Morning Recess

Principals’ 101 – L&E Case Update
May 25, 2017

Zeinab Yousif
Agenda

• The latest in discipline and discharge
• The latest in human rights
• Q & A
Discipline Cases
Fernandes v. Peel Educational & Tutorial Services Ltd., 2016 ONCA 468

- A school terminated a teacher without notice because he had recorded inaccurate marks for students.
- Lied about doing so.
- The teacher had been teaching for 10 years when he was terminated.
- At trial, the judge found the teacher’s conduct was not serious enough to warrant dismissal.
- The trial judge found that the school still sent out the inaccurate marks when report cards were released, suggesting the infraction was not as serious as they claimed.
Fernandes v. Peel Educational & Tutorial Services Ltd., 2016 ONCA 468

• The ONCA overturned the trial judge’s decision, ultimately finding that it was within the school’s rights to terminate a teacher for cause

• The ONCA found that the teacher’s actions constituted serious misconduct, and that he had breached one of his most important professional obligations as a teacher – to evaluate students’ work fairly

• His actions also exposed the School to serious potential harm, as failure to comply with the Ministry of Education’s accreditation standards could have jeopardized the school’s continued operation

- The teacher was involved in a cross-border cheese-smuggling ring, which resulted in the criminal conviction of one of the participants, a police officer, against whom the teacher testified in exchange for immunity.
- Though the teacher’s actions were characterized as serious misconduct that was deserving of discipline, and could have potentially harmed the board’s reputation, the arbitrator held that dismissal was excessive considering the teacher’s remorse, and that the misconduct did not negatively impact his ability to do his job.
- Reinstatement without back pay.
York Region District School Board v. Ontario Secondary School Teachers’ Federation, District 16 (Lakhani Grievance), 2016 CanLII 84432 (ON LA)

- A teacher with an otherwise spotless record was fired after an investigation revealed he purchased stolen goods from a student
- Another teacher who admitted to the same conduct was only given a one-day suspension
- The union argued the punishment was too severe
York Region District School Board (cont’d)

• The adjudicator concluded the teacher knew or should have known the goods were stolen, referred other buyers to the student and was not forthright about his degree of knowledge and involvement when questioned

• Further, the teacher paid for part of his purchase by giving the student some lighters that, while not particularly valuable, were the property of the school

• Conversely, the other teacher with the lesser suspension had an honest belief that the goods were not stolen

• The adjudicator dismissed the grievance and upheld the discharge
Human Rights Cases
Canadian Union of Public Employees, Local 4400 v. TDSB, 2016 CanLII 26730

• A school board breached its duty to accommodate when a school principal decided that a special needs assistant with physical limitations could not be accommodated and instead placed her on sick leave.

• The employer’s attempts to accommodate the grievor were “woefully deficient” – its decision was based on speculative or unsubstantiated concerns.

• The procedural aspect of the duty to accommodate was breached.

• Grievor was awarded lost wages and $5,000 in general damages.
Bender v. Limestone District School Board, 2016 HRTO 557

- The HRTO dismissed an Application alleging discrimination with respect to employment
- A casual educational assistant asserted that the Board’s practice of calculating seniority based on days actually worked was discriminatory because it excluded her time on maternity leave
- The HRTO found that all casual employees who became permanent employees were not credited seniority when they were unavailable for work, regardless of the reason
- The decision turned primarily on the fact that the collective agreement accorded seniority based on active performance of work rather than the passage of time of employment
- The educational assistant’s inability to accrue seniority while on maternity leave did not amount to discrimination
Butcher v. Trillium Lakelands District, School Board, 2016 HRTO 1545

- A teacher suffered serious injuries in a motor vehicle accident, with the result that she was disabled from working for quite some time.
- Several attempts to return to work were unsuccessful, and the long-term disability insurer eventually cut off benefits.
- The teacher commenced an action against the insurer which lead to a settlement.
- The teacher also filed an Application alleging discrimination due to the Board’s failure to accommodate her, and the termination of her position.
Butcher v. Trillium Lakelands District, School Board, 2016 HRTO 1545

- The Tribunal considered whether the Application should be dismissed as an abuse of process and/or having no reasonable prospect of success
- The Board argued it was clear she was permanently disabled and the employment contract was frustrated
- The teacher could not rely on earlier medical reports saying she might return. The latest report confirmed she was permanently disabled
- The Tribunal dismissed the Application as having no reasonable prospect of success
Questions?
FORWARD TOGETHER

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