary for an arbitrator to use reasonable conjecture as to the consequence of allowing the grievor to remain in his or her position in the event that the public becomes aware of the off-duty conduct in question. The case thus stands for the sensible proposition that while the presence or absence of publicity may be relevant to the issue of harm to reputation, a finding of potential injury or harm can be made even in the absence of publicity. … (para. 46)

Criteria for Employer Policy

[KVP Company, 1965 OLAA 2 (Robinson)]

1. It must not be inconsistent with the collective agreement.
2. It must not be unreasonable.
3. It must be clear and unequivocal.
4. It must be brought to the attention of the employee affected before the company can act on it.
5. The employee concerned must have been notified that a breach of such rule could result in his discharge if the rule is used as a foundation for discharge.
6. Such rule should have been consistently enforced by the company from the time it was introduced. (para. 34)

Inappropriate Use of Social Media

Generally, in arbitration decisions involving employee discipline for the inappropriate use of social media arbitrators apply the above principles and also look to see if the employer has:

· established a social media policy;
· trained / inserviced employees about the policy and
· required employees to sign a confidentiality agreement.

Hugh H.M. Connelly
Hugh Connelly LAW
Ottawa, Ontario

DEEPENING THE DISCUSSION: GENDER AND SEXUAL DIVERSITY: DIALOGUE FOR SASKATCHEWAN SCHOOLS

The 88-page document created by the Saskatchewan Ministry of Education, *Deepening the Discussion: Gender and Sexual Diversity*[1] (*"Deepening the Discussion"*), aspires not only to enable educational stakeholders in Saskatchewan to gain a deeper understanding of the unique needs of, and challenges facing, gender and/or sexually diverse students, but also to support school divisions and other organizations in fulfilling their professional, ethical, and legal responsibilities. Designed "*to assist individuals and communities to engage in meaningful discussions and actions to respond to the experiences, perspectives and needs of students and families who are gender and/or sexually diverse (GSD),*"[2] *Deepening the Discussion* is a practical resource for facilitating much-needed conversations among educators and administrators at all levels. Predicated on tenets of diversity and inclusion in schools, it concentrates on providing educators with supports for creating school environments where "*everyone feels included, protected and respected*,"[3] while reminding them at the same time that "*the duty to accommodate all students, up to the point of undue hardship, includes addressing their needs that may be related to prohibited grounds of discrimination…*[and that] *may entail changing rules, policies, practices and/or behaviours.*"[4] It is imperative, however, that these all-important discussions, once initiated, move along the dialogic continuum to action and sustainable change.

Couched within a framework which includes an overview of human rights law and supporting legal documentation, detailed parsing of the terms "gender and sexual diversity,"[5] discussion of First Nations and Métis ways of knowing, consideration of heteronormative assumptions and privileged identities, and an expansive description of the Comprehensive School Community Health approach to establishing inclusive school settings for gender and/or sexually diverse students, *Deepening the Discussion* also includes a requisite glossary of evolving terminology. At a time when "*queer (lesbian, gay, bisexual, transgender, or LGBT) youth are challenging the*

heteronormative cultures in schools as they disclose their sexual orientation at a younger age and with unprecedented regularity,"[6] this document speaks directly to the pressing need for educators to focus on those who are often the "*most vulnerable*"[7] in the school system. Highlighted is the acknowledgement of a requirement for self-reflection in asking educators and administrators to "*examine the inherent gendered assumptions with the school curriculum, climate, and classroom practices*"[8] and to address the subtle and not-so-subtle ways schools privilege "*heteronormative gender performance*."[9] Sections entitled "What Can Educators Do?" and "Questions for Professional Learning," in addition to strategies and suggestions presented under the heading "Professional Learning Activities," require teachers to interrogate their assumptions and beliefs about gender roles, question their reactions towards non-conforming students, examine their own privileges, and identify practices which may reinforce normalized expressions of gender. Such reflective exercises are crucial elements in helping educators and members of the school community "*anticipate and overcome challenges related to transphobia, homophobia and heterosexism*"[10] in their work with students. *Deepening the Discussion* appeals to a responsive pedagogy, recognizing "*there is an implicit yet clear message communicated to students when the schools are silent on certain topics*."[11]

