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Official Report of Debates (Hansard)

Monday 14 May 2007

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Lundi 14 mai 2007

Standing committee on general government

Education Amendment Act
(Progressive Discipline
and School Safety), 2007

Chair: Kevin Daniel Flynn
Clerk: Susan Sourial

Comité permanent des affaires gouvernementales

Loi de 2007 modifiant
la loi sur l'éducation
(discipline progressive
et sécurité dans les écoles)

Président : Kevin Daniel Flynn
Greffière : Susan Sourial

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON GENERAL GOVERNMENT

COMITÉ PERMANENT DES AFFAIRES GOUVERNEMENTALES

Monday 14 May 2007

Lundi 14 mai 2007

The committee met at 1603 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. Kevin Daniel Flynn): We'll call to order, then. This is a meeting of the standing committee on general government. We're here today to hear from four public delegations on the matter of Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety.

Prior to that, we need a motion to deal with the standing committee. Would somebody like to move that? Mr. Rinaldi?

Mr. Lou Rinaldi (Northumberland): Summary of decisions made at the subcommittee on committee business:

Your subcommittee on committee business met on Thursday, May 10, 2007, to consider the method of proceeding on Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety, and recommends the following:

(1) That the committee hold public hearings at Queen's Park on Monday, May 14, 2007, and Wednesday, May 16, 2007, in the afternoon.

(2) That hearings be held on the morning of Wednesday, May 16, 2007, if required.

(3) That the committee clerk, with the authority of the Chair, post information regarding the committee's business on the Ontario parliamentary channel and the committee's website, and send out a press release.

(4) That interested people who wish to be considered to make an oral presentation on Bill 212 on Monday, May 14, 2007, should contact the committee clerk by 5 p.m., Thursday, May 10, 2007.

(5) That interested people who wish to be considered to make an oral presentation on Bill 212 on Wednesday, May 16, 2007, should contact the committee clerk by 5 p.m., Friday, May 11, 2007.

(6) That on Thursday, May 10, 2007, and Friday, May 11, 2007, the committee clerk supply the subcommittee members with a list of requests to appear received. This list is to be sent to the subcommittee members electronically.

(7) That if all groups can be scheduled, the committee clerk, in consultation with the Chair, be authorized to schedule all interested parties.

(8) That, if required, each of the subcommittee members supply the committee clerk with a prioritized list of the names of witnesses they would like to hear from by 10 a.m., Friday, May 10, 2007, and by 10 a.m., Monday, May 14, 2007, and that these witnesses must be selected from the original list distributed by the committee clerk to the subcommittee members.

9. That groups be offered 10 minutes in which to make a presentation.

10. That the research officer prepare an interim summary of the recommendations heard. This summary will be distributed on Friday, May 18, 2007.

11. That the deadline for written submissions be 12 noon, Friday, May 25, 2007.

12. That the deadline for filing amendments be Wednesday, May 23, 2007, 12 noon, as per the order of the House dated May 1, 2007.

13. That the committee hold one day of clause-by-clause consideration on Monday, May 28, 2007, as per the order of the House dated May 1, 2007.

14. That the committee clerk, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That's the report of your subcommittee.

The Chair: Thank you, Mr. Rinaldi. Any speakers? Those in favour? That's adopted.

EDUCATION AMENDMENT ACT (PROGRESSIVE DISCIPLINE AND SCHOOL SAFETY), 2007

LOI DE 2007 MODIFIANT LA LOI SUR L'ÉDUCATION (DISCIPLINE PROGRESSIVE ET SÉCURITÉ DANS LES ÉCOLES)

Consideration of Bill 212, An Act to amend the Education Act in respect of behaviour, discipline and safety / Projet de loi 212, Loi modifiant la Loi sur l'éducation en ce qui concerne le comportement, la discipline et la sécurité.

CANADIAN CIVIL LIBERTIES ASSOCIATION

The Chair: We can move on to our first delegation of the day, which is the Canadian Civil Liberties Asso-

ciation. Noa Mendelsohn Aviv is with us. If you'd like to come forward.

Ms. Noa Mendelsohn Aviv: Hi there.

The Chair: Welcome. Make yourself comfortable. You've got 10 minutes. You can use that any way you choose. If there's any time left at the end, we'll apportion that time between the parties proportionately.

Ms. Mendelsohn Aviv: Good afternoon, Mr. Chairman, members of the committee. As you know, I'm here from the Canadian Civil Liberties Association. What you may not know is that one of the fun things I get to do is spend many hours meeting with hundreds of students every year in their classrooms to discuss civil liberties, the Charter of Rights and Freedoms and the challenges of democracy. I have heard many students give their opinions about lots of issues, including the question we've come to speak to you about today, that of cyberspeech. It's not always easy to get the students, but once they get going, many of them have very interesting and intelligent things to say; a lot of fair comments as well.

