

**CITATION:** Ramsay v. Waterloo Region District School Board, 2023 ONSC 6508  
**DIVISIONAL COURT FILE NO.:** Hamilton, DC-22-141-JR  
**DATE:** 20231207

**ONTARIO SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

**E. Stewart, Lococo and Williams JJ.**

**BETWEEN:** )  
 )  
MICHAEL RAMSAY )  
 ) *Hatim Kheir*, Counsel for the Applicant  
Applicant )  
 )  
**- and -** )  
 )  
WATERLOO REGION DISTRICT ) *Natalie D. Kolos*, Counsel for the  
SCHOOL BOARD ) Respondent  
 )  
Respondent )  
 ) **Heard at Hamilton by videoconference**  
 ) **on June 6, 2023**

**REASONS FOR DECISION**

**E. STEWART J.**

**Nature of the Application**

[1] Michael Ramsay has brought this application for judicial review of the decision of the Waterloo Region District School Board (the “WRDSB”) on June 6, 2022 which found that he had breached its Code of Conduct for Trustees (“Code of Conduct”) and imposed sanctions upon him as a result.

[2] On June 27, 2022, following receipt of a reconsideration request from Ramsay, the WRDSB confirmed its decision and the sanctions that had been imposed.

[3] Ramsay seeks an order quashing the decision. He also asks for a declaration that the decision infringed his right to freedom of expression under s. 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the “Charter”).

[4] Ramsay also takes the position that the complete and unredacted versions of the Record of Proceedings in this matter should be included in the court file and made available to the public.

[5] The Respondent WRDSB asks that the application be dismissed.

### **Background Facts**

[6] The WRDSB is a public school board that exercises statutory authority under the *Education Act*, R.S.O. 1990, c. E.2 (the “*Act*”). The WRDSB is composed of 11 trustees who are responsible for serving the interests and needs of the general public, and for advocating for a strong public education system that benefits the learners and communities served within the local community.

[7] Ramsay has served as a WRDSB trustee since 1989. Indeed, he was a member of the WRDSB committee that drafted the current version of the Code of Conduct.

[8] On January 17, 2022 the WRDSB held a public meeting called a Committee of the Whole Meeting. One of the topics on the agenda was a proposed “Library Review”. During an oral delegation that digressed from the topic at hand, the Chair warned the delegate that she risked being in violation of human rights legislation. When she nevertheless continued with her presentation and refused to adhere to the scope of the agenda item, the Chair stopped her presentation because of concerns that its content was potentially harmful to the school and the LGBTQ+ community.

[9] Ramsay was one of the trustees presiding at the public meeting who felt that the presenter ought to have been permitted to proceed. However, by a majority, the WRDSB voted to support the Chair’s ruling.

[10] The delegate whose presentation had been terminated then brought an application for judicial review of the decision of the WRDSB which was dismissed by this Court on November 29, 2023 (see: *Carolyn Burjoski v. Waterloo Region District School Board*, 2023 ONSC 6506). She also has brought a civil action claiming damages against the WRDSB and its Chair.

[11] On January 24, 2022 at the next meeting of the WRDSB, Ramsay repeatedly interrupted the discussion of the Board’s business and was ruled out of order by the Chair. Ramsay accused the Chair of having incited “moral panic” in the community by his handling of the delegation issue at the January 17, 2022 public meeting and he demanded that an apology be issued to the entire community.

[12] On February 14, 2022 at a further WRDSB meeting, Ramsay again strongly criticized the WRDSB and the Chair, saying that they had unfairly forced staff to abandon any balanced approach to these issues and had ordered them to disregard directives from the Ministry of Education as well as the law on human rights applicable to these issues and to vaccination and masking mandates.

[13] As these events were unfolding, Ramsay also used social media to communicate his views about this controversy. In his online activity, Ramsay amplified, agreed with and “re-tweeted” commentary that (among other things) described the WRDSB as a “farce,” and made strong

criticisms of the Chair's handling of the delegation issue at the January 17, 2022 meeting. He also appeared to downplay the threats of bodily harm that had been made against the Chair after the public meeting.

[14] On February 24, 2022 the WRDSB received a formal complaint from a 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.

[15] In order to handle and deal with the complaint, the WRDSB retained Barry Bresner of ADR Chambers as Integrity Commissioner to investigate the allegations made against Ramsay contained in it and to provide a report, as provided by the Code of Conduct.

[16] The Integrity Commissioner summarized the breaches of the Code of Conduct alleged in the complaint as follows:

- (a) The refusal of Ramsay to accept and respect the decisions of the Chair and the WRDSB;
- (b) Accusations by Ramsay of unlawful conduct by fellow trustees; and
- (c) Disclosure of confidential information by Ramsay.

