

Form 7
Clerk's stamp:



COURT FILE NUMBER	2409 00092
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	PEACE RIVER
APPLICANT	MOISE DION
RESPONDENT	THE BOARD OF TRUSTEES OF THE PEACE RIVER SCHOOL DIVISION
DOCUMENT	ORIGINATING APPLICATION
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	James SM Kitchen Barrister and Solicitor 203-304 Main Street S, Suite 224 Airdrie, AB T4B 3C3 Direct: 587-330-0893 Email: james@jsmklaw.ca <i>Counsel for the Applicant</i>

NOTICE TO THE RESPONDENT

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date:	December 13, 2024
Time:	9:00 AM
Where:	Peace River Court House, 9905 - 97 Ave. Peace River, AB T8S 1T4
Before:	Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

GROUND FOR MAKING THIS APPLICATION

Introduction

1. This is an application pursuant to section 92(1) of the *Education Act*, SA 2012, c E-0.3, which is a statutory appeal provision for the appeal of a decision by a school board to disqualify a school trustee.
2. The Applicant, Moïse Dion is a former trustee of the Board of Trustees of the Peace River School Division (PRSD).
3. The Respondent is the Board of Trustees of the Peace River School Division (the “Board”).
4. Mr. Dion herein impugns the Board’s September 26, 2024 decision to disqualify him pursuant to section 91(a) of the *Education Act*.

Summary of Facts

5. On June 13, 2024, Trustee and Board Chair Crystal Owens made a complaint that, during a May 28, 2024 Board Meeting, Trustee Dion had contravened the Board’s Trustee Code of Conduct as a result of comments he made toward Deputy Superintendent Jeff Thompson that were allegedly disrespectful and insulting.
6. At a June 20, 2024 Board meeting, the Board ruled, by way of Motion 15862, that Trustee Dion had contravened the Code of Conduct because of the aforementioned comments. The Board further decided that, as a result, Trustee Dion must issue a letter of apology to Deputy Superintendent Thompson (to be viewed by the Trustees), and also meet with Deputy Superintendent Thompson to deliver an oral apology to him in the presence of Trustee and Vice-Chair Lacey Buchinski. These required apologies were characterized by the Board as “remedial actions”. The Board explicitly decided to address the matter of “sanctions” at the next Board meeting.
7. Trustee Dion declined to apologize to Deputy Superintendent Thompson because doing so would have constituted compelled speech. Trustee Dion did not agree that he had anything

to apologize for, was unclear on what he was expected to apologize for, and unwilling to utter an apology that was not sincere and genuine.

8. Further still, Mr. Dion contests that the Board has the authority to compel a trustee to issue an apology and, as a matter of principle, will not participate in a compelled apology. He believes that, by their very nature, apologies must be voluntary in order to have their intended meaning for both the giver and receiver of the apology.
9. In response to Mr. Dion's refusal to issue the compelled apology, the Board decided during an *in-camera* session of a Board meeting on September 26, 2024 to sanction Mr. Dion by way of disqualification. Although the Board did not cite the legislative authority for such a sanction, at least as far as Mr. Dion is aware, there can be no doubt that the only possible source for the ability of the Board to disqualify Mr. Dion in the circumstances is section 87(1)(c) of the *Education Act*.
10. The Board asked Mr. Dion if he would resign pursuant to section 90 of the *Education Act*, which he declined. The Board therefore declared Mr. Dion to be disqualified as a Trustee pursuant to section 91(a) of the *Education Act* (the "Decision").
11. The Board announced and commented upon the Decision later that same day, September 26. No formal reasons for the Decision have been issued by the Board and Mr. Dion does not have access to the meeting minutes of the September 26 board meeting. However, the Board noted in its announcement that the sanction for its finding in June 2024 that Mr. Dion breached the Code of Conduct was disqualification precisely because Mr. Dion did not fulfil the Board's apology requirements.

Legal Basis

12. Disqualification of a school trustee pursuant to the *Education Act* and as a result of a finding the trustee breached a code of conduct is a new and not yet judicially considered issue (although the Court of King's Bench will consider the issue when reasons for judgment are issued in a pair of related cases involving former Red Deer Catholic school trustee Monique LaGrange in action nos. 2310-01396 and 2310-01422).

13. Section 87(1)(c) of the recently-enacted *Education Act* states:

a person is disqualified from remaining as a trustee of a board if that person has breached the code of conduct of the board established under section 33, where the sanction for the breach under the code of conduct may be determined by the board to be disqualification.

14. The *Education Act* replaced the *School Act*, RSA 2000, c S-3, which did not have a similar provision. The *School Act* only allowed for statutory disqualification of a trustee on the basis of a conflict of interest, if a trustee became disqualified pursuant to the *Local Authorities Election Act*, RSA 2000, c L-21, or if a trustee was convicted of a criminal offence. Any disqualification as result of alleged misconduct was effected at common law. The O'Malley cases are examples (2006 ABQB 364 and 2007 ABQB 574).

15. The ability to disqualify Mr. Dion pursuant to section 91(a) of the *Education Act* **as a result of a finding the trustee had breached a code of conduct** is only available to the board by way of section 87(1)(c). In other words, the Board's disqualification of Mr. Dion was exclusively a statutory one.

16. The Decision is subject to an appeal to the Court of King's Bench pursuant to the statutory right of appeal contained in section 92(1) of the *Education Act*. As the Supreme Court ruled in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraphs 36-37, this Honourable Court is to apply the appellate standard of review to the Decision. Specifically, questions of law, including questions of statutory interpretation and those concerning the scope of a decision maker's authority, are to be reviewed on the standard of correctness in accordance with *Housen v Nikolaisen*, 2002 SCC 33.

17. Mr. Dion submits the Decision is wrong at law and must be set aside.

18. Section 16.2.2 of the PRSD Trustee Code of Conduct lists **requesting** a trustee issue a letter of apology as a possible "remedial action". While the Board is permitted to **request** a trustee issue an apology, it was not open to the Board to **impose a mandatory** apology upon Mr. Dion, enforceable by way of disqualification or any other penalty. It is unlawful to **require** an apology, as opposed to **requesting** one.

19. An overriding requirement to issue an apology constitutes conscience-violating compelled speech, which is unlawful. This is not to suggest that just anything may constitute compelled speech, but forced apologies (as compared to voluntary apologies) do because of the nature of what the apologizer must affirm and the fact the affirmation conflicts with his true belief. A forced apology does not merely insert into one's mouth words that are not one's own and then compel the utterance of those words as if they really are one's own words—it does so in a way that also viscerally violates the conscience because of the inevitable forced dishonesty. The act of issuing an apology, by its very nature, must be voluntary if it is to avoid infringing the dignity of the apologizer and the general prohibition against compelled speech, as well as achieve its intended purpose.
20. This is also not to say the Board could not have done any number of things to sanction or place conditions on Mr. Dion for what it found to be a breach of the Code of Conduct. However, like anything else, sanctions and conditions must be permissible at law and they will not be if they compel speech.
21. Mandated actions, if they are to be lawful, must also have the ability of achieving their intended effects. Only a voluntary and sincere apology is capable of achieving any of the legitimate purposes served by an apology, such as fostering accountability and reconciliation. A forced apology is incapable of achieving any legitimate purpose because it lacks these necessary elements. It is therefore an abuse of power that is only capable of serving inappropriate purposes, such as humiliating the apologizer or satisfying a desire to exact revenge.
22. Unsurprisingly, neither the *Education Act*, nor the PRSD Trustee Code of Conduct contemplates **requiring** an apology as a possible sanction or remedial action.
23. It was an error of law for the Board to mandate Mr. Dion issue an apology against his will.
24. Any sanction based, whether in whole or in part, upon an unsatisfied requirement to apologize must fail at law. Here, the Board's decision to disqualify Mr. Dion as a trustee was the result of his refusal to issue the apology the Board purported to require of him. The Decision therefore cannot stand.

25. In the alternative, and in any event, disqualification is a disproportionate, unjust, and unfit sanction. In the circumstances, the board erred in law by deciding to impose upon Mr. Dion the most serious trustee sanction available to it: disqualification. Disqualifying a school trustee from continuing in any capacity to represent the constituents who elected him must only be used as a last resort and only in response to truly exceptional and egregious circumstances. That threshold has not been met in this case.

REMEDY SOUGHT

26. Mr. Dion applies to this Honourable Court for the following relief:

- a) An Order setting aside the Decision;
- b) An Order pursuant to section 92(4)(a) of the *Education Act* declaring Mr. Dion to be qualified to be a trustee;
- c) Orders pursuant to sections 92(4)(i) and (iii) of the *Education Act* reinstating Mr. Dion as a trustee for the remainder of the term for which he was elected and requiring the Board to pay him all honorarium, salary, and entitlement amounts not paid during the period of disqualification;
- d) Costs of this Application; and
- e) Such further and other relief as this Honourable Court deems just and equitable.

MATERIALS TO BE RELIED ON

27. The Affidavit of Moïse Dion; and

28. Such further and other material as counsel may advise and this Honourable Court may order or permit.

APPLICABLE ACTS AND RULES

29. *Education Act*, SA 2012, c E-0.3;

30. *Alberta Rules of Court*, Alta Reg 124/2010.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and the time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.