



Originally filed October 6, 2023

FORM 66
RULES 16-1(2) and 16-1(19)(B)(i)

File No. CHI-9-S-40035
Chilliwack Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

LYNDA DI ARMANI

Petitioner

and

THE BOARD OF SCHOOL TRUSTEES OF
SCHOOL DISTRICT NO. 33 (CHILLIWACK)

Respondent

AMENDED PETITION TO THE COURT

ON NOTICE TO:

THE BOARD OF SCHOOL TRUSTEES OF
SCHOOL DISTRICT NO. 33 (CHILLIWACK)



ATTORNEY GENERAL OF BRITISH COLUMBIA
Ministry of Justice, Legal Services Branch



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This proceeding is brought for the relief set out in Part 1 below by Lynda di Armani (the "Petitioner")

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition in the United States of America, within 35 days after that service,
- (c) if you were served with the petitioner anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is: 46085 Yale Road Chilliwack, BC V2P 2L8
(2) The ADDRESS FOR SERVICE of the petitioner is: [REDACTED] Fax number for service of the petitioner: N/A E-mail address for service of the petitioner: [REDACTED]
(3) The name and office address of the petitioner's lawyer is: Marty Moore Moore Justice Law [REDACTED]

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CLAIM OF THE PETITIONER

PART I: ORDERS SOUGHT

1. The Petitioner, Lynda di Armani ("Ms. di Armani"), seeks the following relief against the Respondent, the Board of School Trustees of School District No. 33 (Chilliwack) (the "Board"):
 - a. a Declaration, pursuant to section 2(2)(b) of the *Judicial Review Procedure Act*, RSBC 1996, c. 241 ("*JRPA*"), that the Board's decision (the "Termination Decision") to repeatedly interrupt, interfere with, mute and ultimately terminate Ms. di Armani's remarks at the Board's June 13, 2023 meeting (the "Meeting") was *ultra vires* the Board's authority and powers delegated to the Board pursuant to the *School Act*, RSBC 1996, c. 412 (the "*Act*");
 - b. a Declaration, pursuant to section 2(2)(b) of the *JRPA* and section 24(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), that the Board's actions to repeatedly interrupt, interfere with, mute and ultimately terminate Ms. di Armani's remarks during the Meeting unjustifiably infringed Ms. di Armani's freedoms of thought, belief, opinion, expression and other media of communication, protected by section 2(b) of the *Charter*;
 - c. an Order, pursuant to section 2(2)(a) of the *JRPA* and section 24(1) of the *Charter*, prohibiting the Board (including its Chair, Vice-Chair(s) and Trustees) at future Board meetings, from interrupting, raising points of order, muting and silencing Ms. di Armani or other members of the public seeking to participate in the public participation portions of such meetings, solely on the basis of the Chair's, the Vice-Chair's or any other Trustee's disagreement with the contents of the presenters' remarks;
 - d. a Declaration pursuant to section 52(1) of the *Constitution Act, 1982* that the Board's prohibition of recording at Board meetings that are open to the public violates section 2(b) and is of no force and effect;

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- d e. in the alternative, an Order, pursuant to section 2(2)(a) of the *JRPA* and section 24(1) of the *Charter*, prohibiting the Board from preventing Ms. di Armani and other members of the public from recording future Board meetings that are open to the public;
- e f. in the alternative, a Declaration, pursuant to section 2(2)(b) of the *JRPA* and section 24(1) of the *Charter*, that the Board, by
- i. preventing Ms. di Armani and other attending members of the public from taking audio and/or video recordings of the Meeting, and then
 - ii. muting, first Ms. di Armani's microphone, and then the entire audio recording,
- violated Ms. di Armani's freedom of expression and other media communication as protected by section 2(b) of the *Charter*, as well as that of other interested members of the public;
- f g. an Order that given the public interests engaged in this matter, no costs should be awarded for or against Ms. di Armani; and
- g h. such further and other relief as the Court considers appropriate.

PART II: FACTUAL BASIS

The Parties

2. Ms. di Armani is a resident of Chilliwack, BC.
3. The Board is a board of education established pursuant to section 30 of the *Act*, with trustees elected every four years pursuant to section 35(1) of the *Act*.
4. The current Chair of the Board is Trustee Willow Reichelt (the "Chair"). The current Vice-Chair of the Board is Trustee Carin Bondar (the "Vice-Chair").

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5. There are five additional Trustees of the Board, including Teri Westerby ("Trustee Westerby"). In addition to being a Board Trustee, Trustee Westerby is also the Director of Marketing for the Chilliwack Pride Society.

