

TABLE OF CONTENTS

Dedication	iii
About the Authors	v
Foreword	vii
Preface	xi
Acknowledgements	xiii
Table of Cases	xxiii
Chapter One: A Delicate Balance: Inspiring the Future	1
Background and Purpose of This Book	3
Complicated Nature of Education	4
Parental Harassment and Social Media	4
Principals May View Social Media, but the Scope of this View is Limited	6
Schools and Societal Issues	6
Freedom of Religion	7
Overview	7
A Frame of Reference	10
Religious Accommodation	13
Private or Independent Schools	14
Use of Technology	19
Custody and Child Access	20
Teacher Relationships	20
Case Studies	20
Case Study: School Safety/Expression of Religious Rights (<i>Multani</i>)	21
Case Study: Bill 21 Entitled “An Act Respecting the Laicity of the State”.	22
Case Study: <i>Morin v. PEI Regional Admin Unit</i> (2002) SCC	23
Conclusion	23
References	23
Chapter Two: Legal Issues and Child Education	27
The Constitutional Framework	27
Organization of the Courts	27
The Supreme Court of Canada	28
Federal Courts	28
Provincial and Territorial Superior Courts	29
Provincial and Territorial Courts	29

Table of Contents

Administrative Tribunals	30
Provincial Courts of Appeal	31
Overview of Canada’s Court System	31
New Court Initiatives	31
Alternative to Going to Court: Alternative Dispute Resolution	32
Access to Justice	32
Family Violence	32
Three Words that Can Change a Life: “I Need Help”	33
Managing Child Behaviour	34
Changes in Society	34
Assault and the <i>Criminal Code</i>	34
Section 43: the Spanking Law	36
By Way of Correction	36
Reasonable in the Circumstances	37
Negligent Parenting	39
Case Studies	40
Case Study: Custody	40
Chapter Three: Professionalism	43
Teaching’s Human Touch	43
In the Public Eye	44
Off-Duty Behaviour	45
Freedom of Expression	52
The <i>Charter</i>	54
Professionalism and Social Media	56
Invasion of Privacy	57
Criminal Harassment	63
Social Media and the U.S.	63
Social Media and Canada	64
Sexual Misconduct in the Workplace	65
Grooming	65
Censorship of Resource Material	66
Limits on Higher Standards	67
Position of Trust	70
Teacher Conduct and Student Suicide	72
Human Rights	72
Is Smoking A Disability?	73
Case Studies	73
Case Study: <i>Ross v. New Brunswick School District No. 15</i>	73
Case Study: <i>R. v. Audet</i> , [1996] 2 S.C.R. 171	75

Table of Contents

Case Study: <i>R. v. Jarvis</i>	76
References	77
Chapter Four: The Law of Negligence	81
History	81
Duty of Care	86
What Is Vicarious Liability?	95
Confirmation of Vicarious Liability	98
Non-Delegable Duty	99
Case Studies	102
Case Study: <i>Perry v. Toronto District School Board</i>	102
Case Study: <i>H. (S.G.) v. Gorsline</i>	102
Case Study: <i>Fraser v. Campbell River School District No. 72</i>	103
Case Study: <i>Urbanson v. Western Canadian Place Ltd.</i>	104
References	105
Chapter Five: Position of Trust	107
Supervision and Duty of Care	107
The Police and Children's Aid Societies: Duty to Report	108
<i>Child, Youth and Family Services Act</i> : Duty to Report	109
Disclosure to Children's Aid Society	110
Professional Obligation and Protection from Liability	114
Reporting Suspicions That a Youth Aged 16 or 17 May be in Need of Protection	115
Person Must Report Directly	115
Student Over the Age of 18	115
Responsibilities of the Board	116
Students Under 12 Years of Age Who Cause Serious Injury	117
Caregiver-Adolescent Conflict	117
Mandated Reporters	117
When Am I Mandated to Report?	117
What is a Professional Role?	117
Reasonable Cause to Suspect	117
Abuse and Maltreatment	118
Abuse	118
Maltreatment (Including Neglect)	118
How do I recognize Child Abuse and Maltreatment?	118
Policy/Program Memorandum #9	119
Duty to Report is Ongoing	119
Report(s) Must be Made Directly to a Children's Aid Society	119
Duty to Report Does Not Apply to Older Children	119

