Robinson v. Northmount School For Boys, [2014] O.J. No. 2123

Ontario Judgments

Ontario Superior Court of Justice

T.R. Lederer J.

Heard: February 25, 2014.

Judgment: May 2, 2014.

Court File No. CV-09-378776

[2014] O.J. No. 2123 | 2014 ONSC 2603

Between Alana Robinson, Plaintiff, and Northmount School For Boys, L.L. and J.L., Defendants

(33 paras.)

Case Summary

Civil litigation — Civil procedure — Discovery — Examination for discovery — Range of examination — Objections and compelling answers — Privilege — Appeal by plaintiff from Master's decision allowed — Plaintiff was teacher who sued School and student's parents for damages for breach of employment agreement and libel — Plaintiff alleged student assaulted her, whereas student alleged teacher abuse — Plaintiff alleged she was libeled at community meeting held by School in her absence — School refused to answer discovery questions that would disclose student names and contact details sought as potential witnesses — Master found information was protected by statutory privilege — No privilege attached to contact details in context sought by plaintiff — Education Act, s. 266(2).

Education law — Schools — Pupils or students — Student records — Confidentiality — Practice and procedure — Discovery — Appeal by plaintiff from Master's decision allowed — Plaintiff was teacher who sued School and student's parents for damages for breach of employment agreement and libel — Plaintiff alleged student assaulted her, whereas student alleged teacher abuse — Plaintiff alleged she was libeled at community meeting held by School in her absence — School refused to answer discovery questions that would disclose student names and contact details sought as potential witnesses — Master found information was protected by statutory privilege — No privilege attached to contact details in context sought by plaintiff — Education Act, s. 266(2).

Appeal by the plaintiff, Robinson, from a Master's decision refusing an order compelling the representative of the defendant, Northmount School, to answer discovery questions. The plaintiff taught at the School, a private elementary school for boys. She alleged that she was assaulted by one of her students, the son of another teacher. The parents, who were also named as defendants, reported the incident to police and alleged the plaintiff had bullied their child. The School and the Catholic Children's Aid Society investigated the matter. The School held a community meeting at which the plaintiff alleged she was defamed by the student's father. The Society found that none of the allegations by the student were validated and police closed their file shortly thereafter. The plaintiff's teaching contract was not renewed following its expiration. The plaintiff sued the School for breach of her employment contract and the parents of the student for damages for libel. The School contended it had just cause to terminate the plaintiff due to her disclosing the contents of the student's psychological assessment to other parents. The acting head of the School was examined for discovery. The plaintiff sought the names of non-party students who may have witnessed the events underlying the litigation. A Master ruled that the identity of the students was protected by statutory privilege in the Education Act. The

plaintiff appealed.

HELD: Appeal allowed.

The documents and information requested were limited to student names and contact details and were therefore not part of a student record subject to privilege. The names of the students were included in the records to assist supervisory officials in the improvement of instruction and the education of the pupil. They were not privileged when they originated in other documents where they were used for other purposes. The decision below was set aside with the direction that the questions be answered.

Statutes, Regulations and Rules Cited:

Education Act, *R.S.O. 1990, c. E.2, s. 265*(1)(d), s. 266(1), s. 266(2), s. 266(2)(b), s. 266(9), s. 266(10)

Ontario Rules of Civil Procedure, Rule 30.02(1), Rule 30.02(2), Rule 30.10(1), Rule 31.06(1), Rule 31.06(2)

Counsel

Angelo G. Sciacca, for the Plaintiff.

Voula Koutoulas, for Northmount School, Defendant.

No one appeared for L.L. and J.L., Defendants.

T.R. LEDERER J.

