



Court File No.: DC-22-141-JR

**ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)**

B E T W E E N:

MICHAEL RAMSAY

Applicant

and

WATERLOO REGION DISTRICT SCHOOL BOARD

Respondent

APPLICATION UNDER Rules 14.05(2), 38 and 68 of the *Rules of Civil Procedure*, RRO 1990, Reg 194 and Sections 2(1) and 6(1) of the Judicial Review Procedure Act, RSO 1990, c J.1.

NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the applicant, unless the court orders otherwise. The applicant requests that this application be heard in person at 45 Main Street East, Hamilton, ON L8N 2B7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for hearing or terminated by any means within five years after the notice of application was filed with the court, unless otherwise ordered by the court.

Date: July 26, 2022

Issued by Registrar
45 Main Street East, Hamilton, ON L8N 2B7

TO Waterloo Region District School Board
51 Ardelt Avenue
Kitchener, Ontario N2C 2R5

AND TO Attorney General of Ontario
Crown Law Office – Civil
720 Bay Street
8th Floor
Toronto, Ontario M7A 2S9

APPLICATION

I. Relief Sought

1. The Applicant, Michael Ramsay (“Mike Ramsay” or “Mr. Ramsay”) makes application for:

- a. An Order setting aside the decision of the Waterloo Region District School Board (the “Board”), dated June 27, 2022, confirming its finding that Mr. Ramsay breached Board Policy G201 – Trustee Code of Conduct (the “Code of Conduct” or the “Code”) and its decision to censure him and bar him from attending Board meetings or receiving *in camera* materials up to and including September 30, 2022 (collectively, the “Decision”);
- b. An Order prohibiting the Board from conducting subsequent formal inquiries against the Applicant;
- c. A declaration that the Decision breached the Board’s duty of procedural fairness and was unreasonable;
- d. A declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* that the Decision was made without justification and is an unreasonable violation of the Applicant’s freedom of expression guaranteed by section 2(b) of the *Charter*;
- e. Such further and other relief as counsel may advise and this Honourable Court considers just; and
- f. Costs.

II. Grounds for Relief

2. The grounds for the application are:

- a. The Board breached its duties of procedural fairness and natural justice by incorporating a biased decision-maker; and

- b. The Decision is unreasonable because its reasons are inadequate, it was made contrary to the facts and law, and the Board failed to consider the Applicant's *Charter* right to freedom of expression.

The Parties

3. Mike Ramsay lives in Breslau, Ontario. He served as a police officer with the Waterloo Regional Police for 11 years. He is currently a practicing paralegal.

4. Since 1989, Mr. Ramsay has served seven terms as a trustee for the Waterloo Region District School Board.

5. The Board is a public school board exercising authority under the *Education Act*, RSO 1990, c E.2 (the "*Act*") in the Waterloo Region.

The Decision

6. On February 24, 2022, a Board trustee, Laurie Tremble, submitted a complaint to the Board alleging that the Applicant breached the Code (the "Complaint").

7. On March 1, 2022, the Board retained Barry H. Bresner of ADR Chambers ("Mr. Bresner" or the "Integrity Commissioner") as Integrity Commissioner to investigate the Complaint and provide a report with factual findings to the Board pursuant to ss. 40, 54, and 57 of the Code.

8. On April 22, 2022, the Applicant provided Mr. Bresner with his written reply to the Complaint. On April 27, 2022, the Applicant met with Mr. Bresner over telephone. On April 28, 2022, the Applicant provided a written clarification to the Integrity Commissioner.

9. On March 22, 2022, Chair Piatkowski made 58 pages of written allegations against the Applicant in support of the Complaint to Mr. Bresner.

10. On May 31, 2022, Mr. Bresner's report (the "Report") was finalized. The Report was provided to the Board on June 1, 2022. The Report summarized the Complaint as consisting of three allegations that the Applicant:

- a. refused to accept and respect the decisions of the Chair and the Board;

- b. made accusations that other trustees engaged in unlawful conduct; and
- c. disclosed confidential information.

11. The first allegation related to the Applicant's response to the events of the Board meeting on January 17, 2022 (the "January 17 Meeting"). At the meeting, a teacher within the school district made a presentation in which she expressed concerns about the inclusion of certain materials in the library. The Chair terminated her presentation, stating that it violated the *Human Rights Code*. The Applicant moved to overturn the Chair's decision, but it was sustained by a vote of 5-4.

12. At the Board meeting on January 24, 2022, the Applicant asked the Chair to apologize for the events at the January 17 Meeting. The Chair ruled the Applicant out of order and muted the Applicant's microphone. The meeting ultimately continued without serious incident.

13. The Applicant voiced his disagreement with the Chair's decision at the January 17 Meeting on Twitter by retweeting tweets and articles. He also expressed his disagreement in an email to a member of the public.

