KEEL
COTTRELLE LLP
Barristers and Solicitors

36 Toronto Street | Suite 920 | Toronto ON | M5C 2C5
416-367-2900 | Fax: 416-367-2791

Education Law Newsletter

Fall 2019

IN THIS ISSUE —

HRTO dismisses application: siblings not entitled to attend same school 1

HRTO declines to grant interim remedy of full-time ABA to expelled student 2

HRTO: student's placement decision not a "one-time accomodation" 3

CFSRB quashes Board's expulsion decision based on assessment of mitigating and other factors 4

Court held Board not negligent after student injured in physical altercation 5

IPC upholds Board's decision to withhold anonymized course marks of Arrowsmith Program students 6

Legislative & Policy Update ***NEW*** 7

HRTO dismisses application: siblings not entitled to attend same school

In *H.K. v. Toronto District School Board*, 2019 HRTO 190, the Human Rights Tribunal of Ontario (Tribunal) dismissed an application on Summary Hearing arising from the respondent school board's denial of the applicant's request to place his younger daughter in the same school as his older daughter. The older daughter had been placed in a program for intellectually gifted students through an Identification, Placement and Review Committee (IPRC).

The applicant and his family lived outside the Middle School's catchment area. The applicant had requested that his younger daughter be allowed to attend the school through the optional attendance program. He argued that, it was inconvenient to have his children at different schools and that the siblings would miss a bonding opportunity if they could not walk to school together. The respondent, the Toronto District School Board (Board) had denied the request because the policy governing the optional attendance program had a provision excluding students placed through the IPRC process. Absent that exclusion, the applicant's younger daughter would have been considered a first priority because she had a sibling at the school.

The applicant alleged discrimination on the basis of disability, family status, and association with a person identified by a prohibited ground of discrimination, contrary to the *Human Rights Code*, RSO 1990 c H19, as amended (the *Code*).

With respect to disability, the applicant submitted that his older daughter was entitled to protection under the *Code* as a student with special education needs, and that it was irrelevant that she was identified as intellectually gifted rather than as a student with a disability. The Tribunal disagreed, noting that identification as an exceptional student through an IPRC does not automatically engage the protection of the *Code* or transform a student without a disability into a student with a disability.

The Tribunal also rejected the applicant's arguments on the ground of family status. Notwithstanding the applicant's assertion that the *Code* should protect sibling relationships, the Tribunal noted that the *Code* is clear in defining family status as "the status of being in a parent and child relationship" (paras. 14-15).

Lastly, the applicant's arguments with respect to discrimination because of "relationship, association or dealings with a person or persons identified by a prohibited ground of discrimination" also failed, since the Tribunal found that there was no prohibited ground of discrimination engaged in this case.

As a result, the Tribunal dismissed the application on the basis that it had no reasonable prospect of success. It also dismissed the application for delay as it was filed more than one year after the alleged discrimination. Despite the applicant's submissions that it was unfair to apply the *Code*'s one year limitation period to a child, the Tribunal confirmed that there was no extended limitation period under the *Code* for minors.

This case confirms that the applicant must be able to establish that they have a characteristic that constitutes a prohibited ground under the *Code* in order for an application to proceed to a full hearing.■

HRTO declines to grant interim remedy of full-time ABA to expelled student

The Human Rights Tribunal of Ontario (Tribunal) recently declined to grant, an interim remedy to a student who was expelled from his school. The applicant sought a return to school with the provision of full-time Applied Behaviour Analysis (ABA) therapy. The application was filed under s. 34 of the *Human Rights Code*, RSO 1990, c H19 as amended (*Code*). The applicant alleged, among other things, discrimination by the respondent, Upper Grand District School Board (Board), with respect to the provision of educational services because of disability.

Following his expulsion, the applicant was offered a new school placement. However, as he was not prepared to consider a return to school without ABA support, he instead began receiving ABA programming at Monarch House at the initiative of his parents.

