

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

LINDA STONE

Applicant

and

DURHAM DISTRICT SCHOOL BOARD

Respondent

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

NOTICE OF APPLICATION 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 pages.

THIS APPLICATION for judicial review will come on for a hearing on **TBD**, at the court house located at **15 Bond Street East, Oshawa, Ontario**.

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 this court office, 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 court office where the application is to be heard as soon as possible, but at least four days before the hearing.

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.

Date: April 3, 2023

Issued by **Jessica R Roy**
Local Registrar

Digitally signed by
Jessica R Roy
Date: 2023.04.06
16:01:37 -04'00'

Ontario Superior Court of Justice
150 Bond Street East
Oshawa, ON L1G 0A2

TO: Durham District School Board
400 Taunton Road East
Whitby, Ontario L1R 2K6

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

APPLICATION

1. The applicant, Linda Stone (“**Trustee Stone**”), makes application for:
 - a) an order granting leave for this application to be heard by a single judge of the Superior Court of Justice, pursuant to section 6(2) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1;
 - b) an order setting aside the decision of the Durham District School Board (the “**Board**”), dated March 6, 2022, in which the Board: (i) confirmed its earlier finding that Trustee Stone breached the *Board Member (Trustee) Code of Conduct* (the “**New Code of Conduct**”) and *By-Law #12: School Board Member (Trustee) Code of Conduct* (the “**Old Code of Conduct**”); (ii) censured Trustee Stone; (iii) barred Trustee Stone from attending the Board Meeting held on March 20, 2023, and (iv) barred Trustee Stone from sitting on any committees of the Board or attending any such meetings until December 31, 2023 (collectively, the “**Decision**”);
 - c) an order quashing the Board’s censure of Trustee Stone;
 - d) an order reinstating all of Trustee Stone’s privileges and rights as a Board trustee, including all rights of attendance and full participation at all Board and committee meetings;
 - e) a declaration that the Decision was *ultra vires* the Old Code of Conduct, the New Code of Conduct and the *Education Act*, R.S.O. 1990, c E.2 (the “**Act**”);
 - f) a declaration that Trustee Stone did not act in contravention of the Old Code of Conduct or the New Code of Conduct in respect of any of the matters raised in this application;
 - g) a declaration that the Decision was procedurally unfair;
 - h) a declaration that the Decision was unreasonable;

- i) a declaration that the Decision violated the unwritten constitutional principles of (i) the rule of law; and (ii) democracy and democratic government;
- j) a declaration, pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), that the Decision was made without justification and amounts to an unreasonable violation of Trustee Stone’s freedom of expression as guaranteed by section 2(b) of the *Charter*;
- k) an order directing a public apology by the Board to Trustee Stone, to be conspicuously published on the Board’s website for the duration of Trustee Stone’s tenure as a Board trustee;
- l) an order prohibiting the Board from conducting subsequent formal inquiries against Trustee Stone without leave of the Court; and
- m) such further and other relief as counsel may advise and this Court considers appropriate.

2. The grounds for the application are:

- a) Trustee Stone is an individual resident in the City of Oshawa, Ontario. Trustee Stone is currently one of eleven school board trustees sitting on the Board;
- b) Trustee Stone has been a school board trustee on the Board for several years. She was first elected to the Board in 2014 and served as trustee for the entire term. Trustee Stone ran for re-election as trustee in 2018, but was not successful;
- c) however, in November 2020, Trustee Stone was appointed as a trustee back to the Board in order to fill a vacancy;
- d) as more fully described below, Trustee Stone then resigned from the Board on May 16, 2022;
- e) a few months later, Trustee Stone sought re-election and was re-elected as trustee on October 24, 2022;

- f) the Board is a public school board exercising authority under the Act in the Durham Region;

The Codes of Conduct

- g) pursuant to s. 218.2(1) of the Act, school boards are empowered to make codes of conduct which apply to the members of the board. Pursuant to O.Reg 246/18, s. 1(1), made under s. 218.2(2)(a), the Board was required to have a code of conduct;
- h) the Old Code of Conduct was passed by the Board on June 18, 2012, and had been most recently amended on November 19, 2018;
- i) on March 21, 2022, the Board replaced the Old Code with the New Code of Conduct;

