IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Di Armani v. School District No. 33 (Chilliwack),* 2025 BCSC 2155

Date: 20251031
Docket: S40035
Registry: Chilliwack

Between:

Lynda Di Armani

Petitioner

And

The Board of School Trustees of School District No. 33 (Chilliwack)

Respondent

Before: The Honourable Justice Ormiston

Reasons for Judgment

In Chambers

Counsel for the Petitioner:	M. Moore
Counsel for the Respondent:	D.S. Penner
Place and Date of Hearing:	Chilliwack, B.C. March 14, 2025
Place and Date of Judgment:	Chilliwack, B.C. October 31, 2025

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[1] Lynda Di Armani's petition against the Chilliwack School Board was heard together with the respondent's application to strike portions of the petitioner's second affidavit as unnecessary and therefore non-complaint with Rule 9-5(1)(b) of the *Supreme Court Civil Rules* [*Rules*].

[2] The petition arises from Ms. Di Armani's attendance, as an interested member of the public, at a Chilliwack School District Board of Trustees meeting on June 13, 2023 (the June meeting). The Chair and Vice Chair of the Board decided to silence the petitioner during the public participation segment of the meeting, when people are ordinarily permitted a brief period of time to ask questions or make comments. The agenda for the June meeting included an item named 'Board Support for National Pride Month in Canada.' The petitioner started to ask questions and comment on an alleged conflict of interest arising for a particular trustee in relation to recommendations to recognize National Pride Month by putting a message of support for 2SLGBTQIA+ staff, students and families on the District website. The petitioner also tried to make comments about the recommendation to fly a pride flag at the school district office.

[3] Before the petitioner spoke, the Chair had set out some general rules of order for the public participation segment of the meeting, including prohibitions on discriminatory comments, and on speakers referring to others by name. Two reasons were articulated during the meeting for interrupting and muting the petitioner. First, the Chair said the petitioner violated a point of order by naming a specific trustee when she raised her concern about a conflict of interest. Second, the Chair and Vice Chair referred to some of the petitioner's remarks as discriminatory. The petitioner was swiftly interrupted and her microphone was muted multiple times in the course of her attempted response. At times during the petitioner's address, the entire audio recording was inaudible to those observing the proceedings remotely.

[4] The petitioner also seeks relief in relation to the decision to prohibit members of the public from recording the June meeting themselves. In order to be admitted, the petitioner was required to complete a form to document her acknowledgment

that the meeting was being recorded and livestreamed online, and that no other video/audio recordings were permitted, with the exception of authorized media. The decision to have participants complete the form at the June meeting was made by Rohan Arul-Pragasam, the Superintendent of Schools for the Chilliwack District.

[5] The petitioner seeks the following relief:

1. A declaration that the Board's decision to interrupt, interfere with, mute and terminate the petitioner's remarks were *ultra vires* the Board's authority

2. A declaration pursuant to the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*] and s. 24(1) 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 [*Charter*], that the petitioner's rights to free thought, belief, opinion, and expression protected by s. 2(b) of the *Charter* were unjustifiably infringed by the Board's decision to interrupt, interfere with, mute and terminate the petitioner's remarks

3. An Order pursuant to the *JRPA* and s. 24(1) of the *Charter* prohibiting the respondent from interrupting, raising points of order, muting and silencing the petitioner or other members of the public seeking to participate in the public participation portions of their Board Meetings, solely on the basis of any members disagreement with the presenter's remarks

4. A declaration pursuant to s. 52(1) of the *Constitution Act* that the respondent's prohibition on recording Board meetings that are open to the public is of no force and effect since it is an impermissible violation of s. 2(b) of the *Charter*.

[6] Alternatively, the petitioner seeks an order prohibiting the respondent from preventing the petitioner or others from recording future Board meetings that are

open to the public; and a declaration that the respondent violated the petitioner's, and other interested members of the public's, right to free expression protected under s. 2(b) of the *Charter* by:

> (i) preventing the petitioner and other members of the public from recording audio or video of the Meeting; and
>
> (ii) muting the petitioner's microphone and muting the entire audio recording

The Application to Strike

[7] Turning first to the respondent's application to strike the petitioner's second affidavit, I find this application must be dismissed with the exception paragraph 14, which is clearly nothing more than argument. With respect to the rest of the affidavit, the respondent raises sound concerns about the extent to which it is relevant to the petition. However, in my view, the affidavit requires close attention to the purpose for which the evidence can be used and the weight it should be given, but it should not be struck on the basis of threshold admissibility.

[8] The applicant's objections to the affidavit are that it contains hearsay and irrelevant evidence. The hearsay relates to the petitioner's assertion that the Board will not agree to re-open the motion on which she tried to comment at the June meeting. In my view, this evidence can be properly admitted as non-hearsay to explain why the petitioner believes the invitation to express her comments at a subsequent meeting is an inadequate remedy. Given that the petitioner received this information from her counsel, I also find that it is an accurate reflection of what her counsel understood at the time. Nevertheless, given that the hearsay evidence stands in isolation without any explanation about the circumstances under which the respondent took this position, it does very little to advance the petitioner's submission that this is the Board's definitive position on re-opening the motion.

[9] The remaining evidence that the respondent submits is irrelevant relates to an ongoing prohibition on public recordings during Board meetings, and additional

examples of what the petitioner alleges to be censorial conduct by the respondent. While I agree with the respondent that much of this evidence goes beyond the scope of the petition, it is potentially relevant when assessing the reliability of the Superintendent's evidence about the recording prohibition. The evidence about how the Chair has conducted herself in relation to other public speakers is also capable of being relevant to the petitioner's argument that the remedies she seeks are not moot.