The seventeen Appendices provide readily accessible information in addition to at-a-glance charts with checklists which allow for ease of future reference. Appendix D[12], for example, describes areas of study in the provincial curriculum where students' understanding of gender and sexual diversity may be developed, while Appendix E[13] identifies curricular learning outcomes linked to gender and sexual diversity across all grade levels.[14] Guidelines for starting student alliances for gender and sexual diversity in schools[15], in addition to barometers for gauging school climate for gender-inclusivity,[16] are also presented. The prerequisite for strong leadership in establishing welcoming and inclusive school cultures cannot be overstated and, in that regard, Appendix I[17] and Appendix J[18] speak directly to school leaders[19] and propose ways administrators can work with their staffs to "initiate conversations"[20] regarding challenges encountered by gender and/or sexually diverse students. The final five pages of the document, which comprise Appendix Q, highlight additional resources and references which will enable educational stakeholders to enhance their own understanding of LGBTQ issues.

Although *Deepening the Discussion* is not situated within an anti-bullying framework, Appendix G[21] briefly deals with harassment in schools and presents a short four-step process as a template for preventing and responding to transphobia and homophobia. While the success and effectiveness of anti-bullying programs may be regarded as somewhat mixed and unclear[22], certain researchers maintain harassment with respect to sex, sexual orientation, and gender expression must be considered separately.[23] *Deepening the Discussion* does not side-step the issue of harassment, however, since allusions to the topic weave throughout the document and identify ways in which educators can work to create inclusive and welcoming school settings. Additionally, the Ministry of Education's policy statement included in Appendix O[24] "*encourages and supports school division discussions, policy development and safe school practices for all students*,"[25] and urges school divisions "*to regularly evaluate and update existing policies to reflect safety and acceptance for sexually and/or gender diverse students and their allies*,"[26] all the while indicating the language of policy "*should specifically include the words 'Lesbian, Gay, Bisexual, Transgender, Queer, Straight, Two-Spirit and Questioning*."[27] Helpful links in Appendix P[28] direct Saskatchewan school divisions to administrative procedures from other jurisdictions (such as Toronto and the Yukon) which may serve to inform their policy creation and assist in developing school procedures that are supportive of all students.

Clearly, however, harassment demands attention, especially in light of the Public Health Agency of Canada's disturbing finding that "96% of gender variant youth are verbally harassed and as many as 83% physically harassed"[29] in schools, while as many as "*three-quarters of gender variant youth report not feeling safe in school and three out of four report dropping out*."[30] Quantitative assessments such as these reside at the core of the issue of rights protection of gender-diverse students. Yet if, as studies suggest, some educators feel ill-equipped to respond to reports of gender-based harassment,[31] it is imperative they are provided with high-quality in-service, on-going professional development,[32] and adequate resources[33] so they can effectively intervene in cases of harassment

relating to gender expression and sexual orientation and work to fulfill their "*professional, ethical and legal responsibilities...to ensure that all schools are safe, caring and inclusive environments regardless of differences*."[34] National research citing limited opportunities for professional development for teachers in Canada is troubling[35] and underscores the call for additional training and support for all educators and school staffs.[36] As a comprehensive guide, *Deepening the Discussion* can be an effective resource package for helping to educate both professional and support staffs.

Some jurisdictions in Canada have introduced policy documents to help educators support gender and/or sexually diverse students,[37] while others have amended existing legislation to include specific protection for gender and/or sexually diverse students with respect to bullying behaviours.[38] *Deepening the Discussion* quotes the Saskatchewan Ministry of Education's expectation "*that all school divisions will respond positively to students' requests to establish a student alliance for gender and sexual diversity in their school.*"[39] Although the Minister of Education in Saskatchewan, Don Morgan, has indicated he "*doesn't see the need*"[40] for legislation to make gay-straight alliances mandatory in Saskatchewan schools, opinions on how best to ensure the rights of gender and/or sexually diverse students are supported, protected, and respected in the school setting vary widely.[41] In a thoughtful and well-reasoned article, Michael Higdon[42] considers a more expansive approach, albeit from an American perspective, and offers insight into how students "*who do not conform to traditional gender stereotypes*"[43] can be protected from "*gender-based bullying*"[44] in schools. Identifying three factors that he believes will work to "*achieve greater protection*"[45] for gender-diverse students, Hidgon asserts the most effective strategy is "*education.*"[46] Education, he maintains, is necessary to change school culture and climate and behavioural norms.[47] To this end, *Deepening the Discussion* can serve as a foundational element for educators and others in their work to expand their awareness and understanding of issues faced by LGBTQ students.

