

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(DIVISIONAL COURT)**

B E T W E E N:

CAROLYN BURJOSKI

Applicant

and

WATERLOO REGION DISTRICT SCHOOL BOARD

Respondent

*APPLICATION UNDER Rules 14.05(2), 38 and 68 of the Rules of Civil Procedure, RRO 1990, Reg 194 and Sections 2(1) and 6(1) of the Judicial Review Procedure Act, RSO 1990, c J.1.*

**NOTICE OF APPLICATION TO DIVISIONAL COURT FOR JUDICIAL REVIEW**

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar by the method of hearing requested by the applicant, unless the court orders otherwise.

The applicant requests that this application be heard **BY VIDEO CONFERENCE** at **the London Courthouse, 80 Dundas Street, London, ON, N6A 6A3**, at a date and time to be fixed by the Registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario

lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicant's application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

*TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED* if it has not been set down for hearing or terminated by any means within five years after the notice of application was filed with the court, unless otherwise ordered by the court.

Date	Issued by Registrar Address of court office
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TO: Waterloo Region District School Board  
51 Ardelt Avenue, Kitchener, ON N2C 2R5  
email: info@wrdsb.ca

AND TO: Attorney General of Ontario  
Crown Law Office – Civil  
720 Bay Street, 8th Floor  
Toronto, Ontario M7A 2S9  
email: [REDACTED]@ontario.ca

# Application

## **The Applicant makes application for:**

- a) Judicial review of the decision of the Waterloo Region District School Board (the "**WRDSB**" or the "**Board**") to prematurely end the Applicant's presentation (the "**Presentation**") and expel the Applicant from a public meeting of the WRDSB Committee of the Whole held on January 17, 2022 (the "**Decision**");
- b) A Declaration that the Applicant's Presentation did not violate and was not inconsistent with WRDSB Bylaws or WRDSB policies (including WRDSB Equity and Inclusion Policy 1008 and WRDSB Human Rights Policy 1017);
- c) A Declaration that the Applicant's Presentation did not breach the *Human Rights Code*, RSO 1990, c H.9.;
- d) A Declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11. (the "**Charter**") that the Decision unreasonably violated the Applicant's right, and the rights of those attending the public meeting, to freedom of expression protected under section 2(b) of the *Charter*;
- e) A Declaration that the Decision was unreasonable, breached the duty of fairness due to the Applicant and violated principles of natural justice;
- f) A Declaration that the Decision was *ultra vires* Respondent's authority;
- g) An Order in the nature of *certiorari* quashing the Decision;
- h) An Order in the nature of *mandamus* requiring the Board to allow the Applicant to make her Presentation in full at a future public WRDSB Committee of the Whole meeting of the Applicant's choosing. Or, in the alternative, an Order remitting the Decision to the Board to be determined in accordance with this Court's reasons for judgment;
- i) An Order, if required, under section 5(2) of the *Judicial Review Procedure Act*, RSO 1990, c J.1, extending the time permitted for the making of an application of judicial review in this case;
- j) Such further and other relief as counsel may advise and this Court considers just; and
- k) Costs.

## **The grounds for the Application are:**

1. The Applicant Carolyn Burjoski is a former elementary school teacher with the Waterloo Region District School Board. Ms. Burjoski taught English as a second language to new Canadian children, and retired from the WRDSB effective January 31, 2022.

2. The Respondent WRDSB is a public school board exercising statutory authority under Ontario's *Education Act*, RSO 1990, c E.2 (the "**Education Act**"). WRDSB is required to operate in accordance with the *Education Act*, other applicable legislation, certain regulations of the Ministry of Education (Ontario), and the policies and procedural by-laws developed for the operation of the Board and its committees.
3. Sections 207 and 208 of the *Education Act* govern school board meetings, with section 207(1) stipulating that most Board meetings must be open to the public, and that no person shall be excluded from a public Board meeting except for improper conduct.
4. The WRDSB Committee of the Whole (the "**Committee**") held a public meeting on January 17, 2022 (the "**Board Meeting**" or the "**Meeting**"). The Meeting was held by videoconference.
5. Scott Piatkowski was elected as a trustee of the WRDSB in 2018, and is currently serving as Chairperson of the Board for 2021/2022. Mr. Piatkowski served as Chairperson at the Board Meeting.
6. The Applicant, in her personal capacity, followed the procedures to register as a delegation to make a presentation before the Board, and was approved by the Board and scheduled to appear at the Board Meeting. The agenda for the Meeting listed her as a delegate as follows: "Carolyn Burjoski - Library Review".
7. At the Meeting on January 17th, 2022, the Applicant appeared to make a 10 minute presentation before the Board. She began her Presentation by outlining concerns about the Board's ongoing "cull" of "harmful" books from classrooms, libraries, and teachers' personal classroom collections, which she considered to be based on uncertain and unclear criteria.
8. The Applicant went on to express concerns about the age-appropriateness of certain books which the Board had placed in Kindergarten through sixth grade classrooms and libraries in connection with Transgender Awareness Week. She showed the Board a passage from a book called "*Rick*", by Alex Gino, and made the following comments:

