

LEADERSHIP UPDATE

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To Do or Not to Do

Administrators' Legal Obligations to Students, Teachers, Parents: Boundaries, Investigations and Disclosure

March 9, 2009

Most educators are aware of society's litigious nature and of ever-changing legislation and judicial decisions that affect the operation of schools; however, some educators are uncertain about the legality of the decisions they make in the daily operation of their schools. School personnel often approach the law with anxiety and fear and view it as a trap to ensnare any educator who makes an innocent mistake. Therefore, to protect themselves educators need a basic understanding of the laws that affect them and of the concerns that frequently arise in education law. In addition to this understanding, educators must recognize how their actions can lead to litigation and must understand the impact of legislative and judicial mandates on the teaching profession.

School administrators may have a larger responsibility than other professionals to understand the legal process, including certain landmark decisions and their effect on school policies and operation. To help administrators, the ATA will provide a seminar series on important legal issues that will give administrators the chance to engage in useful and instructive activities and discussions. This seminar series will familiarize administrators with their legal obligations within the complex set of employment, professional and social parameters set out in various laws, regulations and policies.

The first session of this series will be held on March 9, 2009, at Barnett House, in Edmonton. There is no cost to attend. The session will address the school administrator's legal obligations regarding

- A. Students
 - Investigation process boundaries
 - Reporting boundaries
 - Section 43 of the Criminal Code
- B. Teachers
 - Investigation process boundaries
 - Medical information disclosure boundaries
 - Access to and disclosure of personal information in records and websites
- C. Central Office
 - Investigation process boundaries
 - Record disclosure
 - Obligation to participate in assessments
 - Lawful orders of the board
- D. Parents
 - Responding to parent concerns
 - Enforcing limits on access
 - Electronic access to school information
 - Defamation

For more information and a registration form, visit the ATA website at [www.teachers.ab.ca/Resources for School-Based Administrators/ Legal Issues for Administrators](http://www.teachers.ab.ca/Resources-for-School-Based-Administrators/Legal-Issues-for-Administrators), or call Konni deGoeij at 1-800-232-7208 or 780-447-9400.



One's
philosophy
is not best
expressed in
words;
it is
expressed in
the choices
one makes. ...
In the long
run, we shape
our lives and
we shape
ourselves.
The process
never ends
until we die.
And the
choices we
make are
ultimately
our own
responsibility.

—Eleanor
Roosevelt



Real Learning First

As the voice of Alberta's teaching profession, the Association is committed to protecting the integrity of public education by advancing an approach to accountability—including student assessment, evaluation and reporting—that puts real learning first. The government's current educational accountability policies and processes, specifically its provincial student assessment, evaluation and reporting initiatives, are not effectively meeting the needs of today's students. It is time to engage both the membership and other Albertans in a dialogue about how educational accountability that foster ingenuity and innovation rather than merely comply with command-and-control requirements designed in a bygone era of minimal growth in student enrolment and declining resources.

Both school administrators (the instructional leaders in schools) and teachers believe in public accountability. First and foremost, as professionals, their shared commitment is to the best interests of students. Alberta teachers are prepared to work closely with the parents and the communities served by their schools to evaluate student progress, to identify local priorities for improvement and to work with the entire school community to achieve those priorities for all students.

Authentic local school-based planning and reporting can contribute significantly to this process. For example, the Alberta Initiative for School Improvement (AIS I) has demonstrated the power of collaboration and trust among education partners to respond to the learning needs of all students.

Principled consultations among education partners *do* produce optimal results. Alberta Education has a proven track record in developing world-class curriculum and implementation models—in distinct contrast to its approaches to educational accountability.

To support genuine accountability, the Association has developed a Real Learning First action plan, which has four major goals:

1. To encourage teachers, school communities and education partners to examine how the government's current accountability initiatives tend to undermine attempts by teachers to provide high-quality assessments of student achievement and by schools and jurisdictions to develop meaningful measures of their performance
2. To affirm the central role of teachers' professional judgment in diagnosing, assessing and responding to the learning needs of students
3. To urge the government to shift its accountability scheme from one that relies on large-scale external tests to one that (a) focuses on teacher-developed student assessments that conform to professional standards of practice and (b) fosters the conditions necessary for optimal teaching and learning
4. To work with education partners to urge the government to adopt a system of educational accountability that supports student learning and improves the capacity of teachers, schools and jurisdictions to respond to the growing complexity and diversity of classrooms

Beginning with the expansion of the provincial achievement testing program, the government has continued to adopt assessment policies that intrude into the professional domain of teachers.

These policies have created conditions that the profession can no longer accept. Policies such as Grade Level of Achievement, Prior Reporting and increased focus on one-shot, large-scale testing program results (Accountability Pillar) deprive teachers of their professional judgment, autonomy and decision making, overshadow other aspects of pedagogical practice and undermine public confidence in teacher assessment and evaluation.

The action plan is built on four major strategies: (1) making representation to the government, (2) educating and engaging members (including teachers, administrators and locals), (3) raising public awareness and (4) fostering partnerships with key education partners. It will communicate three key messages:

1. Teachers are ultimately responsible, both legally and professionally, for evaluating and reporting student progress.
2. The current emphasis on standardized testing programs does little to address the individual needs of students and diverts precious resources away from the classroom.
3. Relying on standardized testing programs to determine school and school-system performance misrepresents the work of teachers and schools.

The Association believes that we need to develop accountability processes that reflect what the research says about how schools, teachers and students actually improve. We need an approach to educational accountability and reporting student progress that recognizes the complexity and diversity of Alberta's growing population and honours multiple pathways of success and the rich possibilities for this province articulated in the Association

publication *Changing Landscapes of the Next Alberta—Shaping a Preferred Future 2008–2028*. The present challenge we face related to education accountability in Alberta is captured by the founder of VISA, Dee Hock, when he points to the need for complex, dynamic organizations to support distributed leadership and ingenuity through one basic principle: “Have a

simple, clear purpose which gives rise to complex, intelligent behaviour rather than complex rules and regulations that give rise to simplistic thinking and stupid behaviour.”