Deepening the Discussion is a timely and relevant and, for many educators, a necessary first step.[48] More informational than prescriptive, it is a useful resource for initiating meaningful conversations and affording educators an opportunity to drill down into notions of inclusion, diversity, and gender and reflect upon their own practices. With this document as a guide, all educational stakeholders in Saskatchewan are better equipped to move the dialogue towards action and, ultimately, sustainable change that will not only support gender and/or sexually diverse students, but also create school environments that are safe, accepting, and inclusive.

Nora M. Findlay, Ph.D.
Regina Public Schools
Regina, Saskatchewan

1. Saskatchewan Ministry of Education (2015). *Deepening the Discussion: Gender and Sexual Diversity*. Online: http://publications.gov.sk.ca/documents/11/84995-Deepening%20the%20Discussion_Saskatchewan%20Ministry%20of%20Education%20Oct%202015%20FINAL.pdf
2. *Id*. at 1.
3. *Id*. at 1.
4. *Id*. at 4.
5. *Id* at 6–10.
6. Elizabeth J. Meyer & David Stader (2009). Queer Youth and the Culture Wars: From Classroom to Courtroom in Australia, Canada and the United States. *Journal of LGBT Youth 6*(2-3), 135–154, at 135.
7. Elizabeth Payne & Melissa Smith (2012), Rethinking Safe School Approaches for LGBTQ Students—Changing the Questions We Ask. *Multicultural Perspectives* 14(4), 187–193, at 188.
8. Linda McCarthy (2003). Wearing My Identity: A Transgender Teacher in the Classroom. *Equity & Excellence in Education*, 36(2), 170–183, at 171.
9. *Supra* note 7, at 189.
10. *Supra* note 1, at 2.

