



ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Joshua Alexander

Applicant

and

Renfrew County Catholic District School Board

Respondent

APPLICATION UNDER section 97 of the *Courts of Justice Act*, section 2 of the *Judicial Review Procedure Act*, and section 68.01 of the *Rules of Civil Procedure*

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 following location:

Ottawa Courthouse, 161 Elgin St., 2nd Fl., Ottawa, ON K2P 2K1

on (day), (date), at (time).

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
Ottawa Courthouse
161 Elgin St., 2nd Fl.
Ottawa, ON K2P 2K1

TO Jennifer Birrell, counsel for the Respondent
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AND TO Attorney General of Ontario (*as required by subsection 9(4) of the Judicial Review Procedure Act*)

Crown Law Office – Civil
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APPLICATION

RELIEF SOUGHT

1. The Applicant, Joshua Alexander, makes application for judicial review of a December 18, 2023 decision of a three-member committee of the Board of Trustees of the Respondent, Renfrew County Catholic District School Board, denying his appeals of various suspensions and exclusions imposed on him by the principal of St. Joseph's High School in Renfrew, Ontario (the "Decision").
2. The Applicant seeks relief in the form of an Order of *Certiorari* quashing the Board's unreasonable Decision to confirm:
 - a. A 20-day suspension imposed on November 23, 2022 and confirmed on December 20, 2022 by St. Joseph's Principal, Derek Lennox;
 - b. An exclusion imposed by Principal Lennox on January 8, 2023; and
 - c. The extension of the January 8, 2023 exclusion through to the end of the 2022-2023 school year, imposed by Principal Lennox and communicated through the Board's counsel on January 26, 2023.
3. An Order granting the Applicant's appeal of each of the above Suspension and Exclusions, or, in the alternative, remitting the matter back to the Board to be decided in accordance with reasons delivered by this honourable Court.

GROUND FOR THIS APPLICATION

Background

4. Mr. Alexander was, at all material times, a resident of Cobden, Ontario and between the age of 16-18 years old. He was enrolled as a grade 11 student for the 2022-2023 school year at St. Joseph's High School, which is operated by the Respondent Board.
5. Mr. Alexander is a Christian. He holds many specific beliefs, informed by the Bible, regarding sex, sexuality, and sexual morality. In summary, these beliefs are that human beings are created

by God as immutably male or female, persons cannot “change” their gender or sex from male to female or from female to male, and it is perverted and contrary to central Christian teaching, informed by the Bible, for biological males to enter the sex-segregated private spaces of females, such as washrooms and change rooms. Mr. Alexander believes he is called, along with all followers of Jesus Christ, to proclaim truth, which includes telling those around him about the Lord’s design for human sexuality and to openly oppose the Board’s policy of permitting males to enter the girls’ washrooms. He further believes he would commit a sin if he remained silent on the issues of transgenderism and males accessing the sex-segregated private spaces of females.

6. The Respondent is a public Catholic school board. The Board has what it calls a “bathroom policy” that permits transgender students to use the bathroom “of their choosing”, which, in practice, means biologically male students who self-identify as girls are permitted to enter the girls’ bathroom in schools such as St. Joseph’s High School.
7. Beginning in October 2022, Mr. Alexander expressed his religious beliefs during various class discussions. In response, many students, and sometimes teachers, called him various names, such as homophobic and transphobic, and harassed him based on his minority Christian beliefs. Understanding that his beliefs were unpopular and considered by many to be offensive, Mr. Alexander absorbed the mistreatment and continued to express his beliefs that boys cannot become girls and should not be entering the girls’ washrooms.
8. Mr. Alexander also advocated, by speaking to Principal Lennox, for girls who confided in him they had concerns with boys using their washroom, but were hesitant to bring their concerns to Principal Lennox.
9. Principal Lennox became aware of the class discussions referred to above. He and Mr. Alexander met on October 20, 2022 to discuss the classroom discussions and the School’s bathroom policy. In summary, Principal Lennox asked Mr. Alexander to be respectful, to which Mr. Alexander agreed.
10. Principal Lennox did not impose or threaten to impose any discipline upon Mr. Alexander for the beliefs he had expressed or for the alleged use by Mr. Alexander of the term “tranny”.

