Divisional Court affirms high degree of deference to school board decisions

April 25, 2024

In June 2023, BLG responded to two applications for judicial review brought against the Waterloo Region District School Board (the WRDSB). In the first application, *Carolyn Burjoski v. Waterloo Region District School Board*, 2023 ONSC 6506, a former teacher, Carolyn Burjoski (Burjoski), sought to overturn a decision that upheld the Chair's decision to stop her presentation at a public school board meeting when she began criticizing books in the Board's libraries that discussed gender identity.

The second application, *Ramsay v. Waterloo Region District School Board*, 2023 ONSC 6508, was brought by WRDSB trustee, Michael Ramsay (Ramsay), who was found to have breached the Trustee Code of Conduct and was censured as a result of a variety of conduct, including his comments and actions concerning the Board's decision to stop Burjoski's delegation.

The Divisional Court ruled in favour of the Board in both instances and dismissed the applications.[1]

Key takeaways

- The decisions affirm that courts afford a high degree of deference to elected decision-makers like Board trustees, especially when the Board is enforcing its Code of Conduct as part of the discretion granted to it by statute to manage its own affairs.
- Concerns of bias are evaluated against the structure of the Board of Trustees and its processes for the handling of complaints.

Carolyn Burjoski v. Waterloo Region District School Board

Burjoski ventured beyond the scope of her approved delegation request at the public school board meeting, which included criticism of books in the Board's libraries that discussed gender identity. The Chair of the Board intervened, and Burjoski sought judicial review of the decision.

Was the decision unreasonable?

Burjoski submitted that the WRDSB's decision was unreasonable because the WRDSB failed to consider her *Charter* right to freedom of expression. She argued that the *Education Act* does not provide the WRDSB with the authority to curtail speech on the basis that such speech is misconduct.

The Court agreed with the WRDSB and found that the decision was not unreasonable. In coming to this decision, the Court emphasized that a high degree of deference must be given to elected decision-makers and observed that the Bylaws of the WRDSB identified duties of the Chair to maintain order in meetings and, in particular, to preserve order and decorum and decide upon all questions of order. The Court also recognized that the trustees of the WRDSB are accountable to their community and are well-versed in the goals of the education system and the boundaries of proper debate at meetings. Ultimately, the Court found that the WRDSB sought to achieve, and did achieve, a reasonable balance between Burjoski's *Charter*-protected freedom of expression and the objectives of the WRDSB's Bylaws, its Equity and Inclusion Policy, and the *Education Act.*

Was there a breach of procedural fairness?

Burjoski also asserted that she was denied procedural fairness. The Court determined that if any procedural fairness was owed to Burjoski, it was on the low end of the spectrum and that it was not breached. The Court noted that it was only when she began to discuss topics irrelevant to those outlined in her request for a delegation that her presentation was interrupted with a warning and ultimately stopped. The Court explained that: "The WRDSB followed its own procedures in coming to a resolution to end Burjoski's presentation" and that "She was given more than one opportunity to deliver her delegation on the topic approved in advance, but declined to do so even after she was reminded of its scope."

Was there a reasonable apprehension of bias in the decision?

Finally, Burjoski submitted that the statements made by the Chair demonstrated that the decision was motivated by bias. The Court held that the only evidence of bias raised by Burjoski were statements that were made after the meeting. The comments that Burjoski took issue with merely supported the decision that was already made by five members of the elected Board. Having formed a reason for voting a certain way is not the same as being biased before the vote is cast. Accordingly, the Court did not find any reasonable apprehension of bias, or any actual bias, in the Chair's decision.

Ramsay v. Waterloo Region District School Board

Ramsay, a longstanding WRDSB trustee who was present at the public meeting referenced above, was of the opinion that Burjoski ought to have been permitted to proceed with her presentation. At two subsequent meetings and on social media, Ramsay repeatedly interrupted the Board's business and strongly criticized the Board and the Chair.

Following the above, the WRDSB received a formal complaint from another WRDSB trustee (not the Chair) about Ramsay's conduct regarding this delegation issue. Specifically, the complaint alleged that Ramsay had failed to uphold the dignity and integrity of his office, had failed to act in a manner that would inspire public confidence in the abilities and integrity of the WRDSB, and had engaged in unprofessional behaviour, among other alleged breaches of the Code of Conduct. The WRDSB retained an Integrity Commissioner to investigate the allegations against Ramsay and to provide a report.

Pursuant to the WRDSB's Code of Conduct, the Integrity Commissioner's report did not make any specific recommendation as to consequence, but simply presented his findings of fact to the WRDSB. It was up to the WRDSB to decide whether Ramsay had breached its Code of Conduct and, if so, to determine whether any of the sanctions applicable to trustees should be imposed upon him.

The trustees first held a closed-door deliberation on the issue and then a public meeting where, by a 6-3 margin, the WRDSB voted to: (1) find that Ramsay had breached the Code of Conduct and (2) impose sanctions. The sanctions included a formal censure, and the suspension of his entitlement to attend WRDSB meetings or receive materials from closed door meetings for a specified period. The decision was upheld on a reconsideration request made by Ramsay.

Ramsay raised two principal issues on this application: (1) denial of procedural fairness; and (2) unreasonableness of the decision.

Denial of procedural fairness

The Court concluded that there was no basis for a finding of bias or for a denial of procedural fairness to Ramsay. Ramsay was given all pertinent details of the complaint against him and was provided with a full opportunity to respond. The Court further rejected Ramsay's argument that the closed-door meeting was improper. The Court emphasized that the *Education Act* allows for meetings to be closed to the public when, among other exceptions, the subject matter under consideration involves litigation affecting the school board.

Ramsay also asserted that the Chair's involvement in the investigation process and his participation in casting votes tainted the decision with bias, or a reasonable apprehension of bias. Ramsay submitted that by making submissions to the Integrity Commissioner, the Chair was acting as both investigator and advocate, which are roles that are incompatible with his ultimate role as a decision-maker. The Court rejected this submission and found that there was nothing wrong with the Chair making submissions to the Integrity Commissioner after having been invited to do so.

Unreasonableness of the decision

The Court held that there was no basis for the decision to be unreasonable. Pursuant to the *Education Act*, the WRDSB is permitted to adopt its own Code of Conduct that applies to its board members, and to carry out procedures to enforce its Code. Trustees are required to comply with the Code of Conduct. The Code of Conduct outlines expectations of trustees with respect to their behaviour to maintain the integrity and dignity of their office, civil behaviour, compliance with legislation and upholding of

decisions of the board. The WRDSB properly considered its own governing Bylaws, its Code of Conduct and the statutory objectives of the *Education Act*, as well as Ramsay's *Charter* rights.

[1] Kevin McGivney and Natalie Kolos of BLG appeared for the Board in both applications.

By

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