



Form 33  
(Rule 8-1(10))

File No. CHI-S-S-40035  
Chilliwack Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Between

LYNDA DI ARMANI

Petitioner

and

THE BOARD OF SCHOOL TRUSTEES OF  
SCHOOL DISTRICT NO. 33 (CHILLIWACK)

Respondent

**APPLICATION RESPONSE**

**Application response of:** the Petitioner, Lynda di Armani (the "Application Respondent")

THIS IS A RESPONSE TO the Notice of Application of the Respondent, the Board of School Trustees of School District No. 33 (Chilliwack), filed February 21, 2025.

The Application Respondent estimates that the application will take ½ hour.

**Part 1: ORDERS CONSENT TO**

The Application Respondent consents to the granting of the orders set out in the following paragraphs of Part 1 of the Notice of Application on the following terms:

None

**Part 2: ORDERS OPPOSED**

The application respondents oppose the granting of the orders set out in paragraph 1 of Part 1 of the notice of application.

**Part 3: ORDERS ON WHICH NO POSITION IS TAKEN**

The application respondents take no position on the granting of the orders set out in none of the paragraph 1 of Part 1 of the Notice of Application.

## Part 4: FACTUAL BASIS

### The Prohibition of Recording at Public Board Meetings

1. The Application Respondent, Ms. di Armani, has consistently challenged not only the Decision at the June 13, 2023 Board Meeting, but also the prohibition of recording at public Board meetings.
2. Both her Petition and her Amended Petition plead at para 38:

The apparent policy of the Board to prohibit members of the public from recording its public meetings limits the freedom of expression, which protects the right to hear, and the freedom other media of communication protected by section 2(b) of the *Charter*.
3. Both the Petition and the Amended Petition seek an order “prohibiting the Board from preventing Ms. di Armani and other members of the public from recording future Board meetings that are open to the public”.
4. Further, the Amended Petition seeks “a Declaration pursuant to section 52(1) of the *Constitution Act, 1982* that the Board’s prohibition of recording at Board meetings that are open to the public violates section 2(b) and is of no force and effect.”
5. In its Amended Response to Petition, filed October 4, 2024, the Board stated at paragraph 42: “There is no board policy which prohibits members of the public from recording its meetings.”
6. The 2<sup>nd</sup> Affidavit of Lynda di Armani, at issue states, in its section on “The Recording Prohibition” that it is filed “to ensure this Honourable Court has an accurate understanding that recording continues to be prohibited at public meetings of [the Board]” (paragraph 4).”

### Mootness

7. In its Response to Petition, the Board asserts that the “issue of the Petitioner’s freedom of expression in relation to the Decision is Moot” (paragraphs 26-39).
8. The Board’s Amended Response to Petition states:

~~2834~~. On November 14, 2023, the Board extended an invitation to the Petitioner to provide any further comments she had planned to make at the June 13, 2023 Board meeting at the public board meeting in December 2023, which is also subject to Board Policy 170 and at which the Form was not used.

~~2935~~. Therefore, the Petitioner has already been granted the remedy that would flow from a finding that the Decision failed the *Doré/Loyola* test, and the matter is moot.

...

~~3437~~. The Petitioner has been offered the opportunity to provide any further comments to the Board that she was unable to provide due to the Decision. She has already been offered what the Court could order if she successfully argued that the Decision was unreasonable under the Doré/Loyola test. No live controversy exists between the parties and the decision of the Court will have no practical effect on the rights of the Petitioner.

...

~~3339~~. It is not in the interest of judicial economy for the Court to exercise its discretion on this judicial review. The Court has a limited, supervisory role on judicial review. Thus, the Court should not depart from the ordinary rule to decline to hear a moot petition.

9. The 2<sup>nd</sup> Affidavit of Lynda di Armani, at issue, includes a section entitled “Speaking at the December board meeting” in which Ms. di Armani explains why she did not accept the Board’s offer to speak at the December 2023 meeting:

13. I did not accept this offer because the motion that I was speaking to at the June 13, 2023 meeting had passed after I had been censored at that meeting, and that motion was not being reconsidered at the December 2023 meeting and I am informed by my lawyer, and do believe, that the Board was not willing reopen that motion for consideration.

14. Furthermore, the Chair's email failed to acknowledge my *Charter* freedom of expression, let alone recognize that the censorship of my June 13, 2023 remarks violated my *Charter* freedoms.

10. The 2<sup>nd</sup> Affidavit of Lynda di Armani, at issue, also includes a section entitled “Continued Censorship at Board Meetings” in which Ms. di Armani explains, at paragraph 16, that “the Board has continued to engage in a pattern of censorship” against her and other members of the public. Ms. di Armani concludes this section by stating:

26. From my observations, I believe there has been a pattern of censorship at Board meetings prior to and following the June 13, 2023 meeting. This continues to motivate me in bringing this case forward for the benefit of the public including better governance at the Board.

## **Part 5: LEGAL BASIS**

11. The Board’s Application seeks to strike paragraphs in the 2<sup>nd</sup> Affidavit of Lynda di Armani filed to address two issues in this matter:

- a. The Board’s prohibition of recording at public board meetings (the “Recording Prohibition”); and
- b. The Board’s attempt to have this matter dismissed as moot.

## Evidence Concerning the Recording Prohibition

12. The Board's application fails to recognize that Ms. di Armani, in addition to challenging the Board's June 13, 2023 Decision, is challenging the "Board's prohibition of recording at Board meetings that are open to the public" on the basis that it violates section 2(b) of the *Canadian Charter of Rights and Freedoms*.

