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Education Law Newsletter

— March 2014 —

IN THIS ISSUE —

Court dismisses constitutional challenge to Catholic school funding

In *Landau v Ontario (Attorney General)*, [2013] ONSC 6152, Landau challenged public funding for Ontario Catholic schools as being contrary to the Canadian *Charter of Rights and Freedoms* (*Charter*). The Ontario Superior Court of Justice (Court) dismissed the case stating that Landau did not have sufficient standing to bring the case, nor was there a sense that recent Court decisions on the issue were in need of reconsideration.

Landau applied to the Court to eliminate public funding for Ontario Catholic separate schools for grades 9 to 12, a reduction of funding for Catholic schools for grades 1 to 8 to levels provided for in 1867, and to declare that any public funding in excess of those limits violates the freedom of religion, expression, and equality rights of the *Charter*. The Province of Ontario brought a motion to dismiss the Application.

Landau argued that, as a Canadian citizen, Ontario resident, property owner and taxpayer, her tax dollars were being used to fund the separate school system, thereby forcing her to fund a religious educational system which propagates policies with which she does not agree.

The Court stated that *"being a citizen, resident, taxpayer, does not give someone private interest standing to challenge government action a person believes is unconstitutional"*. Instead, to have a private interest standing, *"a person must have a direct personal legal interest in the issue"*. In respect of public policy issues, *"to have standing an applicant must show that she is 'exceptionally prejudiced' or is 'specially interested' in the issue"*. Interest here refers to a *"legal interest"* as opposed to *"having one's intellectual passion aroused"*.

The Court held that Landau had no special interest and was not exceptionally prejudiced. Her status as a taxpayer did not give her a privileged position to challenge state action. Therefore, she lacked private interest standing to bring the case to Court.

Public interest standing is sometimes granted to someone who lacks private interest standing because *"it is in the public interest that the case proceed, and that the proposed applicant is an appropriate person to bring it"*. The Court found that Landau could not qualify for public interest standing either. First, there are many persons with private interest standing who could bring such a case but did not, and secondly, there was no reasonable prospect that the application could succeed.

The Court cited the Supreme Court of Canada, which decided in 1987 that the *"existence and full funding of Catholic separate schools in Ontario, and the non-funding of other denominational schools, is protected, and that this is not affected by the Charter"*. In 1996, the Supreme Court affirmed this ruling, holding that *" 'providing separate schools with funding that is on par with the funding received by public schools' was 'a right or privilege enjoyed by separate schools at Confederation' and was thus 'immune from scrutiny under the Charter' "*. The Court then noted that there has been no subsequent jurisprudence questioning the wisdom of the Supreme Court on these issues.

Lastly, the Court noted that although Landau is legally trained, she did not have the legal expertise to bring such a challenge without the assistance of expert counsel. Given that she lacked private interest standing and was not a qualified public interest applicant, there was no merit in appointing her as an unqualified self-represented litigant to proceed with the case.

The Court granted the Province of Ontario's motion and dismissed Landau's application.

This Decision reconfirms the Decisions of the Supreme Court of Canada. Any constitutional challenge to Catholic school funding would not be successful. After this Decision, the Province of Ontario announced that it would not be reviewing the issue from a political perspective.

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HRTO decides public board's policy of disseminating religious material discriminates against Atheists

In *RC (Next of Friend) v District School Board of Niagara*, [2013] HRTO 1382, the Human Rights Tribunal of Ontario (HRTO) determined that the Board discriminated against atheists, contrary to the Ontario *Human Rights Code* (*Code*), by permitting only Gideons to distribute religious literature in public schools. Furthermore, the Board's policy of distributing religious material lacked safeguards to ensure that requests to distribute such material were treated equally amongst all creeds.

Under the Board's policy, the Gideons International In Canada were permitted to distribute a version of the New Testament to fifth grade students, provided that the principal, after consulting with the school council, agreed, and parental consent forms were provided to the class. The Applicant, whose family identifies as atheist, was a Grade 5 student at a school of the Board. The Applicant and her father (RC) each made an Application to the HRTO alleging that the Board's policy discriminated against them because of creed.

RC contacted the principal and proposed that he distribute a book called *"Just Pretend: A Freethought Book for Children"*, which promoted atheism. The purpose of the request was to encourage a change in the Board's policy because he believed parents might be upset about being asked to consent to their children receiving atheist literature in the same way he was offended about being asked to consent to his children receiving the Gideon Bible.

Following this request, the school decided to distribute neither the Gideon Bible or Just Pretend. The Board then adopted a new Policy that read as follows:

"Any requests for the distribution of religious publications in schools must be approved by the Director or designate and subsequently by the

Principal, in consultation with the School Council and with pre-approved parental consent".

RC then made another request to distribute Just Pretend, which was denied by the Board.

As part of their reasons for denying the request, the Board stated that they were entitled to sponsor the study of all religions, but atheism was not a religion. Additionally, the Board relied on the Multifaith Information Manual (MIM), which *"allows it to objectively determine whether a text falls within its policy 'by reference to an accepted list of religious texts'."* Just Pretend was not included in the MIM, and was a *"secondary publication"* instead of a *"globally recognized sacred text"*.

The Tribunal noted that the MIM does not include every religion, and also does not clearly distinguish between sacred and secondary texts. The Tribunal also disagreed with the Board's contention that atheism is not a 'creed'. The very reason 'creed' is a protected ground of the *Code* is to ensure that people do not experience discrimination because they reject one or many religious beliefs or practices.

The Tribunal noted that schools are an arena for the exchange of ideas and need to be *"premised upon principles of tolerance and impartiality so that all persons within the school environment feel equally free to participate"*. Children are particularly vulnerable *"to the message sent when their school formalizes the delivery of religious views by one faith that does not include the creed with which they or their family identify"*. Therefore, *"when a public school is not neutral with respect to creed, it discriminates with respect to services against both parents and children whose creed is marginalized"*.

In allowing students to receive literature from one creed but not others, the Board *"violated the norm of substantive equality"* by promoting *"prejudice and stereotyping by suggesting that non-Christians, including atheists, are less worthy and valuable than others of having their creed included in the public school system"*. Furthermore, the Board was unable to articulate a valid education-related reason for restricting the distribution of religious literature to one creed.

The Tribunal noted that optional religious activities outside the instructional school day are permitted as long as *"all creeds are treated equally, there is no subtle or formal coercion to participate, and the school, makes clear that it is not favoring any of them"*. Under a carefully constructed policy ensuring equality between all creeds, such literature can be distributed with parental consent. However, the new policy adopted by the Board also contravened the *Code*.

The new policy offered *"no written guideline about what will be approved, and nothing to ensure that creeds are treated equally across the Board's schools in relation to requests to distribute material"*. Without guidelines to principals or school councils, there was a serious risk that requests will be treated differently.

The Tribunal also found that *"the manner in which discretion was exercised was discriminatory"* in attempting to restrict the policy to *"recognized sacred texts"* and not secondary materials since some creeds are not text-based. Furthermore, the standard was not consistently applied since the Gideon Bible includes both biblical text and secondary material. Additionally, the Board made no efforts to either publicize the policy, or ensure other creeds were aware they could provide materials.

The Tribunal ordered that *"no distribution of religious materials shall take place in the Board's schools unless the Board designs a new policy consistent with the Code principles set out in this Decision"*. The Board was provided with six months to develop a new policy. The Adjudicator remained seized of the matter for one year to deal with any disputes about whether a new policy complied with the *Code*.

Other School Boards should take this Decision into consideration and review any policies relating to the distribution of religious or creed-related literature.

