Education Law eBulletin

A newsletter for educators

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Internet Defamation by student hockey players nets $20,000 in damages plus costs

In a recent decision of the Ontario Superior Court entitled *Windsor-Essex Catholic District School Board & Seguin v. Lentini et al.*, 2010 ONSC 6364, a principal and school board were awarded damages and costs in respect of egregious online comments made by a former student on the popular social networking website "Facebook."

In the fall of 2009 a Windsor area high school hockey coach conducted several meetings for potential players. Because the majority of the players attending the meetings were grade 9 and 10 students, the coach approached the league to relegate the team to the A/AA league as opposed to the AAA/AAAA league in which it had competed the previous year. The other coaches allowed the request on the condition that, to be fair to the other smaller schools in the league, the team be limited to only grade 9 and 10 students. This decision was made for safety reasons; the coach did not want to field a team of relatively inexperienced players against more mature teams with bigger players. The school principal supported this decision.

Soon after this decision was communicated to the students, parents of senior students began contacting the school principal complaining that the decision was unfair. Shortly thereafter one of the parents whose child was now ineligible to play started a Facebook website inviting students and parents to comment on the hockey team situation. Students and parents alike began to voice their displeasure with the situation; comments posted by students, former students and parents directed toward the principal quickly turned personal and very abusive. Another "invite-only" Facebook website was started on which comments were posted accusing the principal of engaging in acts of paedophilia and homosexuality on school property.

The School Board issued notices of defamation to all offending individuals. Although most recanted and apologized for their statements, one former student who had made the most comments did not. Accordingly, the School Board commenced a defamation action against the student in the Superior Court. The student did not defend the claim and was noted in default.

The School Board then brought a motion for default judgment against the student, claiming general damages, aggravated damages and legal costs. The motion for default judgment was heard by the Honourable Mr. Justice Gates. Bryce Chandler of Shibley Righton's Education & Public Law Group argued the motion on behalf of the School Board. In his decision, Justice Gates found that the online comments tarnished both the reputation of the principal and the School Board and that the principal's family had "…likewise [been] subject to public ridicule and humiliation." In awarding general damages in the amount of $20,000 and aggravated damages in the amount of $7,500, the court recognized that, with respect to teachers, "[t]here are few role models in our society who enjoy higher esteem or who are impressed with a higher and more significant obligation." Further, the court considered that the allegations of paedophilia contributed significantly to public ridicule and humiliation

given the "broader context of recent times when paedophilia in roman Catholic churches and educational institutions has become arguably rampant both present and historically." Finally, the court also noted that the defamation in these circumstances was made more acute considering that "…it was spread across a student body which, by nature could be considered quite malleable to the suggestions or ideas expressed by their peers…"

The court also awarded substantial indemnity costs in the amount of $8,936.33 to the plaintiffs. This is particularly significant because substantial indemnity costs were awarded given the nature of the defamatory conduct. In our opinion, this decision serves as a reminder that school boards and their employees need not be subjected to online bullying at the hands of students and/or parents.

Arbitrator Allows Employer to Request Disclosure of Cell Phone Records

The RCMP and Provincial Police aren't the only groups looking out for inappropriate use of cell phones or other personal electronic devices. A recent arbitration award, *Teamsters Canada Rail Conference v. Canadian Pacific Railway Company (Case No. 3900)* seems to support the idea that employers may be able to implement policies requesting disclosure of cell phone records when attempting to determine the cause of workplace incidents.

After a number of serious accidents in the railway industry the Canadian Pacific Railway Company (CPR) implemented a policy mandating that its employees produce cell phone records if they were working near, or involved in, an accident that could not be otherwise explained. The policy provided that only a minimum of information, including where and when the device was being used, would be reviewed; all other detailed information regarding the phone numbers called or the content of text messages could be redacted. Notably, the employees were already subject to CPR policies prohibiting: a) the use of personal communication devices for non-work-related purposes; and b) the use of personal electronic devices on company property. Although the new policy indicated that no disciplinary action would be taken if an employee refused to produce cell phone records, CPR would draw a negative inference if an employee opted not to disclose his or her records.

The Union grieved the cell phone record disclosure policy, arguing that it was a violation of the employees' privacy rights pursuant to the *Personal Information Protection and Electronic Documents Act* (*PIEPDA*) as well as their rights under the collective agreement.

In his decision dismissing the grievance, Arbitrator Picher found that *PIPEDA* does not provide employees with an absolute or unconditional right to privacy. Further, employees should not expect an absolute right to privacy regarding cellphone use, especially when working in safety-sensitive environments. The arbitrator also noted that CPR's policy was reasonable given that its infringement on employee privacy was limited to that information which would establish whether the employee had been operating his or her wireless devise near a serious accident or workplace incident.

This decision is significant because it suggests that employers may not only implement policies limiting employee use of personal electronic devices, but may also then request reasonable information from their employees' regarding their use of these devices when investigating workplace incidents. In this case, by upholding the employer's policy and finding that employee privacy interests must yield to public safety, the arbitrator did not allow privacy legislation such as *PIPEDA* to render a valid workplace safety initiative ineffective.

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