1 This is an appeal from an order made by Master Muir. He refused to require that the representative of the defendant, Northmount School for Boys ("Northmount School"), answer certain questions put to him while being examined-for-discovery on its behalf. The Master was sympathetic to the position of the plaintiff, but felt compelled to follow the decision of this court in Pandreinenos v. Riverdale Collegiate Institute.[1] In that case, as in this one, the plaintiff was seeking the names of non-party students of the defendant school who may have been witnesses to the events that led to commencement of the lawsuit. The judge ruled that the identity of the students was protected as a result of a privilege put in place by the Education Act.[2] Master Muir was unable to distinguish this case from Pandremenos.

2 Northmount School is a private elementary school for boys. The plaintiff was a teacher at Northmount School. It was alleged that she had assaulted one of her students. The boy was the son of another teacher, the defendant L.L. and her husband, the third defendant, J.L. The assault was said to have occurred on or about May 10, 2007. On May 14, 2007, L.L., the mother of the student, wrote to the acting head of the school saying that the plaintiff had bullied her son, as well as other students at Northmount School, The parents reported the incident to the police who, in turn, contacted the Catholic Children's Aid Society ("CCAS"); both conducted separate investigations of the incident. Northmount School retained an independent investigator. On June 7, 2007, Northmount School held a meeting of parents and others "in the community".[3] The plaintiff was not present. The defendant, J.L., is alleged to have "openly identified and defamed [the plaintiff]".[4]

3 On July 31, 2007, the CCAS advised that after "a thorough investigation"[5], none of the allegations made by the student had been "validated"[6]. The plaintiff was spoken of in "glowing terms"[7] by all parents and students who were interviewed. "[T]here is no pattern of behaviour on [the plaintiff's] part that would suggest any form of maltreatment or abuse on her part."[8] On September 7, 2007, the police closed their file after determining that allegations made were unfounded. The investigator concluded that there was insufficient evidence to substantiate the allegations of abuse.

4 The employment of the plaintiff was ended. Like all teachers at Northmount School, it was for a fixed term. The school says that the contract was fulfilled and " ... there was neither obligation nor reasonable expectation of renewal".[9] Northmount School contends that it had just cause to terminate the plaintiff. She had breached her statutory and contractual duty of confidentiality by disclosing the contents of a student's psychological assessment to other parents at the school.

5 In this action, the plaintiff sues Northmount School for the breach of her employment contract and the parents of the student, who alleged the assault for libel, arising out of what was said at the meeting and for inducing breach of contract.

6 The acting head of the school was examined-for-discovery on its behalf. As its representative, he was obliged by the Rules of Civil Procedure to disclose all documents relevant to the matter in issue that were or had been in the possession, control or power of Northmount School and to produce for inspection those that were not the subject of a claim of privilege (see: rule 30.02 (1) and (2)). The rules also require that he answer to the best of his knowledge, information and belief any proper question relevant to any matter in issue in the action and to disclose the names and addresses of persons who might reasonably be expected to have knowledge of the occurrences in issue (see: rule 31.06(1) and (2)).

7 This appeal concerns the refusal of the acting head to answer, and the decision of Master Muir that he need not answer, the following four questions:

> Q. 319 - Produce Mr. Clark's complete file. (Tom Clark was the independent investigator who had been hired by the school.)
>
> R. 354 - To advise if Northmount has any information that the plaintiff bullied other students at Northmount.
>
> S. 412 - To advise which parents, and other persons, were invited to the June 7, 2007 meeting and who attended the meeting; and,
>
> Q _554 To provide the name of the parent that approached a member of Northmount's board with information that she knew of the CCAS investigation into the plaintiffs conduct.

8 It is not difficult to see that, relying only on the obligations imposed by the Rules of Civil Procedure, each of these questions would be answered and the information that responds to them passed over to the plaintiff. It was conceded that the information requested was relevant to the issues in the action. Northmount School says that it is unable to answer the four questions. They are subject to a statutory privilege found in the Education Act. Reference was made to, and reliance placed on, the requirement that the principal prepare and maintain a pupil record an Ontario Student Record ("OSR")):

> 265.(1) It is the duty of a principal of a school, in addition to the principal's duties as a teacher,
>
> ...
>
> (d) in accordance with this Act, the regulations and the *guidelines* issued by the Minister, to collect information for inclusion in a record in respect of each pupil enrolled in the school and to establish, maintain, retain, transfer and dispose of the record;

[Emphasis added]

266.(1) In this section, except in subsection (12),

"record, in respect of pupil, means a record under clause 265(1)(d).