11. Principal Lennox also made clear to Mr. Alexander that the policy of permitting boys to enter the girls' washrooms would not be changing.
12. In early November 2022, Mr. Alexander decided to organize a student walk-out and protest to raise awareness about and oppose the St. Joseph's High School bathroom policy. The walk-out was scheduled to take place on November 25. Principal Lennox met with Mr. Alexander on November 4 to discuss the planned walk-out. He said he wanted to work with Mr. Alexander, not against him. No discipline or threat of discipline was discussed, except that Principal Lennox stated any student attending the walk-out would lose their transportation home for that day.
13. Two days before the walk-out, on November 23, Principal Lennox issued by way of email a 20-day suspension to Mr. Alexander, citing concerns about Mr. Alexander's social media posts. He also stated he would be conducting an investigation regarding Mr. Alexander.
14. Principal Lennox issued a letter on December 20, 2022 in which he made several findings that Mr. Alexander had engaged in inappropriate behaviour that justified a suspension. Principal Lennox subsequently communicated to Mr. Alexander a number of conditions he would have to abide by in order to return to school in January 2023, including that he not "deadname" any transgender students and that he be excluded from the two of his four classes because those two classes were attended by transgender students.
15. In late December 2022, Mr. Alexander withdrew from parental control and hired counsel. Through counsel, Mr. Alexander appealed the suspension; however, the Board refused to hear the appeal, claiming that Mr. Alexander had not, in fact, withdrawn from parental control.
16. Counsel for Mr. Alexander wrote to Principal Lennox on January 6, 2023, explaining that Mr. Alexander was unable to comply with the "deadname" condition due to his sincere Christian beliefs. Counsel further explained that segregating Mr. Alexander from the classes he shared with transgender students amounted to religious discrimination because it was apparent the purpose of such segregation was to prevent transgender students from hearing Mr. Alexander express his religious beliefs. Counsel reminded Principal Lennox that Mr. Alexander had not and would not, on an objective standard, bully transgender students.

17. Principal Lennox responded by excluding Mr. Alexander from physically attending St. Joseph's High School until the end of January 2023, which was also the end of the first semester.
18. On January 23, 2023, counsel for Mr. Alexander wrote to the Board alleging that the exclusion and the conditions for Mr. Alexander's return to school were discriminatory and requesting that he be permitted to return to school in the second semester without discrimination on the basis of his religious beliefs. Again, counsel communicated Mr. Alexander's commitment to not bully transgender students.
19. On January 26, counsel for the Board wrote to communicate that the exclusion was being extended to the end of the school year. The January 8 exclusion and the extension of the exclusion were both appealed by Mr. Alexander, although the Board again refused to hear these appeals.
20. Mr. Alexander never returned to St. Joseph's High School. Following a successful application to the Superior Court of Justice for a declaration Mr. Alexander had withdrawn from parental control, the appeals of the suspension and exclusions referred to above were heard by the Board on November 15 and 17, 2023 *in camera*.
21. By way of a committee of trustees, the Board issued a 10-page decision denying Mr. Alexander's appeals on December 18, 2023. The Board purported to seal the Decision and ordered a complete publication ban on all materials submitted as part of the appeals.

The Board's Failure to Satisfy the *Vavilov* Requirement to Grapple with the Key Issues and Central Arguments Raised by the Applicant

22. While the *Vavilov* court settled on reasonableness as the standard of review in all but the narrowest of exceptions, it made equally clear how high the standard of reasonableness actually is.
23. *Vavilov* puts reasons first, because reasons are the means by which the decision-maker communicates the rationale for its decision.
24. If the decision "cannot be said to exhibit the requisite degree of justification, intelligibility and transparency", it will be unreasonable. In order to be reasonable on the *Vavilov* standard, a

decision must bear the hallmarks of justification, transparency and intelligibility. This means the decision must:

- a. be rational and logical, including free of logical fallacies;
- b. be justified in relation to the constellation of law and facts;
- c. take account of the evidentiary record and the general factual matrix that bears on it;
- d. not adopt inferior interpretations for the sake of expediency;
- e. not engage in reverse-engineering;
- f. not fundamentally misapprehend or fail to account for the evidence before the decision-maker;
- g. not fail to consider relevant facts and evidence before the decision-maker;
- h. not follow an “irrational chain of analysis” or reach a “conclusion” that “cannot follow from the analysis undertaken”;
- i. meaningfully account for the central issues and concerns raised by the Appellant;
- j. meaningfully grapple with the key issues and central arguments raised by the Appellant;
- k. grapple with particularly harsh consequences of a decision; and
- l. demonstrate that the decision-maker was actually alert and sensitive to the matter before it.

25. The principles of justification and transparency require that the reasons for the Board’s Decision meaningfully account for the central issues and concerns raised by the parties. The Board did not do this; it failed to grapple with the key issues and central arguments raised by the Applicant in his appeal. The Board’s reasons, such as they are, demonstrate that it opted to listen only to the issues raised and arguments made by Principal Lennox about bullying. The Board was not alert to the issues raised and arguments made by Mr. Alexander regarding religious discrimination.