Racial discrimination claim against school board for student suspension dismissed by HRTO

In *BC v. Durham Catholic District School Board*, [2014] HRTO 42, the HRTO dismissed a complaint against the Board from a student who alleged her suspension for slapping another student was based on race, colour and/or ethnic origin. Her concurrent

complaint against the police for the handling of her arrest for assault was also dismissed. However, the HRTO recommended that the Board conduct a review of any potential correlation between student discipline and race within the Board.

The Applicant was a 16-year-old African-American female high school student who allegedly slapped and bullied another female student during an altercation at school. Following the altercation, the Applicant was suspended for three days and arrested for assault. The Applicant alleges that her race, colour and/or ethnic origin was a factor in the suspension. The Board responded that it was acting on the basis of information provided by the alleged victim and confirmed by other students.

The Respondent Police Constable was at the school when the incident occurred. The Constable arrested and charged the Applicant with assault. The Applicant alleged that racial discrimination was a factor in the decision to make the arrest, and in the manner in which she was removed from the school.

The criminal charges were eventually withdrawn, while the suspension was overturned by the Discipline Committee after the alleged victim gave different information than that provided to both the school and police on the day of the incident.

The HRTO Adjudicator noted that there was not sufficient evidence to conclude exactly what happened during the altercation. However, it was evident that there was *"some form of confrontation"* wherein either the Applicant or the alleged victim stepped on the other's foot, the victim made a remark or gesture toward the Applicant, two of the Applicant's friends intervened, and some kind of physical force took place. Considering all of the evidence, particularly the evidence of one of the school's Vice Principal's (VP), who testified to directly observing the Applicant slap the alleged victim, the Adjudicator concluded that the altercation was not a *"play fight"* as the Applicant claimed.

Despite being unable to conclude exactly what happened, the issue before the Adjudicator was whether, consciously or unconsciously, the applicant's race, colour and/or ethnic origin was a factor in the actions taken by the VP and the Board, or by the Constable. This issue *"needs to be determined on the basis of what these respondents knew at the time the actions at issue were taken"*.

The Adjudicator noted that when the second VP and Constable appeared on the scene, they found the alleged victim *"in a state of considerable distress, to the point where she had a panic attack in the hallway and a first aid teacher had to be called to assist"*. Furthermore, upon bringing the alleged victim into the VP's office, both the VP and Constable observed that she had a red mark on her face consistent with having been slapped. In the presence of the VP and Constable, the alleged victim identified the Applicant as having slapped her so hard that it knocked her glasses off her face.

The VP also viewed surveillance video to identify two student witnesses to the altercation. The VP then interviewed the two students. The first confirmed that the alleged victim had been slapped by the Applicant, but said that it was done in *"fun"*. The Adjudicator refused to find that it was some kind of play fight. Furthermore, it was reasonable for the VP to conclude that it was not a play fight based on her direct observations and the video surveillance. The second student confirmed that the Applicant had slapped the victim.

Following these interviews, the Principal did not immediately suspend the Applicant, but instead, the VP called the Applicant to the office to speak with her. Although the Applicant claimed that she was not afforded an opportunity to give her side of the story to the VP, the Adjudicator found that such an opportunity was provided in the VP's office. During their meeting in the office the Applicant did admit to having slapped the alleged victim, although she claimed it was part of a play fight.

The Adjudicator found that the decision to suspend the Applicant was made on the basis of the initial statement by victim, the confirmation by two other students, and the Applicant's personal acknowledgement of the incident. Accordingly, the Board *"provided a legitimate, non-discriminatory explanation to support the suspension decision, which is credible on all of the evidence"*. Furthermore, the three-day suspension was *"consistent with other first-time suspensions handed out at the school for fighting and/or bullying"*. Additionally, the Applicant had been involved in a prior incident of alleged bullying and was warned that a future incident of fighting or bullying would merit a suspension.