9 An OSR is privileged and, generally, is not admissible in evidence at a trial or examination:

266.(2) A record is *privileged for the information and use of supervisory officers and the principal, teachers and designated early childhood educators of the school for the improvement of instruction and other education of the pupil, and such record,*

(a) subject to subsections (2.1), (3), (5), (5.1), (5.2) and (5.3), is not available to any other person; and

(b) except for the purposes of subsections (5), (5.1), (5.2) and (5.3), is not admissible in evidence for any purpose in any trial, inquest, inquiry, examination, hearing or other proceeding, except to prove the establishment, maintenance, retention or transfer of the record,

without the written permission of the parent or guardian of the pupil or, where the pupil is an adult, the-written permission of the-pupil.

[Emphasis added]

10 The privilege extends to cover testimony in respect of the content of an OSR:

266.(9) Except where the record has been introduced in evidence as provided in this section, no person shall be required in any trial or other proceeding to give evidence in respect of the content of a record.

11 Subject to three exceptions, the privilege extends such that those who learn of the contents of an OSR are to preserve secrecy in respect of it:

266.(10) Except as permitted under this section, every person shall preserve secrecy in respect of the content of a record that comes to the person's knowledge in the course of his or her duties or employment, and no such person shall communicate any such knowledge to any other person except,

(a) as may be required in the performance of his or her duties; or

(b) with the written consent of the parent or guardian of the pupil where the pupil is a minor; or

(c) with the written consent of the pupil where the pupil is an adult.

12 It is the position of Northmount School that, as a result of the operation of these sections, a privilege attaches to the OSR that would be breached if its representative is required to answer any of the four questions.

13 A privilege is an indulgence and, as such, should be narrowly construed:

A privilege is a special right, advantage, exemption, immunity, or indulgence granted by the law, and in the context of documentary discovery and of oral examinations is the right to not have disclosed to one's opponent and the adjudicator communications that are relevant to the proof or disproof of a disputed fact The person with the privilege is relieved or excused from the obligation to disclose the document or communication protected by the privilege ...[10]

* * *

> Because of their interference with the discovery of the truth, the operation of the various privileges is carefully scrutinized to ensure that the privilege is not available unless the constituent elements of the particular privilege are satisfied.[11]

14 The OSR is "privileged" for use by the educational professionals referred to in s. 266 (2) (supervisory officers, the principal, teachers and designated early childhood educators of the school) only " ... for the improvement of instruction and other education of the pupil "[12]. If the information is put in the OSR for some other reason and cannot contribute to the instruction or education of the child, it should not be in the OSR and is not subject to the privilege.

15 There is a published Guideline.[13] It suggests that there may be uses of the information and materials contained in the OSR beyond those it and the Education Act specifies.[14] Boards are authorized to develop policies for identifying such uses. Reference is made to section 3.4 of the Guideline (The Documentation File). It refers to "other reports and/or information identified in accordance with the policies established by the school board."[15] Could such reports or information be used for something other than "improvement of instruction and other education of the pupil"? The use of these reports is specifically qualified. The Guideline says that reports from a professional, paraprofessional, or other relevant person " ... should only be included [in an OSR] if, in the principal's opinion, they are conducive to the improvement of the instruction of the student."[16] In other words, if they cannot assist with the education of the pupil they should not find their way into the OSR. The court was not made aware of any policy developed by the school or the policies of any Board which would apply.