Issues on the Petition

[10] The petition before the Court raises three bases on which relief could be granted. First, it is submitted that the decision to terminate the petitioner's participation in the June meeting was *ultra vires*, or beyond the statutory power of the Board Chair. The parties have referred to this as the 'termination decision.' Second, the petitioner submits the termination decision and the decision to prohibit the public from making their own audio video recordings of the June meeting did not reasonably balance constitutionally protected rights to free belief, opinion, thought and expression. And finally, the petitioner advances a claim for relief that is not characterized as judicial review, but rather a constitutional challenge to the prohibition on recording public Board meetings. Specifically, the petitioner alleges that such a prohibition violates s. 2(b) of the *Charter* by limiting the right of public participants to share their own audio-video recordings of the meeting.

[11] Before embarking on any judicial review, the Court must identify the decision at issue. The parties are in agreement that the Chair's decision to terminate the petitioner's opportunity to speak during the June meeting is capable of being reviewed by this Court. Given the dynamic nature of the interaction between the parties at the June meeting, this Court is not being asked to review each individual time the petitioner was muted or interrupted. It is the ultimate 'termination decision' that will be subject to review.

[12] However, the scope of the claim regarding recording prohibitions is contentious. Ms. Di Armani's primary position is that any prohibition on audio-video

recordings at public Board meetings should be found to be unconstitutional, and therefore of no force or effect. I will address this argument separately. When it comes to the alternative orders the petitioner seeks pursuant to the *JRPA*, it is important to clearly identify the decisions being reviewed at the outset. The orders sought in paras. 1(e) and (f) in the amended petition refer only to the recording prohibition at the June 2023 Board meeting. There is nothing in the factual basis of the amended petition that suggests the court will be asked to review any other recording prohibition decision. The petitioner's submissions went well beyond this factual basis to include different restrictions on recording that post-date the June meeting. Not only were these subsequent prohibitions not engaged at the June meeting, they appear to be entirely different administrative decisions. While I have found that Ms. Di Armani is entitled to lead evidence of these subsequent restrictions for the reasons given above, the petitioner is not entitled to rely on different alleged prohibitions to materially change the nature of the case to be met by the respondents.

[13] A brief explanation regarding the differences between the June meeting prohibition and the subsequent restrictions on recording is necessary to understand why this review must be limited to the decision made at the June meeting. There is an uncontradicted evidentiary basis to find that the recording prohibition at the June meeting was a decision made by the Superintendent, who issued a form for all public participants to acknowledge that they were not permitted to make video/audio recordings of the meeting. It is this form that is identified in the amended petition as the decision for review.

[14] The subsequent alleged prohibitions are described in Ms. Di Armani's second affidavit, which was generated in reply to the respondent's evidence. In this affidavit Ms. Di Armani points to Administrative Procedure 481 (AP 481), which was adopted by the Board the year after the June meeting. AP 481 requires all audio-video recording and livestreaming on District property to be authorized in advance. Similarly, the petitioner describes a sign posted at the Board office in late 2023

announcing that anyone making audio-video recordings in the Board office requires the consent of the persons being recorded.

[15] Unlike the clear prohibition on recording issued at the June meeting, the subsequent policies identified by the petitioner do not automatically prohibit public recordings at Board meetings. While AP 481 lists events that may or may not be considered authorized for recordings, the language used does not create an absolute prohibition. For example, AP 481 does not say recordings at Board Meetings will be unauthorized, it says they 'may' be unauthorized. In my view, this leaves open the possibility that a member of the public will have good reason to make such recordings, in accordance with the competing interests of safety and privacy that the Board has to consider. Ms. Di Armani must make a request for authorization before asking this Court to review the administrative procedure in question. This process will either result in Ms. Di Armani being allowed to record a Board meeting, or it will provide her with reasons about why such recording is prohibited in the specific circumstances of her request.

[16] In summary, I find that the decision made by the Superintendent at the June meeting and the apparent policies restricting public recordings are different. There are two reasons for limiting review on this petition to the June meeting prohibition. First, this will maintain procedural fairness for the respondent who was not put on notice of the breadth of the review being requested. And second, it will allow the Court to conduct a review based on an adequate record. Given the evidence before me, even if the additional restrictions on public recordings were subject to judicial review, Ms. Di Armani's argument in relation to these policies would be seriously compromised by the fact that she does not appear to have pursued the available internal remedy of seeking authorization to make her own audio-video recording.

Ultra Vires

[17] If a subordinate decision maker strays beyond the scope of their legislated power, the ensuing decision will be *ultra vires*. Reasonableness remains the presumptive standard of review to be applied to a petition alleging *ultra vires*

decision making: See *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 68. A reasonableness review requires the Court to be deferential to the decision maker, however, a reasonable decision must be both rational and logical. In addition to the need for internally coherent reasoning, a reasonable decision must be justified in relation to the constellation of law and facts that are relevant to the decision. It follows that a decision will not be reasonable where there is a failure in the rationality that is internal to the reasoning process, or where the decision is untenable in light of the factual and legal constraints that bear upon it: *Vavilov* at para. 102–106.

[18] In this case, the petitioner submits that the respondent did not have the legislative authority to make the termination decision, and so the decision did not conform with the prevailing legislative constraints. The petitioner does not argue that the Board had no authority to regulate its meetings, but rather that in making the termination decision the Chair acted beyond the limited powers of her position. The petitioner maintains that the Chair's powers during the public participation section of a Board meeting are prescribed in *The Board of Education of School District No. 33 (Chilliwack) Bylaw 5*, ss. 5.1-5.5. Section 5 describes the purpose and extent of public participation in Board meetings as follows:

> 5.1. Communication with the public is extremely important. The public Board meeting is the formally designated means of transacting Board business. Two public participation periods are therefore provided solely as a means for ensuring that community members who are present in the audience have an opportunity to provide comments and/or ask questions about business or issues pertaining to the Board agenda.
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> 5.2. The public participation periods are open to comments and/or questions from the public concerning the agenda.
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> 5.2.1. Each public participation period will generally be allotted fifteen minutes.
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> 5.2.2. Speakers must identify themselves before speaking.
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> 5.2.3. Individuals will be limited to a total of two minutes per speaker.
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> 5.2.4. Persons addressing the Board are reminded that, when requests or questions are directed to the Board, actions or answers to many questions may be deferred pending Board consideration.

