

JUST IN TIME

News from the Diversity, Equity and Human Rights (DEHR) Committee

Tribute



The DEHR Committee has lost a great friend. Karen Virag, administrative secretary to the committee and editor of *Just in Time*, died on January 11, 2014. Karen was brilliant, witty and generous, and her loss is keenly felt by committee members and by friends and colleagues at the ATA and in the wider community.

The following is excerpted from Jonathan Tegtmeier's editorial in the January 28 issue of the *ATA News*, a tribute to Karen.

We at the Alberta Teachers' Association are blessed to be surrounded by an outstanding team of editors. Sadly, a key member of that team, Karen Virag—our supervising editor of publications and good friend—died on January 11, 2014, following a brief illness.

Besides being a superb editor, Karen was a fabulous writer and her skill with words and attention to detail influenced publications produced by the Association for the past 16 years.

Karen was sharp, in terms of intelligence, style and wit. She had the most incredible one-liners, often delivered at breakneck speed while maintaining her characteristic eloquence. And

even when those lines were delivered at your expense, you knew they came from a place of love and respect, because Karen was a genuinely kind and generous person.

Born in 1957 and raised in southwestern Ontario's "tobacco country," Karen attended the University of Toronto, where she obtained a general studies BA (English, Latin, French) in 1981. She went on to earn an MA in comparative literature from the University of Alberta in 1996.

Karen travelled widely, was a lover of languages and fluent in many. She respected the power of the written word and was a published author across different genres.

She joined ATA staff in 1996, and was a frequent contributor to the *ATA News* and the *ATA Magazine*. As the administrative staff member with the Association's Diversity, Equity and Human Rights Committee, Karen wrote and published *Just in Time*, the committee's award-winning newsletter. She worked closely with many teacher leaders from across the province in her role editing specialist council journals and publications. She was also the ATA's resident expert on copyright matters.

Away from Barnett House, Karen was half of CBC Radio's Grammar Gals, contributed to CBC Radio's *Ideas* program ("Silver and Exact," March 6, 2012), and was a book reviewer for the *Edmonton Journal* and a writer for *The Tomato*. She taught courses in grammar and edited fiction and nonfiction works on a freelance basis.

An ardent supporter of the arts, Karen sat as a board member on Edmonton's Arts on the Avenue board, the Editors' Association of Canada, where she served as director of publications, and the Cultural Human Resources Council of Canada.

Out of respect for Karen's contribution to the teachers of Alberta, Provincial Executive Council observed a minute of silence at its January 16 meeting. The flag at Barnett House was flown at half-mast the day of Karen's funeral, January 24.

Karen was widely respected and will be missed terribly.

I think the first duty of society is justice.

—Alexander Hamilton, one of the founding fathers of the United States

This issue of Just in Time is about a certain kind of duty that exists in schools; it applies to students and to teachers. It is the “duty to accommodate.”

Let’s have a closer look at this phrase—the word duty dates from the late 13th century and is derived from Old French and Latin debitus, which means “to owe.” Debitus also implied a sense of moral commitment to someone or something. In other words, duty is not only about doing things right, it is about doing the right thing.

As for accommodate, that word is from the past participle of the Latin word accomodare, meaning “to make fit, adapt.”

Alberta schools have a duty to accommodate students and teachers.

—Karen Virag

Accommodation for Parents

Both the federal and the Alberta governments have recently proclaimed legislation that provides for accommodation in the workplace for parents of gravely ill family members.

Alberta workers are now able to take up to 8 weeks of unpaid, job-protected leave as long as they have worked for at least 52 weeks for their employer; they must provide their employer with certification from the attending physician that the family member needs care. The 8 weeks can be divided into two parts, both to be taken within 26 weeks. Employees who take this compassionate care leave will be able to return to their same or a like position, similar to new mothers returning after maternity leave.

The federal *Helping Families in Need Act* was introduced in the House of Commons in September 2012, and came into effect in 2013.

The act implemented a new employment insurance (EI) benefit for parents of critically ill or injured children, which provides up to 6 weeks of EI in a 26-week period. Also included in the act are provisions for compassionate leave for parents of children who disappear as a result of probable criminal activity, and amendments to the *Canada Labour Code* to protect the jobs of parents who take a leave of absence to care for a critically ill child.

