

Court File No.:

**COURT OF APPEAL FOR ONTARIO**

B E T W E E N:

**MICHAEL RAMSAY**

Applicant (Appellant/Moving Party)

and

**WATERLOO REGION DISTRICT SCHOOL BOARD**

Respondent (Respondent/Responding Party)

APPLICATION UNDER Rules 14.05(2), 37, and 68 of the *Rules of Civil Procedure*, RRO 1990, Reg194 and Sections 2(1) and 6(1) of the *Judicial Review Procedure Act*, RSO 1990, c J.1.

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**NOTICE OF MOTION FOR LEAVE TO APPEAL**

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The moving party, Michael Ramsay, will make a motion to the Court of Appeal to be heard in writing at the Courthouse, Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5 on a date to be fixed by the Registrar.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard in writing as an opposed motion under subrule 61.03.1(1).

**THIS MOTION IS FOR:**

- (a) leave to appeal the Order of Justices Stewart, Lococco, and Williams, made on December 7, 2023, to the Court of Appeal on the grounds listed in the proposed Notice of Appeal attached as **Schedule “A”**, or on such other grounds as the Court may order; and
- (b) such further and other relief that the Court considers appropriate.

## **THE GROUNDS FOR THE MOTION ARE:**

1. A Notice of Application for judicial review was issued on July 27, 2022.
2. The Notice of Application was brought in response to the Board's Decision confirming its finding that Ramsay had breached the Code of Conduct and its decision to sanction Ramsay by censuring him, barring him from attending the June 27, 2022 meeting, and barring him from attending Committee of the Whole meetings or receiving *in-camera* materials up to and including September 30, 2022.
3. The Moving Party, Michael Ramsay ("**Ramsay**"), is a Trustee on the Board currently serving his eighth term.
4. The Responding party, the Waterloo Region District School Board (the "**Board**"), is a public school board exercising authority under the *Education Act*, RSO 1990, c E.2.
5. The Board is governed by the *Education Act*, the Board Bylaws, and the Code.
6. On February 24, 2022, a Board Trustee submitted a complaint to the Board alleging that Ramsay breached the Code (the "**Complaint**").
7. In Accordance with s. 218.3 of the *Education Act*, the Code sets out a process for complaints that a trustee has breached the Code.
8. On March 1, 2022, the Board retained Barry H. Bresner of ADR Chambers (the "**Integrity Commissioner**") as Integrity Commissioner to investigate the Complaint and provide a report with factual findings to the Board pursuant to ss. 40, 54, and 57 of the Code.

9. On March 22, 2022, the Chair of the Board, Scott Piatkowski (the “**Chair**”), submitted 58 pages of written allegations against Ramsay to the Integrity Commissioner in support of the Complaint.

10. On May 31, 2022, the Integrity Commissioner’s report (the “**Report**”) was finalized. The Report was provided to the Board on June 1, 2022. The Report summarized the Complaint as consisting of three allegations that Ramsay:

(a) refused to accept and respect the decisions of the Chair and the Board;

(b) made accusations that other trustees engaged in unlawful conduct; and

(c) disclosed confidential information;

11. On June 6, 2022, the Board voted 6-3 to find that Ramsay had breached the Code. Subsequently, the Board voted along the same lines to sanction Ramsay by censuring him, barring him from attending the June 27, 2022 Board meeting and from attending all Committee of the Whole meetings or receiving *in-camera* materials until September 30, 2022.

12. On June 24, 2022, Ramsay provided his written request for reconsideration (the “**Request for Reconsideration**”) to the Board.

13. On June 27, 2022, the Board voted 6-3 to confirm its finding that Ramsay breached the Code. The Board also voted to confirm its sanction (collectively, the “**Decision**”).

14. On July 26, 2022, Ramsay filed a Notice of Application for judicial review of the Decision on the grounds that the Board breached its duty of procedural fairness by deliberating *in camera* and being tainted by the Chair’s actual and reasonably apprehended bias, and the Decision was

unreasonable because the reasons were inadequate and the Board failed to conduct a proportionality balancing exercise in relation to the *Charter* infringement raised by Ramsay.

15. A dispute arose between the parties as to whether materials contained in the Record of Proceedings ought to be redacted in the copy filed in the Court's public record (the "**Redacted Materials**"). Following a case conference held on November 1, 2022, the Divisional Court directed that the issue was to be argued at the hearing on the merits.

