

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

B E T W E E N:

DARIA KANDAHARIAN by her Litigation Guardian  
ANDRANIK KANDAHARIAN

Applicant

- and -

YORK CATHOLIC DISTRICT SCHOOL BOARD

Respondent

**FACTUM OF THE APPLICANT**

April 19, 2022

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## PART I - POSITION WITH RESPECT TO FACTS

### Overview

1. Every child in Ontario is entitled to attend Catholic secondary school. But not all children have equal opportunity in those schools. Dasha Kandaharian learned this lesson the hard way.

2. In April 2020, Dasha was selected by her high school Principal, Vice-Principals, and guidance counsellors to run for the student trustee position in the York Catholic District School Board (“YCDSB”). Student trustees are student-elected leaders that voice student opinions at the school board level. Under the *Education Act*, a student trustee is “not a member of the board”, cannot vote or move motions at board or committee meetings, and cannot attend certain closed meetings of the board.

3. Forty-eight hours before the election, Dasha’s application was rescinded. The YCDSB’s student trustee policy requires that student trustees be baptized Roman Catholic, and Dasha is Orthodox Christian. Thus, she was ineligible to run because of her religion. She is not alone. Over 5,000 non-Roman Catholic students attend YCDSB secondary schools. But there is a difference of opinion amongst Ontario’s Catholic school boards: some do not require their student trustees to be Catholic.

4. To spare other students the rejection and isolation that she has felt, Dasha brings this challenge to the YCDSB’s student trustee policy. This Court should quash or declare without legal effect the religious qualification in the policy for three reasons:

- (a) The Catholicism requirement is *ultra vires* – it contradicts the *Education Act*’s direction that school boards create inclusive communities and frustrates the aim of having province-wide standards for the student trustee position.

- (b) The Catholicism requirement is discriminatory under section 15(1) of the *Charter* and interferes with Dasha’s section 2(a) freedom to hold and manifest her religious beliefs. These violations – which treat Dasha as inferior to her Catholic peers and compel her to choose between her religion and participating fully in school life – cannot be justified under section 1.
- (c) Section 93(1) of the *Constitution Act, 1867* does not entitle the YCDSB to discriminate in its student trustee policy. Student trustees, which were created in 1997, cannot prejudicially affect denominational rights.

**Legislative framework: *Education Act and Student Trustees, O. Reg. 7/07***

5. The *Education Act* governs all public school boards in Ontario. It defines the purpose of education as providing “students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society.” To further this purpose, every school board in Ontario must “promote student achievement and well-being”, “promote a positive school climate that is inclusive and accepting of all pupils”, and develop and maintain policies that promote these goals.

*Education Act*, [RSO 1990, c E.2](#), ss. 0.1(2), 169.1(1)(a)(a.1)(d).

6. School boards are responsible for administering and managing the educational affairs of a particular school district or zone. Boards are composed of and governed by members elected in municipal elections. The *Education Act* imposes specific duties on those members.

*Education Act*, [RSO 1990, c E.2](#), ss. 169.1(1), 218.1.

7. The position now known as a “student trustee” was created by the Legislature in 1997. Section 55 of the *Education Act* governs student trustees and applies to all school boards, including Catholic boards. Under section 55, a student trustee has participatory rights at board

meetings and committee meetings, but a “student trustee is not a member of the board and is not entitled to exercise a binding vote on any matter before the board or any of its committees.”

Student trustees are also “not entitled to move a motion” and are “not entitled to be present” at certain closed board meetings.

*Education Act*, [RSO 1990, c E.2](#), s. 55(2)-(6).

8. *Student Trustees, O. Reg 7/07* prescribes further rules about the student trustee role, including their qualifications. It states that “[a] person is qualified to act as a student trustee if... he or she is enrolled in the senior division of a school of the board and is, (a) a full-time pupil...” not serving a sentence of imprisonment. The regulation also requires that student trustees be elected by their peers. School boards must develop and implement policies related to student trustee honoraria and other matters “in accordance with” this regulation. However, the regulation does not authorize school boards to modify these aspects of the position.

*Student Trustees, O Reg 7/07*, ss. 2, 4, 5 [the “2007 Regulation”].

9. ***Evidence about student trustee role.*** Two former student trustees – Kirsten Kelly and Benjamin Smith – have given evidence in this proceeding. They agree that the student trustee role is representational: the “student trustee’s job is to voice opinions on behalf of students at Board meetings, primarily to inform the Trustees of the student perspective.” They also agree that the position provides leadership opportunities to students to voice opinions on behalf of fellow students and to work through the provincial student trustee’s organization.

Kelly Affidavit, paras. 16-17, Applicant’s Application Record (“A.A.R.”), Vol 3, Tab J, pp. 1127-1128; Smith Affidavit, para. 33, Respondent’s Application Record (“R.A.R.”), Vol 2, Tab 5, p. 565; Smith Cross, qq. 109, 113, Applicant’s Transcript Brief (“A.T.B.”), Tab 9, pp. 573-574.

10. Mr. Smith and two Catholic board trustees, the YCDSB’s Carol Cotton and Hamilton-Wentworth’s Patrick Daly, claim that student trustees have a governance role. Ms. Kelly

disagrees. Student trustees cannot vote and cannot move motions on their own, so their ability to independently raise new policies depends on voting trustee sponsors. As Mx. Kelly explains, “gaining a sponsor was not automatic or guaranteed” and in their experience, “student trustee-led motions were also of a lower priority for the Board to consider”. Despite Mr. Smith’s assertions about his influence, Mr. Smith admitted on cross-examination that over his two years as a student trustee, he never suggested a motion that was voted on or passed by his board.

