

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Divisional Court)

**BETWEEN:** KENNETH ROCZNAK (Applicant)

**AND:** HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD (Respondents)

**COUNSEL:** *Glenn Stuart* for the Applicant  
*Brent Foreman, Christopher Berg* for the Respondents

**BEFORE:** C. CAMPBELL J.

**ENDORSEMENT**

[1] This urgent injunctive application required an immediate decision. As a result, this written endorsement follows the delivery of oral reasons.

[2] I am not satisfied that the decision of the principal that the student in issue not be permitted to attend the school prom gives rise to a right that permits review by this Court of a statutory power of decision.

[3] The right that is coincident with the right to an education to be in the classroom for the purpose that is referred to in s. 265(m) of the *Education Act* does not in my view extend to what is a privilege and not a right, namely to attend a dance.

[4] The argument on the part of the Applicant parents is that the denial of the opportunity to attend the prom is part and parcel of a suspension that was imposed for 10 days in April and has now been extended without notice to the affected student. Given that the prom is today, there is not time to permit an appeal to be taken under the *Education Act* and therefore the denial is reviewable by this Court.

[5] The 10-day suspension was for an incident that took place at another social event in the school. The parents appealed the suspension on May 5, 2009 after a decision was made that the student would not be accorded the privilege of attendance at the prom. The appeal was taken in the belief by the parents that the prom denial was an additional penalty to the suspension and therefore reviewable. It has not yet been heard.

[6] The basic position of the Applicants is that the opportunity to attend a prom is an integral part of the educational experience provided for under the *Education Act* and therefore the denial of that right, particularly when it is an add-on to a suspension of which the student and his parents were not made aware at the time of the initial suspension, is a circumstance reviewable by this Court.

[7] The position of the Board, put succinctly, is that the circumstances of the decision are not reviewable and even if they are held to be reviewable, the standard of reasonableness must be accorded to the actions of the principal.

[8] I have concluded that the position of the Board is well-founded. I accept that the issue of prom attendance is (a) a privilege and not a right; and (b) even when a privilege, must not be denied capriciously or on grounds that would not withstand review. The standard therefore is reasonableness.

[9] The decision in *Hall (Litigation Guardian of) v. Parens*, [2002] O.J. No. 1803, referred to by counsel for the Applicants, which dealt with a school prom, can be distinguished. It did not deal with the issue of whether attendance was a right or a privilege. I accept that *Charter* principles may apply to the denial of an activity characterized as a privilege.

[10] In this case, there is ample evidence to support the exercise of discretion on the basis of attendance being a privilege. The Student Handbook makes that clear, although that fact is in no way determinative.

[11] More importantly, I do not accept the position of the Applicants that the denial of the prom ticket was part and parcel of the suspension. I accept the evidence of the school principal Helen McGregor in her affidavit that there are many other considerations that she is entitled and indeed should consider in exercising her statutory duties. The facts giving rise to the suspension would appear to have played a part in the decision but were by no means all of its. The statement by the teacher volunteer supervisors that they would not attend if this student and two others were allowed to attend is worthy of support.

[12] Even if I had concluded that the denial was reviewable by this Court, I would find that the standard of review was reasonableness, and on the facts no basis to find other than it fell within her jurisdiction reasonably exercised.

[13] I return to where I started. Despite the able argument of Mr. Stuart, I am unable to conclude that the activities and actions of the principal represent a statutory decision capable of review in these circumstances by this Court.

[14] It is not necessary to decide whether the denial of a prom ticket is or is not part of the appeal provided for under s. 265 (1)(m) of the *Education Act* – that is a matter for the Board appealed to.

[15] In their text on "Judicial Review of Administrative Action in Canada," looseleaf Canvasback, the authors Brown and Evans, commencing at p. 2-11 and going to p. 2-18, distinguish between those determinations that may be regarded as statutory decisions and those which while administrative actions, may be said to prescribe a person's legal rights.

[16] The authors make clear that not every administrative action is a decision in the exercise of a statutory power. Numerous examples are given, including a decision to close a school in which it was held that the "privilege" to attend a particular school was not a "legal right."

[17] I am satisfied that in the context of the operation of a school, attendance at a prom while it may be part of an educational experience (if offered by the school) is a privilege and not a right.

[18] Even if accorded the status of a right such that the decision to deny attendance is reviewable, it would in this circumstance fall to be accorded a "reasonable" decision.

[19] For the reasons above, the Application is dismissed. If the parties cannot agree on the disposition of costs, written submissions are to be made within two weeks.

Released: May 22, 2009

  
C. CAMPBELL J.