



# LEGAL SNAPSHOT for 2007-08

*and it's not a pretty picture...*

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*For the school year 2006-07 STERLON opened 104 claim files for CPCO members. During the first four months of the 2007-08 school year, 47 files have already been opened. There has been a marked increase in the number of incidents involving disgruntled parents, who seem intent on making their grievances known to the College of Teachers, the Human Rights Commission and the community at large. The latter results in the need for a civil remedy by the member against the parent. Other files relate to employment issues including union grievances, decisions made under duress and interpretation of terms and conditions.*

## **COLLEGE COMPLAINTS**

The 2007-08 school year has started with a bang with no less than eight College complaints during the first quarter. This is an unprecedented number during the 10-year history of CPCO. Parents are becoming more vocal in their frustrations relating to their child's schooling and realize that they have a right to make a formal complaint to the regulatory body governing the teaching profession. Even if the College decides that the complaint has no merit and may even determine it to be frivolous or vexatious, there is no comeback on the parent, financial or otherwise.

Nobody likes having to wade through pages and pages of documentation which contains allegations against you and which challenges your professional competency. It is easy to get more and more emotionally charged. No one knows better than an administrator does how complex your duties are in having to juggle the needs of all students in an environment that does not necessarily give you adequate resources. Any criticism is taken as a personal affront and it is so easy to feel angry with the parent who is making the allegations, a parent that you have always felt that you were most respectful towards and to whom you demonstrated compassion for their concerns.

Defending complaints is time consuming and emotionally draining and it is therefore imperative that the complaint is dismissed early in the investigation process. This is why CPCO offers you legal assistance under your benefits plan. The College

will be grateful for a well-written and succinct response, one that keeps on point and does not include emotional statements. STERLON provides a standard template for the response and the member is invited to provide the information that legal counsel will then review and ensure is accurate, non-prejudicial and non-inflammatory. There is a skill in being able to provide the information without rhetoric and unnecessary opinions. This is much harder for the member who is so personally involved.

To date legal counsel has been successful in having all but one College complaint dismissed upon submission of the written response. For the one that is being pursued, the member is still receiving the benefit of legal representation.

## **HUMAN RIGHTS COMPLAINTS**

For the 2007-08 school year members have already been named in seven complaints. In every case, the board is also named and it has extended and supported the defence on behalf of the member as part of the action. This is good news since it ensures that the defence shows a united front. However, the CPCO benefits plan offers peace of mind by ensuring that the member's interests are being properly protected. Legal assistance may be provided initially to the member under the plan when they are required by the board lawyer to give an account of their role. Having this reviewed by your own legal advisor will ensure that you do not make any prejudicial statements. In several instances STERLON has had to assign independent legal counsel to work with the board lawyer to

ensure that the member is not exposed to personal liability. This coverage is reassuring to the member but in the majority of cases, they are well protected by their board.

### **CIVIL ISSUES**

For the 2007-08 school year 12 requests have been made so far for civil legal intervention and recourse against statements by, and the actions of, parents. Members are reminded that parents have the right to make written and verbal statements about administrators, which may well be untrue or embellished, but provided they are made to persons within the school administration superior to the member there is really no remedy. Regrettably, there are an increasing number of occasions where the comments are being disseminated to

third parties with “no need to know” and in those circumstances, there may be grounds for action against the offending party. Success has been made in a number of more high profile cases with the issuance of a “demand letter” from a lawyer demanding that the instigator “cease and desist” from such actions and a request for an apology and retraction of the statement. A threat of litigation may also be made. Many times the board is able to protect the member by demanding a retraction and indeed, it is the board’s responsibility to ensure a work environment free from harassment. Occasionally, though, the member has needed to take independent action. Members are reminded that this is a discretionary benefit. One case has been supported to proceed to litigation. Proving defamation is notoriously difficult, costly and a lengthy process.

### **CALL FOR LEGAL ADVICE - or maybe face criminal charges**

On a Grade 8 school trip a student used a cell phone to video a fellow student in the nude. When the parent refused to delete the offending material, upon his demand for the return of the phone, the principal decided to refer the matter to her superintendent. The police threatened the principal with criminal charges for distribution of pornographic material if she in fact did this. Her concerns about returning the phone with the footage was her fear that it may be publicly distributed over the internet. This genuine situation provides a very strong caution to administrators that even a well-intentioned act can lead to grave consequences. If the member had kept the phone she could have been reported by the parent and found guilty of theft, but by passing the phone to her superintendent for assistance, she could have been charged with the distribution of pornographic material. The member sought legal assistance from the Telephone Legal Advisory Service, which immediately recommended that she hand the phone to the police, making it their problem.

### **SELF-SERVING MEMOS**

The need for members to document instructions they receive verbally, particularly if they are reticent about the request, can never be stressed enough. If you are in doubt as to the instructions you have been asked to implement or if you feel it necessary to have a record of having received instructions, send an e-mail to the superintendent or director confirming your understanding of the instruction so that at a later date you have a record that confirms where the instruction came from. In the absence of a response, you can rely upon your memo accurately reflecting the discussion. Remember to call the Telephone Legal Advisory Service for assistance with the drafting of this self-serving memo. This memo will use words such as “This is my understanding of your request. Advise if I have misunderstood.”

### **UNION ACTIVITY**

In this school year we have also seen an increase in activity by OECTA pursuing grievances or making allegations against principals and vice-principals. While it is clearly the responsibility of your superintendent to investigate these allegations there appears to be a trend developing whereby members feel that their interests are being compromised. There is a perception that they are not getting support from their immediate superiors who appear seemingly over zealous in their investigations. This has resulted in a number of members taking stress leave or struggling in their working relationship with their superintendent. If this sounds familiar, you are not alone and you are encouraged to seek legal advice from the Telephone Legal Advisory Service to assist you in dealing with

the stress you face and the best way to respond to the investigation. Even after 10 years, there is still some concern that some administrations do not fully embrace principals and vice-principals as part of the management team.

### **RESIGNATIONS UNDER DURESS**

This school year we are dealing with some files where members have made decisions under duress, which have seriously impacted their employment status. Never make any decision in the heat of the moment and without referring to the Telephone Legal Advisory Service. There may be an alternative solution to the problem and it is important that members understand the consequence of any decision they make.

The CPCO legal benefits plan has been offered to all members for 10 years and during that period the value of the program has been evident in the successful outcomes that have been achieved for so many members. Gradually, a number of the boards have recognized the benefit that can be obtained in working with the lawyers STERLON appoints to represent members. The goal is never to alienate the relationship between the member and his or her employer, but rather to ensure fair play. Parents provide a challenge to the member and the board alike and there is often unity in the approach being taken by all the parties involved in parental complaints.

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