The Tribunal's first Interim Decision (*G.K. v. Upper Grand District School Board*, 2019 HRTO 173) addressed the applicant's first Request for an Interim Remedy ("First Request"), in addition to a number of procedural issues. The applicant sought the interim remedy of being returned to school immediately with the provision of full-time ABA to address both his learning and co-morbid behavioural needs. The applicant sought to have this interim measure at his previous school, or alternatively at his new school placement. In the further alternative, he requested that the respondent purchase a placement for him at a private school that provides such services.

The Board submitted that it had accommodated the applicant more than adequately at his previous school, and that after his expulsion he was immediately placed at a new school where he would continue to receive an education with the appropriate supports. The Board regarded the applicant's request for full-time ABA services as unreasonable and inconsistent with the school board's legal obligations.

In refusing to grant the First Request, the Tribunal emphasized the extraordinary nature of interim remedies as "they constitute an order to do, or refrain from doing something, in the absence of a finding that the *Code* has been violated" (para. 23). Moreover, the Tribunal stated that it is more likely to award a requested interim remedy that would preserve the status quo for the parties, rather than create a new state of affairs. In this case, ordering the respondent to provide the requested accommodation of full-time ABA therapy for the applicant as an interim remedy would create an entirely new state of affairs and would essentially provide the applicant with the remedy he ultimately sought without demonstrating that not providing it amounted to a breach of the *Code*.

The Tribunal concluded that a full hearing would be necessary in order to determine whether the applicant required the requested accommodation in order to have meaningful access to an education. Such a determination could only be made based on a highly individualized detailed assessment of the applicant's needs.

The Tribunal also distinguished the circumstances from those in *R.B. v. Keewatin-Patricia District School Board*, 2013 HRTO 130, which the applicant relied on to state that excluding a child from school causes "irreparable harm". The Tribunal noted that in that case, the student had been excluded from school in accordance with section 265(1)(m) of the *Education Act*, RSO 1990 cE2, whereas in the case at hand the applicant was expelled from his school and provided with an alternative school placement with the previous accommodations.

The applicant subsequently brought a second Request for an Interim Remedy ("Second Request") which was the subject of the Tribunal's second Interim Decision (*G.K. v. Upper Grand District School Board*, 2019 HRTO 459). In short, the applicant framed the Second Request as a transition plan to get him back into school. This plan would include half-day attendance by him at school and half-day attendance at Monarch House, 5 days a week, with a tier 3 ABA program implemented at both locations, involving collaboration with the respondent's

personnel. Monarch House was named as a third party that would determine, direct and mostly handle the delivery of ABA services.

The Tribunal dismissed the Second Request, concluding that the remedies it sought were substantially the same as those asked for in the First Request, as well as in the final remedy set out in the Application. The Tribunal found that the applicant had not established a substantial change in circumstances since the dismissal of his First Request to justify the Tribunal to consider a second Request for Interim Remedy. Although the applicant had cited some "new facts" in support of his Second Request, the Tribunal concluded that they could not be considered facts until the evidence could be assessed on a full hearing. Overall, the Tribunal determined that the applicant's Second Request had the appearance of a reconsideration request, which are only available for final decisions.

The Tribunal also noted that it had no authority to make remedial orders that include directions to a third party (in this case, Monarch House).

These decisions confirm that the Tribunal will be unlikely to grant an interim remedy that would create a "new state of affairs" for the parties in the absence of a finding, through a full hearing, that the *Code* has been violated. A determination of accommodation with respect to meaningful access to an education requires an individualized assessment. ■

HRTO: student's placement decision not a "one-time accommodation"

In an Interim Decision, *J.L. v. Greater Essex District School Board*, 2019 HRTO 896, the Human Rights Tribunal of Ontario (Tribunal) addressed the issue of whether a series of alleged incidents of discrimination within the education context could be reviewed together, bringing the application within the one-year limitation period under the *Human Rights Code*, RSO 1990, cH19 (*Code*). The Application was filed under s. 34 of the *Code*, and alleged discrimination with respect to goods, services and facilities because of disability in respect of education.