[17] The Integrity Commissioner invited any trustees who wished to speak to him to provide their comments. Among the information provided to the Integrity Commissioner were comments in writing from the Chair. This was considered to be a "written statement of witness" under section 48 of the Code of Conduct. A copy of this written statement was provided to Ramsay but was not shared with any of the other trustees.

[18] Ramsay was invited to provide, and did provide, his detailed response to the complaint to the Integrity Commissioner in the following way:

- (a) The Integrity Commissioner received a call from Ramsay on March 29, 2022 for a preliminary discussion;
- (b) On April 22, 2022 Ramsay submitted his written response to the complaint;
- (c) A private meeting between the Integrity Commissioner and Ramsay took place via telephone on April 27, 2022; and
- (d) On April 28, 2022 Ramsay delivered a "Response to Request for Clarification and Summary of Telephone Visit of April 27, 2022" by email to the Integrity Commissioner.

[19] On May 31, 2022 the Integrity Commissioner submitted 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.

[20] The Integrity Commissioner confirmed that Ramsay's conduct that had formed the basis for the making of the complaint had arisen because of the delegation issue. The complaint against Ramsay was based on his strong negative reaction to the WRDSB decision to stop the delegate's presentation, and his alleged ongoing failure to respect that decision despite his disagreement with it.

[21] Among several other findings contained in his report, the Integrity Commissioner found that Ramsay had "retweeted" an online posting by a journalist following the meeting on January 17, 2022 that was misleading in that it did not "accurately portray what occurred at the meeting, unfairly insinuated that the Chair is misogynist and racist, and failed to note that the majority of the other trustees, all of whom are female, supported that decision." The Integrity Commissioner also noted that at the time Ramsay's Twitter "handle" was @Trustee\_Ramsay, which he considered could give the impression to members of the public that he was communicating in his official capacity as a trustee.

[22] The Integrity Commissioner noted that Ramsay acknowledged that the basic facts forming the foundation of the conduct alleged in the complaint occurred and are reflected in the recordings of the meetings and in his tweets and emails. There seems to be little dispute that Ramsay said and did what was alleged in the complaint against him, with the exception of the allegation of disclosure of confidential information, which had not been substantiated by the investigation.

[23] Ramsay's basic response to the complaint was that he felt strongly that his right to freedom of expression as guaranteed by the *Charter* trumps any obligation he may have under the Code of Conduct to fetter or restrain that freedom, including any requirement to fulfil conduct expectations arising from his position as a school board trustee.

[24] On June 6, 2022 the trustees deliberated *in camera* the issues of whether to find Ramsay in breach of the Code of Conduct based on the findings of the Integrity Commissioner's report, and to determine whether any resulting sanctions should be imposed.

[25] Following that meeting, a public meeting was held at which the trustees voted 6-3 that Ramsay had breached the Code of Conduct. The WRDSB voted, by the same 6-3 margin, to impose sanctions on Ramsay. These sanctions included a formal censure, and the suspension of his entitlement to attend WRDSB meetings or to receive *in camera* materials until September 30, 2022. The Chair cast a vote in these determinations.

[26] On June 8, 2022, Ramsay was provided with written notice of the decision. He was informed that he could provide written submissions to request the WRDSB to reconsider its decision. On June 24, 2022 Ramsay submitted his request for reconsideration.

[27] On June 27, 2022 the WRDSB deliberated *in camera* whether to confirm or revoke its decision that Ramsay breached the Code of Conduct. At the public meeting immediately following, the trustees voted 6-3 to confirm its finding of a breach, and to confirm the sanctions imposed.

## **Jurisdiction**

[28] The Divisional Court has jurisdiction to hear and determine this application for judicial review under sections 2 and 6 of the *Judicial Review Procedure Act*, R.S.O. 1990 c. J.1.

## **Standard of Review**

[29] The standard of review applicable to this subject matter for judicial review is that of reasonableness (see: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653). For an issue of procedural fairness, the standard is that of correctness (see: *Mission Institution v. Khela*, 2014 SCC 24, [2014] 1 S.C.R. 502, at para. 79; *Law Society of Saskatchewan v. Abrametz*, 2022 SCC 29, 470 D.L.R. (4th) 328, at paras. 26-20).