Employees who are interested in applying for benefits under the provisions of either the federal or provincial legislation should consult their human resources department. Information about the federal legislation is also available at www.labour.gc.ca or www.servicecanada.gc.ca, and about the provincial legislation at <http://work.alberta.ca/documents/compassionate-care.pdf>.



The Duty to Accommodate Within the Context of the Employment Relationship

by Lisa Everitt

Executive Staff Officer, Teacher Welfare

Employers in Alberta are expected to provide work environments that accommodate diversity. This expectation is legitimated and reinforced through the *Alberta Human Rights Act*, which stipulates that employees cannot be denied opportunity, benefits or advantages available to other members of society because of their

- race,
- colour,
- ancestry,
- place of origin,
- religious belief,
- gender,
- physical disability,
- mental disability,
- age,
- marital status,
- family status,
- source of income or
- sexual orientation.

Consequently, employers are obligated to accommodate employees so that discrimination does not occur. When an employee requests an accommodation, there exists a legal obligation on the employer and the employee to make best efforts to enter into an arrangement that allows the employee access to equity of opportunity, yet still provides the employer with an ability to carry on its business interests.

When an employee believes that he or she has not been accommodated fairly, there is an ability through the *Alberta Human Rights Act* to launch a human rights complaint. Ultimately, if the dispute cannot be resolved through informal process, the courts will resolve the issues for the parties. Through the courts, the following legal principles have been established with respect to the duty to accommodate:

- Bona fide occupational requirements
- Undue hardship

Bona fide occupational requirements refer to standards or job tasks that are necessary in and of themselves for the work to be done. To establish whether or not a standard is a bona fide occupational requirement, the Supreme Court of Canada set out a three-part test, known as the Meiorin test. The Meiorin test requires an

employer to show that the employment standard adopted is rationally connected to the work being done, that the employment standard was adopted in good faith and necessary for the fulfillment of the work being done, and that the standard is reasonably necessary and cannot be accommodated. In other words, if an employer cannot demonstrate the validity of its employment standards, on the balance of probabilities, the employer has an obligation to accommodate the employee by adjusting the standard. When an employer fails to do so, it may be found to have acted in a discriminatory manner.

In addition to bona fide occupational requirements, employers have a duty to accommodate employees up to the point of undue hardship. The courts have ruled that the employer may not be obligated to provide the requested accommodation if an accommodation request creates onerous conditions for an employer. Some of the factors that influence whether or not the threshold of undue hardship has been reached include financial cost, size of the employer, operational requirements, morale of the workplace, and health and safety concerns.

The Alberta Teachers' Association supports the human rights of teachers in the employment context through its policies and the provision of assistance to individual teachers. In its union function, the ATA is bound by the duty to represent its members fairly. Concrete examples of this work can be found in collective agreements, which provide equal pay for men and women, maternity and parental leaves, access to sick leave, and the establishment of disability plans that provide for disabled teachers to continue to work until they are able to return to full-time duty. In addition, the ATA, through Teacher Welfare and Member Services, provides support to individual teachers in accessing entitlements under the collective agreement or working with employers to find suitable accommodations, particularly in the area of disability. In its capacity as the voice of the profession, the ATA enacts its policy statements through the development of professional development opportunities such as the Diversity, Equity and Human Rights conference and publications such as this one.

Duty to Accommodate Students

by Robert Mazzotta
Executive Staff Officer, Member Services

The Member Services program area of the ATA regularly receives calls from teachers regarding the duty to accommodate. Often the calls are about teacher accommodation, but what about accommodation for students?

The current Alberta *School Act* speaks to the right of access to education. Section 8(1) reads that every individual

- (a) who at September 1 in a year is 6 years of age or older and younger than 19 years of age, and
- (b) who is
 - (i) a Canadian citizen,
 - (ii) lawfully admitted to Canada for permanent residence,
 - (iii) a child of a Canadian citizen, or
 - (iv) a child of an individual who is lawfully admitted to Canada for permanent or temporary residence

is entitled to have access in that school year to an education program in accordance with this *Act*.

Section 47 of the act refers to special education programs.

47(1) A board may determine that a student is, by virtue of his or her behavioural, communicational, intellectual, learning or physical characteristics, or a combination of those characteristics, in need of a special educational program, and (2) Subject to s48, a student who is determined by a board to be in need of a special education program is entitled to have access to a special education program provided in accordance with this *Act*. It is important that clear communication occur between the board and parents to ensure the child's needs can best be met at the local school or, in some instances, a district site.

