

## School Boards, Teachers, and Student Fights

**Christine Lau**  
**June 2019**

The responsibility given to school boards and teachers for ensuring the safety of all students on school premises is a cornerstone of our educational system. School boards enact policies and teachers supervise and instil disciplinary measures that regulate student behaviour.

That being said, sudden and spontaneous events, such as violent fights between students, erupt in school hallways on any given day. The continued overcrowding of schools in certain pockets of Ontario compound the occurrence of student fights and force school boards to take reactive measures in this regard.

It would seem a precarious standard to hold school boards and teachers liable for the consequences of every single student fight. After all, teachers are not the prison guards to a population of student inmates, despite the wishes of many parents.

In [\*Tilli v. Hamilton-Wentworth Catholic District School Board\*](#), the Ontario Superior Court of Justice drew a line with respect to the liability of school boards and teachers for fights that break out on school property.

Explored in further detail below, the liability of school boards and teachers for fights on school property depends on factors such as whether the school could have anticipated the fight and what supervisory protocols the school had in place.

### ***The Fight***

Two 15-year old students started a “consent fight”, denoted by the willing participation of both students at the outset, in between their period 1 and 2 classes in the second floor hallway of St. Jean de Brébeuf High School (“St. Jean de Brébeuf”) in Hamilton. The police and the paramedics attended the scene of the incident, with the defendant ultimately pleading guilty to criminal charges. The plaintiff advanced a claim for personal injuries sustained as a result of the fight.

The plaintiff (“Ms. Tilli”), the defendant (“Ms. DiTomaso”), and the multiple students who witnessed the fight all had different stories of how the fight played out. The Court accepted the following version of events. Ms. DiTomaso slapped Ms. Tilli in reaction to various derogatory names Ms. Tilli called her that morning, as well as on previous occasions. Hair pulling, kicking, and shoving ensued, which ended in both students falling to the floor, with Ms. DiTomaso on top of Ms. Tilli.

The fight, however, stopped being consensual when Ms. DiTomaso used unreasonable and grossly excessive force on Ms. Tilli, by grabbing her head and banging it forcefully on the tiled floor more than once. The Court found Ms. DiTomaso to be the winner of the fight the moment she landed on top of Ms. Tilli. In that moment, Ms. DiTomaso had total control and the discretion to not inflict further force, an unnecessary step to curtail a dissipated threat and beyond the justification of self defence.

### ***Zero Tolerance Policy***

St. Jean de Brébeuf has a history of violent student behaviour on school grounds. The high school had a zero tolerance policy for violence at the time of the incident, which it educated all of its students on, in accordance with the *Safe Schools Act* (which came into effect in September 2001), which prescribes schools with authority to enforce strict disciplinary measures.

### ***Supervision Policy***

The fight occurred in the hallway during the span of the three minutes in between classes. The high school had a supervision policy in place: during classes, unassigned teachers supervised certain hallways but in between classes, no supervision was required, as numerous teachers walked the hallways in transition.

The second floor hallway had 38 teachers in total transitioning between period 1 and 2 classes the morning of the fight, with at least 16 teachers who would have passed by the area of the incident.

The high school also had surveillance cameras to monitor the premises.

### ***Standard of Care***

The standard of care is that of a careful and prudent parent, in this case, that of a parent of a 15 year old teenager. Even a careful parent does not, and perhaps more accurately cannot, constantly supervise a 15 year old teenager.

Ms. DiTomaso and Ms. Tilli did not have a predisposition to violence towards each other. These students were also aware of the high school's zero tolerance policy on fighting and the serious consequences, which would stem from any breach of this policy. Ms. Tilli led no evidence as to what measures the high school should have implemented to prevent the fight.

### ***The Court's Decision***

Justice Arrell found Ms. DiTomaso to be 60% liable for the damages inflicted with the use of excessive force, and Ms. Tilli to be 40% liable for provoking the fight, which was tantamount to contributory negligence.

The Court dismissed the action as against the teachers and Hamilton-Wentworth Catholic District School Board, on a with costs basis, having found no liability on the teachers and the school board.

Justice Arrell set out:

“It is not lost on this court that this was a sudden and spontaneous event that escalated and finished in approximately 30-45 seconds. Only by having a teacher posted in the exact area of this incident, at the very time it occurred, could the school perhaps have prevented the fight from occurring. Such a standard is not reasonable...”.

### ***Practical Considerations***

Although the Court in this case found no liability as against the school board or the teachers at the school, schools boards and schools should be cognizant of the supervisory and disciplinary measures that they maintain to prevent student injuries.

It may be prudent to install and monitor surveillance cameras in crowded areas, where noise typically prevents incidents from gaining immediate attention, and to assign designated teachers to monitor different areas of the school, as they transition between classes.

In the past decade, some schools have been softening their zero tolerance policies in consideration of mitigating factors, which advocate for the application of discretion to void or limit mandatory disciplinary measures. Perhaps this should be reconsidered.

Although, in this case, the students did not have a record of violence, teachers and administrators should be careful to not turn a blind eye to potential disputes that can develop between students.

Further, schools should keep a well documented record of supervisory protocols/plans and disciplinary events.

Incidents between students cannot be completely prevented. However, school boards can minimize the risk of legal liability by having appropriate policies in place and by ensuring that those policies are followed.