14. The second allegation arose from an exchange at the Board meeting on February 14, 2022 (the "February 14 Meeting"). The Applicant expressed concern that the Board had made decisions in violation of the law by exceeding Ministry of Education directives on staff vaccination mandates. The Applicant also express concern about whether a previous decision relating to masking in district schools violated the *Ontario Health & Safety Act*. The Applicant's first concern was addressed and clarified, and the meeting proceeded with the agenda.

15. The third allegation related to two underlying situations. It was alleged that the Applicant disclosed confidential information to his friend, James Mask. The Integrity Commissioner found that this allegation was not proved on a balance of probabilities.

16. The Complaint also alleged that the Applicant made comments at the February 14 meeting which disclosed confidential information about an employee. The Integrity Commissioner found

that the Applicant's comments would not reveal the identity of the employee to anyone not already familiar with the situation.

17. On June 6, 2022, the Board deliberated *in camera* on whether to find the Applicant in breach of the Code. Pursuant to s. 62 of the Code, the Applicant was allowed to be present during the deliberations, but he could not make oral submissions. The *in-camera* meeting was followed by a public meeting where the Board voted 6-3 to find the Applicant had breached the Code. Subsequently, the Board voted along the same lines to sanction the Applicant by censuring him, barring him from attending meetings until September 30, 2022 and disentiing him from receiving *in-camera* materials.

18. On June 8, 2022, the Board provided a written notice of its decision (the "First Notice"), signed by Chairman Scott Piatkowski, informing the Applicant that he could submit written submissions requesting that the Board reconsider its decision by June 24, 2022.

19. On June 24, 2022, the Applicant provided his written request for reconsideration (the "Request for Reconsideration") to the Board. The Applicant argued that the Board's decision:

- a. violated procedural fairness by failing to provide reasons, incorporating a biased decision maker, and deliberating *in camera*; and
- b. was unreasonable because it was unintelligible and unjustified, contrary to the legal and factual context, and failed to address the Applicant's *Charter* right to free expression.

20. On June 27, 2022, the Board deliberated *in camera* whether to confirm or revoke its decision that the Applicant breached the Code. Despite the sanction imposed on the Applicant, he was allowed to be present during the Board's deliberations, but not participate or provide oral submissions, pursuant to s. 74 of the Code. At the public meeting immediately following, the Board voted 6-3 to confirm its finding that the Applicant breached the Code. The Board also voted to confirm its sanction.

21. On July 6, 2022, the Board provided a written notice of the Decision (the “Second Notice”), signed by Chairman Scott Piatkowski, informing the Applicant that the Board has found him in breach of the Code “under the following sections: Integrity and Dignity of Office, Compliance with Legislation, Civil Behaviour and Upholding Decisions by refusing to accept and respect the decisions of the Chair and the Board and accusing fellow trustees of unlawful conduct.”

The Code and By-Laws

22. The Board is governed by the *Education Act*, the Board Bylaws, and the Code.

23. In accordance with s. 218.3 of the *Act*, the Code sets out a process for complaints that a trustee has breached the Code.

The Board’s Decision is Unfair, Unreasonable, and Unconstitutional

24. The Board is a government actor exercising statutory authority whose decisions are subject to public law scrutiny.

Procedural Fairness

25. The Board owed the Applicant a duty of fairness. The Applicant was entitled to a high degree of procedural fairness given:

- a. the quasi-judicial nature of the Decision – the Code provides a formal inquiry process analogous to a prosecution which has an investigation which can – and in this instance did – result in punishments being imposed;
- b. the democratic nature of the Applicant’s role as a trustee – the Applicant is elected by residents in the Board’s district and the Applicant has a duty to represent the public at Board meetings, which the Board has now prohibited him from attending; and
- c. the impact on the Applicant – the Decision serves as a formal act of denunciation and prevents the Applicant from performing his duties as a trustee.

26. The Board breached its duty of fairness by deliberating in private contrary to the *Act* and incorporating a biased decision maker.

27. First, the Board acted outside of its statutory authority and contrary to the Applicant's legitimate expectations by deliberating in private. Under s. 218.3(10) of the *Act*, the Board *may* keep its deliberations *in camera* if the subject matter involves any of the following factors:

- a. The security of the property of the board;
- b. The disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian;
- c. The acquisition or disposal of a school site;
- d. Decisions in respect of negotiations with employees of the board; or
- e. Litigation affecting the board

28. The deliberations did not engage any statutory factors. The open court principle provides that, by default, hearings are open to the public. This principle is protected by s. 2(b) of the *Charter*. In the absence of statutory authorization, the Board was not permitted to keep its deliberations private. The Applicant was entitled to a public hearing.

29. Second, the Board breached its duty of fairness by incorporating a biased decision maker. The Chair of the Board, Scott Piatkowski, participated in the votes to find the Applicant in breach of the Code, to impose sanctions, and to confirm its Decision. The Chair signed both Notices informing the Applicant of the Decision. During the investigation of the allegations, Chair Piatkowski submitted to the Integrity Commissioner 58 pages of written allegations against the Applicant, contrary to s. 58 of the Code. Section 58 states that if "a trustee chooses to undertake their own investigation it would be considered a breach of the Code of Conduct by the trustee who undertakes their own investigation."

