

FORWARD TOGETHER



MILLER THOMSON
AVOCATS | LAWYERS

WELCOME

VANCOUVER

CALGARY

EDMONTON

SASKATOON

REGINA

LONDON

KITCHENER-WATERLOO

GUELPH

TORONTO

VAUGHAN

MARKHAM

MONTRÉAL



MILLER THOMSON
AVOCATS | LAWYERS

A Flip Phone in a Smartphone World

How Does the Re-issued Health & PE Curriculum: Grades 1-8
Impact the Duty to Prevent and Respond to Cyberbullying?

Table of Contents

1. Curriculum Strands
2. Curriculum History
3. Curriculum Comparison
4. Teaching the 2018 Curriculum
5. Legal and Professional Duties
6. 2018 Curriculum: Legal Challenges

Authority for Curriculum

Education Act, R.S.O. 1990, c.E.2

s.8 (1) The Minister may,

3. in respect of schools under the jurisdiction of a board,

(a) issue curriculum guidelines and require that courses of study be developed therefrom and establish procedures for the approval of courses of study that are not developed from such curriculum guidelines,

(b) prescribe areas of study and require that courses of study be grouped thereunder and establish procedures for the approval of alternative areas of study under which courses of study shall be grouped, and

(c) approve or permit boards to approve,

(i) courses of study that are not developed from such curriculum guidelines, and

(ii) alternative areas of study under which courses of study shall be grouped,

and authorize such courses of study and areas of study to be used in lieu of or in addition to any prescribed course of study or area of study;



MILLER THOMSON
AVOCATS | LAWYERS

Curriculum Changes

Ontario Health and Physical Education Curriculum Strands

1. Active Living
2. Movement Competence
3. Healthy Living



Healthy Living

Develop an understanding of factors that contribute to healthy development, a sense of personal responsibility for lifelong health, and respect for their own health in relation to others and the world around them.

Subgroups:

- Healthy Eating;
- Personal Safety and Injury Prevention;
- Substance Use, Addictions, and Related Behaviours;
- Growth and Development (Human Development and Sexual Health).

Healthy Living Subgroup: Growth and Development

- Students learn about their body, how to make reasoned decisions, mental health, and skills for healthy relationships.
- The 1998 curriculum does not address the modern relationship between health and technology, access to information, methods of communication, mental health awareness, or equity and inclusion.

1998

- Introduction of current growth and development content.
- Very limited mention of computers.
- No content about online communication and messaging, including social media.

2015

- Released after a lengthy consultation with educators and the public.
- New references to social media, texting, and cyber-bullying.
- Focus on learning about health topics from different perspectives, including content on gender identity and sexual orientation.

2018

- Reversion to the 1998 Growth and Development content.
- Limited mention of computers
- No content about online communication and messaging, including social media

Lost Content from 2015: Teaching Prompts

- 2018 Growth and Development sections are very limited.
- 2018 teaching prompts about the impact of technology on health removed
- 2018 Grade 5 does not include discussion of how online imaging affects students

Lost Content from 2015: Online Safety

Cyber-Bullying

- Cyber-bullying is not defined in the current curriculum.

Personal Safety and Injury Prevention

- Reduced references to harmful online behaviours, specifically the content that confirms the serious effects of online actions on the school community
- Sexting is part of the teaching prompts in both curriculums during Grade 7. The 2015 curriculum provides more detail and additional prompts about harassment via text.



MILLER THOMSON
AVOCATS | LAWYERS

Teaching the 2018 Curriculum

2018: Prohibition or Discretion

“Some topics within the Healthy Living strand can be challenging to teach because of their personal nature and their connection to family, religious, or cultural values. These topics can include but are not limited to topics covered in the Growth and Development section of the 1998 curriculum, as well as topics such as mental health, body image, substance abuse, violence, harassment, child abuse, gender identity, sexual orientation, illness (including HIV/AIDS), and poverty.”

(2018 Curriculum at page 30)

“Snitch Line” Reporting Non-Compliance fortheparents.ca

- “Thorough province-wide consultation with parents to obtain input about their children’s education ... during this consultation period fundamental lessons will be restored in classrooms.”
- Options for; feedback about curriculum currently being taught, and other issues.
- Reports generated from the site are shared with the Ontario College of Teachers on a monthly basis.
- Non-curriculum issues should still be submitted directly to the Ontario College of Teachers.



MILLER THOMSON
AVOCATS | LAWYERS

Legal and Professional Duties

Education Act: Cyberbullying

- s.1(1) **bullying** means aggressive and typically repeated behaviour by a pupil where,
- (a) the behaviour is intended by the pupil to have the effect of, or the pupil ought to know that the behaviour would be likely to have the effect of,
 - (i) causing harm, fear or distress to another individual, including physical, psychological, social or academic harm, harm to the individual's reputation or harm to the individual's property, or
 - (ii) creating a negative environment at a school for another individual, and
 - (b) the behaviour occurs in a context where there is a real or perceived power imbalance between the pupil and the individual based on factors such as size, strength, age, intelligence, peer group power, economic status, social status, religion, ethnic origin, sexual orientation, family circumstances, gender, gender identity, gender expression, race, disability or the receipt of special education;
- s.1(1.0.0.1) For the purposes of the definition of “bullying” in subsection (1), behaviour includes the use of any physical, verbal, electronic, written or other means.
- s.1(1.0.0.2) For the purposes of the definition of “bullying” in subsection (1), bullying includes bullying by electronic means (commonly known as cyber-bullying), including,
- (a) creating a web page or a blog in which the creator assumes the identity of another person;
 - (b) impersonating another person as the author of content or messages posted on the internet; and
 - (c) communicating material electronically to more than one individual or posting material on a website that may be accessed by one or more individuals.

