

**IN THE COURT OF KING'S BENCH
OF NEW BRUNSWICK**

TRIAL DIVISION

**JUDICIAL DISTRICT OF
FREDERICTON**

IN THE MATTER of an application for
judicial review and declaratory relief
pursuant to Rule 69 and Rule 38 of the New
Brunswick *Rules of Court*

B E T W E E N :

**THE CANADIAN CIVIL LIBERTIES
ASSOCIATION**

Applicant (Respondent on motion)

-and-

**THE PROVINCE OF NEW
BRUNSWICK, as represented by the
MINISTER OF EDUCATION AND
EARLY CHILDHOOD
DEVELOPMENT**

Respondent (Respondent on motion)

-and-

**GENDER DYSPHORIA ALLIANCE and
OUR DUTY CANADA**

Proposed Intervenors (Moving Parties)

FACTUM

**COUR DU BANC DU ROI DU
NOUVEAU-BRUNSWICK**

DIVISION DE PREMIÈRE INSTANCE

**CIRCONSCRIPTION JUDICIAIRE DE
FREDERICTON**

DANS L’AFFAIRE d’une requête en
revision judiciaire et de jugement
déclaratoire en vertu de la règle 69 et la
règle 38 des *Règles de procédure* du
Nouveau-Brunswick

B E T W E E N :

**THE CANADIAN CIVIL LIBERTIES
ASSOCIATION**

Requérant (intimé à la requête)

-et-

**LA PROVINCE DU NOUVEAU
BRUNSWICK, représentée par le
MINISTRE DE L’ÉDUCATION ET DU
DÉVELOPPEMENT DE LA PETITE
ENFANCE**

Intimée (intimé à la requête)

-et-

**GENDER DYSPHORIA ALLIANCE and
OUR DUTY CANADA**

Intervenants eventuelles (parties requérantes)

FACTUM

I. OVERVIEW

1. The Gender Dysphoria alliance (“**GDA**”) and Our Duty Canada (“**ODC**”) (collectively, the “**Proposed Intervenors**”) jointly move for leave to intervene in this application as a party. In the alternative, the Proposed Intervenors request leave to assist the Court by way of argument as friends of the court.

2. This Application brought by the Canadian Civil Liberties Association (the “**Applicant**”) challenges the constitutional validity of amendments made to Policy 713 of the New Brunswick Department of Education and Early Childhood Development. The amendments require parental consent before school personnel are permitted to formally use students’ preferred names (and pronouns) other than their legal name if the students are under 16 years of age (the “**Notification Requirement**”).

3. GDA represents individuals with gender dysphoria, including individuals who have detransitioned. ODC represents parents of children with gender dysphoria. Both groups support the importance of parental notification to support the best interests and rights of children and their parents. Both groups would be negatively affected if the Notification Requirement were struck down.

II. FACTUAL BACKGROUND

4. GDA and ODC jointly move to intervene in this Application. Both groups have a direct interest in the outcome of this Application.

5. GDA represents people who struggle with gender dysphoria and advocates for evidence-based care. Its leadership is comprised of transsexual individuals. GDA’s collective experience is that many people with gender dysphoria do not find relief from medical intervention and can even be harmed by it. GDA supports the involvement of parents where interventions, including

social transitions, are being considered. GDA has recently intervened in Saskatchewan in *UR Pride Centre for Sexuality and Gender Diversity v. Saskatchewan*.¹

6. ODC is primarily a support network for parents with children with gender dysphoria and transgender ideation. Many of ODC's members have witnessed negative physical and emotional outcomes in their children who have undergone social transitions without being notified. ODC supports the importance of parental notification to uphold the best interests and rights of children with gender dysphoria or transgender ideation and their parents. In addition to the effect on ODC's members within New Brunswick, ODC would be adversely affected if Policy 713 were struck down in this case because parents who would otherwise seek out ODC's resources, support, and assistance, may be left uninformed that their children are undergoing a formal transition in school.

III. ISSUES AND LAW

7. The issue is whether GDA and ODC ought to be jointly granted leave to intervene as parties in this Application. In the alternative, GDA and ODC seek leave to provide joint submissions as friends of the court.

8. The *Rules of Court*² provide that:

(1) Where a person who is not a party claims

(a) an interest in the subject matter of a proceeding,

(b) that he may be adversely affected by a judgment in a proceeding, or

(c) that there exists between him and one or more of the parties a question of law or fact in common with a question in issue in a proceeding,

he may apply to the court by notice of motion for leave to intervene as an added party.

¹ *UR Pride Centre for Sexuality and Gender Diversity v Saskatchewan (Education)*, [2023 SKKB 204](#).

² *Rules of Court*, NB Reg 82-73.

(2) On a motion under paragraph (1), the court shall consider whether or not the intervention will unduly delay or prejudice the determination of the rights of the parties to the proceeding and the court may add the person as a party to the proceeding and may make such order as to pleadings, production and discovery and impose such conditions as to costs or otherwise as may be just.³

9. Subsection 1 requires that potential intervenors satisfy one of three conditions precedent before they can be added as parties.⁴ Conditions (a) and (b) are both met by the Proposed Intervenors.

