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Edu-Law Newsletter —

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SCC confirms school board not liable for sexual assaults committed by employee

The Supreme Court of Canada in *E.D.G. v. Hammer*, [2003] S.C.C. 52, (SCC) has recently reviewed the application of the legal principles of fiduciary duty and non-delegable duty of school boards where their employees have committed sexual assaults against students.

E.D.G. in 1978, while she was in Grade 3, was given the task of cleaning black-board brushes in the boiler room, which was the domain of the school janitors. For a 2-year period starting in 1978, E.D.G. was subjected to approximately 20 sexual assaults committed by Mr. Hammer, a janitor in the school. These sexual assaults ended in 1980 when Mr. Hammer was transferred to a different school. E.D.G. did not report these sexual assaults and on only one occasion protested about the cleaning duty which had been assigned to her. Her teacher at the time dismissed her request to be assigned a different duty because she had not provided any reason for wanting a different job. The trial judge found that no board employees had any reason to suspect that Mr. Hammer was engaged in inappropriate behaviour with the students.

Mr. Hammer had no direct duties with the students of the school, and he was not subject to supervision by the principal, but was under the management of the operations manager, who was not on site all of the time.

E.D.G. brought a claim against Mr. Hammer and the school board, School District No. 44 (North Vancouver). She was successful against Mr. Hammer, but her claim against the board was dismissed both at first instance and by the British Columbia Court of Appeal. (The decision of the British Columbia Court of Appeal is reviewed in "Board Not Liable on the Basis of Non-Delegable Fiduciary Duty for Sexual Assault on Student", Education Law Newsletter, Vol. 7, No. 3, June 2001.)

E.D.G. initially made claims against the board based upon negligence, vicarious liability, breach of non-delegable duty and breach of fiduciary duty. Only her claims based on non-delegable duty and breach of fiduciary duty were appealed to the Supreme Court of Canada.

In its analysis of non-delegable duty, the Supreme Court framed the question to be answered as follows: "*Does it [the School Act] place school boards under a non-delegable duty to ensure that children are kept safe while on school premises, such that school boards are liable for abuse or harm inflicted by school employees upon school children while at school? Or are the duties it imposes more limited?*"

The court noted that the Act places a number of duties on school boards with respect to student health and safety. But, the court found that the Act falls short of giving school boards full responsibility for student welfare while on school board property. Therefore, the court held that "*the Act does not appear to impose a general non-delegable duty upon school boards to ensure that children are kept safe while on school premises, such as would render the board liable for abuse of a child by an employee on school premises*".

With respect to the issue of fiduciary duty, the court noted that both parties agreed that the board has a fiduciary duty towards its students. The parties, however, disputed the nature of that duty. The board argued that the duty owed is a parental fiduciary duty to refrain from harmful acts

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involving disloyalty, bad faith or a conflict of interest. E. D.G. argued that the duty was a duty to promote the "*best interests*" of school children, including a duty to ensure that no employee inflicts injury on a student.

The court rejected a broad fiduciary duty to act in the best interests of students. The court rejected the standard of "best interests" as creating a basis for liability for the following reasons:

"*The cases on the parental fiduciary duty focus not on achieving what is in the child's best interests, but on specific conduct that causes harm to children in a manner involving disloyalty, self-interest or abuse of power - failing to act selflessly in the interests of the child. This approach is well grounded in policy and common sense. Parents may have limited resources and face many demands, rendering it unrealistic to expect them to act in each child's best interests. Moreover, since it is often unclear what a child's 'best' interests are, the idea does not provide a justiciable standard. Finally, the objective of promoting the best interests of the child, when stated in such general and absolute terms, overshoots the concerns that are central to fiduciary law. These are, ... the avoidance of a conflict of duty and interest and a duty not to profit at the expense of the beneficiary*."

The Court commented that E.D.G.'s attempt to characterize the fiduciary duty owed by the board as a duty to ensure that no employee harms school children on school premises, was simply an attempt to frame the fiduciary duty owed as a non-delegable duty. The court stated that a fiduciary does not breach his/her or its duties by failing to obtain a certain result, the breach of a fiduciary duty requires fault. In the present case the court held that the only fault that could be found was that of the school janitor.

Thus, the court dismissed the appeal.