Finally, there were *"reasonable and probable grounds"* for the arrest of the Applicant, based on the

victim's signed statement, the red mark on the victim's face, the broken glasses, the victim's distress, and the video which showed a commotion involving the Applicant. The reasonable and probable grounds *"constitute a rational, non-discriminatory explanation for the arrest which is credible on all of the evidence"*. Thus, the Application against the Board and the Constable were both dismissed.

Notably, as part of the case, the HRTO heard evidence about a large disparity in disciplinary rates at the school between Black and racialized students compared to White students. The Adjudicator found that *"the racial disparity is so glaring as to cry out for further investigation and review by the respondent school board"*. The Adjudicator recommended that the Board conduct an internal review of the three most recent school years for any correlation between student discipline and race. If the review results in a statistically significant disparity, the Adjudicator recommended that the Board retain an anti-racism expert in the educational context to conduct further research into the issue.

The comments of the Tribunal with respect to the disparity in disciplinary rates should also be taken into consideration by other Boards. An analysis of disciplinary rates which demonstrate a disparity should indicate the need for intervention in an appropriate manner.

School board vicariously liable for sexual assault of student by teacher over 30 years earlier

In *SL v RTM*, [2013] ONSC 1448, the Ontario Superior Court of Justice (Court) determined that a School Board (Board) was vicariously liable for the sexual assault of a student by a former teacher (RTM) over 30 years earlier.

RTM was employed the School Board as a science teacher from 1962 until retirement in 1997. The Plaintiff was a student of RTM in the 1976-77 school year. RTM operated a 'mini-zoo' in his classroom for 20 years, purportedly as part of the science curriculum. RTM recruited students to assist him clean and maintain the zoo's caged animals.

The Board sanctioned the mini-zoo. RTM was even given a key to the school by the Director of Education so that he could care for the animals outside of school hours. Despite the Board's policy that only the principal and janitor have a key, the Board never advised any of RTM's principals over the years that he had a key. The Plaintiff helped RTM maintain the zoo during recess, after school, on weekends, and during holidays. RTM used these opportunities to serially sexually assault the plaintiff over approximately 12 months.

In 2006, RTM was charged for assaulting the Plaintiff and four other former students. RTM pleaded guilty to the charge, and admitted that one of his motivations in establishing the zoo was to *"groom likely student candidates as victims for his sexually deviant behaviour"*. After being charged, the Discipline Committee of the Ontario College of Teachers held a hearing, finding RTM committed *"unacceptable and repetitive acts of assault and indecent assault on his students"*, and that he *"abused his position of trust in order to create a long-term pattern of abuse, control and sexual exploitation of his students"*.

At one point over the years, one of RTM's principals advised RTM that there were concerns about his behaviour around children and that RTM should be careful, which RTM understood to refer to his actions of being physically and sexually involved with his students. The Court noted that one or more of RTM's colleagues and at least one principal were aware of student chatter implying RTM's sexual deviance. However, no action was ever taken by the Board to discipline RTM or to ensure that his future teaching assignments would not compromise the safety of students.

The jury found that the Board was negligent by providing him with a key to the school without conditions or stipulations, in contravention of Board policy, and without advising school employees; that at least one principal was aware that RTM enjoyed the company of young males and did not exercise any due diligence in supervising RTM; and the complexity of the process in complaining against a teacher deterred other teachers from coming forward to report RTM.

The Court noted two policy reasons for imposing vicarious liability: *"(1) provision of a just and practical remedy for the harm; and, (2) deterrence of future*

harm". In order to determine whether the Board was vicariously liable, the Court had to consider whether *"the unauthorized acts by RTM are so connected with his authorized acts of teaching that they may be regarded as modes of doing an unauthorized act"*.

The Court noted that RTM's principals should have been notified of his key and access to the school, and the use of the key should have had conditions such as notifying the principal each time he intended to use the key and that he not be alone at school with students. Unconditional access to the school under the guise of operating the mini-zoo enhanced the degree of risk to student safety.

