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**The Return to Ontario Elementary Schools: Surveying the Responsibilities of Teachers,  
Principals, and Students Amidst COVID-19**

**Reflection Essay**

My best friend, a 24 year old elementary school teacher in his second year of a contract for the Fort McMurray Catholic Board of Education, called me in great distress this past summer. Being familiar with my background as a former teacher currently studying in law school, he wanted my opinion regarding his upcoming academic year amidst the coronavirus disease and the legal implications for the administration, teachers and the children returning to in-person learning. Little did I know this conversation was about to intrigue me to the extent that it would change my Fall 2020 term.

His questions primarily concerned the liabilities of teachers and students: What if a student removes their mask and transmits the virus? Who is liable? What happens if the students forget to physically distance? Can students sue one another if there is a viral outbreak? These questions snowballed into a void of more inquiries and uncertainties that effectively set the stage for my interest in researching the legal responsibilities of teachers, principals, and students returning to in-person learning during the novel COVID-19 virus.

The writing process of this term essay has been an extremely unique experience that can be distinguished from my previous written works due to the continuously evolving nature of the virus. In the past, my research has generally focused on less current issues and historical excavations of different legal regimes, whereas the themes of this term paper evolved alongside the shifting issues that children and teachers continued to face in schools. Since September, there have been substantial scientific discoveries relating to the virus, Ontario policy developments, and new outbreaks among children in Ontario schools which have made this writing experience never feel static; my supervisor and I have had to continuously adapt certain arguments and theories as new health and safety developments for the students occurred in society.

As a former elementary school educator, I grappled with the significance of the health and safety issues that children are currently facing amidst this pandemic. More specifically, the section about the teachers' duty to report was particularly eye-opening to me because it equipped me with a greater understanding of the rationale behind s. 72(1) of the *Child and Family Services Act*. In these times of unprecedented health and economic crisis, family homes and children in lower socioeconomic milieus are the individuals who disproportionately experience the negative impacts on the largest scale. The research and writing phase positioned my critical thinking through the lens of a child during COVID-19 – including increased rates of domestic abuse and neglect at home, food insecurity due to parental job loss, and the risk of viral transmission at school - to an extent where I have never believed more in the efficacy and dire need for the policy suggestions included in my essay's last section than ever before.

There are also some issues that I encountered that resonated with me because I do not believe they are being given the proper attention by the media or the provincial government. First, the government's operational guidance pertaining to the return to school recommends that children physically distance as much as reasonably possible. However, the Toronto District School Board has officially announced that classrooms do not have nearly enough space for 2 metre physically distancing for the current class sizes; this directive is effectively impossible for children to follow. Moreover, the Ontario government announced that they unlocked 50 million dollars for new ventilation in Ontario schools to stimulate more air flow in schools. However, on a per school basis, that amounts to less than 10 thousand dollars; for the vast majority of schools that are already in disrepair, that will not even provide for a new Air Conditioner system. There are thus some fundamental issues with the policies underpinning the Ontario "Back-to-School Plans" that severely augment the likelihood of viral transmission among the students.

Overall, this writing process was certainly insightful and immersed me within the perspective of educators and children at different times during my research. While analyzing the intensified duties of children returning to school during this pandemic, I was sensitive to the oppressive barriers that students may have to potentially face if they seek legal recourse against a school's negligent conduct. Given the rushed creation and unrepresented scope of implementing the health and safety protocol of these "Back-to-School Plans," the odds of the school board, principal, teacher, or student committing some form of negligence that may materially increase the risk of viral transmission is likely. An immediate problem for students is the burden of proving causation. Due to the coronavirus' asymptomatic timeline of 2-14 days, coupled with the limitless vectors of transmission, a student who commences a civil action against the school for negligence will be heavily burdened with this onus of proof. Moreover, with Bill 218, children who suffer viral injury at the hands of their school's negligence will virtually have no recourse options at all due to the teachers' total immunity. As a province that has prided itself on advocating for the health and safety of children throughout this pandemic, Bill 218 appears to communicate the exact opposite sentiment. I could not help but conclude that students who are seeking legal recourse - even those with strong evidence that they have suffered as a direct result of a teacher's negligence - are essentially precluded from any compensation. Considering the province has already reported over 4 thousand school related cases, I feel sympathy for these families if Bill 218 is passed because it applies retroactively.

Even after finishing the term essay, I am left with many unanswered questions. How will the courts expect reasonable children to behave with so many new rules and complex protocols? Can children in schools be found negligent for viral transmission? Does Bill 218 immunity somehow apply to students as well? Most importantly, is Bill 218 really how Ontario wants to solve these issues as a society? The fact that Ontario Premier, Doug Ford, has publicly stated that there is a certainty that outbreaks will occur under this plan, coupled with Bill 218's immunity blanket, sends a political message that leaves me questioning whether it is true that "every child matters" in the eyes of the government. If there is one thing that is certain after participating in the "To Look and To Play" project - in light of the heightened duties that are expected of students at school and the manner in which the "COVID-19 generation" has adapted - these children will never look at the world, or play in it the same way ever again.

## Annotated Bibliography

*Bain v Calgary School Board*, (1993) 146 AR 321.