Had the court determined that the board owed a fiduciary duty to promote the best interests of the child, arguably the standard would be close to perfection. More importantly, what may be in a child's best interests may not be realistic. For example, one-to-one supervision for all children might be in their best interest to protect them from harm; however, this is certainly not a ratio that could be afforded by school boards. The decision of the Supreme Court has recognized that a fiduciary duty is owed to students, but the court has not redefined that duty in such a way as to commit school boards to a standard that is neither realistic nor definable. —

Teacher's claim for damages regarding injury from student with special needs denied

The Saskatchewan Court of Queen's Bench in *Kendal v. St. Paul's Roman Catholic Separate School Division No. 20*, [2003] S.J.N. 330, recently denied Kendal, a teacher, damages for personal injuries that she suffered at the hands of a special education student in her class.

The student was in Grade 4 and suffering from Asperger's syndrome, and struck his teacher, Kendal, in the head with an open-handed blow. The teacher claimed that the school board failed to provide a safe work environment, which included failing to provide sufficient staff training, failing to provide sufficient communication to staff to ensure students could be handled safely, failing to have the student removed from the school when it became apparent that his presence was a safety issue, and failing to provide sufficient equipment and facilities to safely address student behaviour.

The student's behaviours from time to time included kicking, biting, pinching, pulling hair, scratching, trying to strangle and hitting. Staff were often required to restrain him to prevent injury.

The incident at issue occurred when the student was restrained after having an episode of uncontrolled behaviour. It had appeared to staff that he had calmed down and therefore, the restraint was released, at which time he struck the special education teacher in the temple.

Counsel for the teacher argued that the injury was foreseeable and that the school should have acted to remove the student by either suspending, exempting, expelling, relocating him to another facility or arranging home schooling.

The court commented that pursuant to the *Education Act*, the school board was obliged to provide the student with an educational program consistent with his needs and abilities.

The court found that there was no evidence that a reasonable alternative accommodation was available. There were eight special-needs students in the school, which had a special-needs room available where teachers could work with students who were not in the regular classroom at a specific time.

The school board presented evidence that it had outside consultants available to staff and that the programs offered were similar to Ontario models that, according to the school board, were doing "quite well".

The school board's evidence was that the role of the special education teacher at the school was to implement the student's program plan, support his classroom teacher and provide individual instruction. The student had a teaching assistant assigned to him at all times and, although the student had mostly good days, on occasion it was necessary to restrain him and, in some circumstances, send

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him home.

The parent testified that staff were well informed about autistic children and were friendly and helpful.

The question before the court was whether the risk assumed by the school board was an unreasonable risk. The court commented that, "*the degree of risk that a reasonable person might tolerate will vary in direct proportion to the worthiness of the undertaking. The more highly valued the societal interest in the undertaking, the greater will be the acceptable risk.*" The court found that the "*notional reasonable person of ordinary prudence would accept an elevated level of risk rather than forego the exercise*" of teaching students with special needs. The court held that the school board did not breach the duty of care owed to its teacher.

In its analysis of the steps taken by the school board to ensure that staff had sufficient resources and training, the court found that there was no evidence that the "quiet room", which counsel for the teacher argued should have been provided by the school board sooner as a way to address the student's tantrums, did anything to address the student's behaviour. Rather, the court cited the one-on-one supervision, special education training provided to teachers, access to outside consultants, separate classroom that could be accessed by special education teachers and their students, individualized programs, and the reduced pupil-teacher ratio as effective strategies consistent with the requirements of the *Education Act*.

It is interesting to note that recently there have been suggestions by the Ontario Labour Relations Board investigators who investigate occupational health and safety complaints that school boards install quiet rooms to address the injurious behaviours that some students exhibit. Arguably, school boards should be examining the available evidence regarding the utility and effectiveness of such quiet rooms when addressing injurious behaviours exhibited by students with special needs. It may be, as found by the Saskatchewan Court, that resources would be better spent on different strategies. —

Claimants may be able to recover some legal costs in Human Rights claims

The Ontario Human Rights Tribunal recently addressed the issue of legal costs in the matter *Quereshi v. Toronto Board of Education*, [2003], HRTO 11, (Ont. Human Rights Tribunal).

This case arose out of an alleged act of discrimination, which occurred in October 1982, some 21 years ago. A Board of Inquiry, now called the Human Rights Tribunal, was convened in January 1987. The parties agreed that the issue of a remedy would be addressed at a subsequent hearing, if necessary. The Board of Inquiry rendered its decision in August 1989, and the school was found to have contravened the *Human Rights Code*. The school board appealed to the Ontario Divisional Court, which allowed its appeal. The Human Rights Commission then appealed to the Court of Appeal, which rendered a judgment in January 1997, restoring the original decision. Leave to appeal to the Supreme Court of Canada was sought by the school board and denied in September 1997.

Thus, in December 1997, the parties commenced a hearing to address the remedy. Subsequently, there was an attempt at mediation, which failed, and in October 1998 the Tribunal made a number of preliminary rulings in an attempt to focus the issues and expedite the hearing.

One of the issues before the Tribunal was the issue of the complainant's legal costs. The Tribunal held that it did "*not have authority to award costs for legal counsel pursuant to section 41(4) of the Code or on any other basis. ... However, the Board noted the breadth of the phrase 'make restitution' under subsection 41 (1)(b) of the Code and invited submissions on the issue of taking legal costs into account as one factor in assessing general damages*".

The Tribunal noted that subsection 41(1)(b) of the Code authorizes the Tribunal to direct respondents to "*make restitution including monetary compensation, for loss arising out of the infringement*". In a previous decision, the Tribunal held that: "*... a Board of Inquiry is entitled to award non-pecuniary, intangible damages arising out of the infringement of the complainant's rights under the Code. It is an award to compensate for the intrinsic value of the infringement of the complaint's rights under the Code; it is compensation for the loss of the right to be free from discrimination and the experience of victimization. There is no ceiling on the amount of general damages*".

The complainant was claiming damages in the amount of $250,000.00, which was broken down to include $100,000.00 for intangible consequences, $125,000.00 for legal fees and disbursements, and $25,000.00 for the complainant's preparation time.

The Tribunal commented that an award for specific costs for legal disbursements and counsel fees was precluded by prior decisions, but personal expenses, including legal fees and disbursements incurred by a complainant could be taken into account as one factor in assessing general damages.

The Tribunal awarded general damages of $10,000.00 with respect to the complainant's legal costs and disbursements as a way to take into account that the Complainant incurred substantial

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legal expenses. The Tribunal, however, denied the $25,000.00 claim made by the complainant with respect to her preparation time, commenting, *"there appears to be no avenue available for awarding compensation based on the consequences of the proceedings themselves"*.

The Human Rights Tribunal appears to be expanding the heads of damage that may be considered in general damages. As well, the amounts of the claims being made by complainants and the award being awarded by the Tribunal also appear to be escalating. Certainly, a school board's best option is to do everything possible to avoid a complaint under the Code. —

No cause of action in petition to have election declared invalid

In *Moss v. Rocky Mountain School District No. 6*, [2003] B.C.S.C. 331, the Rocky Mountain School District brought an interim motion to strike a petition brought by a number of electors pursuant to the *Local Government Act* in British Columbia to have the election of trustees with respect to School District 6 (Rocky Mountain) held on November 16, 2002, declared invalid. The school board argued that there was no reasonable claim disclosed by the petitioners. The court agreed.

Mr. Moss, a former teacher with the school board, filed nomination papers for a position as school trustee on October 1, 2002. The period for nominations closed on October 11, 2002. Mr. Moss was aware that, under the *School Act*, employees of a school board are disqualified from being nominated unless they give notice of their intention to run and take a leave of absence from their employment (which is the same in Ontario).

Mr. Moss had entered into discussions with the school board in June 2002 regarding his resignation, but for reasons unrelated to his political interests. The parties agreed that Mr. Moss would resign effective as of June 30, 2002, upon a written settlement being finalized. The school board signed the written agreement on October 9, 2002; however, it was not presented to Mr. Moss until October 16, 2002.

The school board took steps under the *Local Government Act* to challenge Mr. Moss' nomination and a hearing was set for October 17, 2002.

Mr. Moss maintained that he had mailed a letter on September 30, 2002 advising of his intention to run for a position as school trustee. The school board indicated that they had never received such a letter.

The result of the hearing, which Mr. Moss was advised of on the day before he was to appear, was that his nomination was declared invalid because he was still an employee of the school board and had not given his notice of intention to run as required.

The position of the electors in this matter was that the entire election should be declared invalid because the electorate was not given an opportunity to vote for Mr. Moss because the school board acted wrongfully in delaying the final settlement regarding his resignation in order to thwart his candidacy. The electors argued that, in accordance with section 145 of the *Local Government Act*, the election was not conducted in good faith and the court should declare it invalid.

The court held that the electors failed to plead the basis of the alleged wrongdoing that led to the alleged invalidity of the election process. Further, the court held that the electors were estopped because the issue had already been determined by the court on the application by the school board to have Mr. Moss' nomination declared invalid. The court stated that had Mr. Moss sought an adjournment of the initial application brought by the school board in order to seek legal counsel, the result of the school board's application might have been different. However, Mr. Moss did not ask for an adjournment and he did not submit affidavit evidence supporting his position.

Had Mr. Moss understood the importance of his resignation from the school board in order to be able to run as a trustee, two applications to the court could have been avoided. —

School closure in B.C. upheld

In *Civitarese v. Kootenay-Columbia School District No. 20*, [2003] B.C.J. No. 1953, the British Columbia Supreme Court upheld a decision made by the Kootenay-Columbia District School Board to enact a by-law which, in effect, closed Trail Middle School. The applicants claimed that the decision was patently unreasonable, as the board had not complied with the "School Opening and Closing Order" of the Minister of Education, nor with their own procedures as outlined in their School Closure Policy.

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In British Columbia, the *School Act, R.S.B.C. 1996, c. 412*, provides school boards with the authority to close schools, subject to Ministerial Orders. This authority is found in subsection 73(1)(a) which states:

"(1) A Board may

(a) subject to the orders of the minister, open, close or reopen a school permanently or for a specified period of time".

The court noted:

"The board's own policy required them to 'make available' certain information for the closure of a specific school. However, the board found itself in a situation where it did not know which school it would be closing. Budget meltdowns, due to declining enrolment and reductions in government funding, had forced the board to consider closing a number of schools throughout the district".

The board held numerous public consultations to address school closures in general. The decision to close Trail Middle School was made at a public meeting following an in-camera session where the board had agreed to give first, second and third readings to a series of school closure by-laws.

The court first dealt with the issue of the standard of review to be applied, and explained that the scope would have to be narrow as the court holds no jurisdiction to review policy decisions.

The court referred to *Ross v. Avon Maitland District School Board*, [2000] O.J. No. 5680, where Justice Campbell stated:

"It is not for the Court to say whether the decision to close the school was right or wrong. The narrow mandate of the Court is to inquire whether the school closing is authorized by law, whether there was adequate public consultation as required by law, and whether the decision is taken through a process that is procedurally fair".

Under this standard, the court first looked at the issue of public consultation and the duty of procedural fairness outlined in section 69 of the *School Act*, which reads as follows:

"(1) Subject to subsection (2), the meetings of the Board are open to the public.

(2) If, in the opinion of the board, the public interest so requires, persons other than trustees may be excluded from the meeting".

The court found that the board was clearly aware of its duty to hold public meetings where substantive decisions were made. Despite the absence of minutes documenting the board's decision to go in-camera, and an "appearance that might raise suspicion in the mind of someone unhappy with the outcome", there was no "serious question" as to whether the board's decision was in fact made in public. Therefore, the court found that the applicants had not satisfied their onus sufficiently to quash the by-law on this ground.

Under subsection 68(4) of the *School Act*: *"The board may not give a by-law more than 2 readings at any one meeting unless the numbers of the board who are present at the meeting unanimously agree to give the by-law all 3 readings at that meeting".*

The minutes from the in-camera meeting recorded the vote as "carried", and there was no indication of any dissenting votes. The court found that the motion was passed unanimously, recognizing that the accepted practice of the board was to record dissenting votes on motions.

The board is authorized under the *School Act* to close schools subject to Ministerial Orders. In this case, an order mandated the inclusion of a "public consultation process with respect to permanent school closure".

The court found that the board had complied with this order by implementing their own policy, which included a public consultation process. The contents of such a policy were, *"left completely up to the board, presumably to enable it to craft a policy that will be responsive to local conditions".*

The court referred to a number of specific allegations made by the applicants, where they had argued that the board had in fact not followed the procedures outlined in their policy.

The court found the board had not infringed a 60-day "public consultation period" provided for within their policy, because this period did not commence until Trail Middle School had been added to the list of schools slated for closure.

The policy mandated "a public forum", and the board held at least six public consultation sessions. Though the closure of Trail Middle School was not specifically identified at a number of these meetings, the court found that this was reasonable because of the difficulties facing the board with the large number of schools under consideration.

The dynamic of the consultation process and the magnitude of the problem facing the board was enough to satisfy the court that the intention behind the provision in the policy requiring meaningful consultation had been satisfied.

The board policy required that they *"make available... pertinent facts and information".* The court found that the board had fulfilled this obligation by preparing an extensive information package which was used at the public consultation meetings.

Again, the court pointed out that the magnitude of the problem that the board was facing, with the sheer number of schools being considered for closings, made it impossible for the board to give out specific information.

Though the policy requires that written notice be given to students and parents of a closing, there was no prejudice to the applicants in the notice being given though newspapers, websites, and through the information handed out at the consultation meetings. This, combined with the fact that there were at least six opportunities for parents and students to attend and

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School closure in B.C. ...
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be heard at public meetings *"were sufficient to bring the issue of the potential closure of the Trail Middle School to any reasonably interested member of the public including parents and students"*.

From this, the court found that the decision made by the board in no way approached the standard of patently unreasonable, and the application was therefore dismissed with costs.

The principles enunciated in this case are consistent with the decisions in other Provinces, including Ontario. —

No duty of fairness when disposing of surplus property

The issue before the Divisional Court in *Humber Heights of Etobicoke Ratepayers Inc.* v. *Toronto District School Board*, [2003] O.J. No. 1381 was whether the Toronto District School Board owed the ratepayers association a duty of fairness before leasing a parcel of school board property.

A school belonging to the board was closed in 1982. Since the school closure, the surrounding property was used by residents of the neighbourhood as a park. The board approved a lease to a company interested in demolishing the school and replacing it with a retirement community. The ratepayers challenged the board's approval of the lease on the grounds that the board owed the ratepayers a duty of fairness and should not have approved the lease without giving the ratepayers notice and an opportunity for consultation.

The court reviewed the requirements imposed on the board by Regulation 444/98 with respect to disposition of board property. The court found that the regulation did not impose a duty on the board to provide public notice or to consult with the public before disposition.

The ratepayers relied on what they called a general duty of fairness owed by the board to local residents, as well as a board policy regarding the leasing of surplus property, which had been adopted by the board in May 2000. The board policy required the board to follow certain guiding principles when considering a lease, including informing and receiving feedback from the local community regarding potential alternative uses for the school facilities. The court made it very clear that the board's policy was voluntarily adopted and was not required by statute or regulation.

In determining whether the board had breached a general duty to act fairly the court considered the following factors: *"(i) the nature of the decision to be made by the administrative body; (ii) the relationship existing between that body and the individual; and (iii) the effect of the decision on the individual's rights"*.

The ratepayers argued that the school property was a community asset and that, because of the importance to the community of the green space surrounding the school, the board owed a common law duty to inform the public about what it was proposing to do and a duty to hear from the community. The board argued that, while the ratepayers may have a variety of interests in the school site, they have not, as a result of these interests, acquired rights to the property.

The court agreed that the statutory scheme did not include a requirement for public notice and consultation. However, the court also examined whether the board imposed a duty of fairness on itself when it created a policy with respect to the lease of board property.

The court held that the policy was a discretionary guideline which was not required by the *Education Act* or Regulations and, in the absence of requirements to create a policy or Ministry of Education guidelines, the board was entitled to adopt any policies it desired and to deviate from those policies.

The court also examined whether the ratepayers had legitimate expectations with respect to the board's policy. The principle of legitimate expectations was defined by the court as involving *"the proposition that when a public authority has promised to follow a certain procedure – either expressly or through the existence of a regular practice that a claimant can reasonably expect [it] to continue"*. Those who wish to rely on the principle of legitimate expectations must show that they had knowledge of the procedure or policy and that they relied on it.

In the present case, the ratepayers could not provide evidence that they knew of the policy and had relied on it. The court held that, absent such knowledge and reliance, the board was free to deviate from its policy. Thus, the court held that there was no duty owed to the ratepayers.

As a general principle, school boards should be careful in establishing policies and procedures that are not required by Statute to avoid imposing requirements on the board which may be difficult to comply with. It is conceivable that such requirements could constitute a duty to ratepayers. Consequently, boards should be cognizant of this concern, and the policies and procedures should be carefully crafted to avoid implications not anticipated by the Board. —

Collection, retention and disclosure of personal information

The following article examines recent decisions of Privacy Commissioners across Canada with respect to complaints involving school boards.

In *Privacy Complaint No. MC-020012-1* against the Toronto District School Board, it was alleged by the complainant (the student's mother) that the principal had wrongfully disclosed issues involving the student regarding "*program planning, school problems, assessments he wanted done, his intent on removing [the student] from his classroom and school*" to the student's grandmother.

The student was a Grade 1 pupil with special needs. The student's grandmother was recorded by the complainant as a school contact, and she participated with the school in addressing the student's behavioural issues.

The board argued that the complainant had provided consent to share personal information with the individuals listed as school contacts and, therefore, the disclosure was in compliance with the requirements of the Act. Further, the board argued that the disclosure was made in order to arrange the best placement for the student, which was disclosure that the complainant "*might reasonably have expected*", and was therefore, consistent with section 33 of the Act.