The Board argued that imposing vicariously liability on them for acts that took place over 30 years earlier would not serve to deter future risk. The Court disagreed, writing that, since teachers are responsible for the emotional and physical welfare of students, *"we must be certain that School Boards remain ever vigilant to the possibility of abuse"*. The Court determined that the Board's failure to take appropriate preventative steps was negligent and that *"an appropriate signal of deterrence must therefore be sent to this School Board"*.

In considering whether the unauthorized acts of assault were so connected with the authorized acts of teaching, the Court made note of the following: the Board has a legal duty to provide for the safety of students; the Board exercises legal authority to *"guide, direct, and discipline the child"*; RTM's curriculum was *"designed to make possible the exploitation of students"*; the Board approved RTM's curriculum; and RTM's activities in using the school's premises and resources were in furtherance of his acts of exploitation.

The Court thus concluded that the Board was vicariously liable to the plaintiff for RTM's acts of abuse.

This decision is currently under appeal. The decision of the Court raises some challenging issues with respect to vicarious liability.

CFSRB overturns student expulsion because of permissive language in safe schools policy

In *Appellant v. Toronto Catholic District School Board*, [2013] CFSRB 23, the Child and Family Services Review Board (CFSRB) quashed a student's expulsion since suspension for the activity in question was discretionary under the School Board's (Board) policy, and thereby was ineligible for expulsion under the *Education Act*.

The 16-year-old student was suspended from school after verbally threatening to kill a student. A few months later, the student was expelled from all schools of the Board for engaging in serious or repeated misconduct after threatening death to a second student. The student's father (Appellant) appealed the Board's expulsion decision to the CFSRB.

The CFSRB had to decide whether the student engaged in activity eligible for expulsion, whether expulsion was appropriate, and whether expulsion should be from all of the Board's schools or from the student's school only.

Relying on an earlier decision, the CFSRB found that the *"threshold issue"* was whether a policy of the Board mandated suspension for the activity in question. If so, the expulsion may be upheld. However, if the policy merely permitted suspension, this would be insufficient to impose expulsion. Therefore, the onus was on the Board to establish that it's policy mandated suspension.

The CFSRB relied on ss. 310(1)(8) of the *Education Act*, which states:

> *(1) A principal shall suspend a student if he or she believes that the student has engaged in any of the following activities while at school, at a school-related activity or in other circumstances where engaging in the activity will have an impact on the school climate:*
>
> *8. Any other activity that, under a policy of a board, is an activity for which a principal must suspend a student and, therefore in accordance with this Part, conduct an*

investigation to determine whether to recommend to the board that the student be expelled.

The Board's policy, upon which they relied in expelling the student, read as follows: *"The following infractions may result in a suspension pending possible expulsion in accordance with the Board policy … Serious or repeated misconduct …"*

In considering whether to suspend a student or whether to recommend to the Board that a student be expelled, a principal will take into account any mitigating factors or other factors prescribed by the regulations.

The Board conceded that the language of its policy was permissive, but argued that the policy is intended to mandate suspension and should be interpreted in that way.

The CFSRB noted that it is unable to read mandatory suspension language into a School Board's policy; the language of the policy must be explicit. Given the permissive language of the Board's policy there was no proper basis for an expulsion pursuant to ss. 310(1)(8) of the Act. Thus, the CFSRB quashed the expulsion, ordered the student returned to school, and ordered any records relating to expulsion expunged.

In light of this decision, School Boards should review their Safe Schools Policies to ensure that the language used creates a mandatory requirement for a principal to suspend for activities for which expulsion may be recommended, subject to the consideration of the mitigating and other factors, in compliance with the *Education Act*.

Evidence of former students too prejudicial to be heard in teacher's sexual assault trial

In *R. v. Matthews*, [2013] SKQB 51, the Saskatchewan Court of Queen's Bench (Court) ruled that the evidence of three former students was too prejudicial to be heard in the Trial of a teacher accused of sexual offences against a former student (M).