The allegations contained in the Application began with the decision of the respondent, Greater Essex County District School Board (Board), to place the applicant, a secondary school student, in the respondent's Skills To Enhance Person Success (STEPS) multiple exceptionality classroom in February 2010. The applicant's parents believed that the applicant's learning needs would be better accommodated through a placement focused on the applicant's Autism Spectrum Disorder (ASD). However, they were unsuccessful in appealing the placement and the applicant remained in the STEPS classroom until his high school graduation in 2015.

The applicant submitted to the Tribunal that allegations of incidents of discrimination taking place between January 2013 to June 2015 constituted a series of incidents, culminating in a final alleged incident that took place in February 2015, bringing the series of incidents within the one-year time limit. The Board, on the other hand, submitted that there was a single allegation of discrimination in respect of the February 2010 IPRC decision to place the applicant in the STEPS program, and that the subsequent allegations were simply the continuous effect on the applicant being placed in that classroom. Accordingly, the Board submitted that the applicant's claim crystalized in February 2010 and that the entire Application ought to be dismissed for delay.

The Tribunal noted that "in order to constitute a series of incidents within the meaning of s. 34 of the *Code*, the incidents must be thematically related and occur in close temporal order or succession." (para. 15) In this case, the applicant grouped the allegations into four thematic categories:

1. The respondent's failure to provide and maintain effective supports (i.e. ABA);
2. The respondent's failure to understand the applicant's disability-related behaviours led to an increase in the number of violent incidents being reported;
3. The failure to provide access to meaningful education by limiting the applicant's social opportunities, community outings and cooperative experiences; and
4. The failure to accommodate the applicant's needs by removing him from his classroom and placing him in an environment that was not supportive of his disability-related needs.

The Tribunal declined to dismiss the Application for delay, and instead found that the alleged events after January 1, 2013 constituted a series of events within the meaning of s. 34(1)(b) of the *Code*. The Tribunal focused on the evolving needs of a student within the context of the *Education Act*, RSO 1990, cE2, as amended, and the alleged deterioration of the applicant's abilities and behaviours throughout the relevant period. The Tribunal held these could not be viewed as the effects of a single placement decision made by the respondent at the time the applicant entered high school; rather, the requirement of continual assessment and review entailed fresh steps to accommodate those changes as they are observed and brought to the respondent's attention.

The Tribunal emphasized that the educational context is not static, particularly where a student remains enrolled

in the school board with an ongoing obligation to accommodate and provide meaningful access to education. Therefore, a decision respecting a student's placement is not a one-time accommodation that crystalizes at any one Individual Placement Review Committee (IPRC).■

CFSRB quashes Board's expulsion decision based on assessment of mitigating and other factors

In *D.D. v. Renfrew County District School Board*, 2019 CFSRB 21, the Child and Family Services Review Board (CFSRB) overturned a decision of the Renfrew County District School Board (the Board) to expel A.D. (the Pupil) from all the schools of the Board. The Appellant was the Pupil's mother and the appeal had been filed under section 311.7 of the *Education Act,* RSO 1990, c E2, as amended (the *Act*).

The Pupil was 15 years old at the time of the expulsion and was attending a secondary school at which he was one of approximately 10 black students out of a total population of 750 students.

The Principal had been asked by a teacher to investigate an allegation that the Pupil had posted a rap video on his personal YouTube channel, which was vulgar, homophobic and threatened violence against some named students and a teacher. The Principal initiated an investigation and contacted the parents of the named students as well as the Appellant. At the recommendation of a police officer who attended the school and after some initial reluctance on the part of the Appellant, the videos were taken down the following day. About a week later, the Principal issued a letter to suspend the Pupil for 20 days as she continued her investigation. A Violence Threat Risk Assessment (VTRA) was conducted, which determined that the Pupil was designated a "medium risk".

The Principal recommended that the Pupil be expelled from all schools of the Board.