16 In Children's Aid Society of Ottawa v. N.S.[17], the biological mother sought disclosure of her daughter's entire school record. This included all psychological tests or results and any notes, reports or records involving her daughter and a guidance counsellor at the school. This concerned a child protection proceeding. The court considered the competing concerns of the best interest of the child and the parental interest in raising a child and found that communications between the child and the counsellor were subject to a privilege of confidentiality. However, this determination was only forthcoming after a finding that "the notes made and kept by the guidance counsellor in this case cannot be considered to form part of a 'pupil record' sufficient to be protected by the apparent privilege established in s. 266(2) [of the Education Act]"[18]. Although no reference is made to this in the decision, it is consistent with the notion that these reports are not properly part of the OSR because, in the particular case, they would not have an impact on the quality of the instruction being provided to the student.

17 The Guideline also says that Boards are authorized to develop policies for determining "the types of information beyond those required by this guideline that could be added to the office index card (see: section 3.5 of the Guideline)".[19] It makes reference to "other information that is identified in accordance with the policies established by the school board"[20]. It seems there is no school board that applies and the court was not advised of any policy set by the school. The sentence referred to above that directs that report should be included in the OSR " ... only if they are conducive to the improvement of the instruction ... " begins with the phrase "As with other material included in the OSR ... "[21] To my mind, this proposes that "other information" (that is to be included in the OSR) is to refer to material that reflects on the quality of the instruction and education.

18 In Cook v. Dufferin-Peel Roman Catholic School Board[22], a motion was brought to compel a teacher to answer a question put to him at his examination-for-discovery. A student had lost the sight in one of his eyes as a result of a melee in a classroom. The question concerned his knowledge and belief as to written statements apparently made by students who were present during the incident which had given rise to the action. The court referred to the competing concerns that, in the public interest, all relevant evidence be made available to the court as opposed to individual concerns for confidentiality. It referred to the case of Kampus v. Bridgeford[23], which dealt with the production of certain medical records and concluded that their production may override the desire for confidentiality.[24] This underscores the need to be certain that information being withheld on the basis that, as a result of the provisions in the Education Act is privileged, is properly included in an OSR and is properly subject to the privilege. Cook v. Dufferin-Peel Roman Catholic School Board, after reviewing what is to be included in a student's school record, found:

> By no stretch of the imagination would the record require statements which are the point in issue in the application before me [be included], particularly when section 237 (2) of the Education Act spells out inter cilia, the purpose of such record, namely the use of supervisory officers and principal and teachers of the school for the improvement of instruction of the pupil.[25]

The Court went on to conclude:

> I therefore hold that notwithstanding the placing of same in the record of the child, they are not documents contemplated by the Legislature as being part of any student history. To hold otherwise, would defeat the litigation process requiring full and open disclosure to allow the Court to render a just and equitable decision.[26]

19 This raises the question: Whether the information requested is properly included in an OSR? In the absence of any indication that the information sought is related to improving the instruction of a student or is specifically referred to in the Guideline, it is not. This question was not dealt with by Master Muir; nor does it appear to have been put to him. The plaintiff conceded the documents were privileged, but not the information they contained. She was not seeking production of the documents. Her interest was " ... for the most part, limited to the names and contact information of non-party students and parents who may have information relevant to the matters in issue in this action".[27] I shall return to the question of revealing the identity of nonparty students. For the moment, I suggest only that the documents and information requested, through the disputed questions, do not belong in an OSR and are, accordingly, not subject to the privilege.

