Court File No.: 12-36939

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

E.T.

Applicant

- and -

HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD

Respondent

-and-

ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

Intervenor

FACTUM OF THE INTERVENOR THE ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

April 1, 2016

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PART I: OVERVIEW

1. This application challenges the constitutionality of a discretionary, administrative decision of the Respondent, the Hamilton-Wentworth District School Board. The Applicant, a parent of two elementary school-aged children, seeks declarations that the School Board has breached the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), the Ontario *Human Rights Code* (the "*Human Rights Code*") and has failed to "accommodate" him.

2. The position of the Intervenor, the Elementary Teachers' Federation of Ontario (the "Federation"), in this Application is that there has been no breach of the *Charter*, *Human Rights Code* or *Education Act*. It is the Federation's position that contrary to breaching the *Charter* or *Human Rights Code*, the underlying equity policies at issue, which require the teaching of values of inclusion and respect for diversity, are laudable constitutional and human rights-protected initiatives.

3. If this Court finds that the School Board's conduct in implementing equity policies infringes on the Applicant's freedom of religion in any substantial way, the Federation submits that the School Board's positon is reasonable and demonstrably justified. As such, it is the Federation's alternative position that if there is an infringement to freedom of religion, that is it saved by s. 1 of the *Charter*.

4. It is the further position of the Federation that the Applicant is not required to be accommodated by the School Board unless there has been a breach of his human

rights. We submit that the Applicant has not established such a *Human Rights Code* breach, and in any case, his is not a reasonable accommodation request.

5. The Federation will be addressing the alleged *Charter* and *Human Rights Code* issues only, and not the other issues raised by the Applicant in this Application.

PART II: FACTS

6. The Federation represents 78,000 elementary teachers in Ontario, including the elementary teachers with the Respondent School Board, and the teachers who teach the Applicant's children. The Federation supports the principles of equity and inclusivity promoted by the School Board, and challenged by the Applicant in this Application.

7. The Federation adopts the facts of the Application as set out in the factum of the School Board.

PART III: ISSUES

8. The Federation submits that this application raises the following issues:

A. CHARTER ISSUES

I) Is there a *Charter* breach in light of overriding societal concerns for inclusion and diversity?

II) Has the Applicant met his onus?

III) What is the appropriate analytical approach to applying the *Charter* to administrative decision-makers exercising discretional power?

IV) If there is a *Charter* infringement, is it saved by s. 1 of the *Charter*?

B. HUMAN RIGHTS CODE ISSUES

I) Has the Applicant met his onus in establishing a breach of the H*uman Rights Code*?

II) Is there an issue of failure to provide reasonable accommodation?

PART IV: ARGUMENT

A. CHARTER ISSUES

I. Is there a *Charter* breach in light of overriding societal concerns for inclusion and diversity?

9. The Supreme Court of Canada has, for over 30 years, stated that freedom of religion is one of many rights protected by the *Charter* and human rights codes and has long recognized that the freedom of religion is not an absolute right. It is subject to reasonable limits, including consideration of other rights and concern for overarching principles such as inclusion and diversity.

> *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 ("*Big M Drug Mart*"), Applicant's Book of Authorities ("App. BOA"), Tab 5; see also *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551 ("*Amselem*"), App. BOA, Tab 7, *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256 ("*Multani*"), App. BOA, Tab 8, at para. 30 and *Bonitto v. Halifax Regional School Board*, [2015] N.S.J. No. 357 ("*Bonitto*"), Respondent's Book of Authorities ("Resp. BOA"), Tab 15, at para. 54, leave to appeal dismissed: 2016 CanLII 7596 (SCC).

10. As a result, when claims of religious infringement arise in public schools, courts are careful to consider the broader social aspects in play at the first stage of the analysis of a *Charter* breach, instead of only at the s. 1 justification stage.