This case is particularly informative within the discourse of Canadian education law because the court's reasoning discusses the significance of the student's duty to self-regulate their own actions and take proper steps for their own safety. In this case, a grade 11 student suffered brain damage while on a school field trip. The student requested to go on a hike with other students without a supervising teacher. The teacher permitted the request and the students effectively decided to climb a small mountain unsupervised where Bain fell and suffered injury. The Alberta's Court of Queen's Bench found the teacher negligent and 75% at fault. However, given the student's age, he was 25% at fault. While teachers are saddled with the bulk of the fault, this case importantly exemplified that students – especially as they grow older – are still endowed with responsibility for their own actions.

“COVID-19: Guidance for School Reopening” (29 July 2020), online: *Sickkids* <<https://www.sickkids.ca/PDFs/About-SickKids/81407-COVID19-Recommendations-for-School-Reopening-SickKids.pdf>>.

This document advocates for the safe return of children and youth to school by emphasizing the importance of the school reopening with balanced policies that mitigate the health risks of coronavirus disease. This document is particularly useful because it draws on scientific evidence and paediatric-specific considerations in establishing its directives to policymakers. It makes nuanced policy recommendations that seek to maximize the child's health and safety during the return to school.

Dawn C Wallin, *Understanding Canadian schools: An Introduction to Educational Administration*, 5<sup>th</sup> ed (Winnipeg: University of Manitoba, 2014).

Dr. Wallin's book encapsulates a detailed survey of school administration, pedagogical ethics, and Canadian education law. The fourth chapter is particularly insightful because it examines some key aspects of law and they affect children in schools. The text discusses some of the important legal aspects of schooling including the powers and duties of teachers, negligence and liability, child abuse, and student rights and democratic practices. Other topics include the process of policymaking and how student needs are assessed and incorporated within the design of education laws.

Julian Kitchen & Christopher Dean, *Professionalism, Law, and the Ontario Educator*, (St Davids: Highland Press, 2010).

This book provides a comprehensive overview of the teacher-pupil relationship through the common law lens of Ontario. A significant portion of the text is dedicated to the

duties of care owed to students from the school boards, principals, and teachers. Moreover, there are several case commentaries that examine the details of cases involving students; most notably students suing the schools for negligence.

*Myers v Peel*, [1981] 2 SCR 21.

This case is often cited as a landmark decision that clarified the standard of care expected of teachers supervising their pupils and the standard of self-discipline that the courts expect of young students. In this appeal, a fifteen year old student was trying to perform a gymnastics manoeuvre at a high-school. The teacher had a combined class and gave permission to the student to practice their gymnastics in a separate room away from the teacher. The student attempted an advanced dismount from the rings without a spotter where he fell and broke his neck. The court found that the teacher had not properly exercised his duty of care because the student was engaging in a dangerous activity unsupervised and was given faulty protective matting that failed to soften the fall; a prudent parent would have exercised a higher standard of care. However, this case importantly established that students, despite being young and under the supervision of teachers acting *in loco parentis*, students are also expected to exercise a certain amount of self-discipline and self-control in taking steps to ensure their safety in school activities. Myers, the student, was held partly responsible for his injuries because of his age and his choice to perform the manoeuvre without a spotter.

Ontario, Ministry of Education, *COVID-19 cases in schools and child care centres*, (Queen's Printer for Ontario, 2020).

This living document showcases the data of confirmed COVID-19 school-related cases across Ontario. This data is paramount in assessing the progression of the virus among schools and students, and therefore the health and safety of children in Ontario.

R Masonbrink & Emily Hurley, "Advocating for Children During the COVID-19 School Closures" (2020) 146:3 AAP 3.

Masonbrink and Hurley's article is a valuable resource because it explores the ongoing impact on students in regards to the nationwide elementary and secondary school closures that occurred in 2020 due to the coronavirus disease. The text provides an in depth analysis of how school closures disproportionately affected the safety and security of children in poverty who most heavily rely on school-based services for nutritional, physical, and mental health needs.

Rosonna Tite, "Detecting the Symptoms of Child Abuse: Classroom Complications" (1994) 19 *Canadian Journal of Education* 1 (JSTOR).

Tite's article discusses a 1994 study that assesses the difficulties teachers can experience in attempting to detect the signs of child abuse and or neglect in their students. Despite being a dated study, the information in this article is particularly useful because it illustrates the importance of cultivating strong teacher-parent relationships and how doing

so allows teachers to assume a more powerful position in detecting child-abuse occurring in the family home. The study revealed that teachers are prone to being reluctant in performing their duty to report child abuse and neglect to Children's Aid Societies because of the uncertainty of actual abuse and the fear of potentially compromising the teacher-parent relationship. This short work thus highlights the teacher's legal duty to ascertain a child's safety and security at home can be complicated and envelope the teacher with legal liability if he/she fails to act.

Valerie Tarasuk & Andy Mitchell, *Household Food Insecurity In Canada 2017-2018* (Toronto: PROOF, 2020)

This article analyzes the ongoing issue of food insecurity across Canada. The study draws on data from over 100 thousand Canadian households in 2017-2018 and concludes that more than 1.2 million children under 18 are living in food-insecure households; this is higher than any prior national estimate. Moreover, the researchers explore policy considerations by showcasing how food insecurity can take a serious toll on a child's health and development.