16. On June 6, 2023, Ramsay's application for judicial review was heard by a panel of three judges of the Divisional Court consisting of Justices Stewart, Lococco, and Williams.

17. On December 7, 2023, the Divisional Court rendered its judgment dismissing Ramsay's application and ruling that the Redacted Materials would remain redacted in the Court's public record.

18. The Divisional Court:

(a) erred in law in finding the Board's Decision to be reasonable despite its complete failure to engage in any balancing of its statutory objectives against Ramsay's *Charter* rights;

(b) erred in law by disregarding the failure of the Board to engage in any balancing and substituting its own analysis of whether the Decision proportionately balanced the infringement of Ramsay's *Charter* right to freedom of expression with the statutory objectives of the *Education Act* and the Code;

(c) erred in law in finding that the Integrity Commissioner's discussion of the *Charter* in his report and Ramsay's submissions relieved the Board of the obligation to

consider and balance the *Charter* protections engaged by its Decision to find that Ramsay violated the Code and to sanction him for doing so;

(d) erred in law in finding that the Decision was not tainted by actual bias or a reasonable apprehension of bias; and

(e) erred in law by failing to address and apply ss. 137(1) and (2) of the *Courts of Justice Act* and the governing legal test for departing from the presumption of court openness in finding that the Redacted Materials ought to remain redacted in the Court's public record.

19. Further, this matter engages, among other things the proper application of general principles of law engaged by judicial review of administrative decisions which limit *Charter* rights as well as the proper application of the reasonableness standard of review, which are issues of critical importance to the general public.

20. It is therefore desirable that leave to appeal be granted.

21. Should leave to appeal be granted, the questions the court will be asked to address on the Appeal are as indicated in the proposed Notice of Appeal at **Schedule "A"**.

22. Rules 37 and 61.03.1 of the *Rules of Civil Procedure*.

23. Section 6(1)(a) of the *Courts of Justice Act*.

24. Such further and other grounds as the counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

(a) the Order and Decision of the Divisional Court, made on December 7, 2023;

(b) the Record of Proceedings;

(c) the Moving Party's Application Record on the Application; and

such further and other evidence as counsel may advise and this Court may permit.

December 21, 2023

**CHARTER ADVOCATES CANADA**  
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**Hatim Kheir (LSO # 79576J)**

T: [REDACTED]  
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**Counsel for the Applicant/Appellant**

TO **BORDEN LADNER GERVAIS LLP**

[REDACTED]

[REDACTED]

[REDACTED]

**Counsel for the Respondent**

Schedule “A”

Court File No.:

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**DRAFT NOTICE OF APPEAL**

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**THE APPELLANT MICHAEL RAMSAY (“RAMSAY”) APPEALS** to the Court of Appeal from the judgment of Justice Stewart, Justice Lococco, and Justice Williams of the Divisional Court dated December 7, 2023 made at Hamilton, Ontario.

**THE APPELLANT ASKS** that the judgment be set aside and a judgment be granted as follows:

25. a declaration under s. 24(1) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11 (the “*Charter*”) that the decision of the Waterloo Region District School Board (the “**Board**”) dated June 27, 2022 confirming its finding that Ramsay breached Board Policy G201 – Trustee Code of Conduct (the “**Code of Conduct**” or the “**Code**”) and its decision to censure him, bar him from attending the June 27, 2022 meeting, and bar him from attending Committee of the Whole meetings or receiving *in-camera* materials up to and including September 30, 2022 (collectively,

the “**Decision**”) violated Ramsay’s right to freedom of expression guaranteed by s. 2(b) of the *Charter*;

26. an order in the nature of *certiorari* quashing the Decision;
27. a declaration that the Decision breached the Board’s duty of procedural fairness;
28. an order overturning the costs award of the Divisional Court if the above requested relief is granted;
29. that no costs be awarded against the Appellant who is a public interest litigant; and
30. such further and other relief as counsel may advise and this Court may permit.

**THE GROUNDS OF APPEAL** are as follows:

31. A Notice of Application for judicial review was issued on July 27, 2022.
32. The Notice of Application was brought in response to the Board’s Decision confirming its finding that Ramsay had breached the Code of Conduct and its decision to sanction Ramsay by censuring him, barring him from attending the June 27, 2022 meeting, and barring him from attending Committee of the Whole meetings or receiving *in-camera* materials up to and including September 30, 2022.
33. Ramsay is a Trustee on the Board currently serving his eighth term.
34. The Board is a public school board exercising authority under the *Education Act*, RSO 1990, c E.2.
35. The Board is governed by the *Education Act*, the Board Bylaws, and the Code.



