



Richard Sinclair
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May 24, 2019

BY EMAIL (hrto.registrar@ontario.ca)

Registrar
Human Rights Tribunal of Ontario
655 Bay Street, 14th Floor
Toronto, ON M7A 2A3


Dear Registrar,

Re: NB as represented by her Litigation Guardian PB v. OCDSB et al
HRTO File #: 2019-36437-I

I am legal counsel for the Respondents Ottawa-Carleton District School Board, Julie Derbyshire and Janine Blouin, with respect to the above-noted matter.

Please find attached the Respondents' Request for Summary Hearing.

Yours truly,



Richard Sinclair
Manager of Legal Services

cc: [REDACTED] (by email)

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At any time after an application has been filed with the Tribunal, a party may make a Request for a Summary Hearing by completing this Request for Summary Hearing (Form 26).

A party who has received this Request for Summary Hearing form may file a Response to the Request using Form 11 not later than 14 days after the Request for Summary Hearing was delivered. The HRTTO may direct that a Response to the Request for Summary Hearing is required.

For more information on summary hearings see the Tribunal's **Practice Direction: Summary Hearing Requests**.

Follow these steps to make your request:

1. Fill out this Form 26.
2. Provide all your submissions in support of the Request.
3. Deliver a copy of Form 26 along with a copy of the Tribunal's Practice Direction: Summary Hearing Requests to all parties.
4. Complete a Statement of Delivery (Form 23).
5. File the Form 26 and Form 23 with the Tribunal.

Information for all parties and any person or organization who receives a copy of this Request

You may respond to the Request for Summary Hearing by completing Form 11, delivering a copy to all parties and filing it with the Tribunal, along with a Statement of Delivery, not later than 14 days after the Request for Summary Hearing was delivered. The Tribunal may direct that a Response to the Request for Summary Hearing is required.

NOTE: After reviewing this Form and any response, the Tribunal will decide whether a summary hearing will be held. When the Tribunal decides not to hold a summary hearing, it need not give reasons for this decision.

Download forms from the Tribunal's web site www.sjto.ca/hrto. If you need a paper copy or accessible format, contact us:

Human Rights Tribunal of Ontario
655 Bay Street, 14th floor
Toronto, Ontario
M7A 2A3

Phone: 416-326-1312 Toll-free: 1-866-598-0322
Fax: 416-326-2199 Toll-free: 1-866-355-6099
TTY: 416-326-2027 Toll-free: 1-866-607-1240
Email: hrto.registrar@ontario.ca



Application Information

Tribunal File Number:	2019-36437-I
Name of Applicant:	NB as represented by her Litigation Guardian PB
Name of each Respondent:	Ottawa-Carleton District School Board, Julie Derbyshire and Janine Blouin

1. Your Contact Information (person or organization making this Request)

First (or Given) Name Richard		Last (or Family) Name Sinclair		Organization (if applicable) Ottawa-Carleton District School Board	
Street Number 133	Street Name Greenbank Rd.			Apt/Suite	
City/Town Ottawa		Province ON	Postal Code K2H6L3	Email richard.sinclair@ocdsb.ca	
Daytime Phone 613-596-8714	Cell Phone		Fax	TTY	

If you are filing this as the Representative (e.g. lawyer) of one of the parties please indicate:

Name of party you act for and are filing this on behalf of: OCDSB, Julie Derbyshire and Janine Blouin	LSUC No. (if applicable) 50536M
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What is the best way to send information to you? ☐ Mail ☒ Email ☐ Fax
(If you check email, you are consenting to the delivery of documents by email.)

Check off whether you are (or are filing on behalf of) the:

☐ Applicant ☒ Respondent ☐ Ontario Human Rights Commission
☐ Other - describe: _____

2. Please indicate whether you are asking the Application to be dismissed in whole or in part. If in part, please specify.

See Schedule "A"

3. On what basis do you claim that there is no reasonable prospect that the Application or part of the Application will succeed? Include any facts relied on and full submissions in support of the request.

See Schedule "A"



4. Rule 19 A.3 requires that a party making a request for a summary hearing deliver to the other parties a copy of the Tribunal's Practice Direction: Summary Hearing Requests. Have you delivered this Practice Direction with this request?

☒ Yes

5. If you are relying on any documents in this Request please list below and attach. You must include all the documents you are relying on.

6. Have you disclosed any documents to the other parties? If so, please advise what has been disclosed.

7. Please check off how you wish the Tribunal to deal with the matter:

☒ Conference Call ☐ In Person Hearing

8. Explain why you wish the Tribunal to deal with the request in the manner indicated above.

A conference call is the most expeditious way of dealing with this Request.

9. Signature

By signing my name, I declare that, to the best of my knowledge, the information that is found in this form is complete and accurate.

Name:

Richard Sinclair

Signature:

Date: (dd/mm/yyyy)

24/05/2019

☐ Please check this box if you are filing your Request electronically. This represents your signature. You must fill in the date, above.