Smith Affidavit, para. 12, R.A.R., Vol 2, Tab 5, p. 558; Cotton Affidavit, para. 14, R.A.R., Vol 1, Tab 1, p. 12; Daly Affidavit, para. 39, Vol 2, Tab 4, p. 549; Kelly Affidavit, paras. 14-15, A.A.R., Vol 3, Tab J, p. 1127; Smith Cross, q. 86-88, A.T.B., Tab 9, pp. 568-569.

### **Recent history: public funding for Catholic high schools and student trustees**

11. Because this application is about the role of student trustees in publicly funded Catholic high schools, it is important to understand why Ontario’s Catholic high schools admit non-Catholic students and the evolution of the student trustee position since the 1990s. Much of the evidence about these two developments comes from the cross-examination of Dr. Robert Dixon, the YCDSB’s expert on Catholic doctrine and the history of Catholic education in Ontario.

Dixon Cross, qq. 19, 23-24, 29-30, A.T.B., Tab 7, pp. 361-363.

### ***No public funding for Catholic high schools until the 1980s***

12. Although public funding for Catholic elementary schools has been long entrenched, public funding for Catholic high schools is a relatively recent development. At the time of Confederation, there was no concept of a “high school”. Thus, there was no public funding for Catholic schools past grade 10. This created funding challenges for Catholic high schools.

Dixon Cross, qq. 45-46, 50, 53-56, A.T.B., Tab 7, pp. 365-367.

13. These challenges were resolved through a compromise in 1984. Premier Bill Davis agreed to extend public funding through to the end of Catholic high school if the Ontario

Conference of Catholic Bishops (the “Bishops”) agreed to several conditions. One of those conditions was that Catholic high schools be open to students of all faiths. The Bishops agreed. The Bishops explained that their decision to admit “non-Catholics would not cause any dilution in the Catholic schools” and that it would actually be “consistent with the Church’s mission” to evangelize and accept non-Catholics.

Dixon Cross, qq. 71-72, 74, 84, 98-99, A.T.B., Tab 7, pp. 370, 372-3, 377.

14. Premier Davis’ compromise with the Bishops was enacted in 1985 through Bill 30. At the first reading of the Bill, the Minister of Education recognized that non-Catholic students could attend Catholic high schools for any reason, including reasons of “geographical accessibility, the provision of certain courses that may not be available in the public high school, [and] the fact that my friends are going to the Catholic high school.”

Dixon Cross, qq. 103, 107, A.T.B., Tab 7, pp. 378-379.

15. While enrollment of non-Catholic students in Catholic high schools was initially limited, the enacted version of the Bill removed this constraint and provided that “all children, regardless of their religion, would be permitted to attend Catholic high schools in their local jurisdiction.” The universal access to these schools reflected the reality that all Ontario taxpayers, regardless of religion, were funding both Catholic and non-Catholic schools.

Dixon Cross, qq. 110, 114, A.T.B., Tab 7, pp. 380-381.

***Precursor to student trustee position created in 1997***

16. In 1997, the Ontario Legislature created the position of “pupil representative”. This was the precursor to the student trustee position. Dr. Dixon confirmed that student trustees and student representation on school boards was not required and did not exist before then. At the time of Confederation, school boards were populated by elected adult-aged members and Catholic School trustees had to be at least twenty-one years old.



Dixon Cross, q. 112, A.T.B., Tab 7, p. 380; Cotton Cross, q. 8, A.T.B., Tab 1, p. 8; *An Act for the Schools in better establishment and maintenance of Common Schools in Upper Canada*, [Upper Canada 1846, 9 Vict. c. 9](#); *An Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools*, 5 Prov. C. 1863, 26 Vict., c. 5, ss. 3-5, Applicant's Brief of Unreported Authorities, Tab 1 ["BOUA"].

17. While the *Education Act* has always stated that pupil representatives are not members of boards and have no binding vote, school boards initially had broad discretion to enact pupil representative policies and the power to set their own qualifications for pupil representatives. In addition, boards were entitled to appoint pupil representatives without student input.

Dixon Cross, qq. 169, 170, A.T.B., Tab 7, p. 393; *Education Act*, [R.S.O. 1990, c E.2](#), s. 55 as it appeared on June 4, 2003; *Pupil Representation on Boards* [Repealed], [O. Reg. 461/97](#) ("1997 Regulation"), ss. 1(1), 2(1), 3(1), 3(3)(a)-(d).

18. Soon after the pupil representative position was created, stakeholders began to express concerns with this role. First, most school boards selected representatives by appointment rather than election, which lacked democratic legitimacy. Second, the position varied by school board and was not uniformly implemented across the province. To address these concerns, Ontario's student trustee association recommended legislative amendments requiring boards to implement a uniform, democratic process for selecting pupil representatives.

Elder C Marques, "Youth Involvement in Policy-Making: Lessons from Ontario School Boards" (1999) Institute on Governance Policy Brief No. 5, p. 3, A.A.R., Vol 2 Tab H-17, p. 708-713; Nathan Lachowsky, "The Student Trustee Today and Tomorrow" (2005) Report of the OSTA-AECO at pp 10, 12-13, 21, A.A.R., Vol 2, Tab H-16, pp. 691, 693-4, 702 ["OSTA-AECO Report"].

***Amendments create eligibility criteria and require democratic process***

19. In 2006, the *Education Act* was amended, and pupil representatives were renamed "student trustees". The amendments stripped school boards of their discretion over student trustees and vested the Minister of Education with regulatory authority to create province-wide

standards for the position. While these amendments adopted the recommendation of having uniform, democratic implementation of the student trustee position, they maintained student trustees as a non-voting, non-members of school boards.

*Education Act*, [RSO 1990, c E.2](#), ss. 55(1), 55(2), 55(3), 55(4); Ontario Hansard, 37-2, No 53A (3 Apr 2006) at 2609 (Ted McKeen), A.A.R., Vol 2, Tab H-5, p. 452; Ontario Hansard, 37-2, No 83 (1 Jun 2006) at 4281 (Lorenzo Berardinetti), A.A.R., Vol 2, Tab H-15, p. 675; Dixon Cross, q. 190, A.T.B., Tab 7, p. 397.