The other group that I get to be in contact with a lot is teachers, and I have enormous admiration for them. They have the daunting task of trying to draw teenagers out of their complacency and apathy and try to help them become well-adjusted, engaged citizens in our vibrant democracy. This, after all, is one of the core functions of freedom of expression. But these educators also have a less fun task. They have to keep the schools working when students aren't always excited as much as they are about this project. Needless to say, this is a situation rife with tensions, and it requires educators to establish their authority, set boundaries and enforce these through discipline.

Section 306 of Bill 212 is trying to provide some assistance in this regard. Unfortunately, section 306 does not provide the necessary protections for certain basic rights and freedoms; in particular, freedom of expression and privacy of students. CCLA does not support an absolute right to freedom of expression. I want that to be clear off the top. Certain limits are fair and reasonable, as even the students will tell you, and certain unique limits may be applicable to a school situation, but Bill 212 doesn't get the balance right.

In a period of new technologies and new dilemmas around cyberspeech, semi-public Internet forums and schools reaching out beyond their borders into the homes of students, this bill has an important role to play. It should, first and foremost, be taking the lead in protecting students' rights and freedoms, their expression and their privacy. Where limits are appropriate—and we'll discuss those in a minute—it should be defining those limits. School boards and principals should know what kind of restrictions they may place and, more importantly, students need to know which of their personal and private off-school communications and activities could get them into trouble with their schools.

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Bill 212 only tells us that principals have a vague authority to suspend students for bullying, but it doesn't tell us what bullying is. It tells us that principals can continue to suspend students for any offence so designated by a school board policy, but it sets no limits on what those policies may contain. Finally, and most significantly here, it extends the authority of schools to any other circumstance "where engaging in the activity will have an impact on the school climate." No explanations are offered, no definitions are provided and no protections are made for students' freedoms. This is worrying because, based on recent incidents, there is reason to believe that schools will interpret the term "bullying" to include many kinds of speech and cyberspeech. In fact, "cyberbullying" is the term that has been employed by school authorities in a number of recently reported cases.

In one of these cases a few months ago, according to news reports, a principal became rather unpopular when he enforced a board-wide policy against cellphones and iPods in the school. As you can imagine, the students were not very happy with this decision and, as you can probably also imagine, they started complaining and mouthing off to each other, as angry students have done against school authorities for decades, if not longer. What is new here is the forum they used, the semi-public website Facebook, which attracted the attention of some 300 students and that of the principal. According to media sources, at least 19 students were suspended for statements that were allegedly mean, derogatory or critical of the principal and the policy. Most significantly, there was one young woman who was suspended for the egregious offence of writing online to her friends and telling them that while she supported lifting the ban on electronic devices, she opposed the idea of starting a riot, something somebody else had suggested earlier.

While it's not clear from the news reports exactly why she was suspended, to the extent that students challenge a policy, shouldn't we be commending them for doing so? Isn't that the role we wish for members of a civic society? What is clear is that this bill does nothing to protect a person in such circumstances. Our concern is that the bill might be read as allowing school boards and principals to suspend for lawful, legitimate speech. The bill is very vague. It allows, if not invites, misuse.

"Bullying," for example: What does it mean? Who can be bullied? Principals, trustees? If a high school student sends you a letter, could this qualify as bullying members of this committee? For students to be suspended and have their records permanently marked, is there a standard of impertinence required? For example, what if students complain to a teacher that his test was unfair or what if, in a semi-public, by-invite-only forum, students complain that a teacher is mean, if she really is mean? Or what if they put together a petition to the principal protesting a new school dress code, something they do hate? Are these cases of bullying? How on earth are students supposed to know, and how else are they supposed to get their voices heard?

As for the "other circumstances where engaging in the activity will have impact on the school climate"—that's a

quote from the bill—what precisely are these other circumstances? I ask you: What couldn't have an impact on the school climate? Once again, the bill offers no explanation and the mind boggles at the possibilities, especially when the offences are vague and undefined, "bullying" and anything designated by a school policy. This could extend the disciplinary reach of the school to communications made between students in their own time from the privacy of their homes, where the only reason that school authorities would even know about these communications is because they've gone looking. As long as there is some potential impact on school climate, students could then always be under surveillance and in fear of being disciplined by the school when they're doing nothing more than arguing with friends, discussing the merits of their favourite movie stars or having a heated political debate.