The Discipline Committee of the Board subsequently supported the Principal's recommendation that the Pupil be expelled from all schools of the Board. Following the expulsion, the Pupil was taken by his parents to a psychologist, who completed a report (the Psychological Assessment Report) which identified that the Pupil's profile met the criteria for a diagnosis of Autism Spectrum Disorder (ASD). The Psychological Assessment Report was entered into evidence at the CFSRB appeal and both parties agreed to accept its findings as expert evidence.

The Pupil, in his written statement to the CFSRB, did not deny that he had posted the videos, but stated that he posted them for fun and did not intend to scare people. He also stated that other students frequently said "awful things" to him about his race. The Appellant also stated that her son was subject to frequent bullying related to his race and made "diss-raps" as a way of handling difficult things and his feelings.

The CFSRB noted that it held a hearing *de novo* and not a review of the principal's investigation and/or decision of this Discipline Committee. As a result, direct evidence must be called. The CFSRB described its role as follows: "to determine whether the conduct at issue jeopardised safety and reasonably justified expulsion pursuant to the statutory provisions of the Act."

The first question in this appeal was whether an infraction occurred under section 310(1) of the *Act*. That section requires a Principal to suspend a pupil if he or she believes that the pupil has engaged in certain listed 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", including any activity listed in s. 306(1) that is motivated by bias, prejudice or hate based on sex, sexual orientation and other listed factors. The CFSRB accepted that the videos, which threatened harm and used homophobic language, were activities constituting an infraction of the Code of Conduct which would result in a suspension in accordance with the *Act*.

The second question was whether the activity took place at school, at a school-related activity or would have an impact on the school climate. The CFSRB concluded that the posting of the videos had an impact on the school climate since they named and threatened potential harm to students and teachers of the school.

The CFSRB therefore accepted that the activities of the Pupil were serious enough to result in a mandatory suspension, and turned next to consider the mitigating and other factors under sections 2 and 3 of O. Reg. 472/07 to determine whether they mitigated against an expulsion or not. The CFSRB found several mitigating factors to exist in this case, including the following:

- The Pupil's limited ability to foresee the consequences of his actions and to control his behaviour, especially when frustrated or under attack (as supported by the findings in the Psychological Assessment Report);
- Lack of evidence that the Pupil's presence would create an unacceptably high risk to the actual safety of others at the school going forward, despite the fear his actions had generated in others (this was also supported by the findings of the Psychological Assessment Report);

- The failure of the Board to provide progressive rather than punitive discipline, as the Pupil's several suspensions during his school career had not resulted in any significant follow up interventions or corrective steps;
- The racial harassment experienced by the Pupil;
- The significant impact of the expulsion on the Pupil's ongoing education due to the limited nature of the Board's program for expelled students which would extend the student's schooling an additional year;
- The inadequacy of the Pupil's Individual Education Plan (IEP) and the late diagnosis of ASD after the expulsion ; and
- The likelihood that the expulsion would result in an aggravation or worsening of the Pupil's behaviour without the support provided through counselling if he feels that he is unfairly punished.

As a result, the CFRSB quashed the Board's expulsion decision, directed that the record of the expulsion be expunged from the Pupil's OSR and the Board's records. Acknowledging that identification and placement issues were beyond the purview of the CFSRB on an expulsion appeal, the CFSRB nonetheless recommended that the Board convene an Identification Placement Review Committee for the Pupil and develop an appropriate updated IEP.

This case is instructive as it demonstrates that boards should carefully consider any mitigating factors when contemplating an expulsion decision. This case also serves as a reminder that boards should use progressive rather than punitive discipline measures where appropriate, and undertake follow up interventions and corrective steps where necessary. It is also notable that the CFSRB considered the nature of the program for expelled pupils as a factor mitigating the discipline. ■

Court held Board not negligent after student injured in physical altercation

In *Tilli v. Deponte*, 2019 ONSC 1783, the Plaintiff brought an action for recovery of damages for personal injuries sustained at her high school as a result of a physical altercation with the defendant another student. The Hamilton-Wentworth Catholic District School Board (Board) was also named as a defendant, on behalf of the teachers of the school. The Plaintiff alleged that the Board had been negligent by providing inadequate supervision to prevent the incident from occurring.