11. Ian K. Macgillivray, (2000). Educational Equity for Gay, Lesbian, Bisexual, Transgendered, and Queer/Questioning Students: The Demands of Democracy and Social Justice for America's Schools. *Education and Urban Society* 32(3), 303–323, at 318.
12. *Supra* note 1, at 40.
13. *Id*. at 57.
14. See *supra* note 11, where Macgillivray points out that curricular inclusion is essential to combat myths and stereotypes, and to support sexual minority youth in achieving their potential, at 312. See also supra note 6 where the authors advocate for the addition of more inclusive course materials in classrooms and school libraries at 148; see also G. Slesaransky-Poe. (2013). Adults Set the Tone for Welcoming all Students. *Phi Delta Kappan*, 94(5), regarding materials, activities, and resources that are positively represented, at 43.
15. *Supra*, note 1, Appendix F, at 70–71.
16. *Id*., Appendix H, at 73, Appendix K, at 76.
17. *Id*., at 74.
18. *Id*., at 75.
19. *See* Elizabeth Meyer, (2008), Gendered Harassment in Secondary Schools: Understanding Teachers' (Non)-Interventions. *Gender & Education, 20*(6), 555–572, where the author's assertion that "a principal's priorities and attitudes towards issues permeate the school and shape the culture" supports this focus, at 562; *see also* note 6 where the writers point to the imperative for school leaders to be aware of "existing legal protections" as they work to create environments there "homophobia and transphobia are not tolerated" at 148; see also *supra*, note 8, at 171.
20. *Supra* note 1, at 75.
21. *Id*., at 72.
22. *See* e.g., Susan M. Swearer, Dorothy L. Espelage, Tracy Vaillancourt, & Shelley Hymel. (2010). What Can Be Done About School Bullying? Linking Research to Educational Practice, *Educational Researcher 39*(1), 38–47, who suggest some programs have been "relatively ineffective" because they fail to "incorporate factors such as race, disability, and sexual orientation," at 42 ; see also *supra*, note 7, where the authors conclude that attention should be paid instead to "the cultural systems that reproduce and sanction violence, intimidation, or harassment," at 190, and point to ways in which schools "privilege heterosexuality," at 192.
23. *See supra* note 19, at 556.
24. *Supra* note 1, at 81.
25. *Id*., at 82.
26. *Id*. at 81.
27. *Id*. at 82; see also *supra*, note 7 at 191; see also *supra*, note 11, at 319–320; see also *supra*, note 19, at 562.
28. *Supra*, note 1, at 83.
29. Public Health Agency of Canada (PHAC) (March 7, 2014). *Questions and Answers: Gender Identity in Schools.* Online: http://www.phac-aspc.gc.ca/std-mts/rp/gi-is/ident-eng.php
30. *Id*.
31. *See*, e.g., Bic Ngo, (2003), Citing discourses: Making Sense of Homophobis and Heteronormativity at Dynamic High School. *Equity & Excellence in Education 36*(2), 115–124, at 120; *see also* C. Taylor, T. Peter, C. Campbell, E. Meyer, J. Restock, & D. Short. (2015). *The Every Teacher Project on LGBTQ-Inclusive Education in Canada's K–12 Schools: Final Report*. Winnipeg, MB: Manitoba Teachers' Society, where 64% of participants in this Canadian study did not feel their Bachelor of Education program had adequately prepared them to address "issues of gender diversity in schools", at 136. Online: http://news-centre.uwinnipeg.ca/wp-content/uploads/2016/01/EveryTeacher_FinalReport_v12.pdf
32. *Supra*, note 7, at 191; *see also* note 19 at 560; *see also* Michael J. Higdon, (2011). To Lynch a Child: Bullying and Gender Nonconformity in Our Nation's Schools. *Indiana Law Journal, 86*(3), 827–878, who highlights staff training workshops held by the Winnipeg School Division, at 873–874. (Used with permission)
33. *See* e.g., *supra*, note 31, *Every Teacher Project*, at 156.
34. *Supra* note 1, at 77; see also Hidgon, *supra*, note 32, who points to research which suggests many teachers and

school administrators do not intervene when they hear "homophobic comments," at 844, and cites reasons such as school culture and individual prejudices for failure to respond to this behaviour, at 843–845; see also *supra*, note 6, where Meyer and Stauder point to other studies where sexual minority youth have also identified supportive teachers and administrators as playing an "important part" in their lives when they support GSAs (gay-straight alliances), incorporate LGBT curriculum into courses, and intervene in name-calling, at 137.

35. *Supra*, note 31, *Every Teacher Project*, at 140.

36. See e.g., *supra* note 7, at 191; see also *supra* note 6, where the authors advocate for support for teachers in establishing anti-oppressive classrooms, at 148, and in incorporating "LGBT curriculum" into their lessons plans, at 137.

37. *See*, e.g., Alberta Education. (2016). *Guidelines for Best Practices: Creating Learning Environments that Respect Diverse Sexual Orientations, Gender Identities and Gender Expressions*. Online: https://education.alberta.ca/media/1626737/91383-attachment-1-guidelines-final.pdf; *see* also Province of Nova Scotia, Department of Education and Early Childhood Development. (2014). Policy for *Supporting Transgender and Gender-nonconforming Students*. Online: https://studentservices.ednet.ns.ca/sites/default/files/Guidelines%20for%20Supporting%20Transgender%20Students_0.pdf; see also Leah Kutcher, (December 2014). Nova Scotia Government Introduces New Guidelines for Supporting Transgender and Gender Nonconforming Students. *CAPSLE Comments 24*(2), 1–2.

38. *See*, e.g., *Education Act*, SA 2012, c.E-0.3 which requires school boards to implement codes of conduct that address the prohibited grounds of discrimination under the *Alberta Human Rights Act*, at 33(3)(d) (ii); *see also Manitoba Public Schools Act*, CCSM c. P250; see also Bill 13, *Accepting Schools Act,* 2012, S.O. 2012 C.5.

