

Board/Police Protocols and the Education Act

By Suzanne Elston, STERLON

Imagine the situation where you, as a school administrator, have taken steps to protect the welfare of your students, only to find yourself facing disciplinary action as a result.

Jane McNeill* was confronted by a distressed teacher who knocked on her office door in a panic. At the teacher's side were two young boys, obviously very frightened and upset. The grade one students had been playing outside before school when a young man approached them. He called the boys over to a corner of the schoolyard and showed them sexually explicit materials. The man then told the boys that if they wanted to see more pictures, they should follow him to his car.

Wisely, the children ran and told the teacher on duty in the yard, who promptly brought them to vice-principal McNeill's office. Jane called the police and tried several times to contact the boys' parents. By the time the police arrived, she had failed to make contact. Given the urgency of the situation, and conscious of the need for the police to get as much information as possible, Jane stayed with the boys while the police questioned them. Her quick decision enabled the police to get an accurate description of the perpetrator, which ultimately led to an immediate arrest. Shaken by what had happened, Jane then contacted her superintendent to report the event.

The next morning, Jane was advised by her superintendent that the parents of one of the students were upset that police had

questioned their child. By failing to contact the boy's parents before allowing the police to question them, Jane had violated board policy which stated that no student could be interviewed by the police without the parents' knowledge and consent, unless it was an emergency situation. This is not an uncommon requirement, and is found in many board/police protocols. Jane found herself facing potential disciplinary action.

In another situation at a high school, a student collapsed in the washroom from an apparent drug overdose. * Another student was aware of what and how much the boy had consumed, and advised the principal so that paramedics could administer appropriate medical treatment. The police sought to interview this student immediately to find out where the drugs had been obtained but when the principal was unable to contact the student's parents, the

police were denied access to question the youth. In this situation, the police felt that the principal was being obstructive in the pursuit of his/her inquiries.

What both these incidents highlight is the need to better understand the intent of the Education Act, which requires each board to establish a protocol with police services for the purpose of investigating school-related occurrences. The policy document, "Provincial Model for a Local Police/School Board Protocol", which was produced jointly by the Ministry of Education and the Ministry of Public Safety and Security, was created to allow for differences within school boards while ensuring that certain obligations are met.

The most important of these obligations, according to lawyer James Cameron, is to ensure that student safety is paramount.

"These situations arose because there was a conflict between the duty that is imposed on principals to ensure student safety, and the interpretation that was given to certain board protocols," said Cameron. "In any contest between an Act of Parliament and a school board policy, the Act of Parliament will win."

Cameron explained that while board policy can give further refinement, it cannot be in conflict with the statute itself.

In some cases, police/school board protocols have been drafted to allow for exceptions when student safety is in jeopardy. For example, the Toronto Catholic District School Board's policy requires notification of parents, "except where the advice (i.e. notifying the parents) would compromise the safety of the student or others."

It is easy to see, however, how protocol wording can be interpreted differently by individuals, especially when faced with an immediate decision as to whether or not to allow police questioning to take place. Any decision taken may have ramifications for the administrator at a later date.

"The Education Act imposes upon principals a duty to ensure the safety of their students," said Cameron. "School board policies cannot be interpreted as coming into conflict with the Education Act."

In order to better respond to incidents involving board/police protocols, and to protect your professional standing:

- Read and understand your board/police protocol.
- If you're unsure about any aspect of the Protocol, discuss this with your superintendent or director.
- In the event of an incident requiring police intervention, again, if in doubt, contact your superintendent or director for clarification.
- Understand the proper course of action.

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James Cameron, Lawyer

- Invite a police representative to speak to your school council and staff.
- Advise parents of your board/police protocol through your school newsletter or website.
- Invite any concerned parents to discuss the protocol.
- Keep firmly in mind that your statutorily imposed obligation is to keep your students safe.


If you have any questions or concerns, seek legal advice through the Telephone Legal Advisory Service, which is provided as a benefit to all CPCO members. (Call toll-free 1-888-STERLON, Monday to Friday, 9:00 a.m. to 5:00 p.m., EST.)

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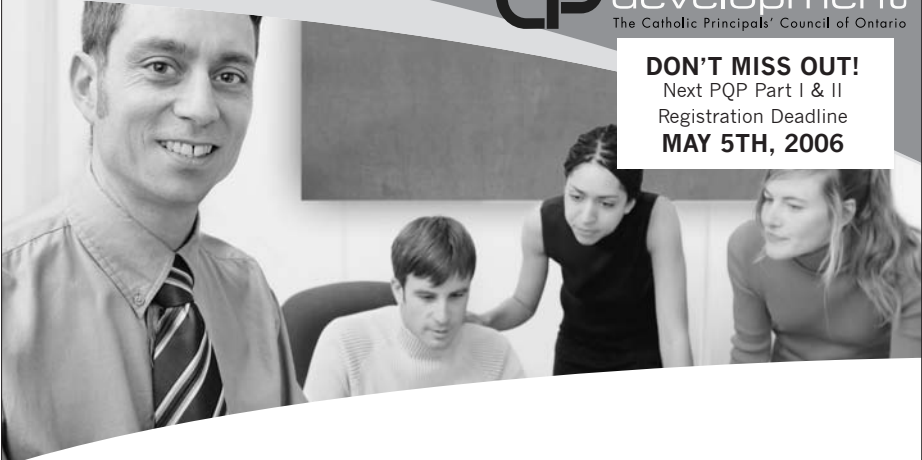
The Ministry of Education and the Ministry of Public Safety and Security's document, *Provincial Model of a Local Police/School Board Protocol* (2003) is available on the Ministry of Education's website at www.edu.gov.on.ca

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

* NOTE: Both the names and the incidents reported above have been changed to protect the individuals involved and to prevent jeopardizing ongoing civil action.



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