> 5.2.5. The Chair may indicate another means of response if question cannot be answered at the time. 5.3. Community members who have other comments or questions are encouraged to contact Trustees or the Superintendent or, if desired, to appear as a formal delegation on the Board agenda in accordance with section six of this Bylaw.
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> 5.4. Matters currently under negotiation or litigation, or related to personnel or student circumstances, are not permitted and will not be addressed in the public participation periods.
>
> 5.5. The Chair shall have the authority to terminate the remarks of any individual who does not adhere to this Bylaw.

[19] I agree with the petitioner that there is no basis in the evidence to find that the Chair was exercising powers under s. 5.2.1– s. 5.4 of *Bylaw 5* when she made the termination decision. For example, there is no suggestion that Ms. DiArmani had exceeded her time limit, failed to identify herself, or that she encroached on subject areas described in s. 5.4. However, these are not the only statutory powers granted to the Chair when it comes to conducting meetings, and they cannot be read in isolation.

[20] Section 5.5 gives the Chair the authority to terminate the remarks of any individual who does not adhere to 'this Bylaw.' In my view, 'this Bylaw' could reasonably be found to be all of *Bylaw 5*, and not only s. 5 of the *Bylaw*. Such an interpretation is supported by the language used in s. 5.3, which describes how community members can appear as a formal delegation in accordance with other sections of 'this Bylaw.' *Bylaw 5* governs procedures at Board meetings generally, and sections other than s. 5 could reasonably be interpreted as applying to the public participation section of such meetings. For example, s. 3 refers to general rules to be followed, including s. 3.8, which states that where the Bylaw is silent, Robert's *Rules of Order* applies; and s. 3.13 which allows a trustee to interrupt proceedings to raise a point of order. The petitioner has not established that it was unreasonable for the Chair to have decided that her more general powers to run an orderly meeting were inapplicable during the public participation section.

[21] While s. 5 of the *Bylaw* establishes some specific rules for public participants to follow, it does not purport to limit the power of the Chair to enforcing only these rules. The respondent has referred to other general powers and duties that could reasonably have been relied on by the Chair in making the termination decision. For example, District Policy 121 lists specific responsibilities of the Board Chair including to "Preside over the Board's deliberations, and enforce appropriate procedures and parliamentary processes for all regular and special meetings of the Board."

[22] The termination decision must also be considered in the larger context of Board policies about inclusivity and student safety. The Chair references these principles in her correspondence to the petitioner when she invited Ms. Di Armani to complete her interrupted comments at a subsequent Board meeting. District Policies 313 (Safe Schools) and 356 (Safe and Caring Schools) both address the physical and psychological safety of students and staff in the School District.

[23] Policy 313 codifies the Board's own commitment to "creating an inclusive environment in which learners and employees are treated with respect and can achieve personal growth and responsible citizenship." To that end, the Board promotes the "highest standards of respectful and responsible citizenship" and a culture of "safety among all persons in schools and at all school-authorized events and activities." To achieve this the Board expects that all persons will refrain from discriminatory behaviour.

[24] Policy 356 states that "The district is committed to acting when there is evidence of discrimination and harassment as a result of sexual orientation, gender identity and expression."(s. 2.1) It also states that "All staff have an obligation to intervene in any interaction involving the use of homophobic, and or transphobic statements, comments, and behaviours regardless of the speaker's intentions, and to convey that such comments are against policy and will not be tolerated in the school/worksite community." (s. 2.4) The transcript of the June meeting shows the Chair invoking these principles in deciding to silence the respondent. The Superintendent's affidavit establishes that students and their supporters were

expected to be in attendance at the meeting. It would not be unreasonable for the Chair to have decided that the policies designed to ensure students experience a safe and inclusive environment had some bearing on the way the Board conducted public meetings.

[25] The interruptions in the petitioner's address began when she suggested that one of the trustees should not be able to participate in recommendations to recognize Pride month, because of their involvement in a Pride festival. From the evidence provided by Ms. Di Armani, the Chilliwack Pride Society Festival "aims to uplift and empower people who identify as LGBTQIA+, Two-Spirit, Black, Indigenous, People of Color, or as having a disability and create a space of belonging, inclusion, and celebration." Notably, the Chair was explicit in stating to the petitioner that she was welcome to express her views about Pride, but that she was also required to comply with the points of order. These remarks by the Chair undermine the petitioner's submission that the termination decision was untethered to any lawful rationale and made solely on the basis of the Chair disagreeing with the petitioner's beliefs.

[26] Whether or not the Chair was right to have silenced the petitioner is not the issue on review. This would apply a standard of correctness. The role of this Court is to determine whether there is a logical and legal pathway for the respondent to have made the decision at issue, and ultimately whether the decision is reasonable in light of the statutory framework and legislative constraints in which the Board operated. I am satisfied that the legislative context in which the Board silenced the petitioner was broader than s. 5 of *Bylaw 5*, and that the Chair could have reasonably decided she had the power to make the termination decision. It does not stand to reason that s. 5 narrows the Chair's power to the extent suggested by the petitioner. In my view, it was logically coherent for the Chair to decide that her general statutory power to run an orderly meeting in compliance with broader policy objectives remained in tact during the public participation section of the meeting.

[27] The relief sought in paragraph 1(a) of the petition is dismissed.