June 13, 2023 Board Meeting

6. On June 13, 2023, the Board held the Meeting. Prior to being allowed into the Meeting, members of the public, including Ms. di Armani, were required by the Board to sign a form acknowledging that no video/audio recordings were permitted, with the exception of authorized media.
7. The Board published an Agenda for the Meeting. Item 5.3 on the Agenda was described as "Board Support for National Pride Month in Canada." A report from Trustee Westerby was included in the Agenda, in which Trustee Westerby recommended that the Chilliwack School District post a message in recognition of National Pride Month and install a third flagpole to fly the Pride flag for the month of June.
8. During the Meeting, the public was given the opportunity to express any concerns or comments to the Board, which is described on the Agenda as "Public Participation – Comments/Questions concerning the Agenda" (the "Public Participation"). The Chair asked at the start of the Public Participation period that people not be identified by name and to avoid being disparaging or discriminatory.
9. Ms. di Armani was the first speaker to give remarks during the Public Participation section. Ms. di Armani sought to address Trustee Westerby's recommendation that the Board support Pride month. She also sought to raise a concern about an apparent conflict of interest since Trustee Westerby was also the Director of Marketing for the local Pride Society.
10. Ms. di Armani was only seconds into her presentation when the Vice-Chair raised a purported point of order. Ms. di Armani was immediately cut off by the Chair, and her microphone was muted, preventing Ms. di Armani from completing her statement of concern.

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11. The Vice-Chair's purported point of order was that Ms. di Armani was allegedly being discriminatory towards a member of the Board. Ms. di Armani attempted to respond; however, her microphone remained muted.
12. The Chair upheld the point of order but advised Ms. di Armani that she was not permitted to refer to a trustee by name during the Meeting, despite the facts that (i) Trustee Westerby's name appeared on the Agenda 20 times; and (ii) Trustee Westerby was the one who had put forward the Agenda item that Ms. di Armani was attempting to address.
13. The Chair further stated her view that there was no conflict of interest. Ms. di Armani attempted to respond; however, her microphone was still muted. The Chair then proceeded to mute the entire recording of the Meeting, preventing anyone listening to the Meeting electronically to hear Ms. di Armani's response.
14. The Chair then advised Ms. di Armani that she could speak to her own feelings about Pride, but if she called out a trustee by name again she would "have to have a seat."
15. Ms. di Armani's microphone was then turned back on. Ms. di Armani attempted to raise the issue of whether other Trustees were also members of the Pride society, hence presenting other conflicts of interest. She was again abruptly cut off by the Vice-Chair, who again raised a purported point of order. Ms. di Armani's microphone was immediately muted for a second time.
16. The Vice-Chair's alleged point of order was that somehow there can be no conflict of interest when discussing a human right. Without any substantiation of this claim, the Chair agreed with the Vice-Chair on this point and upheld the claimed point of order.
17. Ms. di Armani's microphone was then turned back on. She then moved on, attempting to raise another concern, being that the Board, by supporting the concept of raising flags for special interests, would violate state duty of neutrality. She was again (for a third time) abruptly cut off when another point of order was asserted by the Vice-Chair. Ms. di Armani's microphone was silenced again, for the third time. The Vice-Chair stated that "*basic human rights include reflection of basic human rights*" [sic] and that she didn't feel that there was a point to what Ms. di Armani was saying.

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18. The Chair upheld the claimed point of order, but added her own claim that LOBTO people are not special interest groups but rather are members of society.
19. When Ms. di Armani's microphone was turned back on, she attempted to explain her concern by saying that both non-government and special interest flags create segregation, discrimination and discontent. At this, the Chair interrupted Ms. di Armani, claiming: "that was a point of order, you can sit down now."
20. The Chair silenced Ms. di Armani's microphone for a fourth time within a time span of 2 minutes and 30 seconds, and again silenced the entire recording, preventing anyone listening to the recording from hearing Ms. di Armani's response. The audio on the recording was not restored until another speaker gained the podium to address the Board.

PART III: LEGAL BASIS

21. Section 67(3) of the *Act* requires the Board to meet as often as is necessary to transact its business, and in any event not less than once in every three months. Section 69(1) of the *Act* requires that, subject to section 69(2), Board meetings are open to the public.
22. Section 67(5) of the *Act* requires the Board to establish procedures governing the conduct of its meetings.
23. Pursuant to its authority under the *Act*, the Board adopted "Bylaw 5 Board Meeting Procedures" (the "Bylaw"). The Bylaw affirms that Board meetings are open to the public and provides specifically for "Public Participation in the Public Meeting" on the basis that communication with the public is extremely important. The Public Participation periods at Board meetings provided for in the Bylaw are expressly designed to permit community members to provide comments and/or ask questions about business or issues pertaining to the Board agenda.
24. The Bylaw sets out five criteria for the public participation periods at the Board meetings:
 - 1) public participation periods will generally be 15 minutes;
 - 2) speakers must identify themselves before speaking;
 - 3) individuals have a total of two minutes to speak;