## **Discussion**

[30] Ramsay raises the following principal issues on this application:

- A. Denial of Procedural Fairness
- B. Unreasonableness of the Decision

### **Was Ramsay Denied Procedural Fairness?**

[31] Ramsay argues that the procedural fairness he was owed was breached because he had not been fully apprised of the specific allegations against him. He also claims that the deliberations concerning whether he had breached the Code of Conduct as well as what sanctions should be ordered were held *in camera*, contrary to the legislation governing meetings of the WRDSB. He further submits that the participation of the Chair in the process was unfair and tainted the result.

[32] The undisputed evidence of the course of the investigation conducted by the Integrity Commissioner reveals that Ramsay was given all pertinent details of the complaint against him and was provided with a full opportunity to respond. As already noted, there was little or no dispute but that all of the events alleged had occurred and that the statements attributed to Ramsay had been uttered or otherwise communicated by him.

[33] The description of the investigation carried out by the Integrity Commissioner and the process leading up to the decision made by the WRDSB provide an ample basis to conclude that Ramsay was given a fair and full opportunity to refute or explain the allegations contained in the complaint against him.

[34] With respect to his concern with the use of *in camera* proceedings, Ramsay submits that a key factor in determining the scope of the content of the duty of fairness is the nature of the statutory scheme and the terms of the statute pursuant to which the body operates. In this case, s. 207 of the *Act* requires that meetings of the WRDSB be open to the public, subject only to specific statutory exceptions that permit the use of *in camera* proceedings. These are:

- (a) the security of the property of the board;
- (b) the disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian;
- (c) the acquisition or disposal of a school site;
- (d) decisions in respect of negotiations with employees of the board; or
- (e) litigation affecting the board.

[35] Ramsay argues that none of these exceptions applied to the complaint against him or were otherwise engaged. Hence, the principle of openness was not followed and his right to procedural fairness was breached.

[36] The WRDSB maintains that Ramsay was afforded adequate procedural fairness throughout. As articulated by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817, at para. 27, considerable weight must be given to the choice of procedures made by the agency itself and its institutional constraints when assessing the requirements of procedural fairness.

[37] The WRDSB submits that decisions of a purely administrative nature, where a board is not acting as a tribunal which must deliberate and decide upon the rights of others, minimal procedural fairness is required. Decisions related to the enforcement of the Code of Conduct with respect to members of a school board, such as this decision of the WRDSB dealing with the conduct of one of its trustees, are predominantly administrative in nature.

[38] The WRDSB argues that, assuming that procedural fairness was owed to Ramsay, the factors set out in *Baker* would suggest that such fairness is on the lower end of the spectrum in these circumstances. The impact of the decision on Ramsay is nominal, and the sanctions imposed on him were minimal. The decision was not quasi-judicial in nature so as to require a very high level of procedural fairness. As the WRDSB points out, the Code of Conduct is explicit in stating that no formal trial-type hearing is to be conducted in enforcing the Code of Conduct. Rather, this process was designed to be an administrative one carried out by an elected WRDSB of Trustees empowered by statute to govern its own internal affairs.

[39] The WRDSB further submits that the use of *in camera* proceedings for deliberations was permissible under the applicable legislation. Section 207(2) of 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. Since the delegate who was prevented from finishing her presentation commenced an application for judicial review as well as a civil action for damages against the WRDSB and its Chair, the facts involved with the complaint about the Ramsay were involved in litigation affecting the WRDSB. Further, the heart of the decision-making took place in the public sessions, where trustees publicly voted to find a breach of the Code of Conduct and to sanction Ramsay.

[40] The reasons for the decision in *Del Grande v Toronto Catholic District School Board*, 2023 ONSC 349 (Div. Ct.) illustrates the degree of procedural fairness a school board owes one of its trustees when enforcing its code of conduct in the context of alleged inappropriate trustee conduct. The Court stated (at paras 50-51):

As is evident from the process provided under s. 218.3, the process for determining whether a trustee has breached a code of conduct is not akin to a criminal process. The potential sanctions under the *Education Act*, including censure and the inability to participate in committees, are correspondingly weak...The process under s. 218.3 leads to a determination as to whether a trustee has breached the code of conduct and an appropriate sanction, and nothing more...

Under s. 58.5(1) of the *Education Act*, a school board is permitted to function as a corporation and “has all the powers and shall perform all the duties that are conferred or imposed on it under this or any other Act.” That provision reflects a legislative intent that school boards not be limited in conducting their affairs to those functions that are specified in the *Education Act*. Moreover, the *Act* does not dictate to the Board how it must conduct its affairs, rather, the Board is the primary determinant of its own processes.

[41] In my view, the June 6, 2022 meeting was permitted to be held *in camera* as the subject matter under consideration involved litigation affecting the WRDSB that stemmed from the delegation incident and its aftermath. This formed a significant part of the subject matter under consideration at the *in camera* meeting. It was “the triggering event [which gave] rise to the conduct which forms the primary basis for the Complaint” as found by the Integrity Commissioner to be the case.