Constitutional Issues

[28] Section 2(b) of the *Charter* states:

> 2. Everyone has the following fundamental freedoms:
>
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

[29] With respect to both the *ultra vires* and the constitutional arguments, the essential submission made by the petitioner is that the Board unreasonably censored dissent by terminating Ms. Di Armani's participation in the meeting, and by refusing to allow members of the public to record and broadcast the meeting themselves. The *Canadian Charter of Rights and Freedoms* applies to state action, including administrative decisions such as those made by school boards: See *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86, and more recently *York Region District School Board v. Elementary Teachers' Federation of Ontario*, 2024 SCC 22, and *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment),* 2023 SCC 31 [*CSFTNO*].

[30] The applicability of the *Charter* to administrative decisions is also discussed in *Vavilov*. The Court in *Vavilov* distinguishes between "cases in which it is alleged that the effect of the administrative decision being reviewed is to unjustifiably limit rights under the *Canadian Charter of Rights and Freedoms* (as was the case in *Doré*) and those in which the issue on review is whether a provision of the decision maker's enabling statute violates the *Charter*" (at para. 57). The former is reviewed on a standard of reasonableness, and the latter on a standard of correctness. For the reasons that follow, I am satisfied that both the termination decision and the decision to prohibit recordings at the June meeting are reviewable on a standard of reasonableness, and that the analysis in *Doré v. Barreau du Québec*, 2012 SCC 12 applies.

[31] In *CSFTNO,* the Supreme Court considers the broad application of the *Doré* framework where an administrative decision not only directly infringes *Charter* rights,

but also where it simply engages a value without limiting these rights (at para. 60). At para. 66, the Court in *CSFTNO* writes:

> An administrative decision maker must consider the relevant values embodied in the *Charter*, which act as constraints on the exercise of the powers delegated to the decision maker. I refer in this regard to the considerations identified by this Court in *Vavilov*: "... a decision, to be reasonable, must be justified in relation to the constellation of law and facts that are relevant to the decision ..." (para. 105).

[32] And at paras. 72–73:

> [72] On the other hand, the *Doré* approach requires reviewing courts to inquire into the weight accorded by the decision maker to the relevant considerations in order to assess whether a proportionate balancing was conducted by the decision maker […]. In making this assessment, the reviewing court must "consider whether there were other reasonable possibilities that would give effect to *Charter* protections more fully in light of the objectives", while asking "whether the decision falls within a range of reasonable outcomes" […]. In cases where the reviewing court finds that "there was an option or avenue reasonably open to the decision-maker that would reduce the impact on the protected right while still permitting him or her to sufficiently further the relevant ... objectives", the administrative decision will be unreasonable […]. This is a necessary consequence of the robust analysis required by *Doré*. [Citations omitted.]
>
> [73] It follows from the foregoing that, under the *Doré* approach, a reviewing court must first determine whether the discretionary decision limits *Charter* protections. If this is the case, the reviewing court must then examine the decision maker's reasoning process to assess whether, given the relevant factual and legal constraints, the decision reflects a proportionate balancing of *Charter* rights or the values underlying them. If not, the decision is unreasonable.

Termination Decision

[33] There is no dispute between the parties that the petitioner's s. 2(b)right to free expression is engaged by the termination decision. The question is whether terminating her participation at the June meeting was proportionate, and therefore reasonable, in light of the circumstances in which the decision was made, and the prevailing legislative constraints. This legislative framework includes the *Charter*, and the protection it affords to the free expression of opinions and beliefs.

[34] The petitioner has furnished the Court with sound authority regarding the value and the extent of the right to free speech and beliefs in this country. These

rights are enshrined in our constitution, and deserve a fulsome expression in state action, including administrative decisions. The Supreme Court of Canada in *Ward v Quebec (Commission des droits de la personne et des droits de la jeunesse),* 2021 SCC 43 at paras. 59–60 explains how free expression is fundamental to human dignity:

> [59] […] all human beings are equal in worth and dignity; this equality would be hollow if some people were silenced because of their opinions. The purpose of protecting freedom of expression is therefore to "ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream" (*Irwin Toy Ltd. v. Quebec (Attorney General),* [1989] 1 S.C.R. 927, at p. 968).
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> [60] As McLachlin J. (as she then was) wrote in *R. v. Zundel*, [1992] 2 S.C.R. 731, "[t]he view of the majority has no need of constitutional protection" (p. 753). In fact, the exercise of freedom of expression presupposes, at the same time that it fosters, society's tolerance of expression that is unpopular, offensive or repugnant (*Irwin Toy,* at pp. 969-71; *Montréal (Ville de) v. Cabaret Sex Appeal* [*I*]*nc.,* [1994] R.J.Q. 2133 (C.A.)). Freedom to express harmless opinions that reflect a consensus is not freedom (R. Moon, "What happens when the assumptions underlying our commitment to free speech no longer hold?" (2019), 28:1 *Const. Forum* 1, at p. 4). This is why freedom of expression does not truly begin until it gives rise to a duty to tolerate what other people say (L. C. Bollinger, *The Tolerant Society* (1986); Dworkin (2009), at p. vii). It thus ensures the development of a democratic, open and pluralistic society. Understood in this sense, "a person's right to free expression is protected not in order to protect him, but in order to protect a public good, a benefit which respect for the right of free expression brings to all those who live in the society in which it is respected, even those who have no personal interest in their own freedom" (J. Raz, "Free Expression and Personal Identification" (1991), 11 *Oxford J. Leg. Stud.* 303, at p. 305).

[35] Having reviewed the extensive authorities provided by the petitioner, I find there to be an important distinguishing factor in the case at bar. In this case, we know that if the decision had been remitted back to the respondent for reconsideration, they would have reversed their decision. Moreover, the Chair has documented her reconsideration of the termination decision in correspondence to the petitioner. In November 2023, a month after the original petition was filed, the Chair of the Board wrote the following letter to the petitioner:

> The Chilliwack Board of Education is committed to providing a safe, caring and inclusive environment in the district including at its public Board

> meetings. Communication with the public is also extremely important. The Board values providing the opportunity for the public to provide comments and/or ask questions about business or issues about the Board's agenda, all while upholding human rights and upholding human dignity.
>
> While the Board heard and addressed your questions related to an alleged conflict of interest at the June 13, 2023 board meeting, we recognize that you may have had further comments to make in relation to those questions. Further, the Board acknowledges that you were not provided an opportunity to fully address your comments concerning the school district raising flags other than the national or provincial flags. In recognition of this, the Board is extending an invitation to you to provide any further comments you had planned to make at the June 13, 2023 Board meeting at the public meeting in December 2023.