The Allegations Against Trustee Stone

- j) on October 25, 2021, the Governance and Policy Committee of the Board convened a meeting (the “**October 25 Meeting**”) to review a draft Human Rights, Anti-Discrimination and Anti-Racism Policy to be enacted by the Board (the “**Draft Policy**”);
- k) the Governance and Policy Committee subsequently met on November 9, 2021 to further review the Draft Policy (the “**November 9 Meeting**”);
- l) during the October 25 Meeting, Trustee Stone raised a concern on behalf of some constituents that a definition of “white supremacy” included in the draft policy was being seen as derogatory by constituents. Trustee Stone requested that the definition be changed, or that the term be removed from the Draft Policy;
- m) then, during the November 9 Meeting, Trustee Stone expressed further concern about a section of the Draft Policy titled “Privacy and Confidentiality.” Trustee Stone was concerned that pursuant to that section, parents would not be informed if their children identified as transgender. She inquired whether the provision would also require that parents not be informed of their children undergoing surgeries or other procedures;

- n) at the November 9 Meeting, Trustee Stone also inquired about the term “cisnormativity” which was listed in the Draft Policy as a “discriminatory ideology.” Trustee Stone asked whether the term “cisnormativity” applied to statements such as “men cannot get pregnant or give birth” or “men can’t breast feed”. Trustee Stone asked whether using the term “breast feed”, as opposed to “chest feed”, was an example of “cisnormativity”;
- o) on December 1, 2021, Mary Fowler, the president of the Elementary Teachers’ Federation of Ontario, wrote a letter to the Board criticizing comments made at the October 25 Meeting and November 9 meeting asking that the term “white supremacy” be removed from the Draft Policy and asking about the meaning of “cisnormativity.” Ms. Fowler called the comments “offensive and harmful” and asked that Trustees speak out against similar comments in the future;
- p) on January 24, 2022, a meeting of the Board’s Governance and Policy Committee was held (the “**January 24 Meeting**”). Trustee Stone attended and read from a prepared speech. She raised a concern that a lack of willingness to engage in dialogue with differing opinions was causing people to remain silent for fear of reprisal. As an example, she referenced a teacher in the Waterloo Region District School Board (the “WRDSB”) who was not allowed to give a presentation to the WRDSB about potentially age-inappropriate books. Trustee Stone explained that she was not defending hate speech or bigotry. Rather, she was concerned that the response to her previous questions about the Draft Policy was emblematic of a tendency to shut down “opinions and diversity of thought”;
- q) on January 31, 2022, another Governance and Policy Committee Meeting was held (the “**January 31 Meeting**”). Trustee Stone, who chaired the meeting, opened by indicating that she agreed with the Draft Policy generally, but had disagreements with specific

provisions. She further advised that she had heard from others, whose comments had led her to believe that her opinions were not welcome and had caused her to feel unsafe on the committee. Trustee Stone then announced that she was stepping down as chair of the Governance and Policy Committee and left the meeting;

r) between April 19, 2022 and May 14, 2022, Trustee Stone published various “tweets” on the Twitter social media platform:

i. on April 19, 2022, Trustee Stone re-tweeted a tweet by Mike Ramsay, a trustee on the Waterloo Region District School Board, linking to an article by Chanel Pfahl, an Ontario teacher, entitled “*Intimidation Masquerading as Virtue is Chilling Free Speech*”;

ii. on May 2, 2022, Trustee Stone re-tweeted a tweet by Linda Blade that read:
“Terrified girls and #sports officials. The abandoning of Women’s #sport. THIS is the ‘inclusion’ @EthicsInSPORT & @WomenandSportCA endorse. #Canada is there already. #cdnpoli https://twitter.com/RugbyKids_/status/1521019378535477250.;”