11. This analysis is clear in the Supreme Court of Canada's 2002 decision of *Chamberlain v. Surrey School District*, which considered a similar issue to that raised by the Applicant: whether using teaching materials that positively portrayed same-sex

relationships would infringe some parents' religious rights. The Court dealt with this issue by considering what was reasonable, particularly in light of the key Canadian *Charter* values of respect and inclusion.

> *Chamberlain v. Surrey School District*, [2002] 4 S.C.R. 710 ("*Chamberlain*"), Resp. BOA, Tab 23, at para. 65.

12. The Court held that school communities will inevitably have students from different family models. Exposure to these different models may create some "cognitive dissonance" for some parents and their children, however, the Court held that is neither a breach of freedom of religion nor a negative result:

> But such dissonance is neither avoidable nor noxious. Children encounter it every day in the public school system as members of a diverse student body...The cognitive dissonance that results from such encounters is simply a part of living in a diverse society. It is also a part of growing up. Through such experiences, children come to realize that not all of their values are shared by others.
>
> Exposure to some cognitive dissonance is arguably necessary if children are to be taught what tolerance itself involves. As my colleague points out, the demand for tolerance cannot be interpreted as the demand to approve of another person's beliefs or practices. When we ask people to be tolerant of others, we do not ask them to abandon their personal convictions. We merely ask them to respect the rights, values and ways of being of those who may not share those convictions...Learning about tolerance is therefore learning that other people's entitlement to respect from us does not depend on whether their views accord with our own. [Emphasis added.]
>
> *Chamberlain*, Resp. BOA, Tab 23, at paras 65-66.

13. The Court stressed that children cannot learn about respect and inclusion unless they are exposed to views that differ from those taught at home. This reasoning applies to children of all ages, including the Applicant's children. As the Supreme Court in *Chamberlain* memorably stated: "Tolerance is always age-appropriate".

14. Given our country's diversity, it is to be expected that in the Canadian public school system, all students will, and should, be exposed to beliefs that may differ from their parents' religious view. Exposing children to different views is not a *Charter* or human rights breach, but a furtherance of *Charter* values and a necessary part of living in the diverse Canadian society which the Supreme Court has continually endorsed.

15. The Applicant relies on the Supreme Court of Canada decision in *Syndicat Northcrest v. Amselem*. *Amselem* reiterates that freedom of religion, even in the case of a sincerely held belief, is not absolute and is constrained by overriding societal concerns. The Federation submits that the following reasoning of the Court applies to this case:

> However, our jurisprudence does not allow individuals to do absolutely anything in the name of that freedom. Even if individuals demonstrate that they sincerely believe in the religious essence of an action...and even if they successfully demonstrate non-trivial or non-insubstantial interference with that practice, they will still have to consider how the exercise of their right impacts upon the rights of others in the context of the competing rights of private individuals...The ultimate protection of any particular Charter right must be measured in relation to other rights and with a view to the underlying context in which the apparent conflict arises.
>
> Indeed, freedom of religion, like all other rights...may be made subject to overriding societal concerns. As with other rights, not every interference with religious freedom would be actionable... [Emphasis added.]
>
> *Amselem*, App. BOA, Tab 7, at paras. 62-63.

16. Given the overriding societal concerns of inclusion and diversity, the Federation submits that there has been no *Charter* breach, under s. 2(a) or any other section.

II. Has the Applicant met his onus?

17. The Applicant has the onus to establish a *Charter* breach. The Federation submits that he has not met his onus. Instead, he has come before this Honourable Court with vague and speculative claims of a breach, without any evidentiary basis.

> *Amselem*, App. BOA, Tab 7, at para. 46, see also *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7 ("*S.L.*"), App. BOA, Tab 9, at para. 23, *Multani*, App. BOA, Tab 8, at paras. 34-35.