[36] Despite this invitation to speak, the petitioner declined. The respondent submits that because the Board has already reconsidered the decision at issue, and offered the petitioner the opportunity to make her remarks uninterrupted on the public record, there is no longer any real dispute between the parties. The respondent invokes the principle in *Vavilov* that remedies granted on judicial review must be guided by the rationale the legislature has entrusted the decision making at issue to the administrative decision maker, and not to the court, to decide. As such, "it will most often be appropriate to remit the matter to the decision maker to have it reconsider the decision, this time with the benefit of the court's reasons (at para. 141)." In essence, the respondent argues that the Board has already reversed its own decision in favour of the petitioner, and so there is nothing further to be gained from judicial analysis.

[37] The petitioner maintains that there is a live dispute to be resolved by a judicial review of the termination decision. She submits that the Chair's reconsideration decision is not an adequate remedy because the respondent has not fully acknowledged or addressed the breach of her *Charter* rights, and the offer to speak at a later Board meeting deprived her of the opportunity to be heard when her comments had relevance to the agenda items before the Board. She says that a judicial declaration of the breach, and a prohibition on silencing dissent is required because the respondent has shown a pattern of censorial or irrational conduct. The petitioner notes that litigation is timely and expensive, and that a decision by this

Court will send a message to the respondent that would prevent others from having to launch similar actions.

[38] The petitioner's opportunity to speak in the moment was undeniably lost. However, because Ms. Di Armani did not attend to make her comments as she was invited to do, and has not provided evidence about precisely what else she had to say, there is no support for her position that it is an inadequate remedy to speak uninterrupted at a subsequent meeting. The evidence relied on by the petitioner regarding the Board's stated refusal to re-open the agenda items from the June meeting is not sufficient to persuade me that the Board would have refused to consider any legitimate concerns raised by Ms. Di Armani at a subsequent meeting. While I have found that the petitioner's hearsay evidence can be admitted as a reliable indication of the Board's position at the time, it is presented without any context about the circumstances in which the Board may have arrived at this conclusion.

[39] What is clear in the evidence is the fact that Ms. Di Armani wrote a letter of complaint to the Superintendent of Schools, who is the CEO of the Board, in September 2023. In this correspondence, the petitioner detailed the same concerns she tried to voice at the June meeting about the potential conflict of interest and flying of the pride flag. She referenced case law and statutory authority to support her position. The Superintendent responded with focused answers to all of the petitioner's questions and concerns. The Superintendent found no merit in the petitioner's challenges to the agenda items that were dealt with by the Board at the June meeting. He also reminds Ms. Di Armani that the public participants in a Board meeting do not decide whether a trustee is in a conflict of interest, and that public participation is governed by strict rules. It is entirely speculative whether Ms. Di Armani would have had anything further to say if she had been given a fulsome opportunity to express herself at the Board meeting.

[40] In short, while Ms. Di Armani's right to express herself at the meeting may not have been given proportionate weight at the June meeting, there is no basis to find

there is now any unresolved dispute between the parties. The decision to engage in judicial review is ultimately discretionary. As the Court in *Vavilov* states: "reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality, and fairness of the administrative process", (at para. 13). Notably, relief under the *JRPA* is discretionary. The court must determine whether its intervention is warranted having regard to the applicable principles, including the principle of restraint concerning judicial intervention in administrative matters: See *Kinexus Bioinformatics Corporation v. Asad,* 2010 BCSC 33 at para. 14.

[41] The petitioner argues that this Court cannot abdicate its obligation to conduct the reasonableness analysis, just because the nature of the relief to be granted is discretionary. I cannot accede to this submission. The seminal case on mootness is *Borowski v. Canada (Attorney General),* [1989] 1 S.C.R. 342, and the respondent points to our Court of Appeal's reliance on these principles in the context of discretionary declaratory relief in *Independent Contractors and Businesses Association v. British Columbia (Attorney General),* 2020 BCCA 245 [*Independent Contractors*] at para. 7:

> This appeal concerns the doctrine of mootness which, in the interests of judicial economy and consistent with the approach that courts are not required to give declaratory relief or opine on issues absent a live dispute, allows a court, in the management of its own process, to decline to hear a moot case. In *Cowling v. Brown* (1990), 48 B.C.L.R. (2d) 63 (C.A.), Mr. Justice Lambert for this court explained at 66, "The general rule is that if the matter is moot the Court should not deal with it", but said "exceptions arise in special cases" and referred to the reasons for the exceptions discussed in *Borowski v. Canada (Attorney General),* [1989] 1 S.C.R. 342.

[42] While the Court in *Independent Contractors* was not conducting a judicial review, I am satisfied these same principles are applicable. *Borowski* has been applied by Federal Courts that have declined to conduct judicial reviews on the grounds of mootness in relation to revoked or suspended legislation related to COVID-19 measures: *Wojdan v. Canada (Attorney General)*, 2022 FCA 120; *Lavergne-Poitras v. Canada (Attorney General)*, 2022 FC 1391; *Ben Naoum v. Canada (Attorney General)*, 2022 FC 1463; and *Kakuev v. Canada,* 2022 FC 1465.