Education Act: Duties of Boards

s.170(1) 7.1 establish and provide annual professional development programs to educate teachers and other staff of the board about bullying prevention and strategies for promoting positive school climates;

s.170(1) 7.2 provide programs, interventions or other supports for pupils who have been bullied, pupils who have witnessed incidents of bullying and pupils who have engaged in bullying, and the programs, interventions and other supports may be provided by social workers, psychologists or other professionals who have training in similar fields, as determined by the board;

s.170(1) 10. ensure that every school under its charge is conducted in accordance with this Act and the regulations.

Education Act: Duties Regarding Bullying

s.303.3 (1) Every board shall establish a bullying prevention and intervention plan for the schools of the board and require its schools to implement the plan.

s.306 Suspension 6. Bullying

s.310 Expulsion 7.1 Bullying if (i) the pupil has previously been suspended for engaging in bullying, and (ii) the pupil's continuing presence in the school creates an unacceptable risk to the safety of another person

Policy/Program Memorandum 144: “Providing students with an opportunity to learn and develop in a safe, inclusive, and accepting school climate is a shared responsibility in which school boards and schools play an important role.”

Education Act: Safety

Education Act section 301: Minister creates a Code of Conduct to promote the safety of people in schools

Policy/Program Memorandum No. 128: “A positive school climate exists when all members of the school community feel safe, included, accepted, and activity promote positive behaviours and interactions.”



MILLER THOMSON
AVOCATS | LAWYERS

2018 Curriculum: Legal Challenges

Meeting Legal Obligations

- Duty of care and standard of care owed to students
- Duty to ensure bullying programs and discipline policies and procedures are enforced
- Duty to ensure students are aware of discipline provisions and how they apply to cyberbullying, sexting and other inappropriate uses of technology
- Duty to ensure students are aware of and understand the acceptable use guidelines for technology
- Administrators should understand that some discipline infractions may also attract criminal sanction - there may be criminal sanctions regarding disclosing intimate digital images without consent
- Students often exercise inadequate care in protecting the privacy of themselves and others online.
- If teachers are using digital tools that are not on a school board safe list they need to read and understand the terms and conditions of use and the privacy statements
- School boards (and therefore all staff) must comply with the restrictions on collection, use and disclosure of personal information – Apps and websites may collect the personal information of students to use for marketing, for building consumer or other profiles, for disclosure to third parties – understand the tools that are being used

ETFO Application

- ETFO alleges that the actions of the government have limited their ability to provide instruction that is consistent with their professional judgment, ethics, and professional obligations.
- The Application submits the Government of Ontario has infringed rights guaranteed by the Canadian Charter of Rights and Freedoms, including; freedom of expression; life, liberty, and security of the person; and equality rights.

Other legal challenges

- A Human Rights Application has been commenced on behalf of several LGBT children.
- The Canadian Civil Liberties Association and the family of a 10-year old queer girl have launched a Superior Court Application challenging the new curriculum



MILLER THOMSON
AVOCATS | LAWYERS

Conclusions:

- Teachers are less supported by the new curriculum.
- Legal and professional obligations remain unchanged.
- There is some scope for instructional discretion.



MILLER THOMSON
AVOCATS | LAWYERS

Next Time

Social Media and Internet Policies & Procedures

Contact Information



Nadya Tymochenko
Partner
416.595.8513
ntymochenko@millerthomson.com



Gillian Tuck Kutarna
Partner
519.780.4642
gtuckkutarna@millerthomson.com



MILLER THOMSON
AVOCATS | LAWYERS

FORWARD TOGETHER

Thank you for attending

Please ask about our book:
“An Educator’s Guide to Internet and Social Media Law”

VANCOUVER

CALGARY

EDMONTON

SASKATOON

REGINA

LONDON

KITCHENER-WATERLOO

GUELPH

TORONTO

VAUGHAN

MARKHAM

MONTRÉAL

FORWARD TOGETHER



MILLER THOMSON
AVOCATS | LAWYERS

MILLERTHOMSON.COM



© 2016 Miller Thomson LLP. All Rights Reserved. All Intellectual Property Rights including copyright in this presentation are owned by Miller Thomson LLP. This presentation may be reproduced and distributed in its entirety provided no alterations are made to the form or content. Any other form of reproduction or distribution requires the prior written consent of Miller Thomson LLP which may be requested from the presenter(s).

This presentation is provided as an information service and is a summary of current legal issues. This information is not meant as legal opinion and viewers are cautioned not to act on information provided in this publication without seeking specific legal advice with respect to their unique circumstances.

VANCOUVER

CALGARY

EDMONTON

SASKATOON

REGINA

LONDON

KITCHENER-WATERLOO

GUELPH

TORONTO

VAUGHAN

MARKHAM

MONTRÉAL