[42] For this same reason, the WRDSB has filed a redacted Record of Proceeding with which Ramsay takes issue. The report of the Integrity Commissioner directly acknowledges that its contents arise from the delegation event which forms the subject matter of the related court application for judicial review and the civil action for damages against the WRDSB and the Chair. Similarly, the minutes of the *in camera* meetings were removed from the materials filed with the Court. There is no unfairness to Ramsay that results from this approach, nor any impediment to his raising of any argument on his own application for judicial review of the WRDSB decision in his case.

[43] Ramsay further submits 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.

[44] Ramsay argues 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. Ramsay argues that where a decision is made by multiple decision makers and one is disqualified on the basis of bias, the question becomes whether the entire panel is tainted. The Court must therefore evaluate the role of the decision-makers and whether the biased decision-maker had cast the deciding vote (see: *101115379 Saskatchewan Ltd. v Saskatchewan (Financial and Consumer Affairs Authority)*, 2019 SKCA 31, [2019] 8 W.W.R. 67).

[45] In this case, the Chair was the deciding vote since a majority of two-thirds is required to confirm any finding that the Ramsay breached the Code of Conduct. But for the casting of the Chair's vote, the finding could not have been confirmed and the decision would not have been made. Ramsay argues that the Chair's role as author of the reasons and the necessity of his vote to the decision mean that his reasonable apprehension of bias taints the whole decision.

[46] The WRDSB points out that the Integrity Commissioner invited all of the trustees to make written submissions and that is why the Chair did so. The WRDSB submits that there was nothing wrong with the Chair's providing of his submission to the Integrity Commissioner after having been invited to do so.

[47] The WRDSB argues that it cannot be said that the Chair's submissions constituted bias that tainted the entire group of trustees when making the decision. It is evident from the Integrity Commissioner's report that the Chair's submissions were not shared with the other WRDSB trustees. The decision-maker in this case was the panel of the WRDSB as a whole, made up of nine voting trustees. There is no evidence that five other trustees who comprised the majority were biased or tainted by the alleged apprehension of bias of the Chair, nor does the Chair's submission in response to the invitation from the Integrity Commissioner raise any reasonable apprehension that they were biased (see: *R. v. Roberts*, 2005 SCC 3, [2005] 1 S.C.R. 22).

[48] I agree with the approach taken by the WRDSB to this issue in its argument. Ramsay's concerns of bias must be evaluated against the particular structure of the board of trustees and its processes for the handling of complaints against any individual trustee. Indeed, it is only a trustee who is able to bring a formal complaint against another trustees. The Code of Conduct prohibits the trustee who filed the complaint from voting on the disciplinary resolution, but does not otherwise prohibit other trustees from being witnesses, providing such information as they may have to the Integrity Commissioner, and participating in the decision-making process. The very nature of many of the requirements of expected conduct of trustees as contained in the Code of Conduct makes it likely that other trustees may often be 'witnesses' to such conduct. This does not raise any spectre of bias in such a setting.

[49] Accordingly, given the nature of the complaint, the observation that the basic facts underlying it were not disputed, and the context of the decision itself, I conclude that there is no basis for a finding of bias here nor any denial of procedural fairness to Ramsay.

### **Was the Decision Unreasonable?**

[50] Ramsay submits that the reasons for the decision fail to meet the requisite standard of justification, transparency and intelligibility required by *Vavilov*. Because of that failure, Ramsay submits that the decision was unreasonable.

[51] This standard of reasonableness requires that the reasons for the decision must reveal an internally coherent and rational chain of analysis. Reasons that are transparent and intelligible draw a line of analysis that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived (see: *Vavilov*, para 102).



[52] Ramsay argues that the reasons for the decision do not stand up to scrutiny and do not make it possible to understand how the WRDSB arrived at its finding. Ramsay argues that the decision simply repeats statutory and Code of Conduct language but does not reveal any sort of chain of logic.

[53] Alternatively, Ramsay argues that the decision was unreasonable because the WRDSB failed to balance his *Charter* right to free expression against other relevant considerations, as required by the framework set out in *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395, insofar as the decision held Ramsay in breach of the Code of Conduct for comments made by him in meetings and online.