The first issue was the liability between the students. The Plaintiff and Defendant, who were in grade 10 at the time of the incident, each gave varying accounts of how the incident occurred. In short, the Plaintiff alleged that the Defendant started the physical altercation for no apparent reason and intentionally banged the Plaintiff's head on the floor. The Plaintiff also pointed out that the Defendant pled guilty to criminal charges arising from this incident and did not appeal her suspension from school. The Defendant's position was that the Plaintiff had been calling her names and was the first to initiate physical contact, and that the Defendant did not bang the Plaintiff's head against the floor. The Court found some credibility issues on the part of the Plaintiff and the Defendant, as well as some other student witnesses. However, the evidence was consistent in that there were no teachers in the immediate vicinity where the fight occurred. The Court concluded that the Defendant was 60% responsible for the damages inflicted on the Plaintiff, and that the Plaintiff was 40% responsible for her own injuries by calling the Defendant names and thus provoking the confrontation.

On the other hand, the Court found no liability on the part of the school, teachers, or Board.

The Plaintiff's primary argument was that there was an inadequate supervision policy for the periods in between classes, and in the alternative, if the supervision policy was adequate, that there was a failure of its implementation at the time of the incident. The evidence given by teachers and vice-principals on behalf of the school confirmed that there were only three-minute periods between classes, and while there is a schedule of supervision, there is no formal supervision of hallways during these three-minute periods because the hallways are full of teachers going from one classroom to another. They confirmed that since this incident occurred during one of the three-minute transition periods, there would not have been any specific supervision of the hallway at that time. The Court accepted evidence indicating that during the relevant transition period, there were 38 teachers transitioning in the hallway where the incident occurred, and that at least 16 of them would have passed by the area of the incident, but that such an altercation may be very hard for a teacher to see given the large number of people in the hallways during a transition period.

The Court confirmed that the Board's standard of care is that of a careful and prudent parent, and in this case, "that of a parent of 15 year old teenagers" who did not have prior discipline issues and would not be constantly supervised by a careful parent. There were many measures in place: the school had a supervision policy, surveillance cameras, and numerous teachers circulating in the hallways during the three-minute periods between classes. The school had also made all students, including the Plaintiff and the Defendant, well aware of its zero tolerance policy for violence. This incident was a spontaneous event that could have perhaps been prevented "[o]nly by having a teacher posted in the exact area of this incident, at the very time

it occurred". The Court found that such a standard would not be reasonable, and that there was no evidence that the school's supervision policy fell below the accepted standard of care or what was common in other schools. As a result, it dismissed the action against the teachers and school board with costs.

This case confirms that boards must meet a standard of care "of a careful and prudent parent" which will vary based on the factual circumstances including the age of the student. In any event, boards should take care to create and implement adequate supervision policies. ■

IPC upholds Board's decision to withhold anonymized course marks of Arrowsmith Program students

In *Toronto Catholic District School Board (Re)*, 2019 CanLII 17538 (ON IPC), the Information and Privacy Commissioner (IPC) made an interim order upholding the decision of the Toronto Catholic District School Board (Board) denying access to certain records requested under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*).

The Appellant had requested data and course marks from students enrolled in the Arrowsmith Program, the traditional special education programs, and non-special education courses. Specifically, he had sought a spreadsheet setting out a personal identifier, a school identifier, the program enrolled in, and individual marks for each course for each reporting period. The Appellant had sought this information for the purposes of a comparative study on the effectiveness of the Arrowsmith Program versus traditional special education methods for remediating learning disabilities. He had also indicated that he wanted all student identifiers and school names anonymized.

The Appellant appealed the Board's decision denying access to the requested records pursuant to the mandatory personal privacy exemption at section 14(1) of *MFIPPA*.