Without anything more in the way of definitions, qualifications and safeguards, this could result in excessive restrictions on speech and will almost certainly, based on media reports, encourage an exaggerated self-censorship. Students want to get scholarships, references, awards and, certainly, admittance to universities. This bill, as it's currently drafted, is not only unfair; it runs the risk of being unconstitutional.

In order to amend the bill to protect these basic rights, it's important to work out a reasonable and coherent position on these issues, and we would ask the honourable members of this committee to consider the following:

(1) Charter rights, including freedom of expression and the right to privacy, do and should apply to youth and children. Certain limits may apply, in particular in the school context, but these limits need to be reasonable and they should be set out clearly so that students may know what is impermissible behaviour.

(2) The education of children to become fully engaged members of our democratic society requires that we give them room to practise the habits of democracy, including the exercise of their rights. They're a year away from voting.

(3) The goal of schools is to educate children, not to take on the role of parents or police in monitoring them in the other multi-faceted aspects of their lives.

In light of all of the above, CCLA would like to offer the committee several recommendations, which will be distributed to you in a minute. These will focus on the communications made by students in their own time and off school grounds against teachers, principals and other authorities.

(1) First and foremost, the protection of basic rights should not be left entirely in the hands of school administrators, however sincere or well-meaning they may be. As recent cases demonstrate, unfortunately some of them will get things wrong. The bill needs to remind school boards and principals of their constitutional obligations. The bill should provide explicitly for the right of students to freedom of expression and privacy.

(2) With regard to the right to privacy, the bill needs to clarify that school authorities may not intercept communications, and that if they do so, students shouldn't be subject to discipline for this. For example, if they have to make up a false identity to get onto a web group, students should not have to get into trouble for the communications that are inside that group.

(3) As discussed, we need to know what bullying means and what kind of speech is included.

(4) Bullying has always meant the targeting of vulnerable, powerless individuals. This term should not be used to refer to the targeting of principals, teachers and school authorities. A different term is needed for that kind of cyber-speech.

(5) Students expressing dissatisfaction with a school rule, objecting to a policy or trying to organize a protest should be commended by schools as effectively practising good citizenship. This is lawful, legitimate dissent. They should not be subject to school discipline, and the bill needs to say so.

(6) For communications about teachers, principals and the like, students should not be subject to discipline unless, at the very least, the speech is unlawful or unless the authorities in question are able to demonstrate that the expression significantly disrupts learning or school operations in a material or substantial way.

There are a couple more recommendations, but I'll leave them since time is running short.

I just would like to conclude with a thought based on my many hours spent with teenagers in their classrooms: There are a lot of jokers out there, and there are a lot of bright, committed, fair-minded kids. All of them, like us, are entitled to free speech and privacy. It's not earth-shattering news to anyone in the educational community that if we want young people to internalize certain values, we need to lead by example. We should be encouraging peaceful protest, not punishing it. We should be supporting rational debate, not stifling it. Unless these kids are causing real harm, we should be giving them their dignity and their freedom. This is their right, too.

The Chair: Thank you very much for coming today. That was excellent time management, but there's no time for questions, unfortunately.

ONTARIO TEACHERS' FEDERATION

The Chair: I'd ask our next delegation to approach the table: Rhonda Kimberley-Young, secretary-treasurer of the Ontario Teachers' Federation, and a colleague—

Ms. Kathleen Devlin: Kathleen Devlin.

The Chair: It's the same rules as for the previous delegation. You have 10 minutes to use in any way you see fit. If there is any time left over at the end, we'll try and share that as evenly as we can amongst the parties. Make yourself comfortable. The floor is all yours.

Ms. Rhonda Kimberley-Young: My name is Rhonda Kimberley-Young. I'm secretary-treasurer of OTF. I'm here today in place of our president, Hilda Watkins, who was unable to be with us.

The OTF does welcome the opportunity to provide the standing committee on general government with feed-

back on Bill 212, the Education Amendment Act (Progressive Discipline and School Safety).

The OTF, the Ontario Teachers' Federation, represents the professional interests of teachers employed in the publicly funded schools of Ontario. It is made up of AEFO, ETFO, OSSTF and OECTA, and therefore we have a membership of 155,000 teachers.

School safety is an issue of concern for each and every one of the teachers who are members of OTF. We want not only students, parents, teachers and other educational workers to be assured of a safe environment in which to teach and learn, but we also want all Ontarians to value our schools as safe and secure places.

The affiliates of OTF have done considerable work in looking at what will make our schools safer places to learn and to work, and in the last few years they have focused particularly on the impact that bullying can have on everyone in our schools.