Medical needs

However, nowhere in the act does it say anything about accommodating students' special medical

needs. This matter is left between the school board and the parent to decide. When it comes to Association policy on this topic, it is clear that medical needs are not to be addressed by teachers. Current Directive 5.B.12 reads

BE IT RESOLVED, that the Alberta Teachers' Association encourage school boards, the Department of Education, and the Department of Health to develop policy that ensures that students receive the medications, medical treatment and nursing care they require while excluding teachers from regular or ongoing involvement in the administration of these services [1996/99/2002/05/08/11].

Teachers who are asked to administer medications should seek assistance from the Association in protesting the inappropriateness of the assignment. Although each situation may be slightly different, protests should identify the conditions necessary to ensure safety and refuse acceptance of liability. If teachers have any questions about administering medication to students they should contact Member Services.

So, what to do? It is important that there be clear communication between a board and parents to ensure that each party can distinguish between a need and a want, and what the school can provide and what is outside a school's purview. Districts and schools should have clear policy in place on the administration of medication to students. Schools can be expected to make reasonable efforts to accommodate student needs, but this should not be at the expense of other students nor should it be an unreasonable burden on teachers to provide these accommodations. As schools move toward a model of inclusion, it is imperative that there be ongoing discussion among all stakeholders to ensure that the needs of Alberta students are met.



Alberta Teachers' Association Code of Professional Conduct

(1) The teacher teaches in a manner that respects the dignity and rights of all persons without prejudice as to race, religious beliefs, colour, gender, *sexual orientation, gender identity*, physical characteristics, disability, marital status, family status, age, ancestry, place of origin, place of residence, socioeconomic background or linguistic background.

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Research Advice from the ATA Library

by Sandra Anderson, MLIS
ATA Librarian

Having read the interesting articles about the duty to accommodate in this issue, are you eager to read a bit more? The staff at the ATA library are always happy to help you with research and to recommend resources for you.

After doing a bit of searching, we feel that the best place to learn more about the duty to accommodate in Alberta is from the Alberta Human Rights Commission's (AHRC) website. They have a clearly written webpage about the duty to accommodate that is intended to help both employers and employees in Alberta understand requirements to accommodate staff (<http://bit.ly/1cUlc1c>).

What are the duties and responsibilities in providing medical information related to the duty to accommodate? The AHRC also includes great FAQ pages on its website about this question for all those involved: employees (<http://bit.ly/1ceRqWp>); employers (<http://bit.ly/1JeOiA>); and doctors (<http://bit.ly/19B2EIR>).

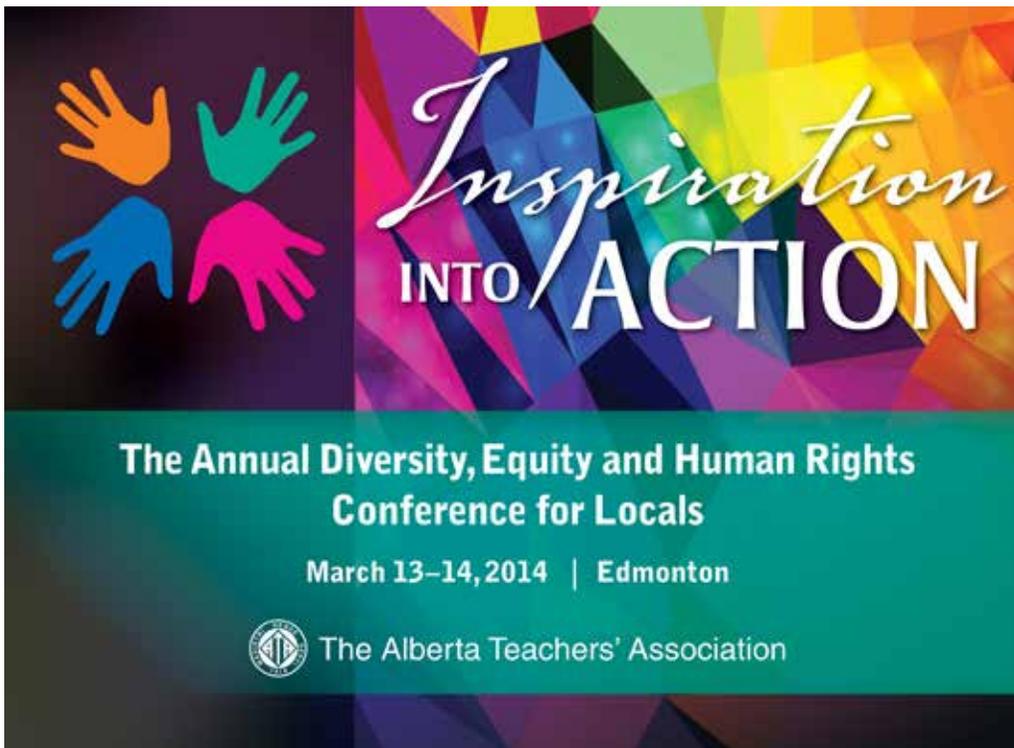
High school teachers and counsellors may be interested in the Duty to Accommodate Students with Disabilities in Post-Secondary Educational