iii. on May 4, 2022, Trustee Stone re-tweeted a tweet by Mary Rice Hasson that read:
“‘I was failed by modern medicine...’ The words of a brave young woman who was ‘transed’ and thankfully broke free and is telling her story. Failed not only by modern medicine but also by adults too willing to validate 'trans' mythology, regardless of the harm.”;

iv. on May 5, 2022, Trustee Stone re-tweeted a tweet by “Rogue Ellement” that read:
“The chest is a cavity. “Chest feeder” isn’t just medically inaccurate, it’s medically impossible.”;

v. on May 11, 2022, Trustee Stone tweeted:
“How many different pronouns must a teacher memorize. If 23 students all have different pronouns and the teacher gets one wrong, would that be grounds for a complaint?”

vi. that same day, Trustee Stone also tweeted:

“Should parents be told if their child is transitioning in school? Schools do not have to tell you if your child requests that you not be told. Children have rights.”;

vii. on May 14, 2022, Trustee Stone made three separate tweets that read:

1) “Should biological men complete in women’s sports? [*sic*]”;

2) “Can trans men become priests?”; and

3) “How many different pronouns are there? And could they be changed daily? That might make it even more difficult for teachers.”

Complaints to the Board against Trustee Stone

- s) on January 26, 2022, Board Trustee Niki Lundquist submitted a complaint to the Board against Trustee Stone. Trustee Lundquist alleged that Trustee Stone had “*undermined confidence in the Board*” and had “*caused questions to be raised about the Board’s commitment to integrity and its obligation to uphold well-settled human rights principles*” by expressing “*personal views of ‘free speech’*” at the January 24 Meeting. Trustee Lundquist also complained about Trustee Stone’s comments about the definition of “white supremacy” made at the October 25 Meeting and unspecified comments made at the November 9 Meeting. Trustee Lundquist alleged that Trustee Stone breached ss. 1.2-1.4, 6.1, 6.13, and 6.16 of the Old Code, which, at that time, was still in force;
- t) on February 2, 2022, Trustee Scott Templeton submitted another complaint against Trustee Stone. Trustee Templeton alleged that Trustee Stone’s comments about free speech made at the January 24 Meeting “*promote[d] her personal belief that promotes divide*” which should be taken “*as a sign of ignorance.*”;
- u) on February 4, 2022, Trustee Darlene Forbes submitted another complaint against Trustee Stone. Trustee Forbes alleged that Trustee Stone’s comments at the October 25

Meeting, November 9 Meeting, January 24 Meeting, and January 31 Meeting “*espoused racist and transphobic points of view.*”;

- v) on May 12, 2022, Alicia McAuley, a Whitby resident who is not a trustee, submitted another complaint against Trustee Stone. Ms. McAuley alleged that Trustee Stone’s tweets and re-tweets listed above were contrary to the Board’s policies. Ms. McAuley also alleged that Trustee Stone’s comments at the November 9 Meeting “*were anti-trans in nature and sentiment*” and were contrary to the Board’s “*stated values.*”

Formal Inquiry

- w) the Board subsequently initiated a formal inquiry into whether Trustee Stone breached the Old and New Codes of Conduct. The Board appointed Michael Maynard of ADR Chambers to act as Integrity Commissioner to investigate the complaints;
- x) during the investigation process, Trustee Stone asked Mr. Maynard what the consequences of her resignation would be to the investigation. Mr. Maynard informed Trustee Stone that the investigation process would be terminated if she were to resign. So, on May 16, 2022, Trustee Stone resigned from the Board. Subsequently, the Board terminated its investigation;
- y) Trustee Stone then ran for re-election. On October 24, 2022 she was re-elected to the Board. The Board, in excess of its jurisdiction, then proceeded to re-open its formal inquiry against Trustee Stone;
- z) on December 19, 2022, Mr. Maynard delegated his position as Integrity Commissioner to Mr. Benjamin Drory (the “**Integrity Commissioner**”);
- aa) on January 21, 2023, Trustee Stone wrote to the Integrity Commissioner to provide comments on a draft of his report to the Board (the “**Report**”). Trustee Stone asked whether the *Charter* protected the statements she had made using her personal Twitter account. On January 23, 2023, the Integrity Commissioner replied and stated that the

