
SUMMARY

The 33rd Annual Conference of the Canadian Association for the Practical Study of Law in Education (CAPSLE) was titled “Riding the Tides of Change: Emerging Issues in Law and Education” and held in Fredericton, NB after two years of on online format. This is the third time I have attended CAPSLE as a provincial executive member, and my fourth time overall as it continues to be an excellent gathering place for union members, senior administrators, trustees, human resources managers, education faculty, lawyers, and more to gather to discuss the most relevant issues of the day in education, and their implications on teachers, divisions, the legal system, and students. For those who have attended the local annual union-labour conference in Winnipeg, I think of CAPSLE as the “Mel Myers” of education law, on a national scale.

The conference was held on unsundered and unceded traditional Wolastoqey land. The lands of Wabanaki people are recognized in a series of Peace and Friendship Treaties, first signed with the British Crown in 1725 and 1726, to establish an ongoing relationship of peace, friendship, and mutual respect between nations. These treaties recognized Wolastoqiyik, Mi’kmaq, and Passamaquoddy title to the land and resources.

I attended two plenary sessions and five breakout sessions, missing one plenary and one breakout due to provincial bargaining. For breakout timeslots, there are five sessions to choose from (often one is in French) providing lots of opportunity for choice among delegates. I also attended their “CAPSLE: Setting Directions” session, which was an opportunity to help set some goals and do some future planning for the organization.

The first plenary, “Piluwitahasuwawuwakon: Changing Minds, Living the Truth” opened with the question “Who here is a treaty person?”, with not all the attendees raising their hands. Suffice it to say that by the end, there was a more fulsome response to the same question. Presenters Elizabeth Mancke and Nicole O’Byrne spoke on the problems with implementing and actualizing the treaties signed in Canada: we don’t know enough about our own history, and as soon as we learn enough, we suffer from paradigm paralysis – the problem seems too insurmountable, and we don’t know where to begin. The session spoke on two 19th century ideas (myths) about Indigenous People: “1) Indigenous peoples lived in a state of prehistory, a state in which they were incapable of affecting meaningful change, and 2) Indigenous people were destined by nature to become extinct in the near future.” Settler society has an obligation to admit our long-standing errors of these two ideas.

My next session was “Welcoming People Back after Trauma: How May I Help You?” presented by Tanya Brancalion & Sandra Donaghue. Discussed, from personal perspectives, were some strategies for helping those who have been through trauma. Don’t ask “How are you?”. Ask “How may I help”, “What can I do for you right now?”, “Is there something I can do for you today”, “Is there something I can do to support you on your journey?” Be an obstacle-remover. Create a space where people feel comfortable to ask. Trauma is not just an experience, it’s also about the imprint of the event that forever changes you. For return to work, ask “How can I help you come back?” People need to feel they have a voice, a choice, and an opportunity for a dignified return. There needs to be a compassionate, thoughtful, purposeful back-to-work plan. Build the capacity of the rest of the team.

In “Critical Consciousness: School Leadership for Protecting the Rights of Marginalized Students,” Ruby Kantharajah discussed that “where there is diversity, there is discrimination.” Her presentation was built on the truths that “educators still hold deficit views of Black-identifying children and youth as unruly and aggressive; curriculum is not inclusive; Black- or Indigenous-identifying students experience disproportional outcomes; immigration and refugee families struggle when they transition to Canada; language is a barrier to student access to programs; and parents/caregivers lack familiarity with the Canadian school system.” Kantharajah discussed some school leadership types that support human rights, such as Transformative Leadership, Social Justice Leadership, and Culturally Responsive School Leadership. Through Critical Reflection (learning and unlearning), Critical Analysis (growth mindset for anti-oppression), Commitment (moral and legal imperative), and Critical Action (culturally responsive work and social agency), school leaders can change the culture of their schools.

In “Recent Education HR Cases You Should Know,” Christian Paquette and Boris Subara talked through ten recent legal cases that may influence future education law. Notably, “The Portage la Prairie Teachers’ Association v The Portage la Prairie School Division, 2021 MBCA 50” was one of the cases discussed, pertaining to the practice of all teachers being required to stay at school until 4pm each day – a case which was won by the Division.

In the second plenary, “Where Pedagogy, Policy, and Human Rights Intersect: Reading Instruction in Our Public Schools,” we heard from Jamie Metsala, who presented on reading strategies at the Right to Read case before the Ontario Human Rights Commission. Through the data she presented, it was demonstrated that learning to read is a human rights issue, as much of the theory on reading strategies does a disservice to Indigenous students, children of colour, and those experiencing poverty. This may become a Manitoba issue, as there is a Manitoba Human Rights Commission studying the same issue. One question I have is around our stance on teacher autonomy: if the way someone chooses to teach reading is contrary to the strategies suggested by the commission, could they be called out on their practice under Bill 35, or to the Human Rights Commission at any time? How will we protect members before and/or after a complaint is filed about teaching strategies for reading? And does this conflict with our stance on autonomy?

Nicole O’Byrne continued on the topic of reconciliation from the first plenary in “Teaching Indigenous-non-Indigenous Relations in an Age of Reconciliation”. The Honourable Murray Sinclair said “The truth will set you free ... but first it will piss you off.” We discussed the Calls to Action regarding law (28) and education (62, 63). The constitution states that “Section 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.” We discussed Canada’s

fiduciary responsibilities towards the lands, properties, and historically, people held “in trust” for Indigenous Peoples (think back to your FTMS and ATMS training – consider how it applies to treaties).

As a teacher in the Manitoban bible-belt, I attended “Judeo-Christian Morality and the Section 264 of the Education Act – Does it Violate the Charter?” which was presented by Jesse Gutman and is specific to Ontario. Section 264 states, to this day, “(1) It is the duty of a teacher and a temporary teacher, (c) to inculcate by precept and example respect for religion and the principles of Judeo-Christian morality and the highest regard for truth, justice, loyalty, love of country, humanity, benevolence, sobriety, industry, frugality, purity, temperance and all other virtues;”. Their Human Rights Code specifically states that it does not apply to the Education Act with respect to the duties of teachers (Section 264). We went through case law and the implications of the law as written, as well as human rights law.

This conference continues to provide excellent information and thoughtful discussion around a myriad of topics that affect teachers both in and out of the classroom. Its applicability to union leaders, staff, and decision-makers is significant.

Thanks to the Provincial Executive for approving this professional development opportunity.

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

Joel Swaan