*In the book "Rick" by Alex Gino, a boy named Jeff keeps talking to Rick about naked girls. Rick is confused because he doesn't think about naked girls, so he wonders if something's wrong with him. Rick gets invited to the school's rainbow club and he winds up declaring an asexual identity.*

*While reading this book, I was thinking maybe Rick doesn't have sexual feelings yet because he is a child. It concerns me that this book leaves young boys wondering if there is something wrong with them if they are not thinking about naked girls all the time. Also, what message does this book send to young girls who might be in grade three, four? They are children. Let them grow up in their own time and stop pressuring them to be sexual so soon.*

9. She then showed the Board a passage from "*The Other Boy*" by M.G. Hennesey, and said:

*In fact, some of the books filling our libraries make it seem simple or even cool to take puberty blockers and opposite sex hormones. The Other Boy, by MG Hennesey...*

10. At this point - about 2 minutes and 45 seconds into the Applicant's Presentation - Chairperson Piatkowski interrupted the Applicant and said:

*Ms. Burjoski, I am just getting a little concerned that your content may be problematic. I'm not sure exactly where you're headed but I would caution you to make sure that you are not saying anything that would violate the Human Rights Code.*

11. The Applicant assured him that she would not violate the Human Rights Code, and continued with her Presentation:

*The Other Boy, by MG Hennesey chronicles the medical transition of Shane, who was born female and now identifies as a boy. Shane takes puberty blockers and is now excited to start testosterone. The doctor states that this hormone mixture will leave Shane infertile in the future. Shane's response is: "It's cool" - a very typical adolescent response. This book is misleading because it does not take into account how Shane might feel later in life about being infertile. This book makes very serious medical interventions seem like an easy cure for emotional and social distress...*

12. At this point - about 4 minutes into the Applicant's Presentation - Chairperson Piatkowski again interrupted the Applicant and declared that he was ending her Presentation because he was concerned that it might violate the Human Rights Code's prohibition of discrimination on the grounds of gender identity or gender expression.
13. Trustees Cindy Watson and Mike Ramsay objected to the Chairperson's Decision, and moved to put the matter to a vote (the "**Vote**"). Trustee Woodcock served as the Chairperson during the vote. The Decision was upheld by a vote of 6-4, with Trustees Ramsay, Smith, Tremble, and Watson opposed.
14. Both Chairperson Piatkowski and temporary Chair Woodcock voted in favour of Piatkowski's decision to end the Applicant's presentation. Temporary Chair Woodcock did not declare that she would be voting in advance of the vote.
15. The Trustees discussed allowing the Applicant to continue her Presentation without screen sharing the excerpts of the books available to Kindergarten to grade 6 students at WRDSB schools, or alternately allowing her to skip her "current topic" and continue with the rest of her presentation (the "**Alternative Proposals**").

16. The Trustees were about to vote on these options when Trustee Ramsay raised a point of order to the effect that temporary Chair Woodcock should not have voted without, at minimum, declaring her intention to vote in advance. Trustee Woodcock agreed, withdrew her vote, and the result of the vote was declared to be 5-4 rather than 6-4.
17. Temporary Chair Woodcock then returned the Chair to Chairperson Piatkowski, who - ignoring the objections of Trustee Watson - declared that the Meeting continue with the next delegation, and ordered that the Applicant be removed from the meeting.
18. No vote was ever held on the Alternative Proposals, and no further discussion was permitted.
19. The Applicant was then removed from the Meeting.
20. On January 20, 2022, the Board published the following "*Statement regarding Committee of the Whole Meeting recording January 17, 2022*":

*Following the Committee of the Whole meeting on Monday, January 17, 2022, we would like to express our deep regret for any harm caused to the transgender community. As a school board, we are guided by the Ontario Human Rights Code and committed to doing our best so that all students are affirmed in their identity and see themselves reflected in their learning environment. The Board is committed to upholding the values and principles set out in Board's Equity and Inclusion Policy 1008 and the Board's Human Rights Policy 1017. The Board is committed to providing a safe, inclusive environment free from inequity, discrimination and harassment.*

*The video of the meeting was not posted as the Board was concerned about potential violations to the Code and to the harm that could affect our students, staff and communities in Waterloo Region.*

21. The Board has provided no means by which to appeal the Decision.

### ***The Decision was Unlawful***

22. The Respondent is a government actor exercising statutory authority whose decisions are subject to judicial review and *Charter* scrutiny.
23. By preventing her from finishing her presentation and removing her from the Meeting, the Respondent violated the Applicant's *Charter* right to free expression. This violation of the Applicant's *Charter* rights is not "*prescribed by law*", and cannot be saved by s. 1 of the *Charter*.