10. First, both GDA and ODC have an interest in the subject matter of the proceeding. The interest need not be direct.⁵ At issue in this application is the constitutional validity of Policy 713 which requires that schools notify parents if their children under 16 years of age seek to use different pronouns or names at school (the “**Notification Requirement**”). GDA represents adults and children struggling with gender dysphoria and advocates for an evidence-based model of treatment. The formal change of names and pronouns constitutes an intervention which is part of undergoing a social transition. Many people GDA represents have been harmed by hasty interventions. GDA takes the position that the interests of children with gender dysphoria are best served when their parents are informed and involved in decisions regarding interventions.

11. ODC also has an interest in the subject matter of this Application. ODC represents parents of children with gender dysphoria and transgender ideation. ODC’s members have been have been directly and negatively affected by policies, including the previous version of Policy 713, which did not require parents to be notified before schools formally changed their children’s

³ *Ibid* at rule 15.02.

⁴ *Bransen Construction Ltd. v. C.J.A., Local 1386*, [2002 NBCA 27](#), at paragraph 14.

⁵ *Allsco Building Products Ltd. v. United Food and Commercial Workers International Union, Local 1288P*, [1998 CanLII 28507 \(NB CA\)](#) at para. 6.

names and pronouns. ODC has an organizational interest in defending the Notification Requirement so that its members and prospective members can be informed and supported to guide and care for their children prior to undergoing interventions.

12. Second, both GDA and ODC may be negatively impacted by a judgment in this Application. If the Notification Requirement is struck down, as requested by the Applicant, ODC and GDA's constituents would be harmed. GDA advocates on behalf of gender dysphoric individuals, including children. The institutional experience of GDA is that children struggling with gender dysphoria need their parents' guidance in making decisions about which interventions to undergo, including whether to socially transition. Those children face the potential for harm if schools are no longer required to inform and involve the parents.

13. ODC's members would also be harmed by such a judgment. The parents represented by ODC already face difficulties in supporting their children. Without the Notification Requirement, the relationship between those parents and their children is at risk of greater alienation. ODC's members will also be impeded from exercising their parental responsibility and right to guide their children if they are kept uninformed of formal changes schools make to their children's name and pronouns. ODC, as an organization, would also be impacted. ODC exists to support parents of children with gender dysphoria or transgender ideation. If parents in those circumstances are not informed, they will not be alerted to the need to seek out resources, such as those offered by ODC.

Different and Useful Submissions

14. The Proposed Intervenors would provide useful submissions to the Court. Motions to intervene may be made more persuasive if the proposed intervenors "offer assistance in resolving

the issues in the proceeding.”⁶ Both GDA and ODC bring a wealth of experience and knowledge related to gender dysphoria to assist the Court. GDA’s experience is informed by its members own perspective of having gender dysphoria and the impact of different interventions. ODC’s experience is informed by the perspective of parents, including those who were not informed when their children began a social transition at school. These perspectives are essential to providing the Court with a complete picture of the importance of parental notification.

15. Further, the Proposed Intervenors’ submissions would be different. GDA and ODC take the following positions:

- a. Canadian law recognizes parents as the primary decision makers of their children for all significant decisions, including being charged with the responsibility for the education and moral upbringing of their children.
- b. Parents’ rights to exercise decision making authority regarding their children involves being informed and involved in important decisions or any significant developments in their children’s social behaviour at school, absent demonstrable risk of harm from the parents on a case-by-case basis.
- c. School personnel lack both the jurisdiction and expertise to change a child’s name and pronouns, which is a significant intervention in a child’s development that should not be done without the involvement of parents and, if necessary, clinicians.
- d. The best interests of children, including their legal and constitutional rights, are protected by the informed involvement of their own parents.

⁶ *Allsco Building Products Ltd. v. United Food and Commercial Workers International Union, Local 1288P*, [1998 CanLII 28507 \(NB CA\)](#) at par. 6.

16. Unlike the Applicant or the intervenor group which includes Egale, GDA and ODC support the Notification Requirement as upholding the rights of parents and children with gender dysphoria. Unlike the Respondent, the Proposed Intervenors are not representatives of the public interest as a whole, but rather the specific perspectives of individuals with gender dysphoria and their parents.

IV. SUBMISSIONS CONCERNING COSTS

17. The Proposed Intervenors requests that no costs be awarded for or against them.

V. ORDER REQUESTED

18. The Proposed Intervenors respectfully request that this Honourable Court:

- i. Grant its motion for leave to intervene in this Application as a party pursuant to rule 15.02 of the *Rules of Court*, NB Reg 82-73;
- ii. In the alternative, grant the Proposed Intervenors leave to intervene as friends of the court and provide assistance by way of argument;
- iii. Grant an order that the Proposed Intervenors not seek costs and not be liable for costs to any other party; and
- iv. Grant such further or other Order that the Court may deem appropriate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of November, 2023.



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