G + Education

INFO

WINTER 2021 - Newsletter nº 35

If 2020 is to be forgotten, 2021 will be the year of change. Change in our work habits, in our leisure time, in short in all aspects of our lives. At Le Corre, we have not escaped this movement, which began in December with the arrival of Me Lucie Roy in our team. Me Roy, until recently, had been an administrator in the education field for more than 15 years.

Thus, the expertise we have developed in education over the last few decades is expanding to encompass other aspects of your day-to-day management, including governance, education law, access to information issues and many others. Our advice has always been grounded in practice, and this is even more true today!

This new presentation of our *Gestion + Education* newsletter, which will continue to be sent to you three times a year, reflects this new support by offering you summaries of decisions related to various aspects of your practice and an editorial on topics of concern to you.

A Leading Edge Expertise

We are a law firm specializing in labour and employment law and occupational health and safety law at the exclusive service of employers. We also offer specialized expertise in education law. Our in-depth knowledge of workplaces, including public and private institutions in the education sector, as well as the laws and decisions of specialized tribunals, allows us to quickly answer your questions by offering you concrete solutions.

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EDITORIAL

The imposition of 30 hours of continuing education for teachers: the first step towards the creation of a professional order in Quebec?

Me Lucie Roy

Starting July 1, 2021, teachers in both public and private institutions in Quebec will have to start recording and accounting for their continuing education hours, an obligation similar to the one imposed to many members of professional orders such as lawyers and engineers. Many see this choice by Minister of Education, Mr. Jean-François Roberge, as a first step towards the creation of a professional teaching order, a solution he envisioned in 2016 in his essay on education entitled *Et si on réinventait l'école*?

Beyond the political considerations that may have led to the inclusion of section 22.0.1 in the *Education Act* and section 54.12 in the *Act Respecting Private Education* that will come into force on July 1, 2021, what is really behind this new obligation and how educational institutions will have to manage this new reality?

Remember that these provisions stipulate that a teacher must take at least 30 hours of continuing education activities per period of two school years beginning on July 1 of each odd-numbered year. It is up to the teacher to choose the continuing education activities that best meet his or her needs in terms of skill development.

The legislator has also defined the notion of "continuing education activity" as participation in a structured activity, such as a course, seminar, symposium or conference, organized by the Minister, a university, a school service centre, a private educational institution, another organization or a peer. The reading of specialized books is also recognized as a continuing education activity. Any participation as a trainer in such an activity is also covered.

The definition of "continuing education activity" is extremely broad in order to recognize the professional autonomy of the teacher and give him or her full control over his or her continuing education.

The *Education Act*[1] stipulates that it is the school principal who must ensure that each teacher fulfills his or her continuing education obligation, whereas the *Act respecting private education*[2] provides that it is the institution that has this responsibility.

In light of these provisions, how can a school administration ensure that a teacher meets his or her training obligation without interfering with the teacher's professional autonomy?

We are of the opinion that, although a school administration has no right of oversight over the qualification of an activity as training, it nonetheless retains its managerial rights when the training activity takes place during working hours or when it is imposed by the employer. In this sense, sections 22.0.1 and 96.21 of the *Education Act* and 54.12 of the *Act Respecting Private Education* do not really change the situation.

Although we believe that a teacher's obligation of continuing education is separate from his or her contract of employment with the employer, the employer will still have to manage requests for training during working hours, particularly those that could have an impact on the teacher's presence in the classroom.

While we do not anticipate that the recognition of training activities will cause any major problems over the next two years, the organization of these activities in the teacher's work performance will.

Finally, it should be noted that there is no sanction for teachers who do not fulfill their continuing education obligation. Here again, the school administration is left with a very tricky role to play in dealing with delinquent teachers.

There is no doubt that these new provisions will continue to be the subject of a lot of discussions in the upcoming months, particularly in the context where their inclusion in the *Education Act* is being challenged by the unions at the bargaining tables.

1. Section 96.21.
2. Section 54.12.

RECENT DECISIONS

1 Does co-modal teaching interfere with the fundamental rights of teachers?

« *No, but…* » This is the arbitrator's decision in this case where the union opposed the project of simultaneously having a classroom and virtual teaching for students at home due to COVID-19. The union alleged that co-modal teaching infringed on teachers' fundamental rights, including the right to privacy, in addition to undermining their professional autonomy. The school service centre argued the opposite, adding that co-modal education constituted, at most, a minimal infringement of the teachers' rights and met the objective of social integration of the students. Although the arbitrator recognized that co-modal education was possible, he ruled that the school service centre's decision to impose it without verifying certain other possible and reasonable avenues was contrary to the Charter. He therefore ordered the parties to continue the temporary measures put in place, namely teaching by non legally qualified teachers.