39. *Supra*, note 1 at 71 and 82 where the Saskatchewan Ministry of Education policy statement #GSD 2015 is quoted.

40. D.C. Fraser. (2016, September 9). Tackling Issues in Education. *Regina Leader-Post*, quotes the Education Minister as saying that school divisions in Saskatchewan have been supportive and have "all worked towards having GSAs where there has been a request for them," while pointing to a court challenge in Alberta as "one reason why such a law [making GSAs mandatory] doesn't make sense," at A4; see also *supra*, note 6 at 143–146 for an overview of court cases in the United States and Canada that deal with GSAs.

41. See, e.g., *supra* note 7, where the authors maintain that although "legal protections are a critical component in the pursuit of equal access and opportunity," at 190, they are "limited in their capacity to change school climate", at 191; see also Slesaransky-Poe, *supra* note 14, where the author argues "anti-bullying and anti-discrimination policies and procedures...are not sufficient responses to harassment," at 41; *see also* Jason Warick. (2016, April 11). Gay-Straight Alliance Legislation Preferred Over Policy: Advocate. *Regina Leader-Post*, at A6; *see also* Ashley Martin. (2016, June 24). Students Aim for Inclusive Schools. *Regina Leader-Post*, at A9.

42. See Higdon *supra*, note 32.

43. *Id*., at 863.

44. *Id*.

45. *Id*., at 863.

46. Id. at 870; the other two factors Higdon names are litigation and legislation which have limitations with respect to bullying in they are responsive, not preventive, at 863–870.

47. *Id*., where Hidgon reiterates that education is needed to effect "societal change in how we think of gender," at 877; see also *supra*, note 7, where Payne and Smith argue that instead of paying attention to the behaviour of bullies and victims, what must be investigated are "the cultural systems that reproduce and sanction violence, intimidation, or harassment," at 190.

48. *See,* e.g., Angus Reid Institute. (2016, September 7). *Transgender in Canada: Canadians Say Accept, Accommodate, and Move On* in which a recent national opinion poll reveals "more than eight-in-ten [Canadians] support government move [sic] to add gender identity to human rights code" and "paints a picture of an accommodating, tolerant society." Online: http://angusreid.org/transgender-issues/; see also Zosia Bielski, (2015, July 17). "I'm Not Afraid to Stand Alone." The Globe and Mail, L1, L3–L4, who documents some of the "unique troubles – from parental estrangement and bullying at school to homophobic employers" facing transgender youth, at L3.

ADOPTION LEAVE TOP-UP FOUND TO BE AMELIORATIVE PROGRAM UNDER NOVA SCOTIA HUMAN RIGHTS ACT

A number of unions, because of fear of discrimination complaints, dropped their adoption leave allowances because there was no equivalent for biological parents. A 2016 Nova Scotia Court of Appeal decision supports the ability of employers and unions to agree to such benefits. In *IAFF, Local 268 v Adekayode*[1] the Nova Scotia Court of Appeal applied the rational contribution test to determine that an adoption leave allowance was ameliorative. The Court found that the adoption leave allowance discriminated against biological parents, but that the ameliorative nature of the allowance meant that a human rights complaint brought against the union and employer who negotiated the agreement could not be upheld.

The Facts

The facts were straightforward. The Union and Employer were parties to a collective agreement that provided an adoption leave allowance. The Employer was required to top-up adoptive parents' EI parental leave benefits for 10 weeks. The top-up did not apply to birth parents. Mr. Adekayode, a firefighter with the Halifax Regional Municipality, filed a complaint with the Nova Scotia Human Rights Commission in which he claimed that the top-up discriminated against biological parents.

The Statutory Regime

Section 5(1)(r) of the *Nova Scotia Human Rights Act*[2] ("the Act") prohibits discrimination on the basis of "family status". "Discrimination" is defined in section 4:

> 4. For the purpose of this Act, a person discriminates where the person makes a distinction, whether intentional or not, based on a characteristic, or perceived characteristic, referred to in clauses (h) to (v) of subsection (1) of Section 5 that has the effect of imposing burdens, obligations or disadvantages on an individual or a class of individuals not imposed upon others or which withholds or limits access to opportunities, benefits and advantages available to other individuals or classes of individuals in society.