Charter did not apply. He claimed that the *Charter* only applied to the provincial and federal government, whereas ADR Chambers was a private corporation, and the Board was a corporate body, making them both distinct from the government. The Integrity Commissioner also stated that Trustee Stone’s liberty to speak had not been infringed. He characterized Trustee Stone as arguing for a right to convey her views free of possible consequences;

bb) the Integrity Commissioner provided his report to the Board on January 23, 2023;

The Decision

cc) on February 6, 2023, the Board held a special meeting (the “**February 6 Meeting**”)

where it decided and ordered that Trustee Stone:

- i. breached “*one or more of*” ss. 1.4, 6.1, 6.3, 6.13, and 6.49 of the Old Code of Conduct by comments about gender identity and expression made at the October 25 Meeting and January 31 Meeting;
- ii. breached ss. 1.4, 6.1, 6.3, 6.13, and 6.49 of the Old Code of Conduct by her tweets made prior to May 5, 2022;
- iii. breached ss. 1.2, 6.3, 6.11, and 6.44 of the New Code of Conduct by her tweets made May 5-14, 2022;
- iv. breached s. 6.6 of the Old Code of Conduct by her comments made at the January 24 Meeting;
- v. breached s. 6.49 of the Old Code of Conduct as a result of “*the retweet she made concerning race on April 18, 2022*”;
- vi. breached unspecified sections of the Old Code of Conduct by her comments on the definition of “white supremacy” in the Draft Policy;
- vii. be barred from the “*next Board Meeting*” which was held on February 21, 2023;

- viii. be barred from sitting “*on any and all Committees of the Board until December 31, 2023*”; and
 - ix. be censured;
- dd) on February 7, 2023, the Board provided Trustee Stone with a written notice of the decision (the “**Notice**”). Trustee Stone was permitted until February 23, 2022 to make written submissions requesting that the Board reconsider its decision made at the February 6 Meeting;
- ee) on February 24, 2023, Trustee Stone provided her written request for reconsideration to the Board (the “**Request for Reconsideration**”). In her Request for Reconsideration, Trustee Stone argued that the Board should reconsider its decision because, among other things:
- i. the Board’s determinations were “*so general and imprecise*” that they did not disclose the specific impugned comments, vaguely found that “*one or more*” of certain sections of the Old Code were breached. With respect to one finding, the Board did not specify any section of any Code of Conduct or other Board policy to have been breached;
 - ii. the Integrity Commissioner lacked authority to investigate alleged breaches of the Old Code of Conduct;
 - iii. the Board and Integrity Commissioner lacked authority to resume the formal inquiry against Trustee Stone after it had been terminated and she had been re-elected;
 - iv. the Board lacked authority to sanction Trustee Stone for breaches of the Old Code of Conduct, and the New Code of Conduct could not be applied to conduct which predated its enactment;
 - v. Ms. McAuley was not entitled to bring a complaint under the Act;

- vi. the Integrity Commissioner and the Board failed to consider Trustee Stone's freedom expression under section 2(b) of the *Charter*;
 - vii. the Integrity Commissioner incorrectly stated that the *Charter* did not apply in Trustee Stone's case;
 - viii. the Old Code of Conduct and the New Code of Conduct were improperly being used to silence the dissenting viewpoint of an elected trustee;
 - ix. the Board incorrectly interpreted s. 6.6 of the Old Code of Conduct which states that trustee's comments must be "*issue based and not personal, demeaning or disparaging with regard to any person*" as applying to comments that were "*off-topic*"; and
 - x. the Board was not impartial but rather motivated by political disagreements with Trustee Stone;
- ff) on March 6, 2023, the Board met to debate and vote on Trustee Stone's Request for Reconsideration. During deliberations, multiple Trustees made comments that "*there hasn't been a limit on free speech*" and that "*freedom of expression does not necessarily mean freedom from consequences.*" Despite the Board's counsel's attempt to inform the Board that there had indeed been a limit on Trustee Stone's freedom expression that required the Board to conduct a balancing analysis, the Board did not consider the impact of the Decision on Trustee Stone's freedom of expression;
- gg) the Board thus made the Decision to confirm its findings of breach and the sanctions imposed;

