

Ontario Divisional Court upholds expulsion of student in knife incident

Under section 309(1) of the *Education Act*, mandatory expulsion is the consequence for students using a weapon to harm or threaten to harm other persons. In *Jackson v. Toronto Catholic School Board* (July 17, 2006), the Ontario Divisional Court upheld the decision of a Principal and Board to impose a limited one-year expulsion on an 11-year-old sixth grader accused of threatening two classmates with a knife.

The student was identified as an exceptional pupil with a language impairment. While a number of report cards and assessments described him as cooperative, polite and fair, the student had also developed behavioural problems - such as hitting, bullying and fighting.

In April 2002, the student brought a knife into the schoolyard for morning recess. It had a double-edged blade inside a silver pen. When the pen cap was removed, the blade was exposed. Two girls reported that he threatened one of them with the knife. Another boy reported hearing the student threaten the girl saying he was going to "cut her." Ultimately, the knife fell to the ground and the girls delivered it to a teacher, who informed the Principal of the incident. An inquiry into the incident was initiated by the Principal.

SECTION 309 OF THE *EDUCATION ACT*

The Principal's investigation was carried out under the legislative framework provided by s. 309 of the *Education Act*. This provision reads, in part:

s. 309(1) It is mandatory that a pupil be expelled if the pupil commits any of the following infractions while he or she is at school or is engaged in a school related activity:

...

2. Using a weapon to cause or to threaten bodily harm to another person.

(2) The principal shall suspend a pupil whom the principal believes may have committed an infraction for which expulsion is mandatory.

(3) Despite subsection (1), expulsion of a pupil is not mandatory in such circumstances as may be prescribed by regulation.

(4) If the principal suspends a pupil under subsection (2), the principal shall promptly refer the matter to the board or conduct an inquiry to determine whether the pupil has committed an infraction for which expulsion is mandatory.

...

(6) The principal's inquiry shall be conducted in accordance with the requirements established by a policy of the board and the

powers and the duties of the principal are as specified by board policy.

(7) If, after the inquiry, the principal is satisfied that the pupil committed an infraction for which expulsion is mandatory, the principal shall:

- (d) impose a limited expulsion...; or
- (e) refer the matter to the board for its determination.

The circumstances under which an expulsion is not mandatory are set out in s. 2 of O. Reg. 37/01, which provides:

2. For the purposes of subsection 309(3) of the Act, the expulsion of a pupil is not mandatory if,
 - (a) the pupil does not have the ability to control his or her behaviour;
 - (b) the pupil does not have the ability to understand the foreseeable consequences of his or her behaviour; or
 - (c) the pupil's continuing presence in the school does not create an unacceptable risk to the safety of any person.

PRINCIPAL'S INVESTIGATION

After separately interviewing the two girls involved in the incident, the Principal concluded that their stories had the ring of truth. He then checked with the two teachers who had been on yard duty when the episode occurred. They were unaware of the incident. Next, the Principal interviewed the student, who initially denied knowing anything about the knife. The Principal then stepped into the classroom and asked the class whose pen he was holding up. The children identified it as belonging to the student, and one child knew that the pen had a knife inside.

At this point the student acknowledged that he had lied. The Principal concluded that a pen with a concealed knife had been brought to school by the student, that the student had not been initially truthful and there was a need to isolate him because of the threat of violence. The Principal then informed the police and arranged for the two girls to write separate statements.

The Principal spoke with the student's mother three times throughout the afternoon. She gave him the name of another student who reported that he saw nothing happen.

The Principal chose to impose a limited expulsion rather than refer the matter to the Board for its determination. In the end, he was satisfied that the incident described by the two girls had occurred. The evidence showed that the student's special needs had been considered when the Principal decided that a limited expulsion was appropriate. He also considered the student's record of increasingly aggressive behaviour over the course of the school year. Finally, the record showed that the Principal concluded that the student had shown that he had the ability to control his behaviour, together with the ability to foresee the consequences of his behaviour, and that his continued presence created an unacceptable risk to the other students.