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As with many issues, it's important that we strike a balance. In this case, we must find the balance between protecting the safety of students, teachers and other educational workers and addressing the root cause of student behaviours. While we recognize that the details of these amendments contained in Bill 212 will be further defined in regulation and address some of our questions, we do want to address the changes contained within the bill.

On suspension and expulsion: The teachers of Ontario have never supported teachers having the authority to suspend, nor principals having the authority to expel students. In fact, many of our affiliates have advised their teachers not to exercise this right. Therefore, we are generally in support of the proposals in Bill 212 to return the authority to suspend to principals and the authority to expel to school boards.

The concept of progressive discipline is one that is understood by the federation. The intention is to balance between changing inappropriate behaviour and applying consequences for that inappropriate behaviour. While we recognize that there needs to be a common-sense application of this idea, it's also important that it not become an excuse for school administration and management not to deal with significant safety issues in our schools. It will be important for the successful implementation of this concept to provide appropriate in-service for teachers and principals.

Teachers are pleased that the bill includes provisions for students to not only continue with their academic programs, but will also have access to treatment as needed. We have two issues we would like to raise concerning this part of the bill.

The first is that this commendable initiative needs to be appropriately funded. By that, we mean that it should not be funded from existing grants to school boards. Recognizing that this work is often quite expensive, the cost of providing the right funding is even greater.

The second issue we would raise is that, from our point of view, it's essential that these students continue to be taught by trained and certified professional teachers. The bill gives the minister the authority to establish policies that would "impose different requirements on the provision of the programs for different circumstances." It's our position that such policies would ensure the qualification and certification of teachers.

We support the increased emphasis the bill puts on communication surrounding matters of suspension and expulsion. It's imperative that the student and the student's family understand their rights and responsibilities in such difficult circumstances. We also recognize that some of these changes are in response to certain findings of the Ontario Human Rights Commission.

We would like to emphasize that it's also important to include teachers in the communication. The level of communication is of greater importance to teachers at the point when students are being reintegrated from the special programs. This matter is one that has long been of concern to us, and we hope that the development of the regulation for this bill provides the government with an opportunity to address the subject.

In terms of mitigating factors, Bill 212 requires the principal to consider certain factors on making recommendations for expulsion. These factors are to be defined in regulation. We recognize the significance of this provision of the bill and the rationale for its inclusion. We do, however, expect that the federation will be consulted in the development of this regulation and consideration of its impact on the safety of our schools.

I do want to speak a little about bullying. As mentioned earlier, the federation is very concerned about bullying in our schools. We are pleased to see bullying included as an offence in these changes. The devastation that bullying can have on those who are being bullied is deep and can be far-reaching. We do have some questions that we would like to see addressed concerning bullying.

First, we hope that the changes will include all forms of bullying, including cyber-bullying, which, as we know from news reports, is increasing as technology advances. Secondly, it's important that the changes also include the bullying of teachers and other educational workers in the school as well as the bullying of students. Once again, committee members will be aware from news reports of the kinds of physical and psychological bullying to which teachers have sometimes been subjected.

Thirdly, in addition to the consequences outlined in the bill, we need to increase our prevention and intervention regarding bullying.

By way of summary, in general, OTF welcomes the introduction of Bill 212, the Education Amendment Act (Progressive Discipline and School Safety). In our view, it brings clarity, transparency and accountability to an issue of fundamental importance in our schools: confidence in our schools as safe and secure places to teach and learn.

We support giving principals the authority to suspend and school boards the authority to expel. We believe that progressive discipline must be appropriately applied and in-serviced. We agree that suspended and expelled stu-

dents should be in alternative programs provided by certified teachers and that the programs should be properly funded. We look forward to improvements in communication among all stakeholders in the area of school safety. We expect to be consulted on the development of the regulation of mitigating factors. We want to see a broad definition of bullying in the regulation and would offer our help in the development of this regulation. Certainly, three of the four Ontario affiliates have done considerable research in the area of bullying, and we would be most happy, through OTF and the affiliates, to offer our help and support.

We really do welcome the opportunity to address the committee on this important piece of legislation, and as I said, we would be very happy to continue to consult as the regulations are developed. Thank you.

The Chair: Thank you very much. You've left time for a brief question from each of the parties. Unfortunately, that's under a minute each, starting with Mr. Ouellette.

Mr. Jerry J. Ouellette (Oshawa): Thank you very much for your presentation. There are a number of questions. Hopefully, somebody else will be able to jump in on them. I think the one I'd like allude to is, you don't mention anything about the appeal process. Once somebody has been suspended, there is an appeal process. Do you think that the student should be allowed to continue on in school while the appeal process is going on or should they be exempt from school when that process is going on? There's no real clarity on that issue in the bill.