18. While the Applicant's children may be exposed to parts of the curriculum, teaching materials or lessons that portray persons having a variety of sexual orientations or relationships this is, as the Supreme Court held in *Chamberlain*, part of growing up in Canadian society. Mere exposure to curriculum materials portraying values, ideas and lifestyles that differ from those of the Applicant in no way inhibits his, or his children's, ability to have and practice religious beliefs of their own choosing nor does it force them to act in a way contrary to their beliefs. Rather, as the Court also found in *Chamberlain*, any cognitive dissonance experienced by his children is a necessary and desirable by-product of living in a diverse and inclusive society.

> *Chamberlain*, Resp. BOA, Tab 23, at paras. 65-66.

19. The Supreme Court took this position again in the 2012 case of *S.L. v. Commission scolaire des Chênes*, relied upon by the Applicant. In *S.L.*, the Supreme Court held that the applicant parents, although they held sincere religious beliefs different from those portrayed in the school program in question, had failed to prove any violation of the *Charter.* The Court clearly and plainly provided an answer to the Applicant's claim when it wrote although "such an exposure can be a source of friction, it does not in itself constitute an infringement of s. 2(a) of the Canadian *Charter*".

S.L., App. BOA, Tab 9, at para. 40.

20. The Applicant claims that his situation is different from that of the parents in *S.L.*. He says that he has demonstrated interference with his beliefs on the basis that he would be unable to stop his children from being "exposed" to "false teachings". We submit that this is, in fact, the same unsuccessful argument as the applicants in *S.L.*, who claimed that the school's teachings "would interfere with [their] ability to pass their faith on to their children". This was not accepted by the Supreme Court in *S.L.*, and ought not be accepted here.

S.L., App. BOA, Tab 9, at para. 24.

21. Moreover, just as the parents in *S.L.* did not, as required by the Supreme Court, objectively establish on the evidence any *Charter* breach, the Applicant also has not, in the five years since first raising his concerns, provided any evidence of a breach of his rights. We submit that the same analysis and reasoning applied in *S.L.* applies here.

S.L., App. BOA, Tab 9, at para. 41 and *R. v. Edwards Books and Art Ltd.*, [1986] 2 SCR 713, App. BOA, Tab 6, at para. 98; see also *Multani*, App. BOA, Tab 8, at paras. 34-36; *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16, App. BOA, Tab 11, at para. 15.

22. In attempting to distinguish his situation from *S.L.*, the Applicant relies on *Loyola High School v. Quebec (Attorney General),* which he claims is similar to his situation rather than *S.L.*. However, the Applicant's matter is clearly distinguishable from *Loyola.* Firstly, *Loyola* concerned the institutional religious freedom of a private Catholic school, which wanted an exemption from the provincial religious curriculum to teach religion from a Catholic perspective. It did not address an individual's freedom of religion in the context of an equity policy in a secular public school.

Loyola High School v. Quebec (Attorney General), [2015] 1 S.C.R. 613 ("*Loyola*"), App. BOA, Tab 10, at para. 2.

23. Further, while the Applicant claims that his situation is analogous to *Loyola* in that the School Board is allegedly preventing him from ensuring his children are taught about marriage and sexuality from his "biblical perspective", this is simply not accurate. There is nothing stopping the Applicant from teaching his children his own personal beliefs. Further, the Applicant remains free to send his children to a private school, a publically funded Catholic school, or to homeschool his children.

24. We submit that the Applicant's claims of a breach of his rights because of "false teachings" is entirely speculative. There is no actual evidence of his or his children's rights being breached. Moreover, his claims of "moral relativism" and "false teachings" being an infringement on his religious rights are vague, and do not meet the standard required by the courts to establish a *Charter* breach.

III. What is the appropriate analytical approach to applying the *Charter* to administrative decision-makers exercising discretional power?

25. This Application is not a challenge to a piece of legislation or a law of general application; it is a challenge to a discretionary administrative decision of a school board. The Supreme Court has stated that a review of administrative decision-makers exercising discretionary power under the authority of a statute should be dealt with differently by the courts from a *Charter* challenge to a rule or law of general application.