26. The Board concluded that the case was about bullying only, not religious discrimination, but failed to provide any reasons for this conclusion or engage in any analysis regarding how or why Mr. Alexander did not establish a *prima facie* case of discrimination on the basis of creed.

27. Had the Board crafted its reasons with more care and attention, it may have realized the errors it committed regarding religious beliefs and religious discrimination. The Board failed to even engage in a cursory analysis of the Applicant's claims of religious discrimination. The leading case regarding religious beliefs, *Syndicat Northcrest v Amselem*, 2004 SCC 47, was not mentioned even once in the Board's reasons (in fact, the Board did not cite a single legal authority in its reasons). In addition to failing to engage with the caselaw on religious discrimination pleaded by Mr. Alexander, the Board also failed to grapple with the multiple Human Rights Tribunal of Ontario ("HRTO") policies relied on by Mr. Alexander, preferring instead to only consider the single HRTO policy relied on by the Principal.
28. The Board's failure or refusal to address the Applicant's central argument led it to conclude, contrary to the clear direction of the Supreme Court of Canada in *Amselem*, that individuals are only permitted by law to hold religious beliefs, not to declare or otherwise manifest those beliefs.

Creed Discrimination

29. The Supreme Court of Canada has both defined religion and declared religion an immutable characteristic. The Court states in *Amselem* a person will establish a protected religious belief if the person

has a **practice or belief**, having a **nexus with religion**, which **calls for a particular line of conduct**, either by being objectively or subjectively obligatory or customary, or by, in general, subjectively engendering a personal connection with the divine or with the subject or object of an individual's spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials;

and

is **sincere** in his or her belief. [emphasis added]

30. Religious belief **governs conduct**, and religious infringement is established when a condition or requirement interferes with conduct-governing beliefs in a way that is beyond trivial or insubstantial. Such infringement triggers the duty to accommodate to the point of undue hardship.

31. The Court states in *Corbiere* that religion is “constructively immutable” because it is “changeable only at unacceptable cost to personal identity” and again affirms this principle in *Quebec v A*.
32. Despite having been provided by Mr. Alexander with a comprehensive explanation of his religious beliefs and extensive submissions on both relevant case law and the HRTO’s *Policy on Preventing Discrimination Based on Creed*, the Board concluded, ***without performing any analysis or referring to any authorities***, that Mr. Alexander’s appeal was not about his religious beliefs. Such a conclusion on the facts of this case is astounding. That Mr. Alexander’s comments in class and elsewhere regarding sex, sexuality, transgenderism, and boys entering the girls’ washroom were a manifestation of his sincere Christian beliefs is patently clear. That the Principal’s adverse actions toward Mr. Alexander were in direct response to Mr. Alexander’s declaration of his religious beliefs is also clear.
33. The Board attempts to avoid acknowledging this by embracing an impoverished and legally incorrect view of the right to participate in society free of discrimination on the basis of belief: that while individuals are free to hold whatever religious beliefs they want, they are not free to act upon or publicly express those beliefs if someone subjectively feels disrespected, insulted, offended, *et cetera* when encountering those beliefs.
34. The law has repeatedly rejected such a notion. Justice Dickson, as he then was, famously stated in *Big M Drug Mart* that freedom of religion is “the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination”. Similarly, in *Amselem*, the Supreme Court stated that freedom of religion consists of the freedom to ***undertake practices***, not merely to hold beliefs quietly in one’s head. Human rights jurisprudence has made it clear that freedom of religion as guaranteed in the *Charter* and the right to be free of religious discrimination as listed in human rights legislation protect the same thing: ***declarations of religious beliefs and manifestations of religious beliefs through practices and dissemination***, not merely the right to hold religious beliefs.
35. The *Human Rights Code*, which has primacy over all other provincial laws in Ontario, states in its first section: “Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of... creed[.]”

36. Discrimination will be established where a person shows he possesses a *Code*-protected characteristic; he has experienced negative treatment or an adverse impact in a *Code*-governed area; and the protected characteristic was a factor in the negative treatment or adverse impact. No intention to discriminate is necessary; acts or omissions which discriminate in effect are equally prohibited. Protection against discrimination applies in the area of services, including education.
37. Establishing discrimination, often referred to as *prima facie* discrimination, is not the end of the legal analysis, however. Discrimination may be justified by the other party if they can show that the discrimination was unavoidable because of a *bona fide* requirement or because accommodation would impose undue hardship.
38. Mr. Alexander presented cogent evidence to the Board establishing *prima facie* discrimination based on his creed. That discrimination may or may not have been justified, but it cannot be credibly denied Mr. Alexander experienced discrimination as a result of declaring and manifesting his sincere Christian beliefs. The Board erred in law by failing to find Principal Lennox discriminated against Mr. Alexander on the basis of creed.