Ms. Kimberley-Young: I think that in terms of the appeal process, a lot of what's going to need to happen—the principals are obviously going to be given the ability to deal with the suspensions directly. I would expect that, given the nature of the behaviour in the first place, that might be a factor that's considered in terms of that appeal process.

The Chair: Thank you. Mr. Marchese?

Mr. Rosario Marchese (Trinity–Spadina): Two quick questions. This bill will not be enacted until 2008. Given the urgency of the issue, I thought they would have made sure this bill got dealt with immediately. I wonder whether you have an opinion on that.

You talk about having to deal with prevention and intervention, but you just leave it there. Do you have any comments about that as well?

Ms. Kimberley-Young: All of the research that the federations did on bullying speaks to the importance of intervention and prevention and the kinds of programs and supports that are needed in schools for students who are showing behaviours that are unacceptable. A student who has been a victim of bullying needs help and support, but the student who's perpetrating the bullying obviously needs assistance as well. It's an area where we do believe there need to be adequate resources to make sure those things happen. It is the root cause of the behaviour that needs to be addressed, and we would like to see a focus on intervention and prevention. I think that's been a consistent message that has come from the affiliates and OTF.

The Chair: Thank you. Ms. Sandals?

Mrs. Liz Sandals (Guelph–Wellington): Thank you for your presentation. You mentioned the issue of communication, particularly when a student is returning from a long-term suspension or expulsion. That was an issue which the action team got into as well. What sort of communication would you like to see at the point of students being reintegrated into the classroom?

Ms. Kimberley-Young: I think the key communication needs to happen between the school, a principal and the teachers with whom that student will be placed. That could be multiple teachers, obviously, in a secondary setting. Having been a classroom teacher, the more one knows about the student and the more one is able to intervene and help with the behaviour strategies and so on that might be very important for that student to continue in, the better. That communication needs to be very clear and immediate with the teacher, so that they understand what that student's experiences have been and what might be part of a team approach to changing those behaviours as a student goes forward.

The Chair: Thank you very much for coming today. It certainly is appreciated.

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GEORGE PASICH

The Chair: We move on now to our third delegation of the day: Mr. George Pasich. The floor is yours, sir. You have 10 minutes. If there's any time left over after the presentation, we'll share the time.

Mr. George Pasich: My name is George Pasich. I have a son who has had the pleasure of having a safe school journey since October 2005, and that's why I'm here.

I'll just get right down to the key points:

—The Ministry of Education is in the business of education, not the business of administering justice.

—The constitutional right to an education should be protected, as should the right to be presumed innocent.

—The Toronto District School Board should be held accountable for its actions.

—Bill 212 requires changes before becoming law.

The Ministry of Education has a mandate to provide education to our youth and not to establish a secondary justice system for youth in school. The method of punishment used—the denial of education—is unconstitutional and self-defeating. The procedures for doling out punishment relegate youth to second-class status. The constitutional right to be presumed innocent is ignored. School boards, with the help of the growing cottage industry of education law professionals, are finding more ways to trample youth rights. Besides frustration, the only recourse for parents to get a fair shake is judicial review, a process out of reach for most parents.

For over four years, school boards have trampled the rights of youth in a deliberate and systematic way. The Ministry of Education, instead of leading a path to reform, has supported the school boards. In some cases,

the ministry has relied on school boards to provide the legal rationale to continue along the path that they are on. I ask you: What does the Ontario Human Rights Commission think of this path? Where is the leadership?

Current problems: The Education Act refers to transgressions occurring on school premises. This boundary is routinely exceeded, and the only recourse for parents is an expensive judicial review if they stumble across this information. I did not. The principal decides this jurisdictional issue with the answering of a simple question: If off school property, how is this related to the school? What a fair and unbiased piece of crock.

A local school board, as a matter of policy, routinely upgrades a principal-limited expulsion to a board expulsion, thus avoiding costly board expulsion hearings and an independent review by the Child and Family Services Review Board. Not only is the youth expelled from his school, but he is not allowed to go to any other schools in the board. This violates his constitutional right to education and contravenes the Education Act and the Statutory Powers Procedure Act. The limited expulsion hearings did not have a defined time limit. Thus any board can schedule a hearing after the expulsion is over, thereby reducing the likelihood of an appeal or making it a moot point.

Most principals do not have any training in investigation procedures and, as they are present in day-to-day situations, cannot be deemed unbiased. Trustees are not trained to be judges, yet they sit in hearings and make judgments on complex legal issues.

