



Court File No. **DC-19-008-00**

ONTARIO
SUPERIOR COURT OF JUSTICE
(DIVISIONAL COURT)

BETWEEN:

ANN GILLIES

Applicant

and

BLUEWATER 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 at the place of hearing requested by the applicant. The applicant requests that this application be heard at 7755 Hurontario Street, Brampton, Ontario L6W 4T1.

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: ~~August 30, 2019~~

SEPTEMBER 3, 2019

Issued by Registrar
Address of court office


J. Phillips

Local registrar: 7755 Hurontario Street
Brampton, Ontario L6W 4T1

TO: Jan Johnstone
Chair of Bluewater District School Board
Bluewater District School Board
P.O. Box 190, 351 1st Avenue North
Chesley, Ontario N0G 1L0

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

APPLICATION

1. The Applicant, Dr. Ann Gillies, makes application for:
 - a. Judicial review of a decision of the Bluewater District School Board (the “Board”), denying Dr. Ann Gillies the right to present at a public Board meeting on May 21, 2019, (the “Decision”);
 - b. An Order quashing the Decision;
 - c. An Order in the nature of *mandamus* requiring the Board to allow Dr. Gillies to present at a public Board meeting, or in the alternative remitting the Decision to the Board to be determined in accordance with the court’s reasons for judgment;
 - 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 protected under 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.
2. The grounds for the application are:

The Parties

- a. Ann Gillies lives near Dundalk, Ontario. She and her husband have 6 adult children and 6 grandchildren, one or more of whom are students in the Bluewater District School Board.
- b. Ann Gillies is a professional counsellor who has maintained a private practice in rural Ontario for nearly 20 years. She holds a Ph.D. in Philosophy of Professional Counselling, an M.A. in Professional Counselling, and has extensive experience in trauma therapy, crisis intervention, disaster relief work, pastoral counselling and anger management.
- c. Bluewater District School Board (the “Board”) is a public school board exercising statutory authority under the *Education Act*, RSO 1990, c E.2 in Bruce and Grey Counties.

- d. The Board has approximately 16,000 students in 48 schools. The board employs approximately 3,000 staff.
- e. The Board is required to operate in accordance with the *Education Act*, other applicable legislation, the pertinent regulations of the Ministry of Education (Ontario), and the procedural by-laws developed for the operation of the Board and its committees.

Bluewater District School Board meetings

- f. Sections 207 and 208 of the *Education Act* provide for school board meetings, with section 207(1) stipulating that all Board meetings must be open to the public, save for certain exceptions which are inapplicable here.
- g. The Bluewater District School Board Procedural By-Laws (the “By-laws”) stipulate that the Board must hold regular meetings on the third Tuesday of every month during the school year (By-law 2.3.1(ii)).
- h. The By-laws specifically provide that members of the community will be provided with an avenue to speak at meetings of the Board in order to foster effective communication between the Board and the community. To register to speak to the Board at a meeting, members of the community are requested to provide the Director of Education with advanced notification and a brief summary of their presentation one week prior to the meeting of the Board (By-laws 6.1 & 6.3.1).

Dr. Gillies denied the opportunity to present

- i. On April 16, 2019, Dr. Gillies wrote to the Board and gave notice of her intent to speak at the upcoming Board meeting on May 21, 2019, as per By-law 6.1. In her summary, Dr. Gillies stated:

I am wishing to speak on my concern on the issue of an Ontario mandate to fly the gay flag at all schools during the month of June. I believe that this is special right not afforded to other interest groups and therefore discriminatory

(the “Presentation”).

- j. On May 8, 2019, the Board denied her request to speak at the May 21, 2019, writing in an email:

Your request to present as a delegation at the May 21, 2019 Regular Meeting of the Board has been reviewed by the Executive Committee. Your request to present is being denied in accordance

with Board Policy 7520-D Human Rights, which supports the Ontario Human Rights Code. If you would like, we could provide your presentation by email, to our trustees for information. Please advise.

- k. On May 13, 2019, Dr. Gillies emailed the Board again asking for clarification, as follows:

Just getting some time to respond. I was surprised by the decision to disallow this conversation. Could you please provide more specifically with the reason for not permitting me to speak? How would I go about appealing this decision?

- l. On May 16, 2019, the Board responded by confirming their decision to reject Dr. Gillies' request, stating:

Further to your request to present as a delegation, your request has been reviewed and the decision is final.

The decision is based on the following:

Our Human Rights policy:

Bluewater District School Board policies will support and provide direction necessary to achieve the board's Vision, Mission and Strategic Plan priorities.

Bluewater District School Board is committed to meeting its obligation under the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code by providing safe schools and workplaces that not only respect the rights but also recognize the worth of every individual. Every student, employee, trustee, parent and community member has the right to a workplace and educational environment free of discrimination and any form of harassment.

Our Mission:

We are a learning organization committed to providing quality education for every student in a safe and caring environment.

Our Priority:

Provide quality instruction and learning experiences in an equitable and inclusive environment.

The Board's decision is unlawful

- m. The Board is a government actor exercising statutory authority whose decisions are subject to judicial review and *Charter* scrutiny (*Gillies et al v Toronto District*

School Board, 2015 ONSC 1038 at para 39; *Chamberlain v Surrey School District No. 36*, 2002 SCC 86 at para 121).

- n. The Board was required to provide sufficient reasons, in light of the record, by which a court could understand why it made its Decision and determine whether its Decision was within the range of acceptable outcomes (*Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16).
- o. The Board must provide reasons that are comprehensive enough to allow Dr. Gillies to understand why the Board rejected her request to present at the public Board meeting (*Canadian Centre for Bio-Ethical Reform v South Coast British Columbia Transportation Authority*, 2018 BCCA 344 at para 55).
- p. The Board did not provide any meaningfully reviewable reasons. As such, the Board's Decision cannot stand.
- q. The Board, a government actor, has created a space for public expression at its board meetings, where expressive activity is protected by section 2(b) of the *Charter*.
- r. The Board impaired Dr. Gillies' freedom of expression protected under section 2(b) of the *Charter* when it denied her application to present at the Board's public meeting on May 21, 2019, based without explanation on the content of Dr. Gillies' proposed presentation.
- s. The Board has the burden to show that its restriction of Dr. Gillies' *Charter*-protected freedom of expression is reasonable and justifiable.
- t. The Board limited Dr. Gillies' freedom of expression without providing reviewable or intelligible reasons.
- u. The Decision not to allow Dr. Gillies to speak was also arbitrary and unreasonable. The Decision was not based on criteria in the By-laws (which do not permit the Board to reject a delegation except on very narrow and inapplicable terms) but rather on irrelevant and/or unlawful considerations.
- v. The Decision is thereby unreasonable. It should be set aside, the Court should order that Dr. Gillies is permitted to give her Presentation at a public Board meeting, and

the *Charter* breach should be remedied by a declaration that her freedom of expression was infringed.

3. The following documentary evidence will be used at the hearing of the application:
- a. The record before Bluewater District School Board;
 - b. The Affidavit(s) of the Applicant to be sworn; and
 - c. Such further and other affidavits and material as counsel may advise and this Honourable Court permit.

Date: ~~August 30, 2019~~

SEPTEMBER 3, 2019

Lisa Bilty and Marty Moore
Lawyers for the Applicant

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ANN GILLIES
APPLICANT

and

BLUEWATER DISTRICT SCHOOL BOARD

RESPONDENT

12-19-0082-00
COURT File No. /19

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Brampton

NOTICE OF APPLICATION

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