WELCOME
Morning Recess

Principals’ 101
Investigations
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Preliminary Issues

• Amount of time and effort to be devoted to an investigation
• Ensuring objectivity
• Seriousness of incident and potential consequences
• Complexity of the incident
• Number and type of potential witnesses (students, staff, others) (age, disabilities)
• Police involvement
• Broader community involvement
• Media (social and traditional)
Police Protocol

**Principals**
- Role and responsibility for investigations
- When police *must* be notified
- When policy *may* be notified
- Notice requirements when police interview students
- Confidentiality pursuant to YCJA
  - S.110(1) no publication of accused
  - S.111(1) no publication of witnesses or victims

**Police**
- Disclosure pursuant to YCJA
- S.125(1) during investigation
- S.125(6) for the provision of services
- Procedure for investigation of incidents (searches, seizure, detention and arrest)
- Police interviews
- Sharing information relevant to principal investigations
- Timelines (20 school days)
Education Act

Suspension

• S.306(1) “if he or she believes”
• Rational, reasonable information upon which belief that student conducted the infraction
• Investigation does not need to be complete
• Up to 20 school days
• S.308(1)(b) parent notification
• Parent should be consulted

Expulsion

• S.310(1) “if he or she believes”
• Investigation following suspension
• Suggests that the investigation if leading to recommendation for expulsion must be more involved than suspension investigation
• S.311.3(8) up to 20 school days
• Must ensure sufficient opportunity to prepare and share report
Evidence

- Surveillance
- Electronic records
- Photographs
- Personal property
- Notes
- Drawings
- OSR

- Witness Statements
  - Interview perpetrator last
  - Perpetrator’s parent should be consulted and asked for information
  - Ensure victim, witnesses and perpetrator have all be given opportunity to contribute to the evidence
  - Mitigating factors
Searches – Person


- Students have a subjective expectation of privacy of their person.
- Expectation of privacy is objectively reasonable.
- Expectation of privacy for student is less when in the school setting
- Principal must have *reasonable grounds* to suspect an infraction before conducting a search
- Right to balanced against school administrator’s duty to:
  - provide a safe learning environment;
  - maintain proper order and discipline;
  - provide for the supervision of school activity authorized by the board
- The search must be sensitive and **minimally intrusive**

*Morning Recess: Principals’ 101 - Investigations*
Searches – Person

*Simon Gillies et al v. TDSB, 2015 ONSC*

- Court reviewed Principal’s advertised intent to require students to submit to breathalyzer before being admitted to off-site prom.
- Applied SCC principles outlined in M.R.M.
- Charter applies to school sanctioned events, including those off-site;
- Students have a reasonable expectation of privacy in their breath samples (biographical core);
- Principal did not have reasonable grounds to believe that each student searched had violated a school rule or law and that search would produce evidence of the violation, but rather had a general suspicion that pre-prom drinking had occurred
Searches - Backpack

*R. v. A.M.*, [2008] 1 SCR, 569 (SCC) backpacks, gym bags, purses

- Students have a reasonable expectation of privacy towards their backpacks, due to their use of bags to store personal items (“itinerant lifestyle”)
- Random searches using dogs cannot be done without reasonable suspicion
- Manner of search was not reasonable, as all students were confined to their classroom for 1.5 hours
Searches - Devices

Ratt as litigation Guardians for Jared Constant-Daniels v. Tournier and Saskatchewan Rivers School Division, [2014] SKQB 353 (CanLII)

- School policy was no cell phones in class – student refused to stop texting and turn over phone – unusual behaviour for him
- First text of cell phone searched by V.P.
- Court agreed that had reasonable grounds and duty to maintain safety


- Cell phones/personal computers “intensely personal and uniquely pervasive sphere of privacy”
- A very high expectation of privacy, requiring “rigorous protection”.
- Contain vast amounts of information that will be unrelated to infringement being investigated or evidence sought.
- Different in nature to any other property.

R. v. Cole [2012], SCC 53 (CanLII) (SCC)

- Board issued technology and networks subject to policy and need for student safety
Searches – Summary

1. Charter Applies
2. Schools are unique environments: school authorities have a statutory duty to maintain a safe learning environment.
3. Students’ expectation of privacy in a school is less than in public/home
4. School authorities do not need a warrant to search a student.
5. Police need a warrant to search a student.
6. School authorities must have reasonable grounds to believe that:
   (a) there has been a breach of a school regulation or disciplinary measure; and
   (b) that a search of the student would reveal evidence of the breach
7. Courts recognize school authorities are in the best position to determine whether there are reasonable grounds examples:
   • Information from one credible student;
   • Information from more than one student;
   • A staff member’s observations;
   • Any combination of the above.
8. Personal items such as backpacks and cell phones have enhanced expectation of privacy;
Findings

- Must ensure evidence capable of supporting the discipline
- Ensure each element of suspension appeal report or expulsion report can be addressed
- Evidence for each element establishing on a balance of probabilities that the student committed the infraction
- Alternate theories are considered and explained away
- Corroboration
- Mitigating and Other Factors considered and applied
- Police information cannot violate right to privacy pursuant to Youth Criminal Justice Act