Institutions page that is also part of the AHRC's website (<http://bit.ly/19fYXUP>).

For a perspective from lawyers, Davis Law (a Canadian private law firm) has posted a good overview about legal issues around the duty to accommodate in Canada at <http://bit.ly/1JIfCUM>.

Finally, if you are interested in reading some of the legal decisions about the duty to accommodate, you can find Canadian case law at CANLII (Canadian Legal Information Institute), www.canlii.org. This website contains thousands of cases from across the country that consider the duty to accommodate. We recommend that you search "*duty to accommodate*" with quotation marks, because this will focus your research to those cases which have the phrase *duty to accommodate* in their text. You can narrow your search further by just selecting cases from one province.

If you would like more information about this or another topic, please contact our helpful library staff at library@ata.ab.ca or give us a call at 1-800-232-7208 (toll free in Alberta) or 780-447-9400 (Edmonton and area).



Resources in Your ATA Library

by Sandra Anderson, MLIS
ATA Librarian

Books

Here are a couple of titles we recommend for those who are interested in learning more about workplace accommodation.

Work Accommodation and Retention in Mental Health

Schultz, Izabela Z, and E Sally Rogers. 2011. New York: Springer (331.5 S388)

This book focuses on workplace accommodation for those with mental health disabilities and provides many strategies for the accommodation of these invisible disabilities.

Labour Arbitration in Canada

Mitchnick, Morton, and Brian Etherington. 2006.

This commentary on labour law in Canada considers many landmark cases on the topic of workplace accommodation.

Web Resources

Because labour law is constantly evolving in Canada, your ATA library also recommends that anyone who is interested in learning more about the duty to accommodate review these websites:

Alberta Government Tip Sheets: Accommodations – Working With Your Disability <http://alis.alberta.ca/ep/eps/tips/tips.html?EK=165>

This is a clear guide written for disabled employees and includes good tips to help these employees speak to their employers about accommodations for their jobs.

Alberta Human Rights Commission: Duty to Accommodate

www.albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/bulletins/duty_to_accommodate.asp

The Alberta Human Rights Commission provides a very thorough explanation of the duty to accommodate.

CanLII

www.canlii.org/en/ca/

This free legal website gives the Canadian public access to case law and arbitrations on a whole range of topics including the duty to accommodate.

Mental Health Works: What is Reasonable Accommodation?

<http://www.mentalhealthworks.ca/employers/faqs/>

Alberta Mental Health Services provides the Mental Health Works site, which discusses mental health generally in the workplace and how employers can accommodate those with mental health disabilities.

Treasury Board of Canada Secretariat: Duty to Accommodate: A General Process for Managers

www.tbs-sct.gc.ca/ee/dorf-eng.asp

This straightforward, easy-to-read web document by the federal government provides clarity for employers about accommodation.



In memory of

Karen Virag

who has made contributions to the
Diversity, Equity and
Human Rights Committee with
passion, imagination and insight



Inspiration INTO ACTION

The Annual Diversity, Equity and
Human Rights Conference for Locals

Thursday, March 13 (evening)
Friday, March 14, 2014 (all day)

Barnett House | 11010 142 Street | Edmonton

Topics of Discussion

First Nations, Metis and Inuit education;
human rights and employment; lesbian, gay,
bisexual and transgender issues; gender
equity; social justice; intercultural education

Eligibility and Registration

Two delegates per local on a grant-in-aid basis
are eligible to attend. Additional delegates
are welcome. Interested teachers should
talk to their local president for registration
information. Additional information available
at www.teachers.ab.ca.