The Suspension

39. The Board's decision to uphold the 20-day suspension was unreasonable. The Board found not only that the Applicant had bullied transgender students, but that such purported bullying was motivated by "bias", and even that Mr. Alexander's presence at St. Joseph's High School put transgendered students' safety at risk.
40. In support of these findings, the Board pointed to nothing other than statements made by Mr. Alexander which were clearly a declaration of his Christian beliefs and, while unpopular, were objectively not hateful or threatening. The Board unreasonably ignored evidence that all of Mr. Alexander's comments found their source in his sincere religious beliefs, which is made all the more unreasonable—to the point of being disingenuous—given the Board is institutionally Catholic and therefore familiar with the beliefs Mr. Alexander adheres to, many of which are identical to canonical Catholic doctrines.
41. The Board was not able to identify any conduct that might reasonably substantiate a finding Mr. Alexander was biased against or posed a risk to transgender students. There was no

evidence, for example, that Mr. Alexander ever attempted to prevent a male transgender student from accessing the girls' washroom, ever followed a transgender student, ever threatened to harm a transgender student, ever told a transgender student to kill themselves, ever said transgender students should be excluded from school, ever physically touched a transgender student in an unwanted way, or ever encouraged other students to threaten or hurt a transgender student or to block a transgender student from using the bathroom of their choice.

42. Ironically, the evidence before the Board is that the transgender students were the ones who wanted to exclude Mr. Alexander from classes because of his beliefs and mused about having a weapon with them at school in the event they encountered Mr. Alexander.

The January 8 Exclusion

43. The Board's decision regarding the January 8 exclusion fails the *Vavilov* standard and is unreasonable.
44. Following the suspension, it was anticipated Mr. Alexander would return to school following the Christmas break, on January 9, 2023. As detailed above, counsel for Mr. Alexander wrote to Principal Lennox on January 6 stating Mr. Alexander's request that the conditions of his return, particularly the requirement he segregate himself from classes transgender students attended, be rescinded because they were discriminatory.
45. Principal Lennox and counsel for Mr. Alexander engaged in an email exchange on Sunday, January 8. Principal Lennox stated the conditions would not be varied. Counsel responded stating that an unfortunate and unnecessary conflict would result the next day because Mr. Alexander would not comply with a discriminatory condition he remove himself from classes. Principal Lennox then purported to exclude Mr. Alexander, claiming that, through counsel, Mr. Alexander had issued a threat and that his presence in the school or classroom would be detrimental to the physical or mental well-being of students.
46. In deciding to uphold the January 8 exclusion, the Board did not grapple with the Applicant's arguments that the conditions were unreasonable and discriminatory, did not identify any test for when exclusions are justified, and did not refer to any other cases where exclusions were or were not justified. Instead, the Board briefly concluded that a "conflict would ensue which would

obviously negatively impact the school,” without providing reasons for how or why this “obvious” negative impact justified an exclusion.

The Extension of the January 8 Exclusion

47. The Board’s decision regarding the extension of the January 8 exclusion is also unreasonable.
48. The January 8 exclusion purported to completely prevent Mr. Alexander from physically attending St. Joseph’s High School, which meant he could only receive his education either remotely or alone in an off-campus, segregated classroom. Principal Lennox decided to extend that exclusion for the entire second semester.
49. The Board provided almost no reasons as to why it found such an unprecedented exclusion to be reasonable. In addition to again failing to grapple with Mr. Alexander’s central argument regarding religious discrimination, the Board failed to, for example, provide reasons as to how such a lengthy exclusion was reasonably not disciplinary in nature, how it did not contravene the HRTO’s *Guidelines on Accessible Education*, or how the exclusion was justified despite Principal Lennox having offered no explanation as to why Mr. Alexander and the transgender students could not simply be placed in different classes from each other.
50. The Board blithely stated that “students had confirmed Mr. Alexander’s behaviour made them feel unsafe” without any meaningful analysis as to whether these unidentified students’ feelings had objective support in the evidence, or any reasoning as to how Mr. Alexander was actually likely enough to engage in behaviour serious enough so as to ground a semester-long exclusion.

DOCUMENTARY EVIDENCE TO BE RELIED ON

51. The Applicant’s Application Record, to be filed.

January 16, 2024

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Joshua Alexander v Renfrew County Catholic District School Board

Court file no.

Ontario
Superior Court of Justice

PROCEEDING COMMENCED AT OTTAWA

Notice of Application to Divisional Court for Judicial Review

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RCP-E 4C (September 1, 2020)