20 What is there in the information requested that would contribute to the improvement of the instruction of the students at Northmount School? I begin with the obvious; these four questions are not about the students; they are about a teacher and parents. The teacher was alleged to have abused a student. The parents are alleged to have defamed the teacher at a meeting of members of the school community. The report of the investigator that is requested exonerates the teacher (Q. 319). If it happens that the school has no information that the teacher bullied other students, it would also serve to benefit the teacher (Q. 354). Information as to who was invited to and who attended the meeting reflects on whether there was defamation or libel and, if so, how damaging it may have been to the teacher (Q. 4129). Finally, the name of a parent who has information as to the CCAS investigation indicates the possibility that there was someone who could contribute some understanding as to how that investigation was undertaken, and the substance behind its conclusions (Q. 412). There is nothing in the material that suggests that any of this would, or could, improve the instruction or education of any student. On this basis, none of this information belongs in the OSR and would not be subject to the privilege.

21 It was not suggested that the report of the investigator, the list of the invitees to the meeting or the name of the single parent who was said to have information as to the CCAS investigation was present in any OSR. This being so, contrary to the concession made by the plaintiff at the hearing before the Master, none of these would be subject to the privilege. The concern was that this information was released, it would reveal the identity and address of "non-party students". The same is the case with the remaining question: Whether the school was aware of any other student having been bullied by the teacher. (Of course as I already said, if the answer to this question was "no", there would be no student to identify). The perceived problem is that providing these facts, found in the OSR, and revealing them through these other reports would breach the privilege.

22 Perhaps it is necessary to step back and ask a question even though the answer is self-evident. Why does an OSR contain the name of a student? It seems clear. If the name of the student was not included, no one reading the OSR would be able to identify who was being referred to. If those involved did not know who was being referred to, they could not advance the purpose of the OSR, to improve the instruction and education being offered to that student. There is no inherent confidentiality in the names and addresses of the students at the school. They are made public through a handbook that was distributed to all students and their families.

23 The question as to who attended the meeting is about parents, not students. The same is true where the identity

of the single parent with knowledge of the CCAS report is asked for. Evidently, the concern is that the non-party students can be identified through the involvement of these parents.

24 What falls out of this is that it is not the names of the students, per se, that is the concern, it is their release in the context of the reports and information surrounding the events that led to the lawsuit the teacher has brought against the school. The context is not set by the OSR or the desire to improve instruction, but by the report of the investigator, the investigation of the CCAS and the meeting of the school community. It is because they are referred to in the reports or because the parents attended a meeting that the names being requested are not being revealed. This is quite separate from the purpose of an OSR which concerns improving instruction and education of students.

25 There is something unsettling about this. The teacher was accused of bullying the student. The school hired a private investigator who exonerated the teacher. A meeting was held under the auspices of the school. A parent may have libelled the teacher. The teacher was not present and, seemingly, was given no opportunity to respond. The contract of the teacher was not renewed ostensibly for other reasons. The teacher sued and because any OSR contains information identifying the student it refers to, the school has refused to release the names of pupils or families who are mentioned in reports it commissioned and attended meetings it held even though they may provide information that could contribute to a complete understanding of what transpired to the benefit of the teacher and to the detriment of the school. There is a public interest in allowing parties to come to court fully informed. There is a privilege protecting material properly included in an OSR for the purpose of improving instruction. To disallow information from other sources to be released because it also happens to be in the OSR, particularly information which reflects nothing more than the identity of the student, would be to extend the privilege in a fashion that denies the public interest and the incumbent requirement that the privilege be strictly construed. To accept what the school is proposing would mean that whenever the police, a Children's Aid Society or any other responsible authority found it necessary to investigate an occurrence, a school would be unable to reveal the names of the students involved because their names are to be found in an OSR.