[43] I am also guided by the Court of Appeal's decision in *Pereira v. British Columbia (Workers' Compensation Board),* 2023 BCCA 195. In *Pereira*, the Court of Appeal was asked by the appellant to grant declaratory relief where the lower court had already made a finding of unreasonableness and remitted the decision back to the administrative decision maker. The Court of Appeal held that in addition to the requirement to defer to the chambers judge, there was no merit in the petitioner's appeal since all legal issues had been resolved on the initial judicial review. While the Court did not use the term 'moot,' the appeal was dismissed based on the same reasoning that underpins *Borowski*; namely, that the legal issues before the Court had effectively been resolved, and there was no legitimate purpose to be advanced by granting the relief sought: See *Pereira* at paras. 20–21.

[44] In the case at bar, I find no reason to undergo a legal analysis to conclude that the respondent failed to give proper weight to the petitioner's right to speak at the June Board meeting, because the respondent has already made that decision itself. The petitioner's counsel submits they may have conceded mootness if the Chair had expressly declared that Ms. Di Armani's right to free expression had been violated. While the Chair's letter to the petitioner may not state Ms. Di Armani's right to free expression was unreasonably curtailed, there is no other logical way in which her decision can be read. In reconsidering their position, the Board clearly found the original decision to terminate Ms. Di Armani's participation was wrong, and that the petitioner should be permitted to voice her comments or questions. The correspondence from the Chair reflects a wise recalibration in the weight that should have been given to the petitioner's right to free expression.

[45] The invitation for the petitioner to speak at a future Board meeting offered her a more complete remedy than what this Court could achieve through a formal declaration. Not only was the value of Ms. Di Armani's free expression accorded its proportionate weight by the respondent, but she was afforded the opportunity to have her silenced remarks heard. It will not be every case where a decision maker can avoid judicial review by reconsidering its own decision, but on the facts of this

case I am satisfied that in so doing the respondent effectively eliminated any need for this Court's intervention.

[46] In submitting that her petition is not moot, the petitioner also alleges a pattern of censorial conduct by the Board that she submits cries out for judicial intervention. The body of evidence marshalled by the petitioner certainly reveals a Board enmired conflict. In some instances raised by the petitioner the Chair is enforcing limitations on public participation, including the requirement to identify oneself, and the fact that the public do not create the Board's agenda. In other instances, the reasons are less clear. Without making explicit reference to the Board's anti-discrimination policies, the Chair often appears motivated to achieve these objectives, and to respond, albeit pre-emptively, to the questions or concerns being raised. The way she conducts meetings must also be considered in light of the kind of tensions described by the Superintendent in his affidavit, including the fact that police involvement was required to keep order when similarly controversial agenda items were raised at a public Board meeting in February 2023.

[47] It is beyond the scope of this petition, legally and factually, to review all of the decisions that the petitioner says show discriminatory or censorial intentions. The relevance of these additional examples of Board conduct is limited to whether they are collectively capable of demonstrating that there is some practical utility to this Court granting the relief sought by the petitioner. There are two primary reasons that I find they are not. First, the willingness of the Chair to invite Ms. Di Armani to complete her comments at a future Board meeting is a strong indication that the respondent is not intractable in its refusal to allow any contrary opinions to be voiced at a public Board meeting. And secondly, the conduct the petitioner says this Court needs to prevent is exercised only by the Chair and Vice Chair from 2023 and 2024. These leadership positions are no longer held by the same Board trustees.

[48] Having reviewed the petitioner's authorities, I find the case at bar is distinguishable from those where declaratory relief is required to resolve an ongoing legal dispute. For example in *Baars v. Children's Aid Society of Hamilton,* 2018

ONSC 1487, the court found that the Ontario child protection agency unreasonably decided the petitioners were unfit to be foster parents. The decision hinged on the religious convictions of the petitioners. In *Baars*, the court made a declaration that the respondent's decision unjustifiably infringed the religious freedoms of the petitioners, even though the issue of whether the petitioners could continue to be foster parents in Ontario was effectively moot.

[49] In *Baars* the petitioners had established a reason for the court to engage in the review and to grant the declaratory relief. Specifically, the child protection authorities did not acknowledge that the Baar family should be entitled to communicate certain religious beliefs to the children in their care. The Baars had moved to a different province and had intentions to continue to foster children. This would be impeded by the decision that their religious beliefs made them unfit foster parents. As such, there was a genuine and consequential decision for the court to make.

[50] Ms. Di Armani is in no such position. While she asserts that the conduct of the Board is likely to continue unless this Court intervenes, her position is undermined by the fact that the respondent reconsidered their decision and agreed that she should be given an opportunity to voice her comments and questions in a public meeting. This strongly suggests that even if an unreasonable decision was made in the course of a dynamic public meeting, a judicial declaration is not required to prevent a recurrence of the termination decision. I am satisfied the case at bar is also distinguishable from the facts in *Dubois v Saskatchewan*, 2022 SKCA 15, where a particular regulatory framework continued to allow the government to unlawfully detain citizens for exercising their *Charter* rights.

[51] In the absence of a live controversy between the parties regarding the termination decision, I cannot find that a decision by this Court would have any practical effect on the rights of the petitioner. Nor has the petitioner established reason for the Court to exercise its residual discretion to rule on an abstract or hypothetical question given the limited supervisory role on judicial review. The

petition for declaratory relief pursuant to s. 24(1) of the *Charter* and s. 2 of the *JRPA* is dismissed.

[52] The orders sought in paragraphs 1(b) and (c) of the petition are dismissed.

The Recording Prohibition

[53] The petitioner submits that the decision to prohibit recordings at public Board meetings cannot withstand judicial review. The respondent's primary position is that a challenge to the June meeting prohibition is not properly before this Court, since Ms. Di Armani did not pursue any internal mechanisms for resolution. I cannot accede to this submission.