20. As part of the reforms, the 1997 Regulation was repealed and replaced with *Student Trustees, O. Reg. 7/07* (the “2007 Regulation”). Through this regulation, the Minister made important changes to the framework for student trustees, which include requiring that student trustees be elected and setting province-wide student trustee qualifications.

*Pupil Representation on Boards*, [O. Reg. 243/06](#); *2007 Regulation*, [O. Reg 7/07](#), ss. 1, 4, 5, 6, 7.

### **YCDSB and Policy 107**

21. The YCDSB is the third largest Catholic district school board in Ontario. In 2021-2022, over 5,000 students (nearly 30% of students enrolled in YCDSB secondary schools) were not baptized Roman Catholic. The YCDSB receives public funding on a per-pupil basis, meaning that the Board gets a certain amount of funding from the province per student enrolled in its schools, whether they are Catholic or not.

Cotton Affidavit, para. 3, R.A.R., Vol 1, Tab 1, p. 9; Cotton Cross, qq. 21, 50-51, A.T.B., Tab 1, pp. 10, 14-15. Cotton Cross, Undertaking, A.T.B., Tab 2, pp. 149, 151.

22. The YCDSB delivers strong Catholic education to its students. Secondary students must take Catholic religious classes, teachers are instructed to incorporate Catholic teachings into their classes, and the provincial curriculum is taught from a uniquely Catholic perspective. The Principals, Vice-Principals, and guidance counsellors at these schools must obtain religious

education qualifications, and Ms. Cotton agreed that these staff members must strive to uphold Catholic values in their work and are stewards of Catholic education.

Cotton Cross, qq. 24-38, 47-48, A.T.B., Tab 1, pp. 10-12, 14.

23. The YCDSB is committed to the principles of inclusion and diversity. All Board decisions must be consistent with its six core values, including Catholicity, equity, and inclusion. The YCDSB is committed to ensuring that every child has an equal chance for success and endorses Pope Francis' statement that "We cannot tolerate or turn a blind eye to racism and exclusion in any form and yet claim to defend the sacredness of every human life."

Cotton Cross, q. 75-97, 100, 103, 122, A.T.B., Tab 1, pp. 18-26, 31.

24. ***The Board of Trustees***. The Board is composed of ten municipally elected trustees referred to as "members" in the *Education Act*. Members make decisions through their votes at Board meetings – they have no decision-making authority on their own. Regular Board meetings are open to the public. Anyone can register to speak or present at them through "delegations". The Board values public input it receives through delegations.

Cotton Cross, qq. 56-59, 137, 216-217, A.T.B., Tab 1, pp. 16, 34, 51.

25. There are several Board committees, but no student trustees are members of those committees. Despite Ms. Cotton's claim in her affidavit that the "Policy Steering [Review] Committee" provides an opportunity for student trustees to contribute to the Board's policy agenda, attendance at these meetings is voluntary and no student trustee attended Policy Review Committee meetings in 2020 or 2021.

Cotton Affidavit, para. 22, R.A.R., Vol 1, Tab 1, p. 14; Cotton Cross, q. - 161-206, Exhibits 8-17, A.T.B., Tabs 1, 1-8 - 1-17, pp. 39-49, 116-143.

26. **Policy 107.** Policy 107 is YCDSB’s student trustee policy. Originally enacted in 1997, it sets out the role of the YCDSB student trustee and the procedure for electing student trustees.

The Policy was most recently approved in 2018 but it does not refer to the 2007 Regulation.

27. Policy 107 reiterates the limits placed on student trustees by the *Education Act*, namely, that student trustee votes are non-binding, student trustees cannot move a motion, and student trustees do not count towards quorum at Board meetings. The Policy also implements other *Education Act* requirements, such as requiring that student trustees have equal access to opportunities for training. Student trustees are entitled to annual honorarium of \$2,500.

YCDSB, Policy 107, *Student Trustees* (April 24, 2001) ss. 3.9, 3.11, 3.13, 3.14, 3.17, 3.22, A.A.R., Vol 1, Tab F-2, pp. 213-214.

28. Section 3.6 of the Policy states that “A Student trustee must be a Roman Catholic”.

Under sections 3.7 and 3.8, a student trustee must also demonstrate that they can complete the duties of student trustee without jeopardizing their academic standing and must have a written recommendation of their school principal.

29. Each YCDSB secondary school nominates one grade 10 student each year to run for student trustee, and student trustees are elected for a two-year term by a YCDSB student council.

Kandaharian Affidavit, para. 13, A.A.R., Vol 1, Tab F, p. 194.

30. ***The role of the Catholic student trustee.*** Mx. Kelly and Mr. Smith, who are both Roman Catholic, disagree about whether a non-Catholic could succeed as a student trustee in a Catholic board. Mr. Smith states that he does not believe he could have fulfilled his duties “without the guiding principles provided by my own Roman Catholic faith.” Ms. Cotton agrees with Mr. Smith’s position. In contrast, Mx. Kelly says that non-Catholic students could succeed in this

role – non-Catholic students “can and do uphold the Catholic values” and “could fulfill the role of protecting and promoting Catholic education”.

Smith Affidavit, para. 34, R.A.R., Vol 2, Tab 5, pp. 565-566; Kelly Affidavit, para. 21, A.A.R., Vol 3, Tab J, p. 1129-1130; Cotton Affidavit, para. 74, R.A.R., Vol 1, Tab 1, p. 30.

31. In his expert report, Dr. Dixon opines that “it seems to make sense” that Catholic board student trustees must be Roman Catholic. But on cross-examination, Dr. Dixon made three key admissions: (1) in 1997, he did not view the creation of “pupil representatives” as an important development in the history of Catholic education; (2) he based his report on the 1997 framework for the student trustee role, not the current framework that includes province-wide qualifications; and (3) all students would be able to learn the Catholic values taught in YCDSB schools.

Expert Report, Dixon Affidavit, Exhibit A at p. 432, R.A.R., Vol 2, Tab 2-A, p. 432; Dixon Cross, qq. 133, 162, 188, 283-286, A.T.B., Tab 7, pp 384-385, 391, 397, 419.

32. The YCDSB also filed affidavits from Brian Beal of the Assembly of Catholic Bishops of Ontario and Anne Jamison of the Institute for Catholic Education. While they speak to aspects of Catholicism and Catholic education, neither focus on the student trustee’s role. Indeed, Ms. Jamison does not refer to the student trustee position in her evidence at all.

Beal Affidavit, R.A.R., Vol 2, Tab 3, p. 443; Jamison Affidavit, R.A.R., Vol 3, Tab 6, p. 689.

### **Dasha Kandaharian denied opportunity because of her religion**

33. Dasha is an Orthodox Christian. She has been a member of the Armenian Orthodox Church since she was baptized as a child and sincerely believes in her faith.

Kandaharian Affidavit, para. 9, A.A.R., Vol 1, Tab F, p. 193.

34. Although she is not Roman Catholic, Dasha attends St. Maximillian Kolbe Catholic High School (“SMK”), a secondary school within the YCDSB. She is in grade 12. She and her family

chose to attend SMK over her local non-denominational public school because her house is on the SMK bus route and because her parents wanted her to receive a faith-based education.

Kandaharian Affidavit, paras. 4, 5, A.A.R., Vol 1, Tab F, p. 192.

35. Dasha has been a model student at SMK: she is on the honour roll and is an active member of her school's community. In May 2020, she was awarded the York Secondary Catholic Presidents' Council Junior Leadership Award. The Chair of the YCDSB has described recipients of these awards as "the very best in Catholic Education".

Kandaharian Affidavit, paras. 6, 7, Exhibit 1, A.A.R., Vol 1, Tabs F, F-1, pp. 193, 210; Cotton Cross, Exhibit 18, A.T.B., Tab 1-18, p. 144.

36. As a non-Catholic within a Catholic environment, Dasha has felt discomfort at times while participating in Catholic rituals such as morning prayer and Catholic Mass. This discomfort stems from a desire to learn more about her own religion and a fear that in participating, she may be doing something wrong or offensive. Nonetheless, before May 2020, she had enjoyed attending SMK and felt like a full member of the YCSDB community.

Kandaharian Affidavit, paras. 19-24, 26, A.A.R., Vol 1, Tab F, pp. 195-7.

37. ***Dasha runs for student trustee.*** In April 2020, Dasha applied to be the YCDSB student trustee. The application form lists that applicants must be Roman Catholic, but she inadvertently missed this requirement when she applied. Dasha's application was unanimously approved by her Principal, Vice-Principals, and guidance counsellors. Her application was then forwarded to the YCDSB and Dasha began participating in the election process.

Kandaharian Affidavit, paras. 27-32, Exhibit 5, A.A.R., Vol 1, Tab F, pp. 197-198, 223.

38. ***Dasha is denied due to her faith.*** Forty-eight hours before the election, Dasha's application for student trustee was rescinded because she is not Roman Catholic. Despite her

attempts to have her application reinstated, the election continued and Dasha missed her opportunity to run and serve as a student trustee.

Kandaharian Affidavit, paras. 34-39, A.A.R., Vol 1, Tab F, pp. 199-200.

39. Being deprived by the YCDSB of the opportunity to run has had a profound impact on Dasha. She describes her exclusion from running as “an affront to my dignity” that was “hurtful and disempowering”. She no longer feels included in her school community. She continues to feel “isolated and discriminated against as a student at SMK” and like a second-class citizen whose religion is less worthy of recognition. If given the “choice to go back to grade 9, [she] would have chosen to attend a non-denominational high school” where she “would have been able to fully participate in school life, regardless of [her] faith.”

Kandaharian Affidavit, paras. 41-42, 47, A.A.R., Vol 1, Tab F, pp. 201-2.

40. ***Dasha’s attempts to change Policy 107.*** Not wanting other students to have the same experience as her, Dasha set out to change Policy 107. She contacted YCDSB officials and members of the provincial government to advocate for change. When these inquiries went nowhere, Dasha sent a letter to the YCDSB asking the board to remove the religious requirement in Policy 107. Through counsel, the YCDSB responded stating that it would not do so.

Kandaharian Affidavit, 48-59, 61, 62, 65, Exhibits 33, 34, A.A.R., Vol 1, Tab F, pp. 203-208, 303-341, 343-355, .

### **Some, but not all, non-Catholic students are excluded in other school boards**

41. Regrettably, Dasha is not the only student to have been excluded from running for student trustee in Ontario’s Catholic school boards. Two non-Catholic students from Milton and Toronto with similar experiences to Dasha have filed evidence in support of her application.

42. ***Raghad Barakat.*** Raghad is a Muslim high school student in the Halton Catholic District School Board. Raghad is a student senator and student leader in her school. But like Dasha, she

was prevented from running for student trustee because she is not Catholic – in fact, the Halton Board also requires that student trustee candidates have a letter of endorsement from their parish priest. Being denied the opportunity to run for student trustee has made her feel like she “was not good enough because of [her] religion.” She wishes she did not attend Catholic high school.

Barakat Affidavit, paras. 33, A.A.R., Vol 1, Tab E, p. 58.

43. ***Rushan Jeyakumar.*** Rushan is a Shaivite Hindu student attending high school in the Toronto Catholic District School Board. Although he is a member of the Catholic Student Leadership Impact Team, he too was precluded from running for the student trustee position because he is not Catholic. It “destroys [him] that [his faith and] identity are preventing [him] from achieving [his] goals.” Being rejected by his school board caused Rushan to consider converting to Catholicism and switching to a non-denominational public school.

