

## TEACHER ADVISOR

## TEACHERS 24/7

## Do teachers pay a big price for off-duty misconduct?

By Joe Pece

C

alls made by members to OECTA's Counselling and Member Services Department regarding situations in their private lives (and how these might affect their employment) have increased during the past few years. A member may have been charged with assault during a dispute with a neighbour, faced an impaired driving charge on the weekend, or posted

unflattering comments about their principal on Facebook. Many cannot fully understand how these behaviours outside of work could have an impact on their professional lives.

Members must be aware that we are considered to be teachers 24/7. This statement refers to the level of scrutiny we can undergo – even in our private lives. It does not refer to the amount of work we do, although it may feel that way at times. Teachers are held to a high standard when it comes to behaviour both inside and outside the classroom.

The *Ontario Education Act* outlines the duty of a teacher under section 264, which states, (among other duties), that it is the duty of a teacher “to inculcate by precept... the principles of Judeo-Christian morality and the highest regard for truth, justice, loyalty, love of country, humanity, benevolence, sobriety, industry, frugality, purity, temperance and all other virtues.”

**Supreme Court Decisions**

The consequences of behaving in a manner that abrogates these virtues can be devastating to one's teaching career. If that standard were not quite high enough, the Supreme Court of Canada has made several decisions that have further defined the standard for judging the off-duty misconduct of teachers. In other words, teachers need to be aware that misconduct, though unrelated to work, could be grounds for justified dismissal according to the courts.

In *Ross v. New Brunswick School District No. 15 (1996, SCC)*, a teacher published anti-Semitic writings and made racist statements outside the classroom. The Supreme Court of Canada decided, even though there was no direct evidence of the impact, that it was reasonable to infer that the teacher's behaviour had poisoned the educational atmosphere.

According to Mr. Justice La Forest: “Teachers are inextricably linked to the integrity of the school system. Teachers occupy positions of trust and confidence, and exert considerable influence over their students as a result of their positions... By their conduct, teachers as ‘medium’ must be perceived to uphold the values, beliefs and knowledge sought to be transmitted by the school system... Teachers do not necessarily check their teaching hats at the school yard gate and may be perceived to be wearing their teaching hats even off duty.”

The implications are that a teacher may be disciplined, up to, and including, termination for actions and beliefs expressed outside the classroom, if their conduct has violated the standards of the teaching profession.

Teachers who are employed in Catholic schools are often expected to hold themselves to an even higher standard. Catholic school boards in Ontario have denominational rights under Section 93 of the *Constitution Act, 1867*. This means Catholic school boards have the right to discipline and/or dismiss teachers based on their denominational rights.

**Freedom of Expression?**

What has the law and the courts established with regards to the expected standards for teachers? Do teachers have the right to express themselves in today's culture and environment? Has our freedom of expression been curtailed? These are all good questions members ask when they are being scrutinized for off-duty conduct. As citizens, we all have the right to freedom of expression. However, we must be aware that unbridled public behaviour or comments could bring our professionalism under scrutiny.

A key component in evaluating the impact of the expression is the disruption that it causes in the school community. Traditionally, the courts have clearly indicated that there is a link among the objectives and policies of the school board, the values of the school



PHOTO: © Baranq / Shutterstock.com

community and the nature and limitations of a teacher's Charter rights.

In *Peel Board of Education v. OSSTF (2002)*, a board of arbitration upheld the termination of a teacher because of out-of-class racist activities. It was felt that the teacher had undermined board values. As well, the Ontario College of Teachers found the teacher guilty of professional misconduct and revoked his teaching certificate.

**Social Media Platforms**

Facebook, Twitter, Instagram, blogs, forums, Snapchat and “selfies” have given us platforms for sharing thoughts, beliefs and opinions as well as displaying aspects of our personal lives. This has further expanded the minefield. It is agreed that teachers' personal lives and conduct are their own business unless the personal misconduct contributes to ineffectiveness in the classroom or represents harm to students. Interacting with colleagues online can be a great way to stay connected. However, teachers should avoid using online conversations to vent frustrations arising from their professional or personal lives.

The increasing use of social media has resulted in a corresponding increase in the number of arbitration cases related to the discipline of employees for offensive posts about co-workers, managers and employers. The College of Teachers' “Professional Advisory – Use of Electronic Communication and Social Media” warns, “online identities and actions are visible to the public and can result in serious repercussions or embarrassments and advises teachers to consider whether any posting may reflect poorly on you, your school or the teaching profession. Avoid online criticism about students, colleagues, your employer or others within the school community.”

Do not post anything on social media sites that you would not post on a bulletin board outside your own classroom.

An employer, the police, the Children's Aid Society and the College of Teachers can all scrutinize off-duty conduct. Teachers are teachers 24/7 and must always be aware of the impact their behaviour in the classroom and in their private lives can have on their professional careers. Always contact OECTA first if advice is needed.

*Joe Pece is the department head for the Counselling and Member Services Department at OECTA Provincial Office.*