26. The Supreme Court recently held, in *Doré v. Barreau du Québec*, a *Charter* case under s. 2(b), that in such cases of review of discretionary decisions, the mechanism of administrative law applies and it is "unnecessary to resort to the justification process

under s.1 of the *Canadian Charter* when a complainant is not attempting to strike down a rule of law of general application". This is applicable in this matter as well.

> *Doré v. Barreau du Québec*, [2012] 1 S.C.R. 395 ("*Doré*"), Resp. BOA, Tab 12, at para. 35, see also *Loyola*, App. BOA, Tab 10, para. 3 and *Bonitto*, Resp. BOA, Tab 15, at para. 49.

27. Under the *Doré* approach, put simply, the question is whether the School Board acted reasonably. If so, there will be no violation. Applying the principles of *Doré*, if the School Board has "properly balanced the relevant *Charter* value with the statutory objectives, the decision will be found to be reasonable".

> *Doré*, Resp. BOA, Tab 15, at para. 58.

28. In the case at bar, the School Board has properly balanced the Applicant's freedom of religion under the *Charter* with its statutory objectives, which include the Ministry of Education's requirement of the Respondent School Board to proactively address the problem of homophobia and value diversity and respect for others, including those from LGBTQ (lesbian, gay, bisexual, transgender, queer or questioning) communities. A proper balancing of these rights and objectives does not warrant the censorship or vetting of materials reflecting the diversity of values and lifestyles in Canadian society from public school classrooms, nor the withdrawal of students.

> *Equity Policy Supporting Guidelines – Sexual Orientation*, at s. 4.2, Affidavit of Gail Belisario, Vol. I, Ex D.

IV. If there is a *Charter* infringement, is it saved under s. 1?

29. If the Court finds that the School Board's actions breached the Applicant's rights under s. 2(a), it is submitted that those actions are nevertheless justified under s. 1 of the *Charter*. As set out above, the recent approach of the Supreme Court in numerous cases of discretionary administrative decisions is to not require the full *Oakes* test under

s.1. If, however, this Honourable Court believes that the *Oakes* approach is necessary in this case, we submit that the analysis under s.1 amounts to any limit being justified.

R. v. Oakes, [1986] 1 S.C.R. 103 ("*Oakes*"), App. BOA, Tab 12.

1) Pressing and substantial objective

30. To be justified under s. 1, the impugned action or law must have a pressing and substantial objective. These objectives are manifold in this case.

Oakes, App. BOA, Tab 12, at page 139.

31. Ontario's *Education Act* states that the purpose of education is to develop Ontarians into "knowledgeable, caring citizens who contribute to their society" and imposes a duty on school boards to promote an inclusive and accepting school climate. The Preamble to Bill 13, *Accepting Schools Act,* further emphasizes the importance of a positive school climate that is inclusive and safe for all students. It states expressly that students need to develop "a critical consciousness", to make their schools and communities more equitable and inclusive for all people, including LGBTQ people.

Bill 13, *Accepting Schools Act*, 2012, SO 2012, c.5, Preamble; *Education Act*, R.S.O. 1990, c. E.2., ss. 0.1(1) 0.1(2) and 169.1(a.1).

32. The Ministry of Education's Equity Strategy, set out in the record, also requires school boards to value diversity, inclusion and respect for others, including those from the LGBTQ communities, and to proactively address the problem of homophobia.

Ontario's Equity and Inclusive Education Strategy, Affidavit of Gail Belisario ("Aff. GB"), Vol. I, Ex. B, see particularly pages 9 and 11.

33. It is submitted that these statutory objectives are pressing and substantial, as they serve to protect vulnerable minorities from stigmatization in public schools, and to foster positive, inclusive, respectful and caring attitudes in Ontario citizens.