[54] The WRDSB argues that the reasons provided were sufficient. The Supreme Court has held that there is no duty to give formal reasons in a context where the decision was made by elected representatives pursuant to a democratic process. It submits that a school board's reasoning may be deduced from the debate, deliberations and the statements of policy (see: *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32, [2018] 2 S.C.R. 293; *Catalyst Paper Corp v North Cowichan (District)*, 2012 SCC 2, [2012] 1 S.C.R. 5). The *Act* does not require the provision of reasons in writing for a decision. The only statutory requirement it imposes is to provide written notice of the result and applicable sanctions. This was done.

[55] The context within which the decision was made was an administrative one, where the WRDSB was enforcing its Code of Conduct as part of the discretion granted to it by statute to manage its own affairs. The trustees had ample opportunity to review and consider the factual findings contained in the Integrity Commissioner's report, as well as the submissions made by Ramsay. They were well positioned to balance statutory and policy objectives in coming to a decision. The notice of the decision references the findings of the Integrity Commissioner's report which implicitly accepts the findings of fact made by the Integrity Commissioner.

[56] The WRDSB argues that the decision reflects an appropriate balancing between the statutory objectives under the *Education Act* and the *Charter* values at play. Given the context within which the decision was made, specific reference to the *Doré* framework was not required.

[57] Pursuant to the *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.

[58] In making its decision, the WRDSB properly considered its own governing Bylaws, its Code of Conduct and the statutory objectives of the *Act*, as well as Ramsay's *Charter* rights. In particular, the WRDSB was alive to Ramsay's right to free expression pursuant to the *Charter* which had been addressed at length by the Integrity Commissioner in his report as well as in Ramsay's own comprehensive submissions. In reaching its decision with respect to finding that Ramsay breached the Code of Conduct, and by imposing fairly minimal sanctions, the WRDSB effectively attempted to achieve a reasonable balance between Ramsay's *Charter* rights and the WRDSB's responsibilities of both the WRDSB and Ramsay under its Code of Conduct, its Bylaws and the requirements of the *Act*.

[59] I am therefore of the view that the decision is reasonable and the reasons for it are adequate. When viewed against the backdrop of the sequence of events giving rise to the complaint, the contents of the report of the Integrity Commissioner, and Ramsay's own acknowledgment of his conduct, the issue before the WRDSB was clear. Its finding that Ramsay breached its Code of Conduct is rational and wholly reasonable.

[60] As pointed out by the Integrity Commissioner in his report, the right to freedom of expression is neither absolute nor unqualified. Although the WRDSB decision was debated and was not unanimous, it is one which on the facts before it was available to the required majority of the WRDSB to make. I see no basis upon which interference with that decision by this Court would be justified.

### **Conclusion**

[61] For these reasons, the application for review of the decision of the WRDSB is dismissed.

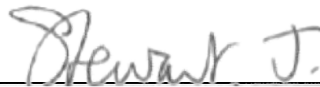
[62] In the circumstances, and given the result on the main aspect of the application, I see no compelling reason to disturb the decision of the WRDSB to maintain confidentiality of those portions of the report of the Integrity Commissioner or those parts of the record of its *in camera* proceedings that, in its discretion, have been redacted. Similarly, the arguments of mootness and available remedies if Ramsay had been successful raised on behalf of the WRDSB need not be addressed.

### **Costs**

[63] The WRDSB has been successful in responding to this application and seeks its costs as a result.

[64] Although the issues dealt with on this application may be of some public interest, I do not consider the magnitude of same to be great enough to affect the usual determination of costs in an application of this nature. The decision under review primarily affects an interest that is specific to Ramsay, being the negative finding that he breached the WRDSB's Code of Conduct. I consider that the public interest is better served by directing that Ramsay, as the unsuccessful party, pay to the WRDSB, the publicly-supported successful party, a contribution toward its costs of responding to this application.

[65] Accordingly, costs of the application, fixed in the amount of \$7,500 inclusive of all disbursements and applicable taxes, shall be paid to WRDSB by Ramsay, if demanded.



**E. Stewart J.**



**Lococo J.**

A handwritten signature in black ink, appearing to read "Williams J.", positioned above a horizontal line.

**Williams J.**

**Released:** December 7, 2023

**CITATION:** Ramsay v. Waterloo Region District School Board, 2023 ONSC 6506  
**DIVISIONAL COURT FILE NO.:** Hamilton, DC-22-141-JR1  
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**ONTARIO SUPERIOR COURT OF JUSTICE**

**DIVISIONAL COURT**

**E. Stewart, Lococo and Williams, JJ.**

**B E T W E E N :**

MICHAEL RAMSAY

Applicant

**- and -**

WATERLOO REGION DISTRICT  
SCHOOL BOARD

Respondent

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**REASONS FOR DECISION**

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**Released:** December 7, 2023