Bill 212: Off school property is not enough. Now, we are going to allow a principal, well-versed in the constitutional rights of youth, to determine what the definition of "climate" is. I'm sorry; that is my mistake. That is the domain of educational law professionals who work for the school boards.

Timeline on suspensions will mean that any suspensions under three weeks will be served before an appeal occurs. Since there is no timeline on a principal's investigation, a suspension can be fully served before an appeal is scheduled.

Board expulsion hearings: On one side, you have a trustee with in-depth knowledge of legal proceedings advised by the school board counsel. You then have the principal, advised by outside counsel with expertise in education law, and possibly an agent. I almost forgot: They also work on a family's budget.

On the other side you have the parent with outstanding expertise in constitutional law, administrative law and education law. Education law is important, because even if you have the money to hire a lawyer, the ones with education law expertise all work for school boards.

Solutions: a real public inquiry where instead of spoon-fed questions and answers, we could hear the real horror stories; a constitutional review of the Education Act and its amendments so that there is no doubt about anybody's rights being violated. A consultation with the Ministry of the Attorney General should take place so that a review of the overlapping jurisdictions occurs.

Accountability of school boards must be resolved. It is most disturbing that the Ontario Human Rights Commission has to monitor the activities of the school boards and their overseer, the Ministry of Education. Obviously, the Toronto District School Board continuously drags its feet with reform and transparency. This falls on its leadership and its accountability to no one. This must change.

A recent Senate report documents how we are failing to live up to international obligations with respect to our human rights. If we cannot respect the rights of our youth, shame on us.

In conclusion, the Ministry of Education is in the business of education and not the business of administering justice. The constitutional right to an education should be protected, as should the right to be presumed innocent. The Toronto District School Board should be held accountable for its actions. And Bill 212 requires changes before becoming law.

The Chair: Thank you, Mr. Pasich. You've left about a minute and a half for each of the parties, starting with Mr. Marchese.

Mr. Marchese: Mr. Pasich, for many years we've known from the Human Rights Commission that there are a disproportionate number of kids who get expelled and/or suspended, and they happen to be kids with a special education need and/or children of colour. For years we were saying to the government, "We've got to provide programs for these kids. Clearly, there are some issues, problems: some of them social, mental illness possibly, some of them related to family problems that come into the school. We as a system should be trying to help rather than kicking them out." For years they didn't listen, and finally they brought a bill that I believe addresses a lot of the concerns that I raised. It doesn't go as far as I would in terms of our need to have other people who help them, but at least it moves in that direction. Are you saying that even this now is just not adequate, or what?

Mr. Pasich: Over the last four years, they have been ignoring constitutional law. Regulation 37/01 says that a board expulsion must be heard by the Child and Family Services Review Board. The Toronto District School Board routinely upgrades a principal's limited expulsion into a board expulsion, appendix B. They put in a line that says that generally during the term of the expulsion, the student would not be eligible to transfer to another district school board, Toronto district school board. They avoid the board expulsion hearings and they also avoid the independent review of the Child and Family Services Review Board. I am the first one in four years. We have a date, June 13, to see what happens. I'm at the Child and Family Services Review Board for the first time.

The Chair: There's time for one short—

Mr. Marchese: That's okay, thank you.

The Chair: Mrs. Sandals.

Mrs. Sandals: Perhaps this follows along on the same issue. You're talking about the issue of the limited expulsion versus a full expulsion, which exists in the

current legislation. In Bill 212, there is no such thing as a limited expulsion. There is only the full expulsion, which means that any family that has an expelled student would have access on appeal to the Child and Family Services Review Board. So in Bill 212, if I'm understanding your complaint correctly, there is no such thing as a limited expulsion precisely because of some of the problems that you're describing. Were you aware that Bill 212 would get rid of that?

Mr. Pasich: Yes, but you still have the problems of the principal deciding whether it is a school offence or a non-school offence. Once the principal decides that it's a school offence, it gets rubber-stamped all the way down the line, and here I am 18 months later: I've written you a letter and a bunch of other people a letter, and nobody wants to talk to me about it.

Mrs. Sandals: The appropriate process under Bill 212 is that the principal will make a recommendation to the board, the board will hold a hearing, and if you wish to appeal, then you would automatically have access to the tribunal.

Mr. Pasich: But they can still trample on your rights, and the only way a parent can do anything about it is by going to get a judicial review, which is a couple of thousand dollars.

The Chair: Thank you, Mr. Pasich. Mr. Ouellette.

