
SUMMARY

This year, provincial executive supported my attendance at the second (and hopefully last) virtual conference put on by the Canadian Association for the Practical Study of Law in Education (CAPSLE). The theme this year was “Innovation in Education: Capital Ideas”. The conference consists of 25 concurrent sessions over three days which were also recorded and available for review. This conference is a fantastic learning opportunity each year, and this year was no exception.

The Conference Opening & Keynote, “Lending a Hand to Youth Voices,” was presented by Janelle Hinds, an advocate for social innovation and the founder of Helping Hands. She was a project lead on [A Resource Guide to Anti-Black Racism: Support for Black Youth and Allies](#), found [here](#), which also includes mental health supports. Her somewhat timely advice on giving grants to youth includes making “grants open to grassroots/unincorporated groups, and help[ing] these groups find organizational mentors (trustees)”, having “easy-to-follow, accessible applications (allow verbal, video, and non-written applications)”, “allow[ing] applicants to ask questions during the application process”, “provid[ing] adequate compensation to all participating youth by having honoraria as an eligible expense”, and “provid[ing] feedback to unsuccessful applicants to they can improve their grant writing skills”.

In “How Technology is Supporting the Physical and Mental Health and Safety of Students”, presented by Monika Ferenczy, certified in Education Law and Human Rights for Education Professionals. COVID brought about at-home learning, which gave parents the opportunity to see how their children were interacting with other students and with their teachers for the first time. Parents had to become much more vigilant while their children were on-line, as the incidents of cyber-bullying increased – teachers couldn’t be in every chat room or breakout room. “Technology has now become a quality control mechanism to access educational services and well-being.” Parents are using tech to document, monitor without being present, for accessibility, to investigate, for efficiency, reliability, and peace of mind.

Baruch Wise, in “Vaccine Mandates and Legal Immunity for Ontario’s School Boards,” discussed the legal ramifications of mandatory employee vaccinations such as the procedure implemented by the Toronto school board, later rescinded. While most employees were on non-disciplinary leave-without-pay if unvaccinated, irreplaceable staff were allowed to continue working with regular COVID testing and safely measures in place. Article 7 of the Charter protects an individual’s right not to be vaccinated, and the TDSB policy didn’t forcibly require anyone to get vaccinated. Arbitration determined the policy was neither arbitrary (it sought to protect health and safety of employees and students) nor overbroad (it allowed for essential workers and human rights claimants), and the consequences were not disproportionate to the objective. The policy also didn’t breach the litmus test set out in *KVP*: it was a

reasonable exercise of management rights. Arbitration concluded that the nuanced mandate was not a charter breach.

Lawyers Christina Roussakis and Maddie Axelrod presented on “Diversity, Equity, and Inclusion in Schools: Human Rights in Practice.” School boards are required in Ontario to develop, implement, and monitor an equity and inclusive education policy (including religious accommodation guidelines) through the following three lenses in eight areas of focus: 1) shared and committed leadership by the ministry, boards, and schools to eliminate discrimination through the identification and removal of biases and barriers, 2) equity and inclusive education policies and practices to support positive learning environments that are respectful and welcoming to all, and 3) accountability and transparency with ongoing progress demonstrated and communicated to the ministry and the community. These three objectives each apply to the eight focus areas of: board policies, programs, guidelines, and practices; shared and committed leadership; school-community relationships; inclusive curriculum and assessment practices; religious accommodation; school climate and the prevention of discrimination and harassment; professional learning; and accountability and transparency. Ontario Teachers’ Federation policy states that teachers should “undertake a leadership role in the development of attitudes which foster a society where all people may participate with equal access to opportunity.”

Building Inclusive School and Supporting Students happens through: building critical consciousness (checking our own biases and building critical consciousness: learn about the particular issues affecting the young people you teach, learn about the experiences of young people in marginalized groups, educate yourself using Canadian resources, resources from your school board and resource specific to your community), conversations in the classroom (create space for brave conversations: establish conditions to facilitate courage and challenging conversations around discrimination and hate; explicitly discuss what constitutes discrimination and hold students accountable for their actions; ensure curricular content meaningfully includes and reflects a wide range of diverse identities, experiences, and perspectives), and off duty conduct (conduct when not teaching or at work can still do harm to the education system and school community).

MTS’ Tim Breen introduced the next session, “The Role and Responsibilities of School Boards with the Rise of #MeToo and Sexual Harassment Awareness” with presenters Bruce Hutchison and Myle Nguyen. This session covered the legal need to balance burden of guilt with presumption of innocence, which has historically not favoured victims’ experiences. It also covered consent as an issue within sex education programs, which includes teaching the concept of grooming which has become a controversial buzzword politically. With regards to disciplinary action regarding reports of sexual assault or harassment, there are a number of jurisdictional issues that come into play which can complicate investigations, and the factors will vary depending on if the parties involved are both students, both staff, or a combination thereof.

In “Technology in Education – Emerging Legal Issues”, Megan Thompson and Jennifer Singh Jenkins covered legal issues around how surveillance cameras, remote learning technologies, and adaptive learning technologies are used within schools. Questions around surveillance include whether it is reasonable, necessary, and proportional, and proper notice needs to be given to those being recorded. Recording has to be balanced with people’s expectation of privacy. Questions around privacy also relate to remote learning, as students are often required to have their cameras on in their own homes. With regard to adaptive learning technologies, they promote inclusion and respect for human rights, and enable students to participate more fully in class. Accommodation is required to the point of undue hardship – this implies that some level of hardship is acceptable; hardship factors include cost, health and safety, and impact on other people or programs.

The final session I attended was “HR Cases of 2021-2022 You May Have Missed.” This session covered the top ten legal issues in education from an employee-employer standpoint. Issues covered include a teacher harassment claim against his principal which was dismissed: “Not every bad judgment call or mistake amounts to harassment.” Preparation time during a COVID virtual teaching environment must still be provided. Duty to accommodate has finite limits with the expectation of the job, the duties of which must still ultimately be performed. A gardener was suspended for 10 days for intentionally coughing into a co-worker’s vehicle after taking time off due to COVID-related symptoms. A teacher in BC was not given paid emergency leave when her daughter took ill overnight, rather was given a half-day of paid leave, and a half-day of unpaid family responsibility leave. A single incident of verbal harassment was behind a \$59,000-in-damages claim which resulted in a \$3,500 award. Two caretakers became ill prior to scheduled vacations, and the Board refused to pay sick leave due to the advance schedule booking; the board’s decision was upheld. A grievance was upheld that a snow day cannot be used to pay back overdue teacher prep time. A music teacher with a poor attendance record was cleared to return to work after a medical-related absence; the board wanted an additional medical questionnaire which was refused as she had already been cleared. This annual session is always an interesting potpourri of legal ramifications.

I strongly recommend future CAPSLE conferences as a professional development for provincial executive members. It continues to provide current, relevant information for leaders in education.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Joel Swaan', with a long horizontal stroke extending to the right.

Joel Swaan