The Association continues to work with the ministry and other education partners to improve student assessment and reporting practices in ways that support teachers’ professional judgment

and ability to respond to the learning needs of all students. The Real Learning First initiative continues this long-term strategic commitment of Alberta’s teaching profession.

For more information on this initiative, please contact J C Couture or M F Podlosky at 780-447-9400 or 1-800-232-7208.

The Doctrine of Fairness, the Rules of Natural Justice and the Principles of Due Process

1. Doctrine of Fairness

This concept, often referred to as procedural fairness, is not a separate standard from the rules of natural justice; it is the heart of natural justice. Where a board or decision maker acts in an “administrative” capacity, there exists an obligation to act fairly, which is something less than the formal procedures referenced to the traditional natural justice.

The relationship of these concepts to the decision-making process is described as follows:

In essence, the rules require that a person whose rights or legitimate expectations may be affected by a decision be given an adequate opportunity to state his case and be heard by an unbiased decision maker. The doctrine of procedural fairness arguably encompasses the rules of natural justice and makes them applicable to all types of decisions which reflect rights of legitimate expectations whether the decision is judicial in nature or merely administrative.

Two Supreme Court of Canada rulings found the doctrine of fairness applicable not only to judicial and quasi judicial decisions, but also to administrative decisions. Generally, the courts did not distinguish between the concepts of natural justice and fairness because the elements of each depend upon the nature of the case and the seriousness of the impact upon the individual. The point of consideration, in each case, was that the tribunal must treat the aggrieved person fairly.

2. Natural Justice

Natural justice is defined in the following manner:

Natural justice comprises the rules to be followed by any person or body charged with the duty of adjudicating upon disputes between or upon the rights of others. The chief rules are to act fairly, in good faith, without bias and in a judicial temper and to give each party an opportunity to adequately state his case.

3. Basic Premises of Natural Justice

The two basic premises of natural justice are that

- (a) an opportunity for a fair hearing should be given to those affected by a decision and
- (b) the decision maker should not be biased.

4. Fair Hearing

In respect of a fair hearing, the following are basic rights as prepared by the Ontario Attorney General.

- (a) The right to reasonable notice of time and place of the hearing.
- (b) The right to reasonable information of any allegation respecting the good character, propriety of conduct and competence of a party.
- (c) The right to a public hearing unless public security and intimate financial or personal matters are involved.
- (d) The right to be represented by a lawyer or an agent.

- (e) The right to call and examine witnesses and to cross-examine other witnesses.
- (f) The right to protection against self-incrimination respecting the use of evidence in any subsequent civil or criminal proceedings (as far as the province can grant that right).
- (g) The right to reasonable adjournments of a hearing.
- (h) The right to a written decision, with reasons upon request.

5. Fundamental Principles of Due Process Protection

The fundamental principles of due process protection which generally operate in a dismissal hearing are set out as follows:

- (a) The right to notice (including a statement of reasons) so the teacher can be informed of the impending subject of review and can choose what action to take with reference to it.
- (b) The right to a hearing.
- (c) The right to a personal presence at the hearing.
- (d) The right to counsel, including the privilege of raising issues and setting up a defense and the right to confront and cross-examine witnesses.
- (e) The right to introduce evidence.
- (f) The right to protection against arbitrary rulings and the right to fairness and impartiality.
- (g) The right to proof of damage.
- (h) The right to a review by an appeal tribunal.

6. Implications of Alberta Law

Section 2 of the *School Act* requires that boards act reasonably in exercising any

rights under the act. This has been upheld as a requirement to provide fairness and natural justice in employment matters.

How Does This Affect You as an Administrator?

You have an obligation to act fairly. As stated, the rules require that a person whose rights or legitimate expectations may be affected by a decision be given an

adequate opportunity to state his or her case and be heard by an unbiased decision maker. In order to do this, the person has a right to know who the accuser is and what he or she has been accused of. If the matter is going to be disciplinary in nature, the person has a right to representation from his or her professional association.

For more information, please contact any staff officer in Member Services.



Q & A

GORDON THOMAS

Q: What recourse do we have when a parent posts a rant about a school issue on the local community bulletin board? Even though the school was not named, everyone knew who had posted the comments.

A: If the author of the posting is known, a phone call from the principal of the school to the author would be a good first step. To the extent that comments may appear to be defamatory, it would be very difficult for the Association or individual teachers to take legal action against the person because fair comment based on facts or facts reasonably believed to be true is a strong defence to a charge of defamation, and a defendant is usually excused from liability for publishing opinions. Defamation is a tort in which a person makes an untrue statement about another that tends to harm the reputation of that person in the eyes of right-thinking members of the community. The person is liable for the defamatory

statement if he or she cannot show that it was a fair comment or made on an occasion of privilege without malice on his or her part. The defence of fair comment is available to both the media and to individuals as long as it is opinion based on facts or on events that the person has good reason to believe are true.

If this behaviour is common from this parent, you should first review your school jurisdiction's harassment policy. Determine if the harassment policy has been communicated to all students, parents, staff and teachers. A harassment policy is one of the school's most important policies and all staff need to know this. One way to impress upon them its importance is to present it at the beginning of the school year at an assembly or in homerooms. You could also consider providing each student with a copy of the harassment policy to take home. If the school has a website, post the policy online. The policy could also be posted publicly near the school office or other public place. If the school board has a harassment policy in place, teachers and principals should use its provisions to address situations as they arise.