Freedom of Information and Privacy

The Tribunal may release information about an Application in response to a request made under the *Freedom of Information and Protection of Privacy Act*. Information may also become public at a hearing, in a written decision, or in accordance with Tribunal policies. At the request of the Commission, the Tribunal must provide the Commission with copies of applications and responses filed with the Tribunal and may disclose other documents in its custody or control.

BETWEEN

NB AS REPRESENTED BY HER LITIGATION GUARDIAN PB

(Applicant)

– and –

**OTTAWA-CARLETON DISTRICT SCHOOL BOARD
JULIE DERBYSHIRE and JANINE BLOUIN**

(Respondents)

SCHEDULE “A” TO THE REQUEST FOR SUMMARY HEARING

1. The Respondents seek the dismissal of this Application by way of Summary Hearing on the basis that the Application has no reasonable prospect for success.
2. The Ottawa-Carleton District School Board (the “OCDSB”) is a School Board established by the Legislature of Ontario pursuant to the *Education Act*, RSO c E.2 (hereinafter the “*Education Act*”). The OCDSB offers a wide range of educational programs as mandated by the Ontario Ministry of Education at nearly 150 schools throughout the City of Ottawa.
3. The Respondent Julie Derbyshire is the principal of one of the OCDSB’s schools, Devonshire Community Public School. The Respondent Janine Blouin is a teacher at Devonshire Community Public School.

4. At all times material to this Application, the Applicant NB was a student at Devonshire Community Public School. During the 2017-2018 school year, NB was a grade one student. The Respondent Janine Blouin was one of NB's teachers.
5. The Respondents deny many of the allegations contained in the Application, and reserve their rights to provide a fulsome Response should the Tribunal not dismiss this matter by way of Summary Hearing.
6. For the purposes of a Summary Hearing, the Tribunal should accept the Applicant's submissions as true and determine whether what the Applicant alleges may reasonably be considered to amount to a breach of the *Code* (see *Andrews v. Great Gulf*, 2019 HRTO 370 at para. 8).
7. In *Forde v. Elementary Teachers' Federation of Ontario*, 2011 HRTO 1389 at para. 17, the Tribunal held as follows:

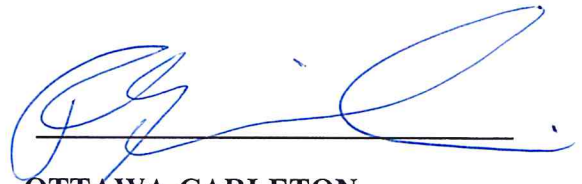
The Tribunal does not have the power to deal with general allegations of unfairness. For an Application to continue in the Tribunal's process, there must be a basis beyond mere speculation and accusations to believe that an applicant could show discrimination on the basis of one of the grounds alleged in the *Code* or the intention by a respondent to commit a reprisal for asserting one's *Code* rights.
8. The Respondents submit that the Applicant has failed to establish in the Application that the Respondents have discriminated against NB on the basis of sex or gender identity. The facts as alleged in the Application, even if true, do not engage any prohibit ground of discrimination as set out in the *Code*.
9. The Applicant alleges that the Respondent Janine Blouin discussed the concept of, and issues related to, gender identity with the class, and that these discussions had a negative

impact on NB. The Applicant further alleges that the Respondents failed to take steps to notify parents that these discussions had taken place in the classroom.

10. The Respondents state that even if these allegations were true in their entirety, they do not disclose a breach of the *Code*, nor do they engage a prohibited ground as set out in the *Code*.
11. The fact is that the concerns expressed by the Applicant are with respect to whether the content discussed in class was age-appropriate. However, Ms. Blouin raised the issue of gender identity and gender expression to meet the needs of her class.
12. In *ETFO et al. v. Her Majesty the Queen*, 2019 OSCJ 1308 (CanLII) at para. 122, the Divisional Court held that teachers were free to “address topics that go beyond those expressly set out in the 2010 Curriculum to meet the needs of a given class or student.” The Divisional Court also noted, at para. 123(e), that the Minister of Education confirmed that “teachers may teach the gender identity concept in class”.
13. The Applicant’s concerns appear to arise from the issue of whether the classroom discussions were age appropriate. The age-appropriateness of a classroom discussion does not engage a *Code*-protected prohibited ground.
14. The Application does not disclose any disadvantage or adverse treatment to NB due to the conduct of the Respondents. However, even if the allegations with respect to the impact on NB of the discussions of gender identity and gender expression were considered to be a disadvantage or adverse treatment, the Applicant cannot show that a prohibited ground was a factor in the disadvantage or adverse treatment.

15. Simply put, the Respondents did not discriminate against NB on the basis of sex or gender identity. Classroom discussions about gender identity and gender expression cannot be the basis of a *Code* infringement. At no time was the Applicant the subject of differential treatment by any of the Respondents, and the Respondents at all times treated NB with dignity and respect.
16. The Respondents cannot be responsible at law for any of the damages alleged in the Application.
17. The Respondents respectfully request that the Application be dismissed.

Dated this 24th day of May, 2019.



