



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

Notice of Application

NAME(S) OF APPLICANT(S): The Board of Education of School District No. 33 (Chilliwack)
(the "Applicant")

TO: The Petitioner, Lynda Di Armani

TAKE NOTICE that an application will be made by the Applicant to the presiding judge or associate judge at the courthouse at 46085 Yale Road, Chilliwack, British Columbia, March 10, 2025 at 10:00 am, at the hearing of the Petition, for the orders set out in Part 1 below.

The Applicant estimates that the application will take 20 minutes.

☐ This matter is within the jurisdiction of an associate judge.

☒ This matter is not within the jurisdiction of an associate judge.

Part 1: ORDERS SOUGHT

1. The following paragraphs and Exhibits of Affidavit #2 of Lynda Di Armani be struck pursuant to Rule 9-5(1)(b) and Rule 22-2(12):

- a. Paragraphs 4-6, 8-11, 13-14 and 16-26 and
 - b. Exhibits A-C.
2. Costs of this application.

Part 2: FACTUAL BASIS

1. The Applicant is the Board of School Trustees of School District No. 33 (Chilliwack). The petitioner, Lynda Di Armani, is a member of the public.
2. Ms. Armani filed her petition for judicial review on October 6, 2023, amending it on July 11, 2024.
3. Ms. Armani's judicial review relates to a meeting on June 13, 2023 and the Decision at that meeting (as defined in the pleadings).
4. Ms. Armani seeks to include an affidavit, sworn on December 6, 2024, as part of the petition record.
5. The Applicant is applying to strike paragraphs in that affidavit pursuant to Rule 9-5(1)(b) and Rule 22-2(12).

Part 3: LEGAL BASIS

Overview of the Relevant Rules

6. Rule 9-5(1)(b) of the Rules empowers a court to strike out the whole or any part of a pleading, petition or other document on the ground that it is unnecessary, scandalous, frivolous or vexatious.
7. Affidavit evidence that is not probative of a fact put in issue by the parties is an "unnecessary" document under Rule 9-5(1)(b).

6180 Fraser Holdings Inc. v. Ali, 2012 BCSC 247 at para. 41.

8. Further, Rule 22-2(12) provides that, subject to subrule (13), an affidavit must state only what a person swearing or affirming the affidavit would be permitted to state in evidence at a trial. This applies in the case of a petition where a final order is being sought.

British Columbia Investment Management Corporation v. Canada (Attorney General), 2016 BCSC 2554 at paras. 6–7.

9. Similarly, affidavits must not include opinions, argument or legal conclusions.

British Columbia Investment Management Corporation, supra, at para. 7.

10. As such, an affidavit containing improper or inadmissible content may be struck under either Rule 9-5(1)(b) or Rule 22-2(12).

Lang v. Lapp, 2015 BCSC 1838 at para. 34.

11. Practically speaking, where an application to strike is heard at the same time as the petition on its merits, the struck portions of the impugned affidavit(s) are given no weight by the Court.

McMahon v. Harper, 2017 BCSC 2328 at para. 108.

12. The above summary of the law is well established.

Paynter v. School District No. 61, 2022 BCSC 1671 at paras. 61-65.

Overview of the Application of the Relevant Rules

13. This proceeding is a judicial review brought in relation to a meeting on June 13, 2023.

14. The bulk of Ms. Armani's reply affidavit relate to events that occurred after June 13, 2023 and neither properly form part of the record, nor do they provide context which would be admissible based on the limited exceptions to the admissibility of extrinsic evidence.

Kinexus Bioinformatics Corporation v. Asad, 2010 BCSC 33, at para. 17.

15. As a result, the impugned paragraphs should be struck, as they are unnecessary, improper, or otherwise inadmissible.
16. To the extent that certain paragraphs in Ms. Armani's affidavit relate to the mootness argument raised by the Applicant, those paragraphs may be admissible. However, that is not the case for the bulk of her reply affidavit.

Application of the Relevant Rules to the Impugned Paragraphs in Ms. Armani's Affidavit

17. Paragraphs 1-3 of Ms. Armani's affidavit need not be struck. They were admissible and the facts were true at the time they were sworn. However, the facts set out in her affidavit must be read in the context of the facts set out in Ms. Bedford's affidavit. Both the Chair and Vice-Chair changed as of December 10, 2024.
18. Paragraphs 4-6 are irrelevant to this judicial review and should be struck as unnecessary. While the petitioner could challenge the Board's administrative procedure, that challenge does not form part of this judicial review.
19. Paragraphs 8-11 are similarly irrelevant and should be struck as unnecessary, along with their exhibits.
20. Paragraph 13 includes inadmissible hearsay and should be struck on that basis.
21. Paragraph 14 is argument and should be struck on that basis.
22. Paragraphs 16-26 are irrelevant to this judicial review and should be struck as unnecessary.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #2 of Lynda Di Armani, affirmed December 6, 2024;
2. Affidavit #2 of Holly Bedford, affirmed February 21, 2025; and
3. Such further and other material as counsel may advise and this court permits.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33;
- (b) file the original of every affidavit and of every other document, that
 - (i) you intend to refer at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 21 February 2025



Signature of lawyer for the Applicant
David Penner

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____ of Part 1 of this notice of application

☐ with the following variations and additional terms:

Date: _____

Signature of ☐ Judge

☐ Associate Judge

Appendix

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ other