



# Risk Management Considerations for Private School Expulsion in Ontario

**E**xpulsion is a disciplinary measure that may become necessary when attempts to change the unacceptable behaviour of a student have been unsuccessful. There is a process, including warnings and written notification that should be followed in order to avoid liability for claims brought by surprised or dissatisfied parents.

In early 2016, a private school student was expelled after continuously exhibiting disruptive behaviour that included assaulting other children. The Director of the school reported that he was called to the classroom up to three times a day. The parents were asked to remove their child from the school and tuition was refunded. No written notice of the expulsion was given to the family and the school did not have a set protocol for expulsion or an appeal process in place. The parents claim they were not advised of the reason for the expulsion and that the student suffered distress following the expulsion.

In the 2012 Ontario Superior Court of Justice case, *W. (W.) v. Lakefield College School* students were expelled when they were caught smoking marijuana. The private school had a zero-tolerance on-campus drug policy that required that the students be expelled. This policy was part of the contract between the parents and the school. The policy

further provided who was responsible for dealing with expellable offences. The policy had been changed 11 years prior because the previous wording stated that students using drugs “may be liable for expulsion”.

The Judge was apprehensive about allowing the expulsion of the students to stand, due to the negative impact he felt it would have on their school careers. However, because the school’s zero-tolerance drug policy was communicated to the parents and the students and the enrollment contract was not ambiguous, he had no choice but to uphold the expulsions.

*Setia v. Appleby College* is a similar Ontario case where it was decided on appeal in 2013 that Ontario private schools have authority to expel students and that the Divisional Court does not have jurisdiction to review that decision.

Although in Ontario, to date, Courts are upholding the right of private schools to determine when it is appropriate to expel students, it is a good practise to develop policies, procedures and risk management strategies for the discipline of students and ensure they are followed, in order to avoid the uncertainty and costs of litigation.

## Risk Management Considerations

1. The school should have a clear, formal written disciplinary policy that is communicated to all parents.
2. The school's Enrollment Agreement should clearly explain the circumstances under which the student will be expelled, especially where expulsion is automatic.
3. Ensure that the school's disciplinary policy and its penalty provisions are understood by parents and students.
4. Have students and parents sign a written acknowledgement that they received a copy of the disciplinary policy and agree to comply with the school's rules of student conduct. Keep a copy of this acknowledgement in the student's file.
5. The student and parents should be advised immediately and in writing when the inappropriate behaviour of a student occurs. Provide details of the rule being broken by the student and how it was allegedly broken.
6. The student should be given the opportunity to provide their side of the story.
7. If the student's behaviour warrants suspension, provide notice in writing to parents and, where appropriate, consider allowing the parents to respond.
8. The Principal should thoroughly investigate and document the circumstances surrounding the suspension to determine if expulsion is warranted.
9. When the Principal determines expulsion is warranted, parents should be notified without delay.
10. The school should have a documented and clearly stated expulsion appeal process in place.
11. The student and parent should be made aware of the appeal process and assured that there will be no retribution for seeking an appeal.