26 All of this was foreseen by the Master Muir:

> In my view, if the legislature had intended to extend the privilege to any piece of information that may end up in an OSR (such as something as basic as a student's address or date of birth, for example) it would have used much broader language that would clearly extend the privilege to the contents and to all information that may be found in an OSR. In my view, the interpretation suggested by Northmount could lead to an absurd situation where certain basic information about an individual could never be disclosed or introduced into evidence in a civil proceeding simply because he or she happens to be a student to whom the Act applies and the information in question can also be found in his or her OSR.[28]

27 Despite this, the Master felt obliged to follow Pandremous v. Riverdale Collegiate Institute[29], even though he did not agree with the finding that had been made.[30] In that case, a student suffered a heart attack. The plaintiff rushed to get help and, in so doing, was injured. He sued the school. The issue of liability depended on whether the student was ordered by a teacher to go for help or determined to do so on his own. On discovery, questions were asked seeking the names and addresses of students who had provided witness statements. The Court ruled that, because the record referred to in the Education Act refers to the name and addresses of the students, that information is subject to the privilege it provides. As it was dealt with by the judge, Pandremous considered the request for the names and addresses as if it was for information that was in the OSR, rather than as information that originated in the witness statements the students had provided. The names would be in the OSR to identify the students in order that their instruction might be improved. The witness statements were for a separate purpose. They were to provide information surrounding the events that led to the lawsuit -- information that might be damaging to the school. The judge's determination applied the privilege to the witness statements because they refer to information that can also be found on the OSR. I disagree with this broad conception of the privilege. Unlike the Master, I am not bound by the decision of the judge.

28 It was suggested that there could be another avenue leading to the requirement that the material be produced, despite the privilege. In D.N. v. Kawartha Pine Ridge District School Board[31], the plaintiff, a minor, alleged that he

had been abused by a fellow student, also a minor, as well as a Crown ward under the jurisdiction of the defendant, Kawartha Haliburton Children's Aid Society (the "CAS"). The plaintiff sued, arguing that both the school board and the CAS were aware that the defendant student was a risk to more vulnerable classmates and had failed in their duty to the plaintiff. The CAS brought a motion for the production of the defendant student's OSR from the Hamilton-Wentworth District School Board where the defendant student was, at the time of the motion, enrolled. The Hamilton-Wentworth District School Board opposed the motion, as did the Children's Lawyer. The concern was that the CAS was in a conflict of interest: on the one hand, it was the statutory guardian of the defendant student; on the other, it was a defendant to the action. The CAS and the defendant student had a common interest in defending the latter such that no adverse findings would be made against him. The conflict was manifest when it came to the question of whether the "guardian" of the student should consent to the release of information in the OSR (see: s. 266(2)(b) of the Education Act). In that case, Master Dash concluded that, despite the conflict, the CAS had the right to determine if its consent as a guardian should be provided. First, this was a production motion. It was not for the court to determine if the CAS had breached its duty to the defendant student. As Master Dash saw it, such a determination " ... could conceivably be the subject matter of proceedings".[32] Further, the CAS, as the guardian, had an absolute right to examine the OSR. "It would be a legal fiction to say the CAS is prevented from waiving privilege when it can obtain the same information as of right.[33]"

29 The Master went on to say that, if the CAS, because of the conflict of interest, could not consent to the release of the OSR, it must be that, in order to provide a remedy, the court retained an equitable jurisdiction to balance the interest of the defendant student against those of the CAS and the plaintiff. D.N. v. Kawartha Pine Ridge District School Board was considered in the decision of Master Muir. I agree with what was said there. The Education Act is clear. The statutory privilege either applies or it does not. There is no discretion left for the court to decide whether there is a broader interest that requires or, in the alternative, forbids the production of the material that is privileged. The only issue is whether the privilege applies. This decision does not provide another means by which answers to the questions can be compelled.

30 Counsel for Northmount School proposed that there is yet another approach. It was her view that the motion should not have been brought against the school but, rather, directed to the parents of each of the students involved. In Lee v. District School Board[34], one seven-year-old assaulted another. The parents of the victim sued the school board, the principal of the school, teachers and the guardian of the other child (his grandmother) alleging they knew of his violent behaviour and failed to properly supervise him. A motion was brought seeking production of school records. Production was opposed on the basis of the privilege found in s. 266 of the Education Act. The court found that, where a school record of a student was relevant and producible under r. 30.10 and the student is a party, the court should order the parent or guardian to sign a consent and take all reasonable efforts to have the record holder (in this case the school) produce the record for the purpose of litigation.[35] The theory behind this appears to be that, given the authority to consent to its production, the student or guardian has custody or power such as to make them properly the subject of production and discovery.[36] In this case, we are not dealing with parties. The order is being sought to identify non-party students who may assist with the action. Moreover, r. 30.10 deals with motions seeking production from non-parties and, by its terms, does not apply where there is a privilege.[37] Accordingly, the question remains does the privilege apply?