Table of Contents

Consequences of Failure to Report	120
Protection for Persons Making Reports	120
Investigation	120
Directors of Education	120
Child and Family Services	121
Domestic Law Regarding Child and Family Services	121
International Law	122
Federalism	124
Protecting Our Students: the Robins Report	126
School Boards and the Ontario College of Teachers	126
A Child's Statement to a Teacher	126
Bill C-32: <i>Victims Bill of Rights Act</i>	128
Other Laws relating to Children and the Family	129
Case Studies	130
Case Study: Duty to Report	130
Rights of Adolescents Under Ontario's Health and Education Laws	131
Case Study: Child Custody	131
Case Study: Principal's Discretion	132
References	132
Chapter Six: Creating A Safe School Environment	135
Modern Threats to a "Safe School"	136
Violence	137
Dealing with Bullying and Other Anti-Social Behaviour	141
Bill 212	148
How Does Bill 212 Affect the Outcome of Some Real School Scenarios?	148
<i>Case #1: A Knife at Recess</i>	148
<i>Case #2: An Assignment Gone Awry</i>	149
<i>Case #3: Facebook Aggression</i>	150
<i>Case #4: "What Good Will a Suspension Do?"</i>	151
Zero-Tolerance Policies	152
A Positive School Climate	152
An Assessment of Bill 212	153
Racism and Education	155
Bullying	157
It's a Different World: Defining Characteristics and Legal Issues of Cyber-Bullying and Sexting	158
Cyber-bullying	158
Sexting	159

Table of Contents

The “MacKay” Report	163
Nova Scotia Anti-Bullying Legislation	164
Case Studies	165
Case Study: Sexting	165
Case Study: Schoolyard Fight	165
Case Study: <i>K.W. v. Toronto Catholic District Board</i>	166
Case Study: Student Ignorance of a Rule	167
Case Study: Video Surveillance and Profiling	168
Case Study: Pictures in a Text Message	169
References	169
Chapter Seven: Pupils	173
Search and Seizure	173
Dress Codes	178
Ethno-Cultural Attire	180
Release of Student Information	183
Personal Information	183
Non-Custodial Parents	184
Privacy Complaint No. MC06-63: Toronto District School Board	185
Privacy Commissioner’s Findings and Relevant Legal Statutes	186
Ontario Student Records	188
Special Education	190
Who has a Legal Right to Special Education?	191
Where Can an Exceptional Student be Placed?	192
What if a Parent Disagrees with an IPRC Decision?	193
Can an Exceptional Student be Suspended or Expelled?	196
Can an Exceptional Student be Excluded From School?	197
Police in Our Schools	197
Key Legislation Affecting Pupils	199
Bill 52: <i>Education Amendment Act</i>	199
All Families Are Equal	201
<i>Youth Criminal Justice Act</i>	203
“Zero-Tolerance” Legislation	208
Expulsion of Students and Bill 212 on Due Process	210
Mitigating Circumstances	212
LGBTQ Pupils	214
Bill 13: <i>Accepting Schools Act</i>	216
Accommodation of Transgender and Gender Nonconforming Students	217
Unpacking Ontario’s 2015 Sex Education Curriculum	219
Power to Determine the Curriculum	219

Table of Contents

Sex Education	221
Comment	222
Importance of Including LGBTQ Language in Curriculum	224
Exposure, Civil Tolerance and Public Schools	225
Conclusion	225
Case Studies	227
Case Study: <i>R. v. Fearon</i> , 2014 SCC 77	227
Case Study: Student Search	227
References	228
Chapter Eight: Teacher Relationships and Collegial Conflicts	233
Parent/Teacher Relationships	233
What Is Harassment?	234
The Law	235
The <i>Criminal Code</i>	236
Harassing Telephone Calls	237
Nuisance	237
Mischief	238
Trespass to Property	238
<i>Education Act</i>	238
<i>Trespass to Property Act</i>	239
Civil Remedies	240
Defamation	240
Tips for Teachers and Administrators	240
Re-employment or Denial of Damages	241
Ontario Human Rights Commission	242
Case Studies	242
Case Study: False Accusations	242
Case Study: Non-Compliance of School Code of Conduct	243
Case Study: Collegial Conflict	243
Case Study: A Sour Note	245
Conclusion	247
References	248
Concluding Remarks	249
Appendices	
Appendix 1 — <i>Education Act</i> , R.S.O. 1990, c. E.2 (excerpts)	251
Appendix 2 — <i>Operation Of Schools — General</i> , O. Reg. 298	315
Appendix 3 — <i>Teaching Profession Act</i> , R.S.O. 1990, c. T.2	339
Appendix 4 — <i>Ontario College of Teachers Act</i> , S.O. 1996, c. 12	345
Appendix 5 — <i>Professional Misconduct</i> , O. Reg. 437/97	419

Table of Contents

Appendix 6 — <i>Child, Youth and Family Services Act</i> , R.S.O. 2017, c. 14 (excerpts)	421
Appendix 7 — <i>Criminal Code</i> , R.S.C. 1985, c. C-46 (excerpts)	435
Appendix 8 — Professional Advisory: Maintaining Professionalism (Use of Electronic Communication and Social Media)	449
Appendix 9 — <i>Children’s Law Reform Act</i> , R.S.O. 1990, c. C.12 (excerpts) . . .	457
Appendix 10 — <i>Health Care Consent Act</i> , S.O. 1996, c. 2 (excerpts)	467
Appendix 11 — <i>Youth Criminal Justice Act</i> , S.C. 2002, c. 1 (excerpts)	475
Bibliography	529
Index	531