36. On February 24, 2022, a Board Trustee submitted a complaint to the Board alleging that Ramsay breached the Code (the “**Complaint**”).

37. In Accordance with s. 218.3 of the *Education Act*, the Code sets out a process for complaints that a trustee has breached the Code.

38. On March 1, 2022, the Board retained Barry H. Bresner of ADR Chambers (the “**Integrity Commissioner**”) as Integrity Commissioner to investigate the Complaint and provide a report with factual findings to the Board pursuant to ss. 40, 54, and 57 of the Code.

39. On March 22, 2022, the Chair of the Board, Scott Piatkowski (the “**Chair**”), submitted 58 pages of written allegations against Ramsay to the Integrity Commissioner in support of the Complaint.

40. On May 31, 2022, the Integrity Commissioner’s report (the “**Report**”) was finalized. The Report was provided to the Board on June 1, 2022. The Report summarized the Complaint as consisting of three allegations that Ramsay:

(a) refused to accept and respect the decisions of the Chair and the Board;

(b) made accusations that other trustees engaged in unlawful conduct; and

(c) disclosed confidential information;

41. On June 6, 2022, the voted 6-3 to find that Ramsay had breached the Code. Subsequently, the Board voted along the same lines to sanction Ramsay by censuring him, barring him from attending the June 27, 2022 Board meeting and from attending all Committee of the Whole meetings or receiving *in-camera* materials until September 30, 2022.

42. On June 24, 2022, Ramsay provided his written request for reconsideration (the “**Request for Reconsideration**”) to the Board.

43. On June 27, 2022, the Board voted 6-3 to confirm its finding that Ramsay breached the Code. The Board also voted to confirm its sanction (collectively, the “**Decision**”).

44. On July 26, 2022, Ramsay filed a Notice of Application for judicial review of the Decision on the grounds that the Board breached its duty of procedural fairness by deliberating *in camera* and being tainted by the Chair’s actual and reasonably apprehended bias, and the Decision was unreasonable because the reasons were inadequate and the Board failed to conduct a proportionality balancing exercise in relation to the *Charter* infringement raised by Ramsay.

45. A dispute arose between the parties as to whether materials contained in the Record of Proceedings ought to be redacted in the copy filed in the Court’s public record (the “**Redacted Materials**”). Following a case conference held on November 1, 2022, the Divisional Court directed that the issue was to be argued at the hearing on the merits.

46. On June 6, 2023, Ramsay’s application for judicial review was heard by a panel of three judges of the Divisional Court consisting of Justices Stewart, Lococco, and Williams.

47. On December 7, 2023, the Divisional Court rendered its judgment dismissing Ramsay’s application and ruling that the Redacted Materials would remain redacted in the Court’s public record.

48. The Divisional Court:

- (a) erred in law in finding the Board's Decision to be reasonable despite its complete failure to engage in any balancing of its statutory objectives against Ramsay's *Charter* rights;
- (b) erred in law by disregarding the failure of the Board to engage in any balancing and substituting its own analysis of whether the Decision proportionately balanced the infringement of Ramsay's *Charter* right to freedom of expression with the statutory objectives of the *Education Act* and the Code;
- (c) erred in law in finding that the Integrity Commissioner's discussion of the *Charter* in his report and Ramsay's submissions relieved the Board of the obligation to consider and balance the *Charter* protections engaged by its Decision to find that Ramsay violated the Code and to sanction him for doing so;
- (d) erred in law in finding that the Decision was not tainted by actual bias or a reasonable apprehension of bias; and
- (e) erred in law by failing to address and apply ss. 137(1) and (2) of the *Courts of Justice Act* and the governing legal test for departing from the presumption of court openness in finding that the Redacted Materials ought to remain redacted in the Court's public record.

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

49. This Court has jurisdiction to hear this appeal pursuant to section 6(1)(a) of the *Courts of Justice Act*, as the Judgment was rendered by the Divisional Court. Therefore, leave to appeal to

this Court was sought by way of a motion in writing to a panel of this Court pursuant to Rule 61.03.1 of the Rules of Civil Procedure, and leave was granted by a panel of this Court on DATE.

December 21, 2023

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**Hatim Kheir (LSO # 79576J)**

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**Counsel for the Applicant/Appellant**

**TO: BORDEN LADNER GERVAIS LLP**

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**Counsel for the Respondent**