Amended Petition at para 1(d);  
see also Amended Petition at paras 1(e)-(f).

13. "It is permissible to seek both declaratory relief under [s. 24](#) of the [Charter](#) and a remedy under the [JRPA](#) in the same petition."

*L'Association des parents de l'école Rose-des-Vents v. Conseil scolaire francophone de la Colombie-Britannique*, [2011 BCSC 89](#), at para 28;  
see also *The Redeemed Christian Church of God v. New Westminster (City)*, [2022 BCCA 224](#) at para 43.

14. Constitutional cases such as the *Charter* challenge to the Board's Recording Prohibition "should not and must not be made in a factual vacuum."

*Mackay v. Manitoba*,  
[1989] 2 SCR 357, [1989 CanLII 26](#) (SCC), at 361-62.

15. Ms. di Armani plead in her Petition filed October 6, 2023, alleged that the "apparent policy of the Board to prohibit members of the public from recording its public meetings limits the freedom of expression, which protects the right to hear, and the freedom other media of communication protected by section 2(b) of the *Charter*."

16. Ms. di Armani's 2<sup>nd</sup> Affidavit attests to the how the Board has implemented its prohibition on recording at its public meetings, including with signs on the door and since May 13, 2024, Administrative Procedure 481 that specifically prohibits recording at "Meetings of the Board of Education."

Amended Petition at paras 8-10.

17. In its Application however, the Board asserts that "[w]hile the petitioner could challenge the Board's administrative procedure, that challenge does not form part of this judicial review." This is simply untrue. Administrative Procedure 481 is simply one of the manifestations of the Board's Recording Prohibition, which Ms. di Armani has been challenging since 2023 and seeking constitutional remedies against, including an order prohibiting the Board from

preventing Ms. di Armani and other members of the public from recording future Board meetings open to the public.

18. Paragraphs 4-6, 8-11, Exhibits A-C of the 2<sup>nd</sup> di Armani Affidavit are thus relevant and essential to the determination of Ms. di Armani's challenge to the Board's Recording Prohibition.

### **Evidence concerning Mootness**

19. The Board asserts that Ms. di Armani's judicial review should be dismissed on the basis that the Orders she seeks are moot.

Amended Response to Petition, para 14.

20. In its Application, the Board seeks to strike out paragraphs of the 2<sup>nd</sup> di Armani Affidavit that respond to the Board's claims that the matter is moot and should not be heard, while simultaneously acknowledging that to the extent those paragraphs relate to the mootness issue, "those paragraph may be admissible." The Board however does not identify which paragraphs that it seeks to strike "may be admissible."

Application at para 16.

21. Ms. di Armani however has already made clear which paragraphs of her 2<sup>nd</sup> Affidavit relate to the mootness: She specifically cites paragraphs 12-15, 16 and 26 in her Written Argument, in the section addressing whether "*the Charter section 2(b) issue in relation to the Termination Decision moot?*"

Written Argument of the Petitioner, at paras 38 and 41.

22. In specific regard to the Board's allegation that paragraph 13 of the 2<sup>nd</sup> di Armani Affidavit includes inadmissible hearsay, that paragraph responded to the Board's Amended Response to Petition by describing Ms. di Armani's reasoning for not accepting the offer to attempt to give her June 13, 2023 presentation at the December 2023 Board meeting. The reference to information she received from her lawyer is relevant, regardless of whether it is true, to show Ms. di Armani's reasoning. The fact of what was on the Agenda for the December 5, 2023 Board Meeting can be seen in Exhibit D of the 2<sup>nd</sup> di Armani Affidavit.

23. Even if a statement in paragraph 13 could be considered hearsay, Rule 22-2(13) permits it, because the source of the information is given, and that portion of the affidavit is not made

in respect of a final order on the merits, but rather in respect of addressing the Board's preliminary objection that the matter is moot.

24. Paragraph 14 of the 2<sup>nd</sup> di Armani Affidavit is not argument. It is a statement of fact, namely that a particular email did not acknowledge Ms. di Armani's *Charter* freedom or expression or recognize that the censorship of her June 13, 2023 remarks violated her *Charter* freedoms. In context, paragraph 14 against relates preliminary objections of the Board to the hearing of this matter, and is there to explain why to Ms. di Armani, the offer that she present at the December 2023 Board meeting did not resolve matter as issue between her and the Board, showing that the matter is not moot, but needs to be determined on its merits.

25. It is abundantly clear that the paragraphs 13, 14 and 16-26 of the 2<sup>nd</sup> di Armani Affidavit are relevant to the issue of mootness and should not be struck.

#### **Part 6: MATERIAL TO BE RELIED ON**

1. Petition filed October 6, 2023;
2. Amended Petition filed July 11, 2024;
3. Amended Response to Petition filed October 4, 2024;
4. Affidavit #1 of Rohan Arul-Pragasam filed November 17, 2023
5. Affidavit #2 of Rohan Arul-Pragasam filed October 7, 2024;
6. Affidavit #2 of Lynda di Armani, filed December 6, 2024;
7. Written Argument of the Petition, dated December 9, 2024;
8. Materials filed to date in this proceeding; and
9. Such further and other material as counsel may advise and this Court permits.

Date: February 28, 2025



Signature of Marty Moore  
Counsel for the Application Respondent

The Application Respondent's ADDRESS FOR SERVICE is:

[REDACTED ADDRESS]