[54] While the petitioner must exhaust her avenues for review, the respondent has not identified any other recourse that would have addressed the recording prohibition at the June meeting, other than suggesting that Ms. Di Armani could have made a complaint. The court has not been directed to any statutory basis, nor can I see any reason for the petitioner to have believed that a complaint would have afforded an adequate alternative remedy (*Strickland v. Canada (Attorney General)*, 2015 SCC 37, at para. 40). Unlike AP 481, which makes clear that a request for authorization will be considered, the form used at the June meeting notified attendees that a decision to prohibit public recordings had already been made.

[55] Turning to a review of the June meeting prohibition, I am guided by the framework for analysis in *Doré*. First, I accept that recording for the purpose of sharing is expressive activity protected under s. 2(b)of the *Charter* (*Canadian Broadcasting Corp. v. Canada (Attorney General)*, 2011 SCC 2 at para. 38.) As such, I find that Ms. Di Armani's *Charter* rights were engaged by the decision to prohibit the general public from making recordings at the June meeting.

[56] The second step in the *Doré* analysis is to examine the decision maker's reasoning process to assess whether the decision reflects a proportionate balancing of *Charter* rights or the values underlying them (*CSFTNO* at para. 95). The burden of proving that a decision reflects a proportionate balancing of *Charter* rights is on the

decision maker (*Doré* at para. 66). Ultimately, a reviewing court must be satisfied that the decision gives effect, as fully as possible, to the *Charter* protections at stake in light of the decision maker's statutory objectives (*Doré* at 55–58).

[57] The evidence about the decision to prohibit public recordings comes from the Superintendent of the School District at the relevant time. Board Policies 140 and 141 establish that the Board delegates to the Superintendent the authority and responsibility to manage operations of the District in accordance with the policies of the Board. Pursuant to the *School Act*, R.S.B.C. 1996, c. 412, School Regulation and Board policy, the Superintendent assists the Board by implementing safety, security and other measures that apply to those entering the Board offices for Board meetings. The Superintendent says he made the decision to prohibit public recordings at the June meeting in accordance with his powers, and not through any direction of the Board.

[58] The Superintendent explains that public meetings are routinely video recorded by the Board for public viewing and live streamed online. The June meeting was broadcast in this manner. He asserts that his objectives in deciding to prohibit public recordings at the June meeting were to protect the safety, security and privacy of participants at that particular meeting. The reasons for this decision are set out in his affidavit.

[59] First, the Superintendent became aware of a social media campaign that led him to believe a large group of people who were in conflict regarding a particular agenda item, would be in attendance at the June meeting. Second, he believed this group was likely to include students protected by District anti-discrimination policy, as well as people who hold negative views about those students. Third, based on incidents at Board meetings earlier that same year, he had reason to believe that the meeting could become disorderly and potentially dangerous. Incidents at a Board meeting a few months earlier also involved a social media campaign about a related issue, and a large group of people attended the public board meetings. Attendees at the meeting were loud and disruptive. Police had to attend to restore order. One

member of the public wore a body camera into the Board meeting and was filming people around the room. A credible death threat was made against the Chair on social media.

[60] The Superintendent explains how he believed the June meeting prohibition would meet his objectives. First, it was intended to protect the safety those in attendance, by ensuring they were not subject to intimidation through the prospect of negative social media posts. He describes how allowing personal recordings during the meeting could escalate an already emotionally charged situation. He also expected that if there was disorderly conduct, as there had recently been, that participants would be likely to video record each other and potentially other attendees at the meeting.

[61] Second, he sought to protect the privacy interests of people attending the meeting, especially vulnerable students who could be in the audience. Allowing the general public to video and audio record in the meeting room could expose the presence or views of young attendees even if they did not participate in the formal meeting, and their images could be broadcast on the internet without their consent. In contrast, the Board's livestream video only records the trustees and any participant who chooses to go to the podium to make comments. It does not record members of the audience in the way that a member of the public could foreseeably do if public video recordings were allowed.

[62] The Superintendent's affidavit reveals that he weighed the competing interests at stake. In making his decision he considered the legislative context in which he operated, including Board policies about his role organizing and supervising District operations. The Superintendent also refers to various other policies that protect students, for example Privacy policy 210 requires the Board, District and all staff to uphold privacy, confidentiality and appropriate use of personal information of any student or staff. Personal information includes any recorded information about an identifiable individual that is within the control of the District. The Superintendent also references the Safe Schools policy 313, which explicitly

invokes the *Canadian Charter of Rights and Freedoms* as well as the British Columbia *Human Rights Code,* R.S.B.C. 1996, c. 210. Policy 313 states that members of the school community are expected to act in accordance with this legislation when they conduct themselves in a respectful manner to promote a safe and inclusive school environment. This includes ensuring that all persons refrain from discriminatory conduct.

[63] In considering the specific circumstances of the June meeting recording prohibition, I find that the Superintendent's decision falls within the range of reasonable outcomes. I am satisfied that the Superintendent recognized the competing interests at stake. He deposes that the prohibition achieved an "appropriate balance between the safety, security and privacy of attendees at the meeting and any interest attendees had in having the board meeting proceedings publicly available on the internet." The Superintendent's objectives are related to protecting vulnerable youth and promoting public participation in the political process by creating an environment that is free from intimidation and violence.

[64] With respect to the importance of public participation in the Board's work, the Superintendent demonstrates his awareness of *Bylaw 5* in his correspondence with the petitioner, including the value of the Board meetings being widely communicated. The Superintendent cites Policy 170 in his affidavit, which provides for the wide-spread dissemination of Board meetings, including proceedings, questions and presentations, through audio/video recordings. I am satisfied that in making the decision about public recordings at the June meeting, the Superintendent was alive to the fact that free expression and public participation in political processes are joined together by the "linchpin of the s. 2b guarantee" (*Ward* at para. 104).