**OTTAWA-CARLETON
DISTRICT SCHOOL BOARD**

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Ottawa, ON
K2H 6L3

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Lawyer for the Respondents
Ottawa-Carleton District School
Board, Julie Derbyshire and Janine
Blouin



Tribunals Ontario

Human Rights Tribunal of Ontario

Practice Direction on Summary Hearing Requests

The procedure outlined in this Practice Direction provides general information only. It is not a rule within the meaning of the Human Rights Tribunal of Ontario (HRTO)'s Rules of Procedure. The HRTO may vary the approach to conducting a summary hearing where it considers appropriate (Rule A4.2).

Rule 19A of the HRTO's Rules of Procedure addresses summary hearings.

The Purpose of the Summary Hearing

The summary hearing is used to determine at an early stage whether an application should be dismissed because it has no reasonable prospect of success.

A summary hearing usually considers:

- whether, assuming all of the allegations are true, the Application has no reasonable prospect of success. In these cases, the focus will generally be on the legal analysis and whether what the applicant alleges may be reasonably considered to amount to a *Code* violation; and/or
- whether there is a reasonable prospect that the applicant can prove, on a balance of probabilities, that his or her *Code* rights were violated by the respondent(s). The applicant has to show that he or she can make a link between the event that led to the Application and the alleged ground(s) of discrimination.

These tests were discussed first in *Dabic v. Windsor Police Service*, 2010 HRTO 1994. All HRTO decisions, including *Dabic* and others on summary hearings, are available on the Canadian Legal Information Institute website at www.canlii.org.

The HRTO may order a summary hearing on its own initiative or may grant a respondent's Request for Summary Hearing.

HRTO Initiated Summary Hearing

If it appears that there may be no reasonable prospect that the Application will succeed, the HRTO can order a summary hearing on its own initiative. This decision can be made at any time and often occurs before the Response is filed.

Requesting a Summary Hearing

At any time after a Response has been filed with the HRTO, a respondent may request the Application be dismissed in whole or in part on the basis that there is no reasonable prospect that the Application will succeed. A respondent must file a complete response before the HRTO will consider a Request for Summary Hearing.

To request a summary hearing, a respondent must deliver and file a Request for Summary Hearing (Form 26) providing detailed submissions about why there is no reasonable prospect that the Application, or part of the Application, will succeed. Full argument in support of the Request must be provided.

The completed Request for Summary Hearing must be delivered with a copy of this Practice Direction to the applicant and any other parties to the Application and filed with the HRTO along with a Statement of Delivery (Form 23).

Summary hearings are meant for an early determination of the issue of no reasonable prospect of success and should be requested as soon as possible. Requests for Summary Hearing filed after a hearing on the merits has been scheduled will rarely be granted.

Responding to a Request for Summary Hearing

An applicant who has received a Request for Summary Hearing (Form 26) may respond to the Request for Summary Hearing by completing a Response to a Request for Order (Form 11), delivering a copy to all parties and filing it with the HRTO, along with a Statement of Delivery (Form 23), not later than 14 days after the Request for Summary Hearing was delivered.

The HRTO will decide whether to grant the Request for Summary Hearing. The HRTO generally will not provide reasons for refusing a Request for Summary Hearing, which will be communicated by the HRTO's Registrar. If the Request is allowed, the HRTO will issue a Case Assessment Direction (CAD) with directions for the parties. A Notice of Summary Hearing will be issued by the Registrar.

Case Assessment Direction

If the Request for Summary Hearing is granted or the HRTO has ordered a Summary Hearing on its own initiative, an HRTO adjudicator will issue a Case Assessment Direction (CAD) to the parties. The CAD will provide directions about:

- the issues to be dealt with at the summary hearing;
- any documents or other information which need to be given to the other side and filed with the HRTO and the deadlines for doing so.

The Summary Hearing

A summary hearing will usually be held by teleconference for half a day. The applicant will usually provide his or her arguments first. Oral evidence is rarely permitted.

The HRTO will send the parties a Notice of Summary Hearing telling them the date and time of the hearing. The Notice will indicate if the hearing will take place by teleconference or in person.

If the hearing is by teleconference, the Notice will provide the phone number and instructions for participating in the teleconference. If you experience difficulty connecting to the teleconference, contact the Registrar immediately. Contact information is provided on the Notice of Summary Hearing.

If the summary hearing is held in person, the Notice will give the address of the hearing location.

If the applicant does not attend the summary hearing, the Application will usually be dismissed as abandoned. If a party, other than the applicant, who received a Notice of Summary Hearing does not attend the hearing, the summary hearing may proceed in his or her absence.

The HRTO's Rules about disclosure of documents and witnesses, Rules 16 and 17, do not apply in summary hearings. The CAD will give directions about any documents or other things which are required at the summary hearing.

The HRTO adjudicator will consider the submissions at the summary hearing and materials in the HRTO file and issue a written decision on whether all or part of the Application has no reasonable prospect of success. If the Application is not dismissed entirely, it will proceed in the HRTO process and the decision may set out the next steps in the process.

A copy of the decision is sent to the parties and published on the Canadian Legal Information Institute website www.canlii.org.

Effective as of May 2013

sjto.ca/hrto