Given that the information had been requested for purposes of comparison of the programs, the adjudicator decided this interim order solely on the basis of the records relating to the Arrowsmith Program and found it unnecessary at this stage to address the possible application of s. 14(1) to the information relating to the special education and regular programs.

The adjudicator first considered whether the record at issue contained "personal information" as defined in s. 2(1) of *MFIPPA* (given that the s. 14(1) exemption can only apply to personal information) and, if so, to whom it related. To qualify as "personal information", it must be reasonable to expect that an individual may be identified if the information is disclosed.

The adjudicator found that the record contains the students' "personal information" of the type described in paragraphs (b) and (c) of the s. 2(1) definition – namely, information relating to education history and identifying number assigned to an individual. The adjudicator further concluded that, due to its nature, the personal information in this case could not be de-identified. The adjudicator accepted the Board's submissions that the "small cell count" concept discussed in previous IPC orders applied here. Given the small pool of students who could reasonably be expected to be identified as part of the Arrowsmith Program, it could become possible to identify individual students and to make reasonable assumptions about whom the anonymized information related. In this case, there were only two Board schools with students in the Arrowsmith Program for the period to which the request related; in each school the total number of students in that program was less than five students spread out over two or three grades.

The adjudicator next considered whether the mandatory personal privacy exemption at s. 14(1) applied to prohibit the disclosure of the personal information. Under s. 14(1), where a record contains the personal information of another individual but not the requester, the institution is prohibited from disclosing that information unless one of the listed exceptions in that section apply. One of the exceptions is that the disclosure does not constitute an unjustified invasion of personal privacy. The adjudicator accepted the Board's submission that the information at issue in this case can be considered "educational history" as described in s. 14(3)(d), creating a presumption of an unjustified invasion of personal privacy. Further, none of the exceptions set out in s. 14(4) applied and the public interest override at s. 16 had not been claimed. As a result, the adjudicator concluded that the information about Board students enrolled in the Arrowsmith Program was subject to the mandatory exemption for personal privacy at s.14(1) and upheld the Board's decision not to disclose that information.

This case confirms that there may be a basis on which to refuse access to personal information "where the pool of possible choices to identify a particular individual is so small that it becomes possible to guess who the individual might be", thus constituting an unjustified invasion of personal privacy.

Legislative & Policy Update

- **PPM No. 128 The Provincial Code of Conduct and School Board Codes of Conduct —** PPM 128, issued August 29, 2019, set out revisions to the Provincial Code of Conduct, restricting of the use of personal mobile devices during instructional time, subject to limited exceptions, effective **November 4, 2019**. School boards must update their board and local school codes of conduct to be consistent with the revised provincial Code of Conduct. Exemptions are provided under the revised Code of conduct as follows: (1) for educational purposes, as instructed by an educator; (2) for health and medical purposes; and (3) to support special education needs.

- **PPM No. 162 Exemption from Instruction related to the Human Development and Sexual Health Expectations in *The Ontario Curriculum: Health and Physical Education, Grades 1-8, 2019* —** PPM 162, issued August 21, 2019, requires that all school boards develop and implement a policy or procedure that allows students to be exempted, at the request of their parents, from instruction related to the Human Development and Sexual Health expectations in the Health and Physical Education curriculum. A school board's exemption policy and/or procedure must be made publically available on their website *before* the period of instruction concerning Human Development and Sexual Health in the 2019-2020 school year and not later than **November 30, 2019**. PPM No. 162 outlines the conditions for which an exemption can be permitted and the minimum requirements for school board exemption policies/procedures.

- **PPM No. 163 School Board Policies on Service Animals —**
- Bill 48, *Safe and Supportive Classrooms Act, 2019,* enacted April 3, 2019*,* amended the *Education Act* to allow the Minister to establish polices and guidelines respecting service animals in schools. PPM 163, issued September 9, 2019, outlines the Ministry's expectations and requirements for school board policies and procedures regarding student use of service animals. School board policies must be developed, implemented and made publicly available by **January 1, 2020.**

- **Bill 100*, Protecting What Matters Most Act*** *(Budget Measures), 2019,* received royal assent on *May 29, 2019.* Among other changes, Bill 100 amends the limited disclosure provisions under section 32(g) of the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*. The exception under section 32(g) is broadened to include two circumstances in which disclosure of personal information to an institution or a law enforcement agency may be permitted. The changes to *MFIPPA* as a result of Bill 100 still await proclamation.