Mr. Ouellette: Wouldn't that section in the bill that states that the appeal has to be heard within five days—

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Mr. Ouellette: Wouldn't that section in the bill that states that the appeal has to be heard within five days—

Mr. Pasich: Here we go. So you get suspended on a Monday. The principal sits there, takes a couple of days, writes you a letter. You get the letter six days later. You have to respond within five days. That's two weeks down the road. Now the principal can take 10 days to set the appeal hearing. Three weeks have gone, no appeal. You've already served your punishment.

Mr. Ouellette: Is that what you're seeing in the bill now?

Mr. Pasich: For both the suspension and the suspension in front of an appeal. So if you look at the timelines of both of those things, you can serve a three-week suspension easily without getting to your appeal.

Mr. Ouellette: So then my question to the previous presenter regarding the appeal process: Do you think that an individual should be allowed to attend the school while undergoing appeal?

Mr. Pasich: I think they should do something that they do in hockey. You know how they have parents who get mad at coaches? They have a cooling-off period. Before a suspension is handed out, maybe you have a cooling-off period. And you know what? If the kid is going to get punished anyway, what's the difference if he got punished on a Tuesday or the following Wednesday?

The Chair: Mr. Pasich, thank you very much for coming today.

COUNCIL OF ONTARIO DIRECTORS OF EDUCATION

ONTARIO PUBLIC SUPERVISORY OFFICIALS' ASSOCIATION

The Chair: We'll move on to our last delegation of the day. It's the Council of Ontario Directors of Education: Mr. Jim Grieve. If you would introduce—

Mr. Jim Grieve: Mr. Chair, I'd like to introduce Jane Mason, who is a superintendent in the Peel District School Board. We're going to jointly present the materials on behalf of OPSOA as well as CODE, public. I should remind you that this is not full CODE; it is the 32 public boards that are represented on this presentation.

So if I may, we're going to Frick and Frack a little bit on our presentation.

The Chair: As long as you can do it under 10 minutes.

Mr. Grieve: Can do. I'm going, yes.

On behalf of my colleagues with OPSOA and with the council of directors, public, I'm pleased to provide your standing committee with comments and recommendations that I hope will add clarity to elements of Bill 212 and which we hope will significantly improve the ability of boards to properly implement and operate within the new elements of the Education Act.

Consistent with the input you're likely to receive if you hear from the Ontario Public School Boards' Association, my colleagues are supportive of the general intent proposed in the changes in Bill 212. As chief education officers and supervisory officials in Ontario, we are dedicated to helping each child grow, feel valued and find success in our schools every day. The general intentions of the bill to articulate the positive impact of progressive discipline and integrate strong concepts of social justice in dealing with matters of school safety are strong pillars, frankly, on which to refine sections of the Education Act.

The general intentions of Bill 212 are clear but there are, we think, significant issues related to the implementation of the bill and a number of areas of the legislation that are unclear and, frankly, problematic. The following comments outline the concerns that we have.

First, the implementation issue: The proposed proclamation date that we've understood is actually July 2007. If that's not the case, then I would stand corrected. But if it is July 2007, then Bill 212 would require that all boards and all schools implement revised policies and procedures by September 4, 2007. This July to August 31 time frame is completely inadequate, and I'm going to give you some of those reasons. By the way, this is the Peel District School Board's set of policies and procedures related to safe schools, and to revise that in two months would be problematic.

First, developing, approving and communicating board policy and operating procedures can't be accomplished in those two months. Boards don't have the capacity, let alone the time, to develop or train principals, vice-principals, supervisory officers and trustees prior to

September 4. Without approved policies in place, boards can't provide clear communication to parents and students in time for the beginning of classes, and you've heard how important it is that we be crystal clear with parents and students.

Most schools in the province have already sent their school agenda planners to the printers. You may not think this a big deal, but this is an essential tool for organizing students. They're critical planning tools for students that all include significant elements of the code of conduct and character education. The documents have to be printed, and they have to be printed in time for September 4—well in advance of September 4. Printing the agenda planners with outdated information or with no content related to behavioural expectations would be ill-advised.

The strict discipline programs remain in effect until February 1, 2008. Any requirement for boards to implement the new elements of Bill 212 prior to that date would result in quite a bit of confusion, we think, in dealing with student suspensions, expulsions, hearings and appeals.

So our first recommendation—we've been bold enough to present you with some recommendations—would be to provide an implementation period from proclamation, if it's July 2007, to February 1, 2008. This will present an opportunity for elements of the bill to come into effect in the same time frame that the bill proposes for the introduction of programs for suspended and expelled students. That's February 1. In addition, it would give time for staff on a number of boards to collaborate on the development of sensible policies and procedures that could flow from these.