30. In his submissions, Chair Piatkowski sides with the Complainant and is highly critical of the Applicant. He states that he believes "that the Scope of Trustee Ramsay's transgressions of the Code is even greater than suggested" by the Complaint. He also states that "it would be impossible

to fulfil [his] duties as Chair with respect to the Code of Conduct if [he] were to file a complaint” himself.

31. In providing submissions in support of the Complaint and then participating in the Decision based on the Complaint, the Chair acted as witness, advocate, and adjudicator. The Chair’s submissions reveal partiality and would appear biased to a reasonable observer.

32. But for Chair Piatkowski’s involvement in the Decision, the Applicant could not have been found in breach of the Code. A two-thirds majority vote is required by ss. 60 and 73 of the Code, and the Board vote forming the Decision was 6-3, including the Chair’s vote.

Reasonableness Review

33. The Board’s Decision was also unreasonable because the reasons provided are inadequate, it is contrary to the factual and legal context and the Board failed to address the *Charter* issues raised by the Applicant.

34. First, the Board’s reasons, as contained in the Second Notice, are inadequate. The Board has failed to justify its decision in a manner that is transparent and intelligible. The Board has not explained which specific provisions of the Code were breached or what conduct constituted the breach.

35. The Board was required to provide sufficient reasons by which the Court can understand why it made its Decision and determine whether its Decision was within the range of acceptable outcomes. The Board must provide reasons that are comprehensive enough to allow Mr. Ramsay to understand why the Board found him in breach of the Code. The reasons must explain which conduct breached which provisions of the Code.

36. To explain the Decision, the Second Notice merely quotes ss. 1, 3-4, 12-13, 15-17, 22-25 of the Code and provides the following:

After careful consideration, lengthy discussion by the relevant trustees, and a review of the relevant findings of fact set out in the report, along with your written submissions dated June 24, 2022, the trustees confirmed the determination that your conduct and

actions at meetings of the Committee of the Whole, and certain emails, tweets and retweets made by you in January and February 2022, constituted a breach of the Board's Code of Conduct.

...

Mr. Bresner made findings of fact which are relevant to the above sections at paragraphs 25-43 and 45- 49 of his report. For these reasons, the trustees confirmed that your conduct and actions at meetings of the Committee of the Whole, and certain emails, tweets and retweets made by you in January and February 2022, constituted a breach of the Board's Code of Conduct.

37. The reasons do nothing to explain which allegations were found to breach which sections of the Code or why; they merely state the conclusion. The reasons provide no insight into the Board's reasoning process. They do not acknowledge the Applicant's right to freedom of expression, let alone demonstrate that the Decision proportionately balances the freedom of expression with the statutory objectives.

38. Second, the findings of the Board that the Applicant breached the Code are contrary to the legal and factual constraints which bear upon the Decision. There was no reasonable basis to decide that the Applicant breached the Code.

39. Third, the Board failed to acknowledge the *Charter*-infringing impact of its Decision or address the *Charter* issues raised by the Applicant. The Complaint impugns comments of the Applicant related to matters of public interest in exercise of his elected role as a trustee. The comments lie at the core of s. 2(b). The Decision punishes the Applicant for his expression and infringes his s. 2(b) right without even attempting a proportionate balancing of the Boards objectives and the *Charter* freedom of expression.

40. The Board failed to balance the infringement of the Applicant's s. 2(b) right to free expression against the objectives of the Code. The Decision unreasonably impairs the Applicant's s. 2(b) right.

41. The Decision was, therefore, unreasonable and should be set aside.

42. The Applicant further requests that the Court prohibit the Board from initiating or conducting subsequent formal inquiries against the Applicant.

43. If this matter is remitted to the Board for reconsideration, Chair Piatkowski should be barred from participating in the decision because his involvement would create a reasonable apprehension of bias for the reasons pleaded at paragraphs 29-32 above.

44. The Applicant requests that the Court remedy the *Charter* breach by making a declaration that Mr. Ramsay's freedom of expression was infringed.

III. Documentary Evidence

45. The following documentary evidence will be used at the hearing of the application:

- a. The Affidavit(s) of the Applicant (to be sworn); and
- b. Such further and other affidavits and materials as counsel may advise and this Honourable Court permit.

Dated this 26th day of July, 2022.



Hatim Kheir

Kheir Law
PO Box 47597
Centre Mall RPO
Hamilton, ON L8H 7S7

Counsel for the Applicant

MICHAEL RAMSAY
APPLICANT

-and-

**WATERLOO REGION DISTRICT SCHOOL
BOARD**
RESPONDENT

Court File No.:

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**NOTICE OF APPLICATION FOR JUDICIAL
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