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- 4) actions or answers to questions may be deferred pending Board consideration; and
 - 5) the Chair can indicate another means of response if questions can't be answered at the time.
25. The Bylaw gives the Chair authority to terminate the remarks of any individual who does not adhere to the Bylaw.
26. The Bylaw does not give the Chair authority to terminate remarks because the Chair or other Trustees disagree with comments or questions raised in such remarks.
27. The Termination Decision was not based on any alleged non-compliance with the Bylaw. Rather, it was based on the Chair's perception that Ms. di Armani was not complying with:
- a. the Chair's *ultra vires* requirement that Ms. di Armani not mention Trustee Westerby by name; and
 - b. the Chair's unreasonable rulings on alleged points of order that Ms. di Armani could not:
 - i. raise a concern about an apparent conflict of interest for Trustee(s) to move to promote Pride while simultaneously employed or engaged with the local Pride society, or
 - ii. infer that the Pride flag represents special interests.
28. The Termination Decision was *ultra vires* the Chair's authority because it was not authorized by the Bylaw as Ms. di Armani's remarks were not terminated on the basis that Ms. di Armani was allegedly or in fact violating the Bylaw.
29. Further, the Termination Decision is unreasonable, devoid of justification, and fails in every respect to be a transparent or intelligible exercise of any authority the Board possesses to regulate public Board meetings pursuant to the *Act*.
30. The *Charter* imposes obligations on government to respect individuals' *Charter* freedoms. The Board is a government body and consequently must respect the *Charter* freedoms of Ms. di Armani and other members of the public.

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31. The *Charter* protects freedom of expression, including the right of individuals to express themselves in public places. Further, freedom of expression protects the right of listeners to hear the expression of others.
32. The Termination Decision limited Ms. di Armani's freedom of thought, belief and opinion by punishing her for thinking, believing and holding opinions different than those of the Board's Chair and Vice-Chair.
33. The Termination Decision limited Ms. di Armani's freedom of expression by preventing her from expressing herself during the public participation portion of the Meeting designed for members of the community such as her to provide comments or ask questions about Agenda items. The Board's actions also had the effect of limiting the right to hear of other members of the public who were listening, especially those who sought to listen to the Meeting via the electronic video and audio links, by restricting their ability to hear Ms. di Armani express her thoughts, beliefs and opinions.
34. In exercising discretion in a manner that engages *Charter* rights, government decision makers must engage in a proportionate balancing of any relevant statutory objectives against the relevant *Charter* protections and determine how those *Charter* rights will best be protected in light of the statutory objectives. A decision of a government decision maker that fails to do so is unreasonable and constitutes an unjustifiable violation of the *Charter*.
35. In making the Termination Decision, the Board's Chair did not acknowledge that it engaged the *Charter* freedoms of thought, belief, opinion and expression of Ms. di Armani and listening members of the public, let alone explain how the Termination Decision was a proportionate balance between any relevant statutory objectives and their *Charter* freedoms.
36. The relevant objectives engaged by the Board's Termination Decision pursuant to section 5 of the Bylaw emphasize that communication with the public is extremely important and that the public participation periods ensure that community members have the opportunity to provide comments or ask questions about matters pertaining to the Board agenda. The relevant statutory objectives weighed against the Termination Decision, and the Termination

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Decision was not in fact a proportionate balance between those objectives and its limitation of Ms. di Armani's and listening members of the public's *Charter* freedoms.

37. The Termination Decision therefore unreasonably and unjustifiably violated Ms. di Armani's *Charter* freedoms of thought, belief, opinion and expression and the *Charter* freedom of expression, which protects the right to hear, of the listening members of the public.
38. The apparent policy of the Board to prohibit members of the public from recording its public meetings limits the freedom of expression, which protects the right to hear, and the freedom other media of communication protected by section 2(b) of the *Charter*.
39. Due to the Board's prohibition on recording, except for "authorized media," Ms. di Armani's remarks when the Board silenced its own recording, could not and cannot be heard by listening members of the public. Further, the purposes of truth seeking, democratic discourse and self-fulfillment were and are frustrated by the prohibition on recording in these circumstances, because Ms. di Armani and interested members of the public are deprived of a complete and accurate record of what occurs at public Board meetings, including the Meeting, given the Board's demonstrated proclivity to mute the recording.
40. The Board has engaged in similar censorship against members of the public at other Board meetings. Ms. di Armani brings this Petition as a public litigant for the benefit of the broader community, on the belief that advancing this matter is necessary to have the Board respect the democratic discourse essential for appropriate decision making at the Board. She does not seek costs and should not have costs awarded against her if her Petition is unsuccessful.
41. Such further and other grounds as counsel may advise and as the Court may permit.

PART IV: MATERIAL TO BE RELIED UPON

42. Affidavit of Lynda Di Armani, Sworn October 6, 2023;
43. The *Canadian Charter of Rights and Freedoms*, part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act, 1982 (UK)*, 1982, c. 11;

44. The *Judicial Review Procedure Act*, RSBC 1996, c 241;

45. The *School Act*, RSBC 1996, c.412; and

46. Such further and other material as counsel may advise and as the Court may permit.

The Petitioner estimates that the hearing of the petition will take 2 hours.

Date: October 6, 2023

Marty Moore
Counsel for the Petitioner

This Amended Petition to the Court DATED June 28, 2024.


Marty Moore
Counsel for the Petitioner

<i>To be completed by the court only:</i>	
Order made	
<input type="checkbox"/>	in the terms requested in paragraphs of Part 1 of this petition
<input type="checkbox"/>	with the following variations and additional terms:
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Date:
	Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master