

**CITATION:** *Alexander v. Renfrew County Catholic District School Board*, 2023 ONSC 4962  
**COURT FILE NO.:** 23-25  
**DATE:** August 31, 2023

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Josh Alexander, Applicant

**AND:**

Renfrew County Catholic District School Board, Respondent

**BEFORE:** Hooper J.

**COUNSEL:** James Kitchen and Jody Wells for Josh Alexander

Jennifer Birrell and Patrick Twagirayezu for RCCDSB

Antoine d'Ailly for Matt Alexander and Nicole Alexander

**HEARD:** June 5, 2023

**REASONS FOR DECISION**

**HOOPER J.**

[1] Josh Alexander is a 17-years old student at St. Joseph's Secondary School in Cobden. When he was 16-years old, the principal of St. Joseph's suspended and excluded Josh due to incidents of alleged bullying and harassment. Josh seeks to appeal the principal's suspension and exclusion decisions to the Renfrew County Catholic District School Board. While Josh's parents support his decision to appeal, they have chosen not to advance the appeal on his behalf. The *Education Act*, R.S.O. 1990, C. E.2 does not allow a student Josh's age to appeal as of right. Normally, that appeal lies with the parent or guardian unless the student has withdrawn from parental control.

[2] Josh asserts that he withdrew from parental control as of December 22, 2022. His parents agree with his position. The School Board, however, refused to grant Josh standing on the basis that there was insufficient objective evidence to support Josh's assertion. Accordingly, Josh has not been permitted to advance an appeal of the suspension and exclusion decisions independently from his parents.

[3] For the reasons that follow, I find that Josh has withdrawn from parental control as of December 22, 2022 and has standing to advance his appeals to the School Board.

**Procedural History**

[4] This matter was originally set to proceed on April 23, 2023; however, a preliminary issue was raised by the School Board regarding the role Josh's parents – Matt and Nicole Alexander –

should play in the proceeding. Josh's parents are not parties to this application, and while Matt is an affiant supporting his son's position, Nicole had not provided any evidence nor was she present at the original hearing. In addition, it was unclear as to whether Matt and Nicole were aware of the impact of the declaration being sought, as they had not been served with the material before the court.

[5] As a result, on consent, the matter was rescheduled for June 5, 2023. On that date, both Matt and Nicole were present, along with their legal counsel. Matt and Nicole orally advised the court that they are aware of the effect of the granting of this application and remain supportive of their son's position that he has withdrawn from their control and should be treated as an adult.

### **Issue before the Court**

[6] Nothing in this decision should be taken as a comment, either way, on the underlying conduct by Josh or the validity of the suspensions and exclusion imposed by the principal. **The only issue before me at this time is whether Josh Alexander has withdrawn from parental control.**

### **Statutory Framework**

[7] Section 309 (1) of the *Education Act* grants a parent or guardian the exclusive right to appeal a suspension or exclusion of their child from school unless the child is 18 years old or is 16 or 17 years old and has withdrawn from parental control. There is no definition of "*withdrawal from parental control*" under that statute.

[8] Section 65 of the *Children's Law Reform Act*, R.S.O. 1990, c. C.12, provides a statutory right to a child who is 16 or more years of age to withdraw from parental control. There is no formal process for this to occur; it is the right of the child: *R.G. v. K.G.*, 2017 ONCA 108 at para. 43.

[9] From an education standpoint, the effect of a child withdrawing from parental control includes the following:

- a. The parents are no longer responsible for ensuring the child attends school;
- b. The child is entitled to attend school where the child lives, regardless of the parents' address(es);
- c. The child is entitled to privacy in their information; and
- d. The child is entitled to be the sole point of contact for information and processes relating to disciplinary issues.

[10] Beyond the impact to a child's educational decisions, a finding that a child has withdrawn from parental control changes the legal relationship between the child and their parents. In effect, the child is declared to be an independent adult. The child would no longer be a dependent for insurance purposes, medical benefits, or income tax considerations.

[11] This is a permanent declaration.

### **Background Facts**

[12] Josh is a resident of Cobden, Ontario. At the material time for this application, he was 16 years old. In the fall of 2022, Josh transferred from the local public school board to St. Joseph's, which is part of the Catholic school board system.

[13] On November 23, 2022, Josh was suspended pending an investigation by St. Joseph's principal to determine whether an expulsion should be recommended. On December 20, 2022, the principal wrote to Josh's parents confirming the twenty-day suspension for reasons including bullying and harassment towards other students. It is uncontested that up to December 20, 2022, Matt, Nicole, and Josh were actively involved in dealing with the school regarding these incidents and the suspension.