- **Bill 89, *Supporting Children, Youth and Families Act, 2017*** *— An Act to enact the Child Youth and Family Services Act, 2017, to amend and repeal the Child and Family Services Act and to make related amendments to other Acts* received Royal Assent June 1, 2017. Amongst other amendments, Bill 89 added a new Part X to the CYFSA to govern the collection, use and disclosure of personal information by a service provider and an individual's right to access a record of personal information within the custody or control of a service provider. These changes come into force **January 1, 2020**.

- **Bill 48, *Safe and Support Classrooms Act, 2019 — An Act to amend various Acts in relation to education and child care***, includes amendments to the professional misconduct provisions under the *Early Childhood Educators Act, 2007,* the *Ontario College of Teachers Act*, *1996,* and the *Teaching Profession Act*. The definition of professional misconduct is expanded to include 'prescribed sexual acts' which includes acts of a sexual nature prohibited under the *Criminal Code* and as prescribed by regulation. The amendments require mandatory revocation of a member's certificate if they are guilty of professional misconduct that includes sexual abuse of a child or student, a prohibited act involving child pornography or a prescribed sexual act. The definition of "sexual abuse" was also amended under the *Early Childhood Educators Act* and the *Teaching Profession Act* to exempt certain conduct from its definition. The changes came into force **April 3, 2019**.

- **Bill 108 –** The Schedule 4 of Bill 108 (the More Homes, More Choice Act, 2019) amends section 195 of the *Education Act* to require a school board to give notice to the Minister if it plans to acquire or expropriate land and to allow the Minister to reject the board's plans. This amendment came into force on **June 6, 2019**. Regulations to support the new requirements are expected to come into effect on November 1, 2019. The Schedule also makes various amendments with respect to education development charges ("EDC"), which amendments will come into force on **November 1, 2019**. Section 257.53.1 is added to the Act to provide for alternative projects that, if requested by a board and approved by the Minister, would allow the allocation of revenue from EDC by-laws for projects that would address the needs of the board for pupil accommodation and would reduce the cost of acquiring land. Section 257.53.2 is also and provides for localized education development agreements that, if entered into between a board

and an owner of land, would allow the owner to provide a lease, real property or other prescribed benefit to be used by the board to provide pupil accommodation in exchange for the board agreeing not to impose education development charges against the land. Regulations to support these amendments (and other changes to EDC's) are expected to come into force on November 1, 2019. The Ministry is also issuing a new Guideline for EDC's.

Keel Cottrelle LLP provides advocacy and advice regarding governance, human rights, privacy issues, school law, property and corporate matters, and human resources. We also regularly deliver professional development, both in person and via webinar, to educational professionals in respect of a wide variety of legal issues.

Upcoming Events
Osgoode PD 14th Advanced Issues in Special Education Law – October 24, 2019
Special Education / Student Discipline /Operations – November 8, 2019
Education Law, 5th Edition, Brown, Zuker, Simmons and Keel – pre-order available

Keel Cottrelle LLP Education Law Newsletter

Contributors —
The articles in this Newsletter were prepared by Shamim Fattahi and Sakshi Chadha, who are associated with KEEL COTTRELLE LLP.

Keel Cottrelle LLP
Barristers and Solicitors
920 – 36 Toronto Street
Toronto ON M5C 2C5 416-367-2900

Executive Editor
Robert G. Keel
RKeel@KeelCottrelle.ca

Editor
Jennifer Trépanier
JTrepanier@KeelCottrelle.ca

Editor
Nicola Simmons
NSimmons@KeelCottrelle.ca

Editor
Kimberley Ishmael
KIshmael@KeelCottrelle.ca