31 The names of the students are in the OSR to assist the individuals referred to in s. 266(2) of the Education Act ("supervisory officers and the principal, teachers and designated early childhood educators of the school") for the improvement of instruction and other education of the pupil. They are not privileged when they originate in other documents where they are used for other purposes.

32 For the reasons reviewed, the appeal is granted. The questions are to be answered.

33 The plaintiff, as the successful party, seeks costs of the motion in the amount of $5,088.02, inclusive of HST. This is less than the defendant indicates it would have requested if successful. To me, the request is high for what was purely a procedural motion. On this basis, I impose a small reduction. Costs to the plaintiff in the amount of $4,500, inclusive of HST.

T.R. LEDERER J.

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1 [1998] O.J. No. 1480 (Gen. Div.).

2 *R.S.O. 1990, c. E.2*.

3 Factum of the Appellant, at para, 12.

4 Ibid, at para. 12.

5 Letter from CCAS, dated July 31, 2007.

6 Ibid.

7 Ibid.

8 Ibid.

9 Factum of Northmount School, at para. 9.

10 Perell, Morden, *The Law of Civil Procedure in Ontario, First Edition, (c) LexisNexis Canada Inc. 2010, at p. 525.*

11 Ibid, at p. 526.

12 Education Act, s. 266(2) see: para. [9], above.

13 The Ontario Student Record (OSR) Guideline.

14 Ibid, Section 2, "Responsibility for the OSR", at p. 5.

15 Ibid, Section 3.4, "Responsibility for the OSR", at p. 12.

16 Ibid, Section 3.4, "The Documentation File", at p. 12.

17 [2005] O.J. No 1070; 138 A.C.W.S. (3rd) 299.

18 Ibid, at para. 7.

19 Supra, (fn. 13), at p.5.

20 Ibid, at p.12.

21 Ibid, at p.12.

22 [1983] O.J. No. 2127.

23 (1981), 24 C.P.C. 122.

24 Ibid, at p. 125.

25 Supra, (fn. 7), at para. 8.

26 Ibid, at para. 10.

27 Robinson v. Northmount School for Boys, 2013 ONSC 1028 (CanLII), at para. 12, where the following is said:

> Northmount argues that by providing the requested answers and documents it will reveal information about non-party students that may be found in the non-party students' records, which would amount to a breech of section 266(2) of the Act.

28 Ibid, at para. 20.

29 [1998] O.J. No. 1480.

30 Ibid, at para. 27, the Master said:

For the reasons I have set out above, I respectfully disagree with Justice Rivard's conclusion in this regard. I do not accept that the basic information the plaintiff is seeking is covered by the OSR privilege.

31 *[2005] O.J. No. 3107*, 117 C.P.C. (6th) 51.

32 Ibid, at para. 15.

33 Ibid, at para. 15.

34 *[2008] O.J. No. 1759*, *167 A.C.W.S. (3rd) 273*.

35 Ibid, at para. 14.

36 Kuczko (Next friend of) v. Hallows, *[1980] O.J. No. 538*, at para. 3.

37 30.10 (1) The court may, on motion by a party, order production for inspection of a document that is in the possession, control or power of a person not a part *and is not privileged* where the court is satisfied that,

(a) the document is relevant to a material issue in the action; and

(b) it would be unfair to require the moving party to proceed to trial without having discovery of the document [Emphasis added].

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