24. The Respondent failed to acknowledge and take into consideration the Applicant's *Charter* right to free expression, and the right of the Board to hear relevant points of view from members of the public. The Decision failed to balance those rights with any legitimate objective of the Board.
25. In making the Decision, the Respondent failed to give effect to the Applicant's *Charter* rights as fully as possible under the circumstances.
26. The Decision was an unreasonable and unjustifiable violation of the Applicant's *Charter* rights.
27. The reasons for the Decision provided by the Board and its Chairperson, Scott Piatkowski (the "**Reasons**"), are inadequate, unclear, and fail to address how the Applicant's Presentation did or may have violated the Ontario Human Rights Code or any other applicable law, regulation, bylaw, Board policy, or Board procedure. No reasons were provided for the abrupt removal of the Applicant from the Meeting.
28. The Board was required to provide sufficient reasons by which the Applicant or a Court could understand why it made the Decision and determine whether the Decision was within the range of acceptable outcomes. The Board failed to provide meaningfully reviewable reasons.
29. The Reasons failed to provide the Applicant with an opportunity to understand or to meaningfully respond to the Decision, the allegations being made against her, or her abrupt removal from the Meeting.
30. From the moment Chairperson Piatkowski ordered her to end her presentation through to when she was removed from the Meeting, the Applicant was not permitted to make any submissions or respond to the Board or its Decision. Therefore the Board breached the duty of fairness owed to the Applicant, failed to comply with the Board's own bylaws and policies, and violated principles of natural justice.
31. To the extent that Chairperson Piatkowski may have determined that the Applicant violated the Human Rights Code or any other applicable law, regulation, bylaw, Board policy, or Board procedure, that determination is unclear from the Reasons, and is wrong in both fact and law.
32. To the extent that the Decision may have been based on concerns that the Chairperson or other Board members may have had that the Applicant would, but had not yet, breached the Human Rights Code, the Decision was based on unreasonable, irrelevant and improper grounds which breached the duty of fairness owed to the Applicant and violated principles of natural justice.
33. Contrary to the principles of administrative decision-making, the Decision is not based on reasoning that is both rational and logical. The Decision suffers from clear logical fallacies, unsupported claims, hyperbole and other misstatements, and is not justifiable in light of the facts and applicable law.
34. The Decision to end the presentation was unreasonable and was *ultra vires* to the Respondent and as it was based on irrelevant considerations, was made in bad faith and for an improper purpose, namely to prevent the Board from hearing and considering views that some Board members may have disagreed with.

35. Due to the procedural irregularities relating to the Decision and the Vote (including allowing Chairperson Piatkowski to vote to sustain his own ruling, temporary Chair Woodcock's improper vote, and the failure to address or vote on the Alternative Proposals) the Board breached the duty of fairness owed to the Applicant, failed to comply with the Board's own bylaws and policies, and violated principles of natural justice.
36. The Board's announcement on January 20, 2022 is an improper post-hoc justification of the Decision, and improperly raises concerns relating to the Board's Equity and Inclusion Policy 1008 and the Board's Human Rights Policy 1017 for the first time. Not only did the Applicant not breach either Policy, but she had no opportunity to know of or respond to such concerns if they existed at the time the Decision was made.
37. In making the Decision, the Board was obliged to comply with applicable law and its own policies, procedures, and bylaws. Because the Board failed to do so, the Decision breached the duty of fairness owed to the Applicant, violated principles of natural justice, and was *ultra vires* to the Board.
38. The Decision must be quashed because it breached the duty of fairness owed to the Applicant, violated principles of natural justice, was a violation of the Applicant's *Charter* rights, and was improper, unlawful, and *ultra vires* to the Board.

**The following documentary evidence will be used at the hearing of the Application:**

- i. The Affidavit of the Applicant Carolyn Burjoski (to be sworn);
- ii. WRDSB Bylaws;
- iii. WRDSB Equity and Inclusion Policy 1008;
- iv. WRDSB Human Rights Policy 1017;
- v. Transcripts and/or video recordings of public meetings of the WRDSB Committee of the Whole held on January 17, 2022 and/or January 24, 2022; and
- vi. Such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

February 16, 2022

Jorge Pineda - LSO # [REDACTED]

Rob Kittredge - LSO # [REDACTED]

[REDACTED]

**CAROLYN BURJOSKI**

APPLICANT

and

**WATERLOO REGION DISTRICT SCHOOL BOARD**

RESPONDENT

COURT File No.

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*ONTARIO*  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT

Proceeding commenced at London

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**NOTICE OF APPLICATION  
(JUDICIAL REVIEW)**

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