[14] Josh retained counsel regarding an appeal on December 22, 2022. Counsel served the School Board with a Notice of Intention to Appeal on January 5, 2023. The Notice of Intention to Appeal listed Josh as the sole Appellant. In his correspondence enclosing this Notice, counsel stated: *"For the purposes of this appeal, Mr. Alexander has withdrawn from parental control, is a mature minor, and is competent to instruct counsel in the conduct of the appeal."*

[15] A child cannot withdraw from parental control for a limited purpose. The School Board advised Josh's counsel of this.

[16] Josh was scheduled to return to school as of January 9, 2023 on certain conditions. He did not agree to those conditions. Following a further exchange of correspondence, the principal exercised his authority under s.265(1)(m) of the *Education Act*, and section 3(1) of Regulation 474/00 – *Access to School Premises*, and excluded Josh from school until the conditions of his return could be resolved. As with a suspension, there is a similar right of appeal of an exclusion.

[17] Josh attended school on January 9, 2023 in contravention of the principal's decision to exclude him. A second suspension was issued. Following this further suspension, the School Board sought documents to support Josh's withdrawal from parental control. The School Board provided a list of the types of evidence normally provided including a lease agreement with Josh listed as the tenant, employment information to support financial independence and/or written statements from Josh and/or his parents.

[18] Following this correspondence, the School Board received affidavits from both Josh and Matt. Josh's affidavit, sworn January 23, 2023, provided the following evidence:

- He has withdrawn from parental control as of December 22, 2022 when he hired a lawyer to appeal his suspension.
- He makes almost all decisions regarding his education for himself, without any control from his parents.

- He has chosen to still live at home as he has an excellent relationship with his parents, but he decides matters for himself. His parents no longer have control over his life.
- He makes his own medical and lifestyle choices. While most of his choices are with his parents' blessing, he is the ultimate decision maker.

[19] Matt's affidavit, sworn January 24, 2023, supports Josh's position of having withdrawn from parental control and includes the following evidence:

- He and Nicole have raised their son to be increasingly independent.
- Josh has his own stream of income of which he has complete control.
- Josh travels extensively without direct oversight of his parents
- Although Matt enjoys providing advice to his son when he seeks it, Josh has been encouraged to make almost all decisions regarding his life for himself without parental control. Josh is also expected to take responsibility for his decisions.

[20] There is no evidence of financial independence. As of December 2022, Josh lived rent-free at home with his parents. There is also no evidence of a break in the parental/child relationship. The position put forth in these affidavits is that Josh's independence evolved naturally, with the love and encouragement of his parents, and by December 22, 2022 had reached a point in which he had withdrawn from parental control and should be treated as an adult.

[21] Upon receiving these affidavits, the School Board took the position that they were insufficient. As a result, the School Board maintained its refusal to grant Josh standing in his appeals and the within application was commenced.

### **Law and Analysis**

[22] As stated above, unlike other jurisdictions, Ontario does not have a formal procedure for a child withdrawing from parental control: *L.(N.) v. M.(R.R.)*, 2016 ONSC 809 at para. 123. The common law has also recognized the right of a child to withdraw from parental control once the child has reached the age of discretion: *R.G. v. K.G.*, 2017 ONCA 108 at para. 43. However, in determining whether to grant an order under s. 65 of the *CLRA*, the Ontario Court of Appeal in *R.G.* confirmed that more than the child's age and stated withdrawal should be considered. The court has a further responsibility to inquire as to the reasons for the withdrawal, the utility of the remedy, and whether the remedy is in the minor's best interest: see *R.G.* at para. 58.

[23] In *Gibson v. Gibson*, 2020 ONSC 5506, the mother sought disclosure of her son's address. The son was seventeen-year-old, living with his father, and had refused to tell his mother where he and the father were living. In maintaining his refusal to advise his address, the father argued that the seventeen-year-old had effectively withdrawn from parental control and the mother was no longer entitled to his personal information. The court disagreed stating the minor had not withdrawn from parental control as he was still living with his father. Before me, the School Board argues that this is indicative of the need for financial independence to meet the test of withdrawal

from parental control. I do not agree that *Gibson* stands for such a broad proposition. There was no evidence before the court in *Gibson* of the minor's position, nor was the court provided with any reason to make this type of declaration.