[65] There is a particular weightiness to the Superintendent's obligation to ensure that students, in particular, were not exposed to discriminatory, invasive, or irresponsible conduct. Based on his uncontradicted evidence, it was reasonable for the Superintendent to find that the meeting could be disorderly and that youth who

were vulnerable to discrimination could be exposed to conduct that was not safe or inclusive. In these circumstances, where the identity and views of students could be broadcast without their consent, or where they could be subjected to the kind of disorder that erupted at an earlier Board meeting, it is reasonable to find that unfettered free expression would create the kind of sufficiently specific harms that are not likely to be prevented by 'discernment and critical judgment of the audience' to the impugned communications (*Ward* at para. 61).

[66] In the particular circumstances of this decision, the limited way in which the right to free expression is infringed bolsters the reasonableness of the Superintendent's decision. The decision to prohibition the public from making their own recordings of the political process in action does engage the right to freely communicate or share information, however, the Superintendent also knew that what members of the public could record and share from the public meeting was already being shared in the Board's own livestreamed broadcast.

[67] For the Superintendent's decision to be justifiable, there must be no other reasonable decisions he could have made to accomplish his objectives that would have allowed for a more full effect to the right to freely communicate and share information. No such alternatives have been identified by the petitioner. The Superintendent articulates a rational nexus between the recording prohibition and his objectives related to human dignity, privacy, and protection of the public including vulnerable youth. The decision to prohibit public recordings was made in a climate of conflict and disorder that had recently occurred at a previous Board meeting.

[68] We live in a time when digital recordings can be manipulated and distributed widely with ease. There is a genuine tension between the respondent's obligation to supervise the conduct of persons attending public meetings, and his lack of control over any recordings those persons may choose to make. It is reasonable to have decided that the mere act of a person making audio-video recordings in the meeting could itself have an intimidating and potentially chilling effect on free expression and participation in the political process, which is recognized in *Bylaw 5,* s. 5.1 and the

constitutional jurisprudence referenced by the petitioner as “extremely important.” The purpose and effect of the prohibition on public recordings was to protect all attendees at the meeting, regardless of which side of any controversial issue they were on.

[69] The Superintendent also limited the scope of the infringement on *Charter* values by creating an exception to the prohibition for authorized media, and by isolating the prohibition at the June meeting. The Superintendent says that the June meeting was the only time he resorted to the form he used on that occasion to prohibit recordings. The petitioner contests this fact; however I do not find that her evidence regarding the subsequent restrictions on public recordings is incompatible with the evidence of the Superintendent on this point.

[70] The evidence is unclear about who posted the later announcements that all audio-video recordings in the Board office require authorization or consent. Regardless, as I have already explained, the subsequent notices, and AP 481 differ from the prohibition imposed at the June meeting. The subsequent notices, which are not cited in their entirety in the petitioner’s argument, alert the public to the fact that authorization to record must be obtained in advance. In contrast, the June prohibition does not allow for recording even if the participants are consenting and it offers no opportunity to apply seek authorization. The evidence establishes that the Superintendent invoked this kind of blanket prohibition on public recording only once, by using the forms participants were required to sign at the June meeting.

[71] At the heart of Ms. Di Armani’s complaint is the fact that the prohibition left her with no recourse when the Chair decided to mute portions of the meeting, including her comments. When the Chair muted the microphones, these portions of the meeting were not publicly broadcast. However, as the Board’s response to Ms. Di Armani’s complaint about being silenced has demonstrated, there are other ways to ensure that a public participant’s comments become part of the public record.

[72] Even when one considers the fact that a Chair of the Board may from time to time mute portions of the meeting from the public broadcast to maintain order and meet other statutory objectives, the balancing of interests apparent in the June meeting recording prohibition is reasonable. The interests of protecting students and promoting public participation in public meetings can rationally be found to outweigh the limited restriction on Ms. Di Armani's ability to express herself by making her own audio-video recordings.

[73] Accordingly, paragraphs 1(e) and (f) of the amended petition are dismissed.

Remedy under s. 52 of the Constitution

[74] Ms. Di Armani also seeks a declaration that the Board's prohibition on public Board meetings violates s. 2(b) of the *Charter*, and that it should be found to be of no force and effect pursuant to s. 52 of the *Constitution*. However, I cannot find that s. 52(1) applies to the facts of this case. The form used at the June meeting to prohibit public recording is not the kind of 'law' to which this broad constitutional remedy applies. The affidavit of the Superintendent establishes that the form used during the June meeting was his decision based on specific concerns related to the June meeting. This kind of individualized decision concerning a particular set of facts is not the kind of government action to which s. 52 applies, rather it is more appropriately considered an administrative decision made pursuant to statutory authority: *Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component*, 2009 SCC 31 at para. 88.

[75] The petitioner also submits that the subsequent 2023 and 2024 Board policies related to audio-video recordings are the kind laws of general application for which a remedy under s. 52 is available. For the reasons already given, I find Ms. Di Armani has not given proper notice to challenge anything other than the decision to prohibit public recordings at the June meeting. I am mindful that the relief sought under s. 52(1) in the amended petition is not limited to the prohibition imposed at the June meeting. However, the petition makes no reference to the kind of factual or legal foundation that would lead the Board to believe they would have to

respond to anything other than the prohibition that was issued for the June meeting. My decision here does not foreclose Ms. Di Armani's ability to challenge the validity of the subsequent policies she has identified in her second affidavit, if she so chooses.

[76] That said, the "apparent policies" referenced by Ms. Di Armani appear to be administrative in nature, such as Administrative Procedure 481. As such, Ms. Di Armani will undoubtedly face challenges in persuading the Court that s. 52 applies. The policies Ms. Di Armani has referenced that post-date the June meeting suggest that a discretionary decision may be made to allow recordings, even for events that may not be considered authorized. Ms. Di Armani will also need to satisfy any future Court that it should conduct a review of the more recent policies when she has not exhausted the internal process for seeking authorization to record a public Board meeting.

[77] Paragraph 1(d) of the claim is dismissed.

[78] The parties have leave to set a hearing before me relating to costs if necessary.

"Ormiston J."