
SUMMARY

The annual conference put on by the Canadian Association for the Practical Study of Law in Education (CAPSLE), this year titled “Rivers of Change: Trans Canada Trends in Education Law”, continues to be a fantastic professional development event, which I would highly recommend to Provincial Executive members.

The opening plenary, *Anti-Racism in Education* by Dr. Jerome Cranston described many of the ways in which Systemic Discrimination appears within education systems. “It is a privilege to learn about racism, rather than learning about it as you experience it.” Dr. Cranston provided steps for how to Dismantle a System through Leadership and through Education which begin with acknowledging that systemic racism exists. With systemic racism, you don’t need to have individual racist actions – no one needs to be racist because the whole system is doing it: the architecture is built to maintain racial superiority. Advice that we can take from his presentation is to eliminate policies, guidelines, and practices that reify existing inequities.

In a session on *Navigating the Legal Challenges of COVID-19* with Eric Roher, we were given the legal background on the idea of employer-mandatory vaccine policies and *bona fide* occupational requirements. It is advisable from an Occupational Health and Safety Act perspective for school boards to have a vaccine policy, given their obligation to take all reasonable precautions to protect the health and safety of their teachers and staff. It is a multifaceted issue when discussing the role schools play in the public health of local communities, but also one to be balanced with the freedom to make choices about one’s own body.

In *Trending Towards Equity*, lawyer Alex Battick shared thoughts on dismantling systems of oppression through the lens of Ontario’s education system where the last segregated school closed in 1965. They developed a system-wide plan in 2008 to identify and remove discriminatory biases and systemic barriers, but the inequities identified in the 1990s still existed in 2017. Ontario Education has moved from a Neutral unaudited stance to an anti-oppression Proactive stance. Through legislation they are diversifying their hiring practices, eliminating Grade 9 academic-vs.-applied streaming options that limit post-graduation opportunities, and reducing the possibilities of student suspensions in Grades JrK-3. Often, policies that appear to treat everyone as equal don’t take into account factors that may more negatively affect one or more groups. When policies are enacted, it may be beneficial to gather race-based data to ensure that they are not disproportionately affecting one or more marginalized groups.

In the plenary session *Substantive Equality and Education*, social justice lawyer Fay Faraday discussed the need to identify the gap between the perspective of our own unique lens and the reality of the systems that were inherited when we were born. This reality gap can distort the law as those claiming they have been discriminated against often have to prove the discrimination charges as well as proving that discrimination exists as a concept, as those hearing them in court with a different lived reality may not identify with or be aware of how discrimination can affect others. This can leave people with a “status quo” feeling that we live in a society that has met the criteria for equality, with legal discrimination cases only calling out the times that society experiences an aberration of inequality. Self-reflection, compassion, emotional intelligence, capacity for having difficult conversations, imagination, critical thinking, disaggregated data collection, design & systems thinking, and – most importantly – the capacity to talk about power and accountability are skills that are needed in this urgent political moment. Seize teachable moments to identify the values that are driving the thoughts and beliefs that reinforce systems and structures leading to discrimination.

William Smale and Charles Russo discussed *Understanding Social Media and Electronic Communication in the Educational Context*. In short, don’t post inappropriate posts on FaceBook. Don’t make fun of students online. Don’t complain about the low character of students. Don’t joke about a serious situation online. Use school-issued computers appropriately. Don’t appear in pictures with strippers. Don’t flirt with students via social media. Don’t mock the poverty of students. Don’t pose in pictures with drugs or alcohol online. Don’t post criticism about colleagues online. Don’t post or leak standardized test information. Don’t post anything online that you wouldn’t put on your classroom bulletin board.

Charles Russo and Kent Donlevy, in *A Bridge Too Far: Students, Parents, Schools, Liability Waivers, & Indemnity Clauses in the Age of COVID-19*, we learn that provincial provisions dealing with minors and contracts may determine the efficacy of student contracts, that there is a legal question surrounding the efficacy of liability waivers in schools where *in loco parentis* is law, and that few parents can be expected to read, let alone understand, the complex legal jargon used in waivers. The elements of a waiver around *duty* (a legal relationship giving rise to foreseeability), *breach* (acting improperly, acting properly, or acting with evil intent; acting as reasonable person, educator, and/or parent), *injury* (is there one for which compensation can be awarded?), can those who sign adequately anticipate what injuries they or their children might encounter), and *causation* with regards to negligence liability (such as getting injured or acquiring COVID) is predicated on the level of immunity, possible contributory negligence, and assumption of risk of the participants. In other words, there is no legal precedent around if an organization can declare themselves innocent if a participant at the event catches COVID.

In the plenary *Education in a Digital World*, Dr. Tracey Burns discussed the nature of childhood in the 21st century, how schools and teachers can work together with families and communities to help children thrive, and whether this can be done while still allowing children to be children who learn by taking risks and making mistakes. Among the four main themes investigated of physical health, emotional well-being, family and peers, and digital technology, it was found that schools are crucial for the academic, physical, and mental well-being of students. She warns against “sharenting” – when parents overshare about their children on social media: this

creates a social media footprint for children that becomes available to others when as teenagers they are trying to build their own identities, which can be harmful. From a policy perspective of having children learning on-line, we need to: address policy fragmentation across physical boundaries; include the voices of children from rights and marketing approaches; adequately support teachers with PD; acknowledge the importance of culture and tradition and address systemic bias; and build and reinforce partnerships with other sectors.

In *Challenges of Attendance Management for School Staff in a New Era* by Christian Paquette, he delineated between innocent absenteeism (beyond employee's control) and culpable absenteeism (within employee's control), as well as those cases that include both elements. Case law states that: the union is not entitled to copies of employees medical records, unless the employee consents; the union is not required to participate in all accommodation discussions, unless a collective agreement right is at stake for the employee or other employees; the union is not required to approve a measure unless a collective agreement provision is at play; and the employee also isn't granted a right to approval of the accommodations. He also provided a framework to address COVID absenteeism: when an employee is ill; unable to work due to isolation, quarantine, family obligations, etc.; or refuses to return to work: consider if they are entitled to a leave under the collective agreement, or a policy, guideline, or procedure of the board; consider if they are entitled to a specific leave under employment standards legislation; and consider if there are any human rights considerations (disability, family status, etc.) and what accommodations can be made in the circumstances.

Finally, in *Pandemic 2020, Crisis Management and Public Education in Manitoba*, Dr. Ardith McGeown Plant and Dr. Joan Grace laid out the current reality of the Manitoba pandemic, which Manitobans reading this already lived through and experienced first-hand.

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', written in a cursive style with a long horizontal stroke extending to the right.

Joel Swaan