The Commissioner rejected the argument that the disclosure was on consent because the student's grandmother was a school contact. The Commissioner did accept the board's second submission that the disclosure was permissible because the grandmother was directly involved, along with the school authorities, in dealing with the student's behavioural issues. The Commissioner found that it was not unreasonable to assume that both the complainant and the grandmother may occasionally have "*some contact or exchange*", relating directly to the child's placement and educational program. In view of this, and because "*school authorities must be permitted a measure of discretion in making judgment calls in certain circumstances*," the Commissioner held that the disclosure was not so egregious as to fall outside of the discretion to be provided school authorities, and was therefore, in accordance with section 32(c) of the Act, which permits disclosure for the purpose for which the information was compiled or for a consistent purpose.

While the Commissioner may give school authorities a measure of discretion with respect to student information that is shared for the purpose of making a decision in the best interests of a student, principals and teachers must still be very cautious and not disclose information to anyone but the student's custodial parents, without their explicit consent.

Administrators must also be very cautious to disclose only the information that is necessary for school purposes. In *Report F2003-IR-002 (Livingstone Range School Division #68) [2003] A.I.P.C.D. No. 14*, the Alberta Privacy Commissioner received a complaint about a letter sent by a school to school students, staff and parents containing details of the death of a student of the school. The complainants disagreed with the amount of personal information disclosed in the letter.

The Commissioner found that the purpose of the letter was to "*provide information to staff and [to] enable them to attend to the needs of the students, to communicate the resources available to assist students in coping with this situation; and to provide advice to parents as to how they could assist their child in this situation.*" Thus, the disclosure of the student's death was held to be in accordance with the Act because it was necessary for the "*management of the school and the well being of the students.*" However, the Commissioner held that the extent of disclosure was not authorized by the Act, and that the details disclosed were not needed.

It is important for school administrators to remember that when disclosure of personal information is required, only the minimal necessary information should be disclosed, even when it might be useful to provide additional detail, this should be avoided. Moreover, as the next case illustrates, information that might be collected must be stored in a secure manner, with access available to only those who require such access.

In *Report H2003-IR-001 & F2003-IR-003 (Alberta (Mental Health Board) (Re)) [2003] A.I.P.C.D. No. 23*, the Alberta Commissioner received a complaint that the Alberta Mental Health Board had disclosed health information in contravention of the *Health Information Act*, and that the Northern Lights School Division # 69 had collected that information in contravention of the *Freedom of Information and Privacy Act*.

The complainant was admitted to hospital for an attempted suicide and a suicide-risk assessment was conducted. Some of the collected information was subsequently disclosed to the school division, where the complainant attended school.

The Commissioner held that the Alberta Mental Health Board had discretion to disclose "health information" and that providing a suicide risk assessment to the school division was a proper use of this discretion to ensure the complainant was monitored. The Commissioner stated, "*a health professional should have sufficient latitude to exercise professional judgement in deciding when health information should be disclosed to provide continuing treatment and care that will assist in protecting the student.*"

The Commissioner also held that the collection of information by the school division was "*needed to ensure a safe and caring environment for the complainant*".

However, the Commissioner added that by inputting the information into the student computer database, the school division had not made reasonable security arrangements to protect the personal information. The Commission therefore, made a number of recommendations for better protection of this information, including, that the school division assess and employ controls for access to the student computer data base; establish policies and procedures for the protection of the "personal information" within the student computer data base; provide confidentiality, privacy and security training to all staff members with access to the student computer data base information; and, finally, to employ reasonable security arrangements to protect this "personal information" from unauthorized access.

Much of the sensitive student information contained in a student's OSR may also be accessed from the student databases maintained by school boards; therefore, it is important for school boards to ensure that only those who require access to this information may access it. Moreover, similar to the principle discussed above that only the minimal necessary information should disclosed, only the minimal necessary information should be collected and retained. —

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Professional Development Corner

November 5, 2003

Edu-Law Consulting Services Limited
hosted by Keel Cottrelle LLP

"**Special Education Session**"

Capitol Banquet Centre, Mississauga, Ontario

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November 12-14, 2003

Edu-Law Consulting Services Limited

"**Mediation & Negotiation Training Program**"

Avon Maitland D.S.B., London, Ontario

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March 29, 2004

Osgoode Hall Law School of York University

"**Current Challenges in Special Education Law**"

Osgoode Professional Development Centre, Toronto, Ontario

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