2) Rational connection

34. Next, there must be a rational connection between the impugned measure and the objectives. In this case, we submit that it is clear that the School Board's decision is rationally connected to the statutory objectives as it is consistent with, and mandated by, the provincial Equity Strategy, which, we note, has not been directly challenged.

Oakes, App. BOA, Tab 12, page 139.

3) Minimal impairment

35. In ensuring the Applicant's *Charter* rights are minimally impaired, the School Board did not have to choose the least restrictive means possible to achieve its objectives. The means chosen need only fall within a range of reasonable choices and be reasonably tailored to the relevant objectives.

Oakes, App. BOA, Tab 12, page 139.

36. It is submitted that the School Board's decision falls well within a range of reasonable choices. The School Board informed the Applicant, on numerous occasions, that he could withdraw his children from the sexual education portion of the curriculum. Instead, he is requesting a much more far-reaching process by which he would determine his children's participation in all matters touching LGBTQ issues and "secular humanism". The School Board's means were reasonable and minimally impairing.

Spiritual Values / Issues in Education Form, Aff. GB,Vol II Ex. M.

37. The School Board's policies and decision are consistent with the mandatory statutory objectives and provincial Equity Strategy. The School Board's decision not to grant the Applicant's request for widespread "accommodations" was reasonably tailored to these mandated objectives, and thus meets the minimal impairment test.

4) Proportionality

38. To be justified under s. 1, there should be proportionality between the objective and the effects of the measure taken. That is, the objective and the positive effects should outweigh the deleterious effects of the impugned measure.

Oakes, App. BOA, Tab 12, page 139.

39. If there are deleterious effects of the School Board's decision, which is not conceded, they are limited to the extent necessary for the School Board to meet the provincial objectives under the Equity Strategy. The School Board has not restricted the Applicant's or his children's ability to exercise their religion. If he chooses to keep his children enrolled in a public, secular school, he remains free to teach them his religious values on his own, as is the right of all parents of public school students across Ontario.

40. The salutary effects of the decision are that the School Board publicly reaffirms its commitment to principles of diversity, inclusion and mutual respect. It allows public schools to portray lifestyles that are entirely legal and prevalent throughout Canadian society in a way that positively promotes inclusion. The salutary effects clearly outweigh any deleterious effects of the School Board's decision.

41. For all of the foregoing reasons, we submit that there has been no breach of the *Charter*, and, if there was any breach, which is denied, it is saved by s. 1.

B. HUMAN RIGHTS CODE

I. Has the Applicant established a breach of the *Human Rights Code*?

42. The Federation submits that there has been no breach of the *Human Rights Code* for the same reasons as there has been no breach of the *Charter*. The Federation submits that without evidence of a human rights breach, there is no need for this Court to consider whether the accommodation requested by the Applicant was reasonable.

> *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc.*, 2015 SCC 39, Intervenor's Book of Authorities ("BOA"), Tab 1, at paras. 35-37, 98 and 100, see also *Pellerin v. Conseil scolaire de district catholique Centre-Sud*, 2011 HRTO 1777 (CanLII), BOA, Tab 2, at paras. 10, 13, 14 and 26.

II. Was the accommodation requested by the Applicant reasonable?

43. In the alternative, if this Court determines that there was a breach of the *Human Rights Code* and the duty to accommodate existed, it is submitted the School Board's response to the Applicant's requests was reasonable. The "accommodation" requested by the Applicant is not reasonable for all of the reasons set out in the above discussion of the *Charter*, and further, because it would negatively affect the statutorily-protected human rights of students and parents on the basis of expressly protected grounds under the *Human Rights Code*, including sex, sexual orientation, gender identity, gender expression, marital status, and family status, as well as create undue hardship.