The prohibition on discrimination in the *Act* is not applicable to programs that are designed to address disadvantages suffered by certain groups. Section 6(i) provides:

> 6. Subsection (1) of Section 5 does not apply
>
> (i) to preclude a law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or classes of individuals including those who are dis advantaged because of a characteristic referred to in clauses (h) to (v) of subsection (1) of Section 5.

The Board of Inquiry Decision

Mr. Adekayode was successful at the Board of Inquiry.[3] He argued that the adoption leave allowance discriminated against non-adoptive parents and that the allowance could not be upheld as an ameliorative program. The Board agreed and found that the allowance could not be considered ameliorative of the special difficulties adoptive parents suffer even though it would provide them with greater resources at the crucial time of their new child's arrival.[4] By entering into and adhering to a collective agreement that provided the adoption leave allowance, both the Union and Employer were found to have discriminated against Mr. Adekayode based on his family status, non-adoptive parent.

The Standard of Review

The Union filed an appeal, pursuant to section 36 of the Act. The appeal was heard on the standard of correctness.[5] Writing for a unanimous court, Justice Fichaud acknowledged that the Board would usually be afforded deference in decisions interpreting its home statute, the Act. Courts would usually review those decisions on a standard of reasonableness.[6] However, in *Adekayode* the Court found that, "Correctness governs the interpretation of constitutional principles under s. 15 of the *Charter* and the transference of usage of s. 15 principles and authorities to construe the same terms in the *Human Rights Act*."[7] The language of the *Act* would be interpreted using *Charter* caselaw. The decision would therefore be of broad relevance. In the words of Justice Fichaud, the decision would include "a discussion of constitutional or quasi-constitutional issues of central importance to the legal system for which the Board has no greater experience than this Court."[8]

Defining "Discrimination"

The Court found against the appellant Union on the question of the definition of discrimination. The Union argued that *Charter* jurisprudence should govern and, therefore, discrimination could only be found where there exists historical prejudice or stereotyping. The Court rejected this argument for two reasons.

First, the *Act* provides its own definition of discrimination. Applying the *Act* does not require parties to import definitions from *Charter* case law,[9] even though the definition in the *Act* is a carbon copy of the reasons for the Supreme Court's landmark decision, *Andrews v. Law Society of British Columbia*.[10]

Second, historical prejudice and stereotyping are no longer requirements for success in s. 15 *Charter* claims. While they are relevant considerations, they are not prerequisites to prove discrimination: "clearly historical prejudice and stereotyping are relevant to whether there is discrimination under s. 15. But those criteria are no longer legally essential to an infringement of s. 15."[11]

For the purposes of the *Act*, discrimination does not conform strictly to the requirements of s. 15 *Charter* claims, nor does it require historical prejudice or stereotyping. The Court agreed with the Board that discrimination may be found where a distinction is made based on a prohibited characteristic, and "The *effect* of the distinction, whether intended or not, may be to impose burdens not imposed on others, or to withhold or limit access to opportunities, benefits and advantages available to other individuals or classes of individuals in society."[12]

Defining "Ameliorative Program"

Where Justice Fichaud disagreed with the decision of the Board was on the question of what can be considered an ameliorative program. The *Act* does not contain a definition of ameliorative program. The Court applied the leading Supreme Court cases, *Kapp*[13] and *Cunningham*[14]. The test used in these cases to determine whether a program can be considered ameliorative is termed the *rational contribution test*. The question to be asked is, "Was it rational for the state to conclude that the means chosen to reach its ameliorative goal would contribute to that purpose?"[15] Restated in *Adekayode*, "Both *Kapp* and *Cunningham* said that it need only be shown that it was 'rational' to expect that the means would 'contribute' to the goal."[16] The Board failed to apply the rational contribution test to determine whether the top-up was ameliorative and thus saved by section 6(i).

