



By **Victoria Girling**, Vice-president
STERLON Underwriting Managers Ltd.

MORE REASONS TO CALL **STERLON** *sooner rather than later!*

What would you do if you were served with civil proceedings along with your board and other employees? Hope it will go away or that someone will take care of it for you?

Many of you will have noticed in recent years that parents are becoming far more adversarial and seeking to have their complaints and concerns about education issues aired in as many forums as are available to them. No longer is a complaint to the Ontario College of Teachers enough. Parents are seeking resolution through board processes, the Human Rights Commission and even civil litigation. Invariably parents are going after as many parties as possible, including the board, senior administration and teaching staff. If the purpose of the complaint is for financial gain, then clearly the boards or their insurers have the deepest pockets, but usually the complainant also wants to extract some form of punishment against the educators themselves. Each of these forums provides this opportunity.

As a CPCO member you already enjoy the protection of a Legal Benefits Plan which protects you before the Human Rights Commission and the Ontario College of Teachers.

What about civil law suits?

Principals and vice-principals, as employees and agents of the board, have historically relied upon the understanding that the board will defend them where they are joined as defendants in civil proceedings. Most terms and conditions of employment

contain an indemnity clause, which states that the board will indeed provide a full defence to its employees where they are “acting within the scope of their authority.” The board lawyer (in-house or otherwise) will generally be appointed for both the board and the employee.

With the emergence of more civil law suits against boards and their personnel, no longer are they confined to claims for negligence where a student has been injured, but now include damage claims for emotional distress caused by bullying, victimization by issuing low grades and poor classroom management style. Although ostensibly the charges are against teaching staff, administration is being joined as culpable parties for failing to act upon parental complaints.

School boards are thus facing a greater number of civil actions, which also name CPCO members. The indemnity clause in your contract is becoming increasingly important. The wording of some of these clauses allows boards considerable “wriggle room” allowing them to disassociate themselves from staff. You will then be responsible for your own legal costs to defend yourself. Issues raised by the civil action or complaint to a regulator may also translate into a disciplinary investigation by the board against the named principal or vice-principal.

Case History

A member and the board are named respondents in a Human Rights Complaint brought by parents of a student alleging racial discrimination. The parents argue that the member breached board policy when investigating the situation. The member is receiving legal assistance through CPCO to ensure that the board supports the member's actions and defends the complaint on the member's behalf.

The indemnity clause in the contract requires the member to have been “acting within the scope of his/her employment” in order for the board to provide indemnification for defence costs. How is this wording interpreted by the board? Do the interests of the board and the member differ? How far will a board distance itself from the actions of the member in order to deflect blame?

Whenever you are notified of a civil proceeding or a threat of a complaint to any of the entities listed above you should immediately contact STERLON. We can determine if the protection offered by the indemnity clause in your contract is sufficient and determine whether there may be a divergence of interests between you and the board. Your Legal Benefits Plan provided by CPCO may provide legal representation to ensure that the board does provide the protection that it is contractually bound to provide to the member pursuant to the terms and conditions of employment, but it does not provide coverage for legal costs associated with civil litigation. It is important therefore that coverage from the board is available to you.

If you have been named as a defendant in a civil claim, it is important to advise STERLON since it alerts us to a potential employment dispute and enables us to monitor the situation to ensure that you are protected against any possible disciplinary action.

Remember 1-888-STERLON is only a phone call away and by calling as soon as you know that there is a discontented parent or staff member, the better able we are to offer guidance. Being named as a respondent in a complaint to a regulator or a defendant in civil proceedings is something everyone is keen to avoid. Early intervention is essential.

Avoid these scenarios, which are based on actual cases recently handled by STERLON.

1. You receive a letter from the Ontario College of Teachers. You have six weeks to respond to the allegations. You are busy at work and feel your responsibilities to the job are more important so you put the complaint to the bottom of the pile. With two weeks to go before a response must be filed you finally contact STERLON. *You should not eat or breathe until you have contacted STERLON at 1-888-783-7566.*
2. You are accused of workplace harassment and if found guilty your board protocol makes it clear you could be disciplined or dismissed. You are incensed by the allegations. You respond immediately with an emotional and hard-hitting rebuttal, without ever picking up the phone and getting advice from a STERLON lawyer! *A response should be unemotional and factual and only ever submitted after review by an experienced lawyer.*
3. You are a VP in a secondary school. The board decides to reassign you to a VP position in an elementary school. You accept the reassignment because your salary is unchanged. You make this decision without ever speaking to a STERLON lawyer experienced in employment law. *You should never accept any change to your conditions of employment, however well-presented by the board, without seeking advice and counsel from a STERLON lawyer.*

***Do you have a legal question or concern?
Call 1-888-STERLON (783-7566)***

This article was prepared by STERLON Underwriting Managers Ltd., the administrators of CPCO's legal benefits plan, as a service to CPCO members.

CATHOLIC COMMUNITY DELIVERY ORGANIZATION

is pleased to offer its 2009 - 11

SUPERVISORY OFFICERS' QUALIFICATIONS PROGRAM

beginning

SPRING 2009



Eligibility for the Program is outlined in Reg. 184 and 309.

For further information, interested candidates may contact:

John Watts, Program Director

905-564-8206 or marieosborne@ocsoa.ca

Program location will be in Mississauga, Ontario.



since 1988

PERSPECTIVES
Education Travel/Voyages culturels

**We have built our reputation
on our winter
French language programs
to St-Donat, Quebec
The adventures continue
with spring & fall
curriculum-based excursions to:
Montreal • Quebec City • Tadoussac
Ottawa • Niagara Falls • Toronto
Kingston • Sudbury**

**PERSONALIZED TRIPS
WITH A DIFFERENCE**

Call us today at 1 800 718 1785
e-mail: tours@perspectives-edu.com
Web Site: www.perspectives-edu.com