[24] In *Re Haskell and Letourneau*, 1979 CarswellOnt 101 (Ont. Sup. Ct.), the minor child brought an application for support from his parents. The parents had divorced and initially the child lived with his father. When his father remarried, and the second wife did not get along with the child, the father refused to continue to have custody. The situation at the mother's home was untenable. As a result, the minor moved in with another family. The parents refused to pay financial support to the child, claiming that he had withdrawn from parental control. In refusing to make such a finding, the court held:

69. In the view of this Court, the concept of the "withdrawal from parental control" at age 16 means a "voluntary" withdrawal, the free choice, indeed, of the child to cut the family bonds and strike out on a life of his own. On taking on this personal freedom, the child assumes the responsibility of maintaining or supporting himself. It is his choice, freely made, to cut himself away from the family unit. Once this choice is freely made and the responsibility accepted by the child, the family unit has, in effect, been severed and the responsibility of the parents to support the child thus ceases.

[25] In *Re Clegg* 2016 ONSC 5292, the sixteen-year-old minor left her father's residence and moved in with a friend from April 2016 for the balance of the school year. She delivered a letter to the principal indicating she had withdrawn from parental control and was asserting her rights pursuant to various sections of the *Education Act*. In confirming her right to do so, the application judge held:

[13] Olivia had a common law right to withdraw from parental control and a statutory right to do so at age 16. Olivia exercised that right on April 13, 2016. She did not require a court order or a declaration permitting or enabling her to withdraw from parental control. She did not require a court order to protect her privacy at her school in Oakville because, after informing the principal in writing by letter dated April 22, 2016, the principal respected her instructions and did not provide information to her father. She did not require a court order to prevent the police from apprehending her and taking her back to her father's home because she informed the police that she had withdrawn from her father's control and the police respected her right to do so.

[35] On the basis of that evidence, I draw the following conclusions. First, my impression of Olivia at the time of the hearing on April 28, 2016 is reinforced. She is articulate, thoughtful, and intelligent. She is a remarkable young woman of whom both parents should be proud. Second, she has sound reasons for wanting to accelerate her university entrance and to attend a university in Florida. Third, at age 17, her wishes and preferences must be respected. Going to university in Florida is in her best interests and her father would not permit that plan to unfold. I need

not consider the father's request for a temporary or permanent custody order but on this record, I must dismiss it.

[26] There are also a series of cases in which the issue before the court is whether an adult child has withdrawn from parental control. In *Warner v. Warner*, 2017 ONCJ 920, the court faced the issue of whether an adult child remained under parental control. In finding that the child did, it held at para 54:

I adopt and apply the maxim that economic dependency on at least one parent may be sufficient to ground a finding that a child remains under the parental control or charge. In my view, the foundation for such a finding is even stronger when the child also remains emotionally dependent on at least one parent.

[27] In *K.A.B. v. Ontario (Registrar General of Vital Statistics)*, 2013 ONCJ 684, the court considered a change of name application by a sixteen-year-old without the consent of her parent. The applicant was a transgender youth who identified as female. The only parent involved in her life was her mother who did not accept that her child was transgender. In granting the application absent parental consent, the court found that the mother no longer had lawful custody of K.A.B. and no longer made decisions about K.A.B.'s education or medical care.

[28] The above decisions highlight the seriousness of this declaration; however, they are of limited precedential assistance given the unique facts of this case. The parties have not referred to any authority where both parents and the minor all agree the minor has withdrawn from parental control yet an unrelated party, in this case the School Board, does not accept that position. I understand the School Board's skepticism. The usual hallmarks the court looks to in resolving disputes within the family as to whether a child has withdrawn from parental control are not present. Josh's residence remains with his parents. His parents are financially supporting him. Both his and his father's affidavits include language such as Josh makes "most" of his own decisions, not all.

[29] However, in my view, once Josh withdraws from parental control, there is no requirement for his parents to stop financially supporting him or to stop helping him make significant decisions. Parents support their independent adult children all the time. Major decisions are often discussed, with parental input sought. A declaration that the child has withdrawn from parental control ends the legal obligation of financial support, but financial support may still be given gratuitously.

[30] Unlike *Re Haskell, supra*, there is no suggestion Josh's decision to withdraw from parental control is anything but voluntary. The School Board does not argue that such a declaration is against Josh's best interest. Josh seeks this declaration for a legitimate reason. He and his parents understand the effect of this declaration and have accepted it. I do not believe a court has the right to overrule the manner in which a family decides to structure itself, just because it is outside the norm.

### **Conclusion**

[31] I therefore find, based on the evidence before me, that Josh Alexander has withdrawn from parental control as of December 22, 2022. He has standing to bring the appeals of his suspensions and exclusion.

[32] If the parties cannot agree to costs, the applicant will have until September 15, 2023 to file cost submissions of no more than three pages excluding a bill of cost and any offer to settle. The respondent will have until September 22, 2023 to file responding submissions of equal length.

A handwritten signature in black ink, appearing to read 'J. Hooper', is written over a horizontal line.

Justice J. Hooper

**Date: August 31, 2023**