Jeyakumar Affidavit, paras. 46, A.A.R., Vol 1, Tab G, p. 369.

44. Had Dasha, Raghad, and Rushan attended a different Catholic school board in Ontario, their experience might have been different. Other Catholic school boards do not require their student trustees to be Catholic. For example, the Peterborough, Victoria, Northumberland and Clarington Catholic District School Board’s student trustee policy states that non-Catholic students are eligible for the role if they are “fully supportive of the mission, vision, and responsibilities of Catholic Schools in Ontario”. And the Huron-Perth and Ottawa Catholic board policies do not state that student trustee candidates must be Roman Catholic.

School Board Policies, First Stoiber Affidavit, Exhibits 1-3, A.A.R., Vol 2, Tabs H-1, H-2, H-3, pp 424-433, 435-436, 438-439.

## **PART II - POSITION WITH RESPECT TO ISSUES**

45. This Court must decide whether to quash or declare section 3.6 of Policy 107 without legal effect. The Applicant submits that it should do so for the following reasons:



- (a) Section 3.6 is *ultra vires* because it is inconsistent with the purposes of the *Education Act* and the 2007 Regulation.
- (b) Section 3.6 violates sections 15(1) and 2(a) of the *Charter* because it arbitrarily discriminates against non-Catholic students and requires non-Catholics to conform to the religion of the majority. These infringements are not minimally impairing and cannot be justified under section 1.
- (c) Permitting non-Catholic students to run for student trustee does not prejudicially affect denominational school rights under s. 93(1) of the *Constitution Act, 1867*.

**Section 3.6 is *ultra vires* the *Education Act* and the 2007 Regulation**

46. Section 3.6 of Policy 107 is *ultra vires* – it is inconsistent with the broad purposes of the *Education Act* as well as the specific purposes of the 2007 Regulation. It should be quashed.

47. ***Reasonableness review applies to vires challenge of subdelegated legislation.*** Policy 107 is subdelegated legislation. Under *Vavilov*, the presumptive standard of reasonableness applies to a review of subdelegated legislation. While some recent decisions of this Court (*Hudson’s Bay*) have applied the *Katz* framework to review the *vires* of regulations, those decisions do not apply here. Unlike Ministers empowered to make regulations, administrative decision-makers making subordinate legislation have no direct statutory power. The *Katz* presumptions and framework do not apply to their exercise of subdelegated power. Indeed, post-*Katz* decisions of this Court have applied reasonableness review to the *vires* of policies.

*Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#), paras. 23, 66 [“*Vavilov*”]; *Hudson’s Bay Company ULC v. Ontario (Attorney General)*, [2020 ONSC 8046](#), para. 37; *The Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, [2018 ONSC 579](#), para. 75 [“*Christian Medical*”].

***Section 3.6 of the Policy is unreasonable and inconsistent with purpose of enabling legislation***

48. This Court must determine whether section 3.6 of Policy 107 represents a “reasonable exercise” of the YCDSB’s subdelegated regulatory authority. This requires the Court to examine whether section 3.6 is reasonable in light of the YCDSB’s powers under the *Education Act* and the 2007 Regulation. If *Katz* applies, it calls for a similar analysis – it states that a *vires* challenge will be successful if a regulation is “shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate.”

*Vavilov*, [2019 SCC 65](#), paras. 23, 66; *West Fraser Mills Ltd. v. British Columbia (Workers’ Compensation Appeal Tribunal)*, [2018 SCC 22](#) para. 12; *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, [2013 SCC 64](#), para. 24.

49. Under either approach, section 3.6 of Policy 107 is *ultra vires* for three reasons.

50. ***Inconsistent with the purposes of the Education Act.*** Section 3.6 contradicts the animating purposes of the *Education Act*. As explained above, the purpose of education under the act is to ensure that students have the “opportunity to realize their potential”. To further this goal, every school board in Ontario must, through its policies, “promote a positive school climate that is inclusive and accepting of all pupils.” A policy that excludes nearly 30% of students from applying fails to live up to these purposes. As the evidence shows, all three non-Catholic affiants feel excluded from their schools because of their discriminatory student trustee policies.

*Education Act*, [RSO 1990, c E.2](#), ss. 0.1(2), 169.1(1)(a.1); *Cotton Cross, Undertaking*, A.T.B., Tab 2, pp. 149, 151; *Kandaharian Affidavit*, paras. 41-42, A.A.R., Vol 1, Tab F, p. 201; *Barakat Affidavit*, para. 33, A.A.R., Vol 1, Tab E, p. 58; *Jeyakumar Affidavit*, paras. 46, A.A.R., Vol 1, Tab G, p. 369.

51. ***Inconsistent with purpose of 2006 amendments.*** Section 3.6 also undermines the purpose of the 2006 amendments. These amendments were designed to remove discretion from school boards by empowering the Minister to achieve provincial uniformity in the

implementation of the student trustee position. Through the 2007 Regulation, the Minister did just that. The 2007 Regulation was the first time that the province enacted student trustee qualifications and the first time that a democratic selection process was mandated.

OSTA-AECO Report, p. 10, A.A.R., Vol 2, Tab H-16, p. 691; *Ontario Hansard*, 37-2, No 53A (3 Apr 2006) at 2609 (Ted McKeen), A.A.R., Vol 2, Tab H-5, p. 452; *Ontario Hansard*, 37-2, No 83 (1 Jun 2006) at 4281 (Lorenzo Berardinetti), A.A.R., Vol 2, Tab H-15, p. 675; Dixon Cross, q. 190, A.T.B., Tab 7, p. 397.