The Principal offered the student's mother a possible appropriate alternate arrangement. The student could be placed in the Language Impaired class at another school and the Principal gave him the opportunity to transfer there immediately, thus reducing the period of the suspension. Eventually, the student's mother decided to send him to the other school.

The mother appealed the limited expulsion to the School Board. After a two-day hearing, the Board dismissed the appeal, holding that the Principal had considered all relevant factors in arriving at his decision.

The mother then applied to have the Board's decision judicially reviewed. Before the Divisional Court, she argued that her son had been denied procedural fairness by the Principal and by the Board. She also argued that the expulsion had infringed his rights to security and liberty under section 7 of the *Canadian Charter of Rights and Freedoms*.

APPLICATION DISMISSED

The Divisional Court dismissed the mother's application, holding that the Principal had acted in a fair and appropriate manner while conducting his investigation. In support of its ruling on the Principal's actions, the Court pointed to the 1998 decision of the Supreme Court of Canada, *R. v. M. (M.R.)*, in which it was held that school boards must be given the flexibility to deal swiftly and effectively with disciplinary problems at school in order to ensure the safety of students. In light of this case law, the Court described the Principal's actions in the following terms:

What then did [the Principal] do? He conducted an investigation of the incident by talking to all the students involved, including those identified by [the student's mother]; he put the allegations to [the student] and obtained his response; he spoke with [the student's mother] several times and kept her informed; he reviewed [the student] history of behavioural problems; he canvassed the mitigating factors set out in O. Reg. 37/01 and decided there were none; he took into account the students' knowledge that [the student] had brought a knife to school.

Viewed in the light of *R. v. M. (M.R.)*, we find the actions taken by [the Principal] and the inquiry conducted to have been scrupulously fair, reasoned and appropriate. He conducted himself as we imagine most parents with children at [the school] would hope a principal would – with respect for the rights of [the student] and the rights of other children at the school. [The Principal's] actions did not constitute a denial of procedural fairness to [the student].

With respect to the fairness of the Board's decision, one of the grounds advanced by the mother was that the Board had failed to give reasons for its decision. In dismissing the mother's appeal, the Board essentially stated that the Principal had considered all the relevant factors in arriving at its decision. In the Court's view, this came "dangerously close" to being inadequate. However, the Court declined to remit the matter to the Board for further reasons, noting that the brief reasons had not impaired the mother's ability to mount an effective appeal.

The Court also rejected the challenge based on breach of the student's *Charter* rights to liberty and security of the person. The Court noted that the Supreme Court of Canada in *Blencoe v. B.C. Human Rights Commission* held that "liberty" is engaged where state compulsions or prohibitions affect important and fundamental life choices, such as where persons are compelled to appear for fingerprinting or to produce documents. With respect to "security of the person," only interference that constitutes "serious state-imposed psychological stress" will amount to a breach of an individual's security of the person. Moreover, even when the interference is serious, s. 7 is not always engaged.

The Court held in this case that the case law was clear, attendance of children at a particular school is not a legal right, benefit or license. No pupil, therefore, has "any vested interest" in any single school. In the Court's view, the assertion that the student had suffered injury or interference with his psychological integrity was completely unsubstantiated, and no particulars had been advanced to support such a claim. In the circumstances, there was no evidence of deprivation to the student's rights to liberty or security of the person sufficient to engage s. 7 of the *Charter*.

Accordingly, the application for judicial review was dismissed.

In Our View

This decision confirms the position of deference taken by the courts towards school authorities in matters of security and safety in schools. The view expressed by the Supreme Court of Canada in *R. v. M. (M.R.)* is that school authorities have a heavy responsibility to ensure student safety and that they are in the best position to evaluate whether there are reasonable grounds to impose discipline. For these reasons, the Court was not inclined to impose overly rigorous standards of procedural fairness on the investigation conducted by the school Principal in this case.

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