Dijla Al-rekabi

Keynote Speakers

Thursday | Dijla Al-rekabi

Dijla Al-rekabi is a diversity and learning support advisor with the Calgary Board of Education. For the past decade Dijla has been speaking on human rights, gender inequality, diversity, refugees and immigrants. Her experiences as a war survivor, refugee camp citizen and visible minority in Canada infuses a deeper understanding of cultural competency, diversity and inclusion within the education system.

Friday | Özlem Sensoy

Özlem Sensoy, associate professor in the Faculty of Education at Simon Fraser University, is the co-author (with Robin DiAngelo) of the bestselling book *Is everyone really equal? An introduction to key concepts in social justice education*. She teaches courses on social justice education, critical media literacy and popular culture, and multicultural and anti-racism theories and practices.



The Alberta Teachers' Association

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**March 5–7, 2014: Rehab Seminars
2014 Special and General Education
Conference: Inclusion, Collaboration and
Differentiated Learning. Seattle, Washington**

This conference deals with strategies for teaching all children, including students with multiple challenges and gifted learners, from prekindergarten through Grade 12.

www.rehabseminars.org/images/SEATTLE_Brochure_Final.pdf

**March 13–14, 2014: Alberta Teachers’
Association Diversity, Equity and Human
Rights Committee**

**Local Diversity, Equity and Human Rights
Conference. Edmonton, Alberta**

The conference will be of interest to teachers and administrators who want to explore topics of diversity in the classroom and workplace.

www.teachers.ab.ca; andrea.berg@ata.ab.ca

**April 28–May 1, 2014: YAI Network
International Conference on Intellectual and
Developmental Disabilities, “Designing the
Future.” New York.**

The YAI Network is a community of advocates, researchers, providers and specialists with many different skills and perspectives working towards a single goal: helping people with developmental disabilities attain the fullest and most independent life possible. The 2014 conference is an opportunity to discover new perspectives, tools and approaches to achieve that goal.

www.yai.org/resources/conferences/yai-conference/

**May 19–20, 2014: Center on
Disability Studies**

**30th Pacific Rim International Conference on
Disability and Diversity, “Learn from
Yesterday. Live for Today. Envision Tomorrow.”
Honolulu, Hawaii**

The Center on Disability Studies focuses on interdisciplinary approaches to accessibility, advocacy, education and employment for persons with disabilities. Conferences have included examples of program providers, natural supports and allies of persons with disabilities and action plans to meet human and social needs in a globalized world.

www.pacrim.hawaii.edu

**June 11–12, 2014: Canadian Human
Rights Commission/Canadian
Association of Statutory Human Rights
Agencies**

**“Accommodation Works: Toward a More
Inclusive Society.” Ottawa, Ontario**

This event will provide a learning environment for key human rights issues and underscore the importance of commitment to the objectives of international, federal and provincial human rights legislation.

www.chrc-ccdp.gc.ca/eng/content/accommodation-works-toward-more-inclusive-society-0

**June 11–14, 2014: Society for Disability
Studies**

**“Disability and Sustainability.” Minneapolis,
Minnesota**

Conference strands include “Communities/Identities,” focusing on challenges and possibilities that shape collaboration, culture, and community for people who experience disability; “Power and Privilege,” to explore the workings of power and privilege within the disability and sustainability movements; and “Professional Development.”

www.disstudies.org/conferences/minneapolis-2014

**July 9–11, 2014: Institute for Gender and
Diversity in Organizations, Vienna
University of Economics and Business
Fourteenth International Diversity in
Organizations, Communities and Nations
Conference, Vienna, Austria**

“This yearly conference brings together scholarly, government, and practice-based participants with an interest in the issues of diversity and community. ... The conference examines the concept of diversity as a positive aspect of a global world and globalized society and ... will seek to explore the full range of what diversity means and explore modes of diversity in real-life situations. The Conference supports a move away from simple affirmations that ‘diversity is good’ to a much more nuanced account of the effects and uses of diversity on differently situated communities in the context of our current epoch of globalisation.”

<http://ondiversity.com/the-conference>

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