The second area is the sustainability of Bill 212 provisions. Boards require lead time in order to develop, select staff and find suitable locations. In some cases—I would cite the case of the Peel District School Board—we will have to find leased space in order to host programs for suspended and expelled students. Boards require guidance on the nature of these programs and significant clarity from the ministry as to the funding available to establish such programs before they can proceed with the planning. Clearly, a February 2008 time frame would benefit both the ministry and the boards in this process.

Our recommendation: Prior to the implementation of February 1, 2008, provide comprehensive details regarding the scope and nature of programs for suspended and expelled students, and outline for each board the funding that will flow to support PD—program development—staffing, program set-up and location costs.

I'm going to ask Jane to speak to the next couple of items.

Ms. Jane Mason: With respect to some areas of Bill 212 that we would see as problematic and/or unclear, the first section I'd like to speak to is that of section 309, appeal of suspension. This section outlines the expectation that all suspensions ranging from one or more classes to 20 days will be subject to appeal. By insisting that all such discipline be treated as a suspension, the bill is actually moving elements of progressive discipline such as time-out from a class into the realm of formal and documented suspension. The removal of a student from one class or part of the timetable of a regular day can be a highly effective, informal, key discipline strategy. Requiring each time-out to be classified as a suspension will place a huge and unnecessary administrative burden on the administration and staff of the school. As well, if all such time-out periods are subject to appeal, the process could lead to an unreasonable and unnecessary load for board trustees and staff that would see the appeal process collapse under its own volume.

Our third recommendation, therefore, is that in-school suspensions of one day or less should remain, as per the current legislation, exempt from the out-of-school suspension process.

The second area we would like to highlight is with respect to subsection 309(4), hearing of appeal. The bill proposes that all suspensions will be subject to an appeal process. That process has a requirement that a hearing and determination of the appeal be held within 10 days. This short time frame will be an extraordinary burden for trustees and school administration. The lead time required to schedule the hearing, prepare and present the supporting materials and ensure that all parties are fully informed before the hearing is unreasonable.

Recommendation 4 therefore is to revise Bill 212 to require that all appeals of suspensions be heard within 20 days.

Mr. Grieve: In the next section, subsection 309(4), regarding hearing of appeals and the trustee panel, given the potential volume to be heard under Bill 212, it will be an extraordinary challenge to put together a panel of three trustees to hear each appeal. Almost without exception, an obligation to select up to a quarter of the members of the board to find time to serve on an appeal committee, within a very tight time frame—many of these trustees hold external employment—may not be workable, and the hearing simply may be dismissed for lack of quorum.

Our recommendation is that the bill be revised in some fashion to place a minimum requirement of at least one trustee, with no maximum. Many boards have an entire board that hears such hearings.

Ms. Mason: Next, subsection 309(4) deals with the hearing of an appeal, and I'd like to speak to the suspension appeal hearing following an expulsion hearing. In the proposed legislation, it is required that if the board does not expel a student, the suspension imposed prior to the hearing must be reconsidered by the principal. If the suspension is not withdrawn, it can then be appealed. This would require another hearing—a suspension appeal—to be held after the board has already conducted an expulsion hearing regarding the same fact circumstances. Perhaps the board could deal with an appeal of the suspension immediately following the expulsion hearing and hear all matters relating to the incident at a single proceeding.

Recommendation number 6 suggests revising Bill 212 to permit boards, after denying an expulsion, to immediately confirm or revise the suspension and immediately hear an appeal of the suspension, if requested by the parent.

Mr. Grieve: The committee has heard loud and clear from two previous presenters on the issue of bullying. Bill 212 includes bullying as one of the reasons for possible suspension of a student. This is an area of behaviour that is extremely complicated and which continues to be a significant focus of school staff—you've heard the federations and unions—boards and parents. To simply use the word "bullying" as a potential cause for consideration of suspension is to assume that there is a common understanding of the meaning of the word. School staff, parents and students deserve a much more clear explanation of what constitutes the range of bullying for purposes of this section of the act. It's not appropriate to leave the definition of this cause for suspension up to appeals committees or tribunals.

Our recommendation: Bill 212 really needs to include much greater clarity of what constitutes bullying for the purposes of this section of the act.

Mr. Chair, we'll end on that note and thank you very much for your consideration of our recommendations.

The Chair: Thank you, sir. Excellent time management: You used just about 10 minutes right on. Unfortunately, there is no time for questions, but thank you very much for attending today.

Thanks to all the delegations that have appeared before us.

This committee is adjourned. We'll be meeting again at 4 o'clock, May 16, in this room.

The committee adjourned at 1653.

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