TCDSB v. OECTA: School board not liable for public statements made by trustee

April 25, 2024

The recent arbitration decision of *Toronto Catholic District School Board v. Ontario English Catholic Teachers' Association,* 2024 CanLII 6704 (ON LA), has important implications for the relationship between school boards and their trustees. More specifically, the decision deals with the issue of whether public school boards can be held liable for public statements made by their trustees.[1]

Key takeaways

- The Arbitrator concluded that the Board cannot be held liable for the public statements of its trustees.
- The Board-trustee relationship is not analogous to an employment relationship or an employment of agent relationship, especially because boards do not have the power to select, control, discipline, or discharge a trustee.
- A trustee's accountability is to their electorate, and it is electors who chose their trustees and whether those persons subsequently continue in those roles.

Background

The Toronto Catholic District School Board (the Board) discharged the Grievor from her position as a teacher. The Board had dismissed the teacher as a result of an altercation with another patron at a Starbucks relating to the Grievor's failure to wear a mask, which was documented in a TikTok video. In a decision dated August 2, 2023, Arbitrator Bram Herlich substituted the termination with a one-month suspension.

Following the Starbucks incident, in a broadcasted television news report, a trustee of the Board made the following statements:

> "I was shocked. As soon as we did find out, you know, the Board acted swiftly.
>
> …

> I just want to reassure parents and staff that we take, you know, anti-maskers very seriously. That we never want to put our kids at risk, or our staff at risk."

The broadcast named the Board and the school, but not the Grievor. The Ontario English Catholic Teachers' Association (OECTA) brought a grievance, alleging that the public statements made by the trustee had caused the Grievor additional and unnecessary reputational damage, for which she ought to be compensated.

Board's position

The Board argued that it could not be held liable for the tortious conduct of a trustee, and that the relationship between the Board and a Board trustee is analogous to that of a councillor and the municipality. The Board relied upon a 2017 arbitration decision, *Hamilton (City) v. Canadian Union of Public Employees Local 5167,* 2017 CanLII 4772 (ON LA), which recognized the long-standing principle of municipal law that an elected member of a municipal council is not an agent or employee of the municipal corporation in any legal sense. Similar to those elected members, trustees are elected, accountable to their constituents, and subject to no real control or discipline from the Board.

OECTA's position

OECTA asserted that the criticism of the Grievor's conduct to be inferred from the trustee's comments was rooted in the false assertion that the Grievor was a "rabid anti-masker". In an effort to distinguish the relationship between councillor and municipality from that of trustee and school board, OECTA relied on provisions of the *Education Act*[2] that: (1) require trustees to perform their duties in a manner that assists the Board; (2) require trustees to comply with the Board's code of conduct; and (3) give the Board the authority to impose sanctions where it determines that a trustee has breached the code of conduct.

OECTA argued that the availability of sanctions makes the relationship of Board and trustee much more analogous to an employment relationship or an "employment of agent relationship". Accordingly, OECTA submitted that the Board should be held liable for the tortious conduct of a trustee, just as it would be for the conduct of its other employees or agents.

Decision

Arbitrator Herlich ruled in favour of the Board. He concluded that the Board could not be held liable for the public statements of the trustee. While the referenced statutory provisions provide the Board with some limited capacity to respond to specific forms of trustee conduct, the nature of the relationship does not lead to the Board being liable for the tortious conduct of trustees

[1] Melissa Eldridge and Zoe Aranha of BLG appeared for TCDSB.

[2] *Education Act* (see sections 218.1 and 218.3)

By

Adrian Pel

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
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T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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