The Board's Decision was *Ultra Vires*, Procedurally Unfair, and Unreasonable

- hh) the Decision is *ultra vires* the New Code of Conduct because determinations of breaches under the Old Code of Conduct were made, which is no longer in force;

- ii) in the alternative, the Decision is *ultra vires* the New Code of Conduct because the New Code of Conduct cannot be applied to conduct that predates its enactment;
- jj) the Decision is *ultra vires* the Act because a complaint from Alicia McAuley, who has never been a trustee on the Board, was investigated contrary to s. 218.3(1) which limits complaints to “*a member of a board*”;
- kk) the Decision is *ultra vires* the Act because the formal inquiry against Trustee Stone was launched by the Integrity Commissioner without prior Board approval. Subsections 218.3(1) and (2) require that alleged breaches be “*brought to the attention of the board*” which may then make inquiries into the matter;
- ll) the Decision is *ultra vires* the Act because the Board lacked authority to reinstate the formal inquiry. Section 218.3 applies to members of the Board. Upon Trustee Stone’s resignation on May 16, 2022, s. 218.3 ceased to apply and the process was terminated. The Board lacked authority to resurrect and pursue the formal inquiry after the Applicant’s re-election on October 24, 2022;
- mm) the Decision was procedurally unfair because the Board is biased against Trustee Stone. The comments of the trustees of the Board made before, during, and after the February 6 Meeting and March 6 Meeting demonstrate a closed mind;
- nn) the Decision was procedurally unfair because the Integrity Commissioner demonstrated bias in his comments to Trustee Stone and those contained in the Report;
- oo) the Decision was procedurally unfair because Trustee Stone had a legitimate expectation that her resignation on May 16, 2022 would conclude the formal inquiry which would not be reinstated against her. Her legitimate expectation arose from statements made to her by Mr. Maynard;
- pp) the Decision was unreasonable because the Board’s reasons were insufficient. They fail to explain which of Trustee Stone’s specific comments breached what specific

- provisions of the Code of Conduct. The reasons also fail to explain why the Board came to the conclusion that it did;
- qq) the Decision was unreasonable because it violated the unwritten constitutional principles of (i) the rule of law; and (ii) democracy and democratic government;
 - rr) the Decision was unreasonable because the Board failed to consider Trustee Stone's freedom of expression under s. 2(b) of the *Charter* and proportionately balance it against applicable statutory objectives. The Decision, by imposing the maximum possible penalty on Trustee Stone simply for executing her duties as a trustee expression of the Applicant, limited her s. 2(b) freedoms. Accordingly, the Board was required to balance the statutory objectives of the Act against her rights, which it failed to do;
 - ss) the Decision was unreasonable because its effect has been to prevent Trustee Stone from (i) exercising her freedom of expression as guaranteed by section 2(b) of the *Charter*; and (ii) effectively representing her constituents and otherwise fulfilling her duties as a democratically elected official;
 - tt) the Decision was unreasonable because the Board misinterpreted the provisions of the Old Code of Conduct and/or the New Code of Conduct, and misapplied them to the facts;
 - uu) in the circumstances of this case, it is appropriate for this matter to be heard by a single judge of the Superior Court of Justice on an urgent, expedited basis, pursuant to section 6(2) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1;
 - vv) section 6(2) of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1; Rules 14 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11;

3. The following documentary evidence will be used at the hearing of the application:
- a) the Affidavit(s) of Linda Stone (to be sworn);
 - b) the Affidavit of Paul Crawford (to be sworn); and
 - c) such further and other materials as counsel may advise and this Court permit.

April 3, 2023

“James Manson”

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**LINDA STONE
APPLICANT**

-and-

**DURHAM DISTRICT SCHOOL BOARD
RESPONDENT**

Court File No.:

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Proceeding Commenced at OSHAWA

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