Quoting at length from the testimony heard by the Board, the Court found that there was ample evidence to conclude that adoptive parents could be the targets of ameliorative programs. The Court listed the following difficulties experienced by adoptive families:

- a greater proportion of children with special needs;
- difficulty with bonding that happens more easily in birth relationships;
- a six-month probationary period where adoptive parents may be deemed unfit to maintain custody, and;
- a less supportive infrastructure for adoptive families than that available for birth parents.[17]

The evidence supported the notion that the adoptive leave allowance could rationally be thought to contribute to ameliorating the disadvantages suffered by adoptive parents.

The Court also disagreed with the Board's finding that, because the top-up had not been part of a more robust and deliberate ameliorating scheme, it could not be saved by section 6(i). The adoption leave allowance had been the result of a bargaining compromise between the parties: the Union wanted a parental top-up for all new parents; the Employer had cost concerns.[18] Justice Fichaud's reasons include the following excerpt:

> [The top-up] was the objective manifestation of the compromised mutual intent of HRM and Local 268. It was down-scaled from Local 268's opening proposal. But this doesn't mean the article colourably shielded an ulterior discriminatory objective. Nobody questions that [the top-up] genuinely recited the mutually agreed goal of HRM and Local 268, at the conclusion of negotiations, to provide a benefit for adoptive parents. Under the purposive approach to substantive equality, this establishes the "object" to ameliorate the condition of adoptive parents.[19]

The Board had misconstrued the strictness of the 6(i) requirement that the objective of the provision be ameliorative.

Conclusion

The Nova Scotia Court of Appeal's decision *Adekayode* supports the ability of employers and unions, including those in the education sector, to agree to adoptive leave top-ups that are more favourable than those for biological parents. While such provisions may be prima facie discriminatory, they may be saved if the parties can demonstrate that it was rational for them to expect that the benefit would contribute to the goal of ameliorating the condition of adoptive parents. Furthermore, a more favourable adoption leave allowance can serve as a stepping stone on the path toward broader parental leave coverage while providing a significant benefit to help adoptive parents with their new family members.

Jason Edwards, Articled Clerk
Pink Larkin
Halifax, Nova Scotia

1. 2016 NSCA 6.
2. RSNS 1989, c 214
3. *Adekayode v. Halifax (Regional Municipality)*, 81 C.H.R.R. D/257.
4. *Adekayode*, *supra* note 1 at paras 123-124.
5. The Court's decision did not turn on the standard of review. At paragraph 158, Justice Fichaud writes, "Given the Board's failure to apply, distinguish, or acknowledge *Kapp* and *Cunningham*, the Board's marked departure from the *Kapp*/*Cunningham* interpretation of those words lies outside the range of permissible outcomes."
6. *Ibid* at para 31.
7. *Ibid* at para 40.
8. *Ibid.*
9. *Ibid* at paras 52-61.
10. [1989] 1 SCR 143.
11. *Ibid* at para 66.
12. *Adekayode v. Halifax*, *supra* note 3 at para 9.
13. *R. v. Kapp*, 2008 SCC 41.
14. *Alberta (Aboriginal Affairs and Northern Development) v. Cunningham*, 2011 SCC 37.
15. *Kapp*, *supra* note 13 at para 49.
16. *Adekayode*, *supra* note 1 at para 123.
17. *Ibid* at para 106.
18. *Ibid* at para 154.
19. *Ibid* at para 155.

FROM THE CAPSLE ARCHIVES (2011, St. John's, NL)
Protecting Rights Without Breaking the Budget: Controlling the Volume and Scale of Legal Proceedings
(Gretchen Brown and Lisa Southern)

Legal Proceeding Costs

The cost and time associated with litigating disputes between unions and employers has become, in many instances, unmanageable and cumbersome. These impediments – both in terms of time and cost – are felt by both sides to the dispute, and arguably most acutely felt in disputes in the public sector where resources are increasingly limited.

…

This presentation is intended to provide an opportunity to reflect on the current structures for dispute resolution and to consider how those structures can be modified to better advance the interests of unions, employers and the education system as a whole.

Reshaping the Arbitration Process

1. Selection of Arbitrators

Often time and resources is wasted on back and forth communication regarding the selection of an arbitrator. This could be avoided through a list of agreed arbitrators and a process of rotating through the list. …

2. Mandatory Case Management

Asking arbitrators to hold a case management call, several weeks before the hearing, would ensure that the parties properly understand the issues, address any document requests, exchange particulars and explore other methods to present evidence. …

3. Mandatory Use of Agreed Statements of Fact and Will Say Statements

There is little time spent by the Arbitrator working with the parties to develop agreed statements of fact or other written tools to reduce the amount of oral evidence required such as will say statements.

"Will Say" statements are written statements of a witnesses' direct evidence. Once produced, it is often the case that there are portions of the statement that are not contentious. Cross examination takes place on those parts of the statement that are contentious, and limited redirect then follows. …

4. Common Book of Documents

Another prehearing tool that can lead to efficient hearings, guaranteed pre-hearing disclosure, a common understanding of the issues in dispute and the nature of the evidence is the common book of documents. This tool is often used in civil litigation and assists the parties in knowing what documents the other is relying on in advance of the hearing, and identifying any documents for which there may be an objection, again, in advance of the hearing. …

5. Pleadings / Common Questions

… While the parties to an arbitration are unlikely to adopt a system that uses examinations for discovery and interrogatories, agreeing to frame a common question or questions, and agreeing to each submit a one page

summary of their respective positions which are then shared in advance of the hearing with the arbitrator, would be useful. Another option would be to have written opening statements, prepared a few weeks in advance of the hearing, shared with the arbitrator in advance.

6. Common Directions to the Arbitrator

Arbitration hearings can commence without the parties providing any directions to arbitrators regarding the arbitration process. … the parties may wish to consider providing shared directions to the arbitrator which communicate the parties common intention to keep the hearing as short and efficient as possible. The parties can also provide instructions regarding the timing, length and scope of the arbitrator's decision.

7. Use of a Jointly Instructed Expert

Use of a jointly instructed expert is becoming increasingly common in civil actions. A joint expert may be useful in grievance arbitrations involving medical or accommodation issues. If the parties cannot agree, the Arbitrator may be asked to select from a list of possible experts put forward by the parties.

8. Limit to Authorities

There are some cases that the parties can agree are of such significance that it is necessary to have a decision that canvases all of the legal arguments and authorities. Those cases, however, are not the norm, and in most instances citing a small number of authorities is adequate. So, too, is a limited legal argument. If it is possible for parties in the Court of Appeal to restrict their factums to a limited number of pages, and to have a limited time allotted for argument, surely these efficiencies can be enjoyed in labour arbitration.

9. [Instructions on] The Type of Decision Required

Similarly, one questions the need, in many cases, for lengthy decisions. In most instances what the parties seek is a timely, clear decision that allows them to move forward and return their focus on their business. The parties have the power to request that decisions be rendered within a specified period of time, that the decision be rendered orally with written reasons only on request, or that any written decision be of limited length. …

Where can I get the rest of this Paper?

The above extracts are part of a 24 page paper presented at the 2011 (St. Johns, NL) CAPSLE Conference. This paper and other are available to CAPSLE Members on the CAPSLE Members Only Web Page. There is also a Master Index of all the Paper and PPT's from the 2011-15 CAPSLE Conferences.

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CONTRIBUTORS TO THIS ISSUE

A special "thank you" to those who have contributed material for this issue of CAPSLE COMMENTS.
They are:

David Mushens
Caroline Spindler
Judith K. Begley
Hugh H.M. Connelly
Nora M. Findlay, Ph.D.
Jason Edwards

CONTACT INFORMATION

CAPSLE - Canadian Association for the Practical Study of Law in Education
37 Moultrey Cres.
Georgetown, Ontario
L7G 4N4

phone: (905) 702-1710
fax: (905) 873-0662
email: info@capsle.ca
website: capsle.ca

Wishing You A Joyous Holiday Season and a New Year Filled With Peace and Happiness

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Inquiries and comments concerning CAPSLE Comments should be addressed to Roderick Flynn, CAPSLE, 37 Moultrey Cres., Georgetown, L7G 4N4 or by email at editor@capsle.ca.

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