44. The Applicant seeks to be able to publically withdraw his children whenever there is a reference to same-sex relationships – what he calls "false teachings". In the case of *Zylberberg v. Sudbury Board of Education*, the Ontario Court of Appeal considered whether a requirement that schools open and close the school day with Christian

exercises was unconstitutional. In the course of its decision, the Court relied on evidence that the exercises placed non-Christian students under pressure to conform, and if they did not, would result in stigmatization of the students. The Court found this to be an "insensitive approach" that "depreciates the position of religious minorities". We submit that allowing the Applicant's "accommodation" request would produce the same insensitive result that the court reject in *Zylberberg,* in this case stigmatizing LGBTQ students.

> *Zylberberg v. Sudbury Board of Education*, 1988 CanLII 189 (Ont. C.A.), Resp. BOA, Tab 20, at paras. 11 and 42.

45. Further, it would create practical difficulties for teachers if they were forced to implement this "accommodation request", which is vague and unreasonable in practice. Concern for these same practical difficulties for teachers was recognized by the Supreme Court in *Loyola.* The Federation submits that in this case, teachers would face even greater practical difficulties than those identified by the Court in *Loyola*.

> *Loyola*, App. BOA, Tab 10, para. 156.

46. First, it would be impossible for teachers to review in advance all discussions that any particular parent may consider to be a "false teaching" in addition to their many responsibilities under the *Education Act,* Ministry curriculum, and School Board policies. It is submitted that lesson plans, activities and classroom discussions are tools that are continually adapted by teachers to meet the needs of their students. They are not static. It would be impossible to provide advance notice of all material, as it is ever-changing.

47. Further, the Applicant's request would force every teacher to comb through all teaching materials and anticipate, somehow, all classroom discussions and judge

whether a subject might conflict with the Applicant's particular beliefs. It is submitted that imposing such a burden on teachers to screen the whole curriculum and communicate the material in advance is unreasonable.

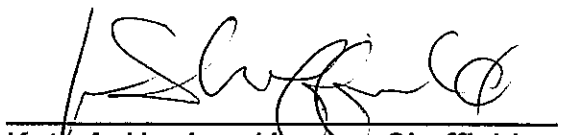
48. The Federation submits that if the Applicant's "accommodation" request is endorsed, each parent, who as part of Canada's diverse culture would not share the same concerns, would be entitled to such a time-consuming review process by every teacher. As a result, teachers would be forced to draft individualized reviews and communications to each parent, providing information tailored to their specific religious or ethical views. We submit that this would create an unmanageable amount of work for teachers, putting additional stresses on their already significant workload, in addition to undermining the School Board policies and provincial equity initiatives.

49. For these reasons, the Applicant's accommodation request was not reasonable. The School Board's decision violates neither the *Charter* nor *Human Rights Code*.

PART V: ORDER SOUGHT

50. The Intervenor, the Federation, requests that this Application be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 1st DAY OF APRIL, 2016



Kate A. Hughes / Lauren Sheffield

SCHEDULE A - LIST OF AUTHORITIES

	Description	Location
1.	*R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295	App. BOA, Tab 5
2.	*Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551	App. BOA, Tab 7
3.	*Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256	App. BOA, Tab 8
4.	*Bonitto v. Halifax Regional School Board*, [2015] N.S.J. No. 357, leave to appeal dismissed: 2016 CanLII 7596 (SCC)	Resp. BOA, Tab 15
5.	*Chamberlain v. Surrey School District*, [2002] 4 S.C.R. 710	Resp. BOA, Tab 23
6.	*S.L. v. Commission scolaire des Chênes*, 2012 SCC 7	App. BOA, Tab 9
7.	*R. v. Edwards Books and Art Ltd.*, [1986] 2 SCR 713	App. BOA, Tab 6
8.	*Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16	App. BOA, Tab 11
9.	*Loyola High School v. Quebec (Attorney General)*, [2015] 1 S.C.R. 613	App. BOA, Tab 10
10.	*Doré v. Barreau du Québec*, [2012] 1 S.C.R. 395	Resp. BOA, Tab 12
11.	*R. v. Oakes*, [1986] 1 S.C.R. 103	App. BOA, Tab 12
12.	*Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc.*, 2015 SCC 39	Intervenor's BOA, Tab 1
13.	*Pellerin v. Conseil scolaire de district catholique Centre-Sud*, 2011 HRTO 1777 (CanLII)	Intervenor's BOA, Tab 2
14.	*Zylberberg v. Sudbury Board of Education*, 1988 CanLII 189 (Ont. C.A.)	Resp. BOA, Tab 20

SCHEDULE B – TEXT OF RELEVANT STATUTORY PROVISIONS

1. ***Education Act*, R.S.O. 1990, c. E.2.**

2. ***Bill 13, Accepting Schools Act*, 2012**

1. ***Education Act*, R.S.O. 1990, c. E.2., ss. 0.1(1) and 0.1(2)**

Strong public education system

0.1 (1) A strong public education system is the foundation of a prosperous, caring and civil society.

Purpose of education

(2) The purpose of education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society.

Board responsibility for student achievement and effective stewardship of resources

169.1 (1) Every board shall,

(a) promote student achievement and well-being;

(a.1) promote a positive school climate that is inclusive and accepting of all pupils, including pupils of any race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability;

(a.2) promote the prevention of bullying;

(b) ensure effective stewardship of the board's resources;

(c) deliver effective and appropriate education programs to its pupils;

(d) develop and maintain policies and organizational structures that,

(i) promote the goals referred to in clauses (a) to (c), and

(ii) encourage pupils to pursue their educational goals;

(e) monitor and evaluate the effectiveness of policies developed by the board under clause (d) in achieving the board's goals and the efficiency of the implementation of those policies;

(f) develop a multi-year plan aimed at achieving the goals referred to in clauses (a) to (c);

(g) annually review the plan referred to in clause (f) with the board's director of education or the supervisory officer acting as the board's director of education; and

(h) monitor and evaluate the performance of the board's director of education, or the supervisory officer acting as the board's director of education, in meeting,

(i) his or her duties under this Act or any policy, guideline or regulation made under this Act, including duties under the plan referred to in clause (f), and

(ii) any other duties assigned by the board. 2009, c. 25, s. 15; 2012, c. 5, s. 3 (1).

2. *Bill 13, Accepting Schools Act*, 2012, Preamble

Preamble

The people of Ontario and the Legislative Assembly:

Believe that education plays a critical role in preparing young people to grow up as productive, contributing and constructive citizens in the diverse society of Ontario;

Believe that all students should feel safe at school and deserve a positive school climate that is inclusive and accepting, regardless of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability;

Believe that a healthy, safe and inclusive learning environment where all students feel accepted is a necessary condition for student success;

Understand that students cannot be expected to reach their full potential in an environment where they feel insecure or intimidated;

Believe that students need to be equipped with the knowledge, skills, attitude and values to engage the world and others critically, which means developing a critical consciousness that allows them to take action on making their schools and communities more equitable and inclusive for all people, including LGBTTIQ (lesbian, gay, bisexual, transgender, transsexual, two-spirited, intersex, queer and questioning) people;

Recognize that a whole-school approach is required, and that everyone — government, educators, school staff, parents, students and the wider community — has a role to play in creating a positive school climate and preventing inappropriate behaviour, such as bullying, sexual assault, gender-based violence and incidents based on homophobia, transphobia or biphobia;

Acknowledge that an open and ongoing dialogue among the principal, school staff, parents and students is an important component in creating a positive school climate in which everyone feels safe and respected;

Acknowledge that there is a need for stronger action to create a safe and inclusive environment in all schools, and to support all students, including both students who are impacted by and students who have engaged in inappropriate behavior, to assist them in developing healthy relationships, making good choices, continuing their learning and achieving success.

E.T.

Applicant

- and -

HAMILTON-WENTWORTH DISTRICT SCHOOL BOARD

Respondent

Court File No.: 12-36939

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at Hamilton, Ontario

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