Syndicat de l'enseignement de l'Ungava et de l'Abitibi-Témiscamingue (FSQ-CSQ) et *Centre de services scolaire du Lac-Témiscamingue*
SAE 9488, 2020-12-23, Me Jean-Guy Ménard (T.A.)

2 Back to School Plan Receives the Passing Grade

With the start of the 2020-2021 school year, parents challenged the government's back-to-school plan and requested various orders to make physical attendance at school optional and to provide all school-age children with the opportunity to receive educational services remotely. The decision does not address the merits of the case, but rather whether the court should issue a safeguard order to allow all parents of school-age children to immediately have access to education services remotely and for the duration of the proceedings. In its analysis of the four criteria for a safeguard order, the court concluded that only the balance of inconvenience test was not met and that the parents had failed to rebut the presumption that the government's back-to-school plan adequately served the public interest. The court refused to issue the safeguard order sought.

Karounis c. *Procureur général du Québec*
2020EXP-2135, 2020 QCCS 2817, Justice Frédéric Bachand

3 You don't catch flies with vinegar!

This was the conclusion of the arbitrator when he had to rule on the application of an attraction and retention bonus for certified maintenance workers at a school service centre when they were paid for overtime. According to the school service centre's method of calculation, the wage received by the employee differed depending on whether he took time off in lieu or asked to be paid at a premium rate for such overtime. The general rule is that an employee who works overtime is always compensated in equal amounts, whether as time off in lieu or as a payment. There is no doubt in our view that this equal treatment is a fair reflection of the will of the parties. The amount of the attraction and retention bonus must therefore be adjusted to the rate of pay when the rate of pay is increased under the terms of the collective agreement.

Centre de services scolaire des Draveurs et *Syndicat du soutien scolaire de l'Outaouais*
SAE 9495, 2021-01-28, Me Serge Breault (T.A.)

RECENT DECISIONS

4 Being threatened with a sharp object is not an objectively traumatic event!

A Special Education Technician (SET) alleges that he suffered a workplace accident that caused him post-traumatic stress disorder associated with major depression, when he had to intervene with a disorganized student by holding her down and disarming her of a sharp object. In this case, although the student was armed and threatening, there was no unexpected and sudden event, since this type of intervention does not go beyond the normal scope of work for a SET working with a psychologically fragile clientele at high risk of disorganization. Under the circumstances, it is not an objectively traumatic event. Moreover, there is no causal link between the employee's psychological injuries and the intervention, since these stem rather from his subjective perception, which is greatly affected by his narcissistic personality disorder with hypervigilance. The employee's challenge is rejected and the refusal of his claim is confirmed.

Dumont et *Commission scolaire de la Capitale*
2020EXPT-1360, 2020 QCTAT 2244 (SST), j.a. Ann Quigley

5 Suspended for recycling exams

A lecturer for the university for more than 10 years is challenging an 87-day suspension. The university disciplined her for using questions from her mock exam used in class for the final exam of her course, which the employee admitted. She also admitted to having the practice of reusing questions from previous exams to make up her own exams. This recycling of questions was, moreover, well known among students. While considering that the employee was negligent in that she did not act as a reasonable teacher in the same circumstances would have done, the court emphasized that its decision did not constitute an assessment of the quality of the employee's teaching. It recalled that, even if an employee has an impeccable "record of service", it may happen that she is negligent in the performance of a task, as is the case here. The suspension without pay is therefore maintained.

Syndicat des chargées et chargés de cours de l'Université de Sherbrooke et *Université de Sherbrooke*
2021 CanLII 1137 (QC SAT), M[e] Jean-Yves Brière

6 In his mind, he always wanted to pay!

A teacher at a vocational training centre is contesting his dismissal, after an investigation revealed that he and colleagues had appropriated goods made by students without paying for them. The teacher argues that his dismissal is disproportionate to the five-day suspension imposed on his colleague. He further alleges that he should not have been dismissed because he intended to pay for the goods he took. According to the court, the teacher's actions were inconsistent with his duty to be a role model for his students. He should have known not to take property without paying whether or not there was a directive. Even in the absence of a written instruction that a good purchased at the centre had to be paid for, there was no justification for the teacher to unilaterally decide on payment rules that were so vague that they could be equated with non-payment and appropriation of property without rights. The dismissal is maintained.

Centre de services scolaire des Appalaches et *Syndicat de l'enseignement de l'Amiante*
SAE 9686, 2020-12-20, M[e] Denis Nadeau (T.A.)