The accused was charged with sexually assaulting M, a former student, between 2005 and 2008. The accused denied the allegation and the Crown applied to have the evidence of three former students adduced at the accused's upcoming Trial. The accused had previously been charged with sexual offences against the three former students, though those charges were stayed because there was no likelihood of conviction.

The accused taught English and Math at a high school which the complainant and witnesses had attended. M alleged that the accused asked him to lunch one day where "*the accused began to ask M questions about his sexual preferences*". The accused then told M to perform a sexual act on him, which M did. A similar incident occurred two weeks later, following which, the accused bought M cigarettes, a drink, and snacks. Further and escalating sexual acts transgressed between the two over the following weeks. M testified that he felt "*intimidated*" by the accused because "*the accused had grabbed him by the arm and put him in an arm lock in front of the class*".

The issue for the Court was whether to admit the "*similar fact evidence*" of the three former students to be heard at the upcoming Trial. The similarities in evidence included the fact that the accused taught at a school they all attended, took each of them off school grounds, engaged them in conversations relating to sex, and gave them cigarettes, clothes, and money. Furthermore, each student "*felt propositioned*" by the accused, which the Crown argued intended to engage them in sexual acts. The Crown wanted to use this similar evidence to corroborate M's testimony and establish a pattern of conduct on the part of the accused. The defence argued the evidence was unreliable and highly prejudicial.

The Court noted that it had to weigh the probative value of the evidence against the potential prejudice to the accused's right to a fair Trial in determining whether the evidence should be admitted. This had to be determined in light of the central issue to be decided at Trial, which was whether the accused intentionally touched M in a sexual manner. As part of its analysis, the Court had to determine whether the alleged similar facts were similar enough to help a jury decide this central question.

The Court noted that the alleged incidents involving other witnesses happened not long after the alleged incident with M. Thus, *"[p]roximity in time makes the evidence more cogent, as it reduces the likelihood that the accused had changed his ways"*.

Although the Crown suggested that the accused engaged the witnesses in conversations about sex and made each feel propositioned to perform a sexual act, the Court noted that only one of the witnesses testified that the accused had engaged him in conversation about sex. Furthermore, "*[t]he suggestion that the witnesses felt propositioned is not evidence about the accused's acts or conduct. It is evidence about the witnesses' feelings*". Lastly, none of the witnesses testified that the accused had invited them to perform a sexual act. The Court noted a pattern of conduct may strengthen the case against the accused, but the evidence of the witnesses disclosed "*no similar act of sexual assault*".

The Court noted the "*glaring and significant dissimilarity in the proposed similar facts*" as *"none of the three witnesses allege sexual touching, invitation or assault*". Such dissimilarities "*dilute [the] probative strength of the proposed similar fact evidence*".

As concerns prejudice, the Court noted that the witness's evidence was of an "*inflammatory nature*". Such evidence "*may show that the accused had discreditable tendencies*", which "*may lead to a verdict based on prejudice*". There was also a concern that the witnesses' evidence would be a "*distraction for members of the jury, or a judge, from their proper focus on the charge itself*". Thus, "*[t]he introduction of such evidence would compound confusion and cause distraction, thereby aggravating prejudice*".

The Court concluded:

"*[t[he proposed similar fact evidence from each of the three witnesses, in my view, is negligible on the issue in question ... On the other hand, the risk of prejudice is great. It is likely that the evidence of any one of the three witnesses … may suggest to the jury that the accused acted inappropriately to the other students or had some propensity in respect of other male students. A jury may, as a result, be readier on that account to believe the worst of the accused in his conduct towards M. This is precisely the sort of general disposition reasoning that the similar fact exclusion rule was designed to prevent*."

Thus, given that the lack of similarities between the evidence of the witnesses and M on whether the accused had sexually touched them, the probative value of the witnesses' evidence was outweighed by the substantial risk of prejudice to the accused. The Court therefore dismissed the Crown's application.