52. By adding a Catholicism requirement to the qualifications already specified in the regulation, the YCDSB has re-introduced school board-specific qualifications, frustrating the goal of province-wide uniformity. Section 3.6 also undermines the legislative goal of increasing democratic legitimacy. The YCDSB's student trustee program cannot claim to be representative of all students when section 3.6 excludes nearly 30% of students from running.

OSTA-AECO Report, pp. 10, 21, A.A.R., Vol 2, Tab H-16, pp. 691, 702.

53. ***Inconsistent with the text of Regulation 2007 and scheme of the act.*** Section 3.6 is also inconsistent with the 2007 Regulation and the scheme of the *Education Act*. Section 5(1) of the regulation sets out the only conditions to be qualified: “a person is qualified to act as a student trustee if” he or she meets the criteria in that subsection. Had the Minister intended to set baseline criteria for student trustees, she could have used open-ended language to achieve that purpose. But she did not do so, and school boards have no power under the regulation to add criteria or disqualify candidates who are already qualified.

2007 Regulation, [O Reg 7/07](#), s. 2(2), 5(1) [emphasis added].

54. Further, while some sections in the *Education Act* augment school board powers as they relate to Catholic school boards, the student trustee section and regulation do not. Legislative silence must be presumed to be deliberate. And though every authority granted by the *Education Act*, including its regulations, must be exercised in a manner that is respectful of denominational

rights under the *Constitution Act, 1867*, this general direction cannot defeat clear regulatory provisions or arrogate powers for school boards that they do not have. The 2007 Regulation is already in force and school boards must respect its purpose and wording. But in any event, for the reasons explained below, the denominational rights under the *Constitution Act, 1867* have no bearing on the student trustee position.

*Education Act*, [RSO 1990, c E.2](#), s. 1(4.1).

### **Section 3.6 violates the *Charter***

55. When “a publicly funded school Board establishes and implements policies of general application”, they are subject to the *Charter*. If this Court decides that section 3.6 is *intra vires*, it should nonetheless be declared invalid because it violates sections 2(a) and 15(1) of the *Charter*.

*Hall (Litigation Guardian of) v. Powers* (2002), [59 O.R. \(3d\) 423 \(S.C.\)](#), para. 16 [“*Hall*”].

56. ***Standard of review.*** Whether section 3.6 violates the *Charter* is a constitutional question that attracts correctness review under *Vavilov*. Dasha is not challenging a discretionary decision made by the YCDSB, but rather, the constitutionality of subdelegated legislation that affects all YCDSB students. Thus, the *Doré* framework for reviewing discretionary decisions that engage *Charter* values does not apply.

*Vavilov*, [2019 SCC 65](#), paras. 53, 55; *Canada (Union of Correctionnel Officers) v. Canada (Attorney General)*, [2019 FCA 212](#), para. 21; *Christian Medical*, [2018 ONSC 579](#), para. 58.

### **Section 3.6 violates section 15(1) of the *Charter***

57. Section 15(1) of the *Charter* provides every person with the equal right to be free from discrimination. The Supreme Court of Canada describes discrimination as “a distinction [...] based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not

imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.”

*Withler v. Canada (Attorney General)*, [2011 SCC 12](#), paras. 29, 31 [“*Withler*”], quoting *Andrews v. Law Society of British Columbia*, [\[1989\] 1 SCR 143](#), pp. 174-175.

58. Assessing an alleged violation of section 15(1) is a two-step process. First, the Court considers if the law creates a distinction based on an enumerated or analogous ground. Second, the Court asks if the law imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. The second step of the test is not a rigid exercise and “the concise wording” of this step “does not require literal reading, as if it were a statutory provision”. The ultimate question is whether “the challenged law violates the norm of substantive equality in s. 15(1) of the *Charter*”.

*Fraser v. Canada (Attorney General)*, [2020 SCC 28](#), para. 27, 76 [“*Fraser*”]; *Carter v. Canada (Attorney General)*, [2012 BCSC 886](#), para. 1080; *Withler*, [2011 SCC 12](#), para. 2.

59. ***Step one is met.*** Section 3.6 directly discriminates: it creates a distinction based on the enumerated ground of religion. Non-Catholic students are disqualified from becoming student trustees in the YCDSB because they are not Roman Catholic.

60. ***Step two is met.*** Section 3.6 imposes burdens or denies benefits in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage. Without any consideration of actual capacities or circumstances, Policy 107 denies nearly 30% of students in the YCDSB the opportunity to be a student trustee on the basis of their religion. This violates s. 15(1)’s protection of substantive equality and “the overarching purpose of the equality guarantee,” which is “to prevent the violation of human dignity and freedom by imposing limitations, disadvantages or burdens through the stereotypical application of presumed group characteristics”.

*Withler*, [2011 SCC 12](#), para. 2; *Miron v. Trudel*, [\[1995\] 2 SCR 418](#), pp. 486-487; *Hall* (2002), [59 OR \(3d\) 423 \(S.C.\)](#), para. 21.

61. Dasha and other non-Catholic students in Catholic schools experience exclusionary disadvantage based on group characteristics in two ways. First, non-Catholics within a Catholic environment feel some discomfort participating in Catholic rituals, like they are “trespassing”, “out of place or disoriented”, and confused. They are minorities in their schools and navigate the daily challenge of compulsory participation in rituals that are not their own.

*Fraser*, [2020 SCC 28](#), para. 77; Kandaharian Affidavit, paras. 19-24, A.A.R., Vol 1, Tab F, pp. 195-197; Barakat Affidavit, paras. 26-27, A.A.R., Vol 1, Tab E, pp. 56-57; Jeyakumar Affidavit, paras. 23-30, A.A.R., Vol 1, Tab G, pp. 363-364.

62. Second, section 3.6 targets religious minorities from communities that have been historically mistreated. Although “historical discrimination need not be demonstrated for a court to find that a law infringes s. 15(1)”, members of Muslim, Hindu, and Eastern Orthodox religions have experienced discrimination in Canada at rates higher than the national average (and Catholic Canadians). Canadian Muslims like Raghad are a heightened target for discrimination. For example, a study shows that Muslim students in Ontario suffer consequences from “encountering discrimination in the public and at school”.

*Ontario (Attorney General) v. G*, [2020 SCC 38](#), para. 38; Zoua Vang et al, “Perceived Religious Discrimination, Religiosity, and Life Satisfaction” (2019) 20 J of Happiness Studies 1913 at 1921, A.A.R., Vol 2, Tab H-19, p. 731; Jeffery Reitz et al, “Race, Religion, and the Social Integration of New Immigrant Minorities in Canada” (2009) 43:4 International Migration Rev 695 at 710, A.A.R., Vol 2, Tab H-22, p. 857; Siham Elkassem et al, “Growing Up Muslim: The Impact of Islamophobia on Children in a Canadian Community” (2018) 12:1 J of Muslim Mental Health 3 at 7, 14, A.A.R., Vol 2, Tab H-21, pp 829, 836.

63. Section 3.6 perpetuates and exacerbates the disadvantage faced by non-Catholic students – it has left Dasha feeling insecure “in the knowledge that [she is] recognized at law as human beings equally deserving of concern, respect and consideration”. As a result of section 3.6, Dasha

feels “less worthy of inclusion in the school”, “like [she does] not belong at [her] school”, “penalized based on my faith and stigmatized for being non-Catholic”, “like a second-class citizen”, and disempowered. Dasha now wishes she would have attended a high school where she “would have been able to fully participate in school life, regardless of [her] faith” and “would not feel isolated due to [her] upbringing and beliefs.”

*R. v. Kapp*, [2008 SCC 41](#), paras. 15, 21, quoting *Andrews*, [\[1989\] 1 SCR 143](#), p. 165; *Kahkewistahaw First Nation v. Taypotat*, [2015 SCC 30](#), para. 16; Kandaharian Affidavit, paras. 41, 42, 47, A.A.R., Vol 1, Tab F, pp. 201-202; *Fraser*, [2020 SCC 28](#), para. 76.

64. Discriminatory policies in the Halton and Toronto Catholic boards have had similar effects on the other non-Catholic student affiants. Raghad has felt a “deep sense of unfairness” and that she “was not good enough because of [her] religion”. Rushan feels “inferior to the Catholic Students”, “less important and unwanted because [he is] not Catholic”, and “less worthy because of [his] religion”. Like Dasha, both students have thought about switching schools.

Barakat Affidavit, paras. 31-33, 35, A.A.R., Vol 1, Tab E, pp. 57-59;  
Jeyakumar Affidavit, paras. 45-48, A.A.R., Vol 1, Tabs G, pp. 369-370.

65. Two further factors should guide the 15(1) analysis: the nature of the interest affected and the lack of correspondence between the distinction and the capacities of the claimant.

*Law v. Canada*, [\[1999\] 1 SCR 497](#), para. 88; *Withler*, [2011 SCC 12](#), para. 66; *Fraser*, [2020 SCC 28](#), para. 76.

66. ***Nature of the interest affected.*** The discriminatory effect of section 3.6 is felt in school, a vital institution in the lives of young people. The Supreme Court has said that “[t]he importance of ensuring an equal and discrimination free educational environment, and the perception of fairness and tolerance in the classroom are paramount in the education of young children”.

*Ross v. New Brunswick School District No. 15*, [\[1996\] 1 SCR 825](#), paras. 81-82; *Hall* (2002), [59 OR \(3d\) 423 \(S.C.\)](#), para. 15.

67. The *United Nations Convention on the Rights of the Child* also recognizes the special status of children and their interests. Article 3 of the Convention states: “In all actions concerning children... the best interests of the child shall be a primary consideration.” Excluding children from an opportunity based on religious status is contrary to their best interests.

*United Nations Convention on the Rights of the Child*, [General Assembly resolution 44/25 of 20 November 1989](#), Art. 3.

68. ***Correspondence with actual characteristics.*** Distinctions may be lawful when they are based on merit. That is not the case here – section 3.6 is a checkbox requirement: Catholics qualify, and non-Catholics do not. Dasha is ineligible even though she receives the same Catholic education as her Catholic peers, won a student leadership award, and was nominated for the role by the “stewards of Catholic education” in her school. There is no correspondence between the distinction section 3.6 draws and the actual characteristics of non-Catholic students.

Cotton Cross, q. 32, A.T.B., Tab 1, p. 11.

69. Section 3.6 violates section 15(1) and should be quashed or declared without legal effect.

***Section 3.6 violates section 2(a) of the Charter***

70. Section 2(a) of the Charter guarantees everyone’s freedom of religion. This includes “the right to entertain such religious beliefs as a person chooses, 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.”

*R. v. Big M Drug Mart Ltd.*, [\[1985\] 1 SCR 295](#), para. 94; *R. v. Edwards Books and Art Ltd.*, [\[1986\] 2 SCR 713](#), para. 97.

71. A two-step approach governs the section 2(a) analysis. First, the Court asks if the applicant sincerely believes in a practice or belief that has a nexus with religion. Second, the



Court asks if the impugned state conduct interferes in a manner that is more than trivial or insubstantial, with the applicant's ability to act in accordance with that practice or belief.

*Trinity Western University v. Law Society of Upper Canada*, [2018 SCC 33](#), para. 32; *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006 SCC 6](#), para. 34.

72. **Step one is met.** Dasha sincerely believes in the religion Orthodox Christianity. Her assertion of this belief is uncontradicted and its sincerity is uncontested.

73. **Step two is met.** Section 3.6 interferes substantially with Dasha's freedom to hold and manifest her religious beliefs. It compels her to choose between adhering to her religion and participating fully in school life, thus constraining her freedom to be an Orthodox Christian.

74. Section 3.6 has a coercive impact on Dasha's freedom of religion. The Supreme Court has explained that "[c]oercion includes indirect forms of control which determine or limit alternative courses of conduct available to others." Dasha's ability to fully participate in school life is limited: section 3.6 compels her to choose between being an Orthodox Christian or converting to Catholicism to fully participate in student life. Indeed, the coercive effect of the Toronto Catholic board's student trustee policy made Dasha seriously contemplate conversion.

*Loyola High School v. Quebec (Attorney General)*, [2015 SCC 12](#), para. 58 ["Loyola"]; *Zylberberg v. Sudbury Board of Education* (1988), 65 OR (2d) 641 (C.A.), para. 38, ["Zylberberg"], BOUA, Tab 2; Kandaharian Affidavit, para. 42, A.A.R., Vol 1, Tab F, p. 201; Jeyakumar Affidavit, para. 46, A.A.R., Vol 1, Tab G, 369.

75. Section 3.6 has also caused Dasha to wish she had attended a non-Catholic school so that she would have been able to run for student trustee. This is consistent with the YCDSB's view of non-Catholics and the student trustee role: two YCDSB affiants stated on cross-examination that every student "has a right to run for student trustee", but that non-Catholics only have that right "in public boards". But Catholic boards are public boards. To secure funding, the Bishops

admitted non-Catholics to Catholic high schools. Non-Catholics should not have to switch schools if they want to continue to practice their religion while running for student trustee.

Kandaharian Affidavit, para. 26, 47, A.A.R., Vol 1, Tab F, pp. 197, 202; see also Barakat Affidavit, para. 35, A.A.R., Vol 1, Tabs E, p. 59; Jeyakumar Affidavit, para. 48, A.A.R., Vol 1, Tab G, p. 370; Smith Cross, p. 51, A.T.B., Tab 9, p. 590; Cotton Cross, pp. 67-69, A.T.B., Tab 1, pp. 17-18.

76. Coercing Dasha to convert or switch schools to access the student trustee opportunity interferes substantially with her freedom to be an Orthodox Christian. This interference is particularly damaging because it occurs in school, where religious compulsion is heightened. As the Ontario Court of Appeal has recognized, “[t]he peer pressure and the classroom norms to which children are acutely sensitive, in our opinion, are real and pervasive and operate to compel members of religious minorities to conform with majority religious practices.”

*Zylberberg v. Sudbury Board of Education* (1988), 65 OR (2d) 641 (C.A.), paras. 38, 43, BOUA, Tab 2; *Alberta v. Hutterian Brethren of Wilson Colony*, [2009 SCC 37](#), para. 34 [“Hutterian”]; *Canadian Civil Liberties Assn. v. Ontario (Minister of Education)* (1990), 71 OR (2d) 341 (C.A.), paras. 67-68, BOUA, Tab 3.

77. Dasha has the freedom “not to conform to the religious practices of the majority”. Because Section 3.6 interferes with this freedom, it must be quashed or declared invalid.

*Freitag v. Penetanguishene* (1999), [47 OR \(3d\) 301 \(C.A.\)](#), para. 20.

78. **Section 3.6 infringes the state’s duty of religious neutrality.** Section 3.6 also violates the state’s duty of religious neutrality under s. 2(a) of the *Charter*. “[T]he state’s duty to protect every person’s freedom of conscience and religion means that it may not use its powers in such a way as to promote the participation of certain believers or non-believers in public life to the detriment of others.” Section 3.6 does just that—it “create[s] a preferential public space that favours [Catholic students] and is hostile to [non-Catholic students]”. Accordingly, Section 3.6 must be quashed or held to be of no force and effect on this basis.

*Mouvement laïque québécois v. Saguenay*, [2015 SCC 16](#), paras. 75-76.

**Section 3.6 cannot be saved under s. 1 of the Charter**

79. The burden falls to the YCDSB to justify these infringements of the *Charter*. Section 3.6 fails on three of the four steps of the *Oakes* test.

*R. v. Oakes*, [\[1986\] 1 SCR 103](#), pp. 136-140.

80. ***Pressing and substantial objective.*** Policy 107 suggests that section 3.6’s objective is to maintain the Catholicity of the board. Dasha acknowledges the importance of maintaining the Catholicity of the YCDSB and concedes that this objective is pressing and substantial.

81. ***No rational connection.*** There is no rational connection between Section 3.6 and the objective of the measure. Under section 55 of the *Education Act*, student trustees are not “members” of school boards, cannot vote at meetings, and cannot move motions. Because student trustees have no authority to affect the Catholicity of the board, restricting the student trustee position to non-Catholics does not further that goal.

82. ***Section 3.6 is not minimally impairing.*** Even if there is some connection between section 3.6 and maintaining the Catholicity of the board, other student trustee policies in Ontario show that there are “are less harmful means” of achieving this goal. For example, one Catholic school board’s student trustee policy provides that non-Catholic students are eligible for the student trustee role if they are “fully supportive of the mission, vision, and responsibilities of Catholic Schools in Ontario”. Other student trustee policies have no Catholicism requirement.

*Carter v. Canada (Attorney General)*, [2015 SCC 5](#), para. 102; *Hutterian*, [2009 SCC 37](#), para. 53; First Stoiber Affidavit, Exhibits 1-3, A.A.R., Vol 2, Tabs H-1, H-2, H-3, pp 424-433, 435-436, 438-439.

83. These policies are consistent with Mx. Kelly’s evidence – as they explained on cross-examination, non-Catholic students can uphold Catholic values and live their life as “any

Catholic would, through their actions, which is what is valued.” Dr. Dixon agrees. Thus, Mx. Kelly explained that non-Catholic students could succeed as a student trustee and “fulfill the role of protