MORNING RECESS

Added experience. Added clarity. Added value.
BYOD – Are We Ready?

Nadya Tymochenko and Gillian Tuck Kutarna
educationlaw@millerthomson.com
September 24, 2014
TOPICS

• Benefits of BYOD
• Cautions
• Legal considerations
• Opportunities to educate
• BYOD policy recommendations
BYOD BENEFITS

• Cost effective technology infusion
• Access and application to data organization tools
• Research tools
• Audio and video
• Apps for classroom polling; gaming; blogging
BYOD BENEFITS

- Podcasting
- Capacity to create multimedia presentations
- Collaborative work product
- QR codes
- Language translation…and much more
BYOD BENEFITS

• Enhanced content-sharing
• Enhanced communication options & tools
• Differentiated instruction
• Student engagement
CAUTIONS

• Equitable access, and options for those who have no device to bring
• Parent consensus depending upon activity
• Teacher training
• Curriculum modifications
• Techniques for minimizing distractions
CAUTIONS

• Types of devices (equity & inclusion)
• Engagement vs. learning
• Capacity to support devices:
  – bandwidth demand (especially at peak times),
  – safe storage options when devices not in use,
  – battery recharging
  – repair &/or replacement
LEGAL CONSIDERATIONS

- **Parent Consent**
  - Implied Consent
  - Reverse Onus or Deemed Consent
- **Recommended: Express consent**
  - Consent for use, subject to terms of Board policy.
LEGAL CONSIDERATIONS

• **Degree of Control**
  – Block websites / Pre-selected websites
  – Closed system
  – Pre-selected apps
  – Board server / external hot spots / individual connectivity
  – Measures to keep students on task
LEGAL CONSIDERATIONS

• Monitoring vs. Searching
• Student Privacy
  – Reasonable expectations
• Duty to provide safe environment for students and staff
• When is it acceptable to access a student’s account or search a device vs.
• When is it legal to search a student’s account
CASE LAW


CASE LAW

- *R. v. Tuduce* 2014 ONCA 547 (CanLII): search of a USB key
• *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56*

• Collection, use & disclosure of personal information

• Duty to prevent disclosure of personal information including class activities
BYOD Education

• **Copyright**

• *Copyright Act* RSC 1985, c C-42 prohibits use of the work of another unless the original author has either given permission or received compensation

• Exceptions exist for use in education

• Not all uses by students will be for educational purposes.
BYOD Education

- **Plagiarism**
- What constitutes original work
- Did the creator properly attribute to the original author any components which are not their own work
- May not breach copyright, but still have plagiarized
- Copying is easier than ever, and an intrinsic part of social media
BYOD Education

• Defamation

• *Ottawa Carleton District School Board v. Scharf et al.*, [2007] OJ 3030 (ON SC) Defamation claimed by Board, Superintendent and Principal against a parent and special education advocate for posting (and re-posting) a “press release”.

• Words were (a) written and published; (b) referred to the defendants; and (c) defamatory
BYOD Education

• **Defamation** (cont.)
  
• Words used by the Defendants defamed the Plaintiffs by impugning their professional reputations.

• Statements proven to be false, so Defendants have to establish a defense of (1) justification (2) fair comment or (3) qualified privilege to escape judgement.

• Damages increased to $15,000.00 due to publication on internet.
BYOD Education

- **Terms and Conditions**
- What does it mean to click “I agree”
- Entering into contract
  - ownership of and license to use data and share with 3rd parties,
  - rights and access beyond termination,
  - collection, use and disclosure of personal information,
  - waiver of liability of site,
  - right to unilaterally change terms.
BYOD Education

- Permanence
- “Privacy Paradox”
- Definition of privacy
- Duty to respect privacy of others
- Little to no legal recourse once post goes up
- Staff can model “digital citizenship”
BYOD Policy Recommendations

• Acceptable Use: no use which offends, degrades or defames other users will be tolerated

• School board cloud

• School board hot spots - where and when use permissible

• Vetting sites, apps, applications
BYOD Policy Recommendations

• Expectations regarding privacy
  – Passcodes
  – Random searching / probable cause
  – Seizure

• Board filters and posted network security practices must be observed

• Duty to report security risks
BYOD Policy Recommendations

• Board will not be responsible for:
  – Monitoring or supervising use
  – Repairing or replacing devices
  – Connectivity/compatibility problems
  – Loss or theft
  – Licenses for software and apps secured by student without permission
BYOD Policy Recommendations

• Companion document: Acceptable Use & Social Media Policy
• Parent and student must consent
• Consequences for breach identified
• Board reserves the right to take immediate action regarding activities giving rise to security and safety concerns, including:
  – Searches
  – Seizure
  – Legal action