This decision demonstrates the legal complexities inherent in such cases. An arbitrator might come to the same conclusion in a grievance arbitration. If there had been evidence of sexual touching with the other three students, the Court would be more receptive to allowing the evidence to be adduced.

School board to issue new access-to-information decision after taking unduly restrictive approach to initial request

In Order MO-2941; *London District Catholic School Board (Re),* [2013] OIPC No. 218, the Ontario Information and Privacy Commissioner (OIPC) held that the School Board (Board) unduly limited the scope of an access to information request dealing with concussion testing at a school. OIPC ordered the Board to issue an access decision based on an expanded understanding of the scope of the request.

The request to the Board came from the father (Appellant) of a student who suffered a concussion during a sporting event. While the Board granted access to records it viewed as responsive to the request, the Appellant felt that the Board narrowly interpreted the scope of the request. The appeal to OIPC therefore concerned whether the Board's interpretation of the scope of the request was correct.

The original request read as follows:

"I am requesting information and/or documentation dealing with concussion testing at [named school]. The search should include but not

be limited to invoices, tenders, cheques, financial entries and reports".

The Appellant took the position that the request included: results of concussion testing on his son; the incident report when his son suffered the concussion; concussion testing information for other school teams; a copy of the request for proposal sent out prior to hiring the concussion testing company; and a copy of the evaluation report summarizing the concussion testing process.

At mediation, the Appellant was informed that, although the Board believed the items were outside of the request, no other team underwent testing, no reports were provided, and no request for proposal was required. The Appellant maintained that all such items were within the scope of the request and requested the matter move to adjudication.

The Adjudicator noted that *"institutions should adopt a liberal interpretation of a request"*. As such, any ambiguity in the request should resolve in favor of the requester, while *"responsive"* records are those that *"reasonably relate"* to such a request.

In a letter to the mediator, the Board noted that the original request did not specifically mention the requester's son. Furthermore, such records would not be released without the consent of the student since he was of age at the time of the request. The Board also invited the Appellant to contact the school directly as many of the questions raised by the Appellant related to school operations. The Board argued that it was therefore *"unreasonable to expect the Board to make any inference that the requester was seeking additional and unspecified records about an unidentified individual (his son); which is outside the scope of the original request"*.

The Appellant took the position that a proper search was not conducted, that it was a broad request, and that he indicated he could be contacted for clarification. The Appellant also enclosed with his representations a sampling of emails to the school identifying his questions regarding his son.

The Board replied that, upon receiving the request, a Freedom of Information Coordinator (FIOC) opened a file. The FOIC receives and opens access to information requests *"to ensure file confidentiality and to protect the identity of the requester"*. Therefore, it is unreasonable to expect the FOIC would have knowledge or be aware of the communications about his son the requester may have had with other individuals or school staff. The Board also argued that the request was for general financial records, and did not identify any specific incidents or information about student safety.

The Adjudicator noted that:

"The school board interpreted his request to be limited to financial records pertaining to concussion testing at the named school, rather than a request for any record touching in any way on the topic of concussion testing at the named school, which would potentially have also included all records that addressed the appellant's specific questions relating to the appellant's son and even other students who may have suffered a concussion at the school".

The Adjudicator then decided as follows:

"considering all the circumstances, adopting a liberal interpretation of the request, in order to best serve the purpose and spirit of the Act and resolving any ambiguity in the request in the requester's favour, I find that the school board unduly limited the scope of the request".

The Adjudicator then ordered the Board to issue an access decision in response to the request, including *"all non-financial information and documentation dealing with concussion testing at the named school"*.

— KC —

Professional Development Corner

Friday, March 28, 2014 - KC LLP Professional Development Session

Special Education / School Operations / Student Discipline Session
at Dufferin-Peel Catholic District School Board

May 26-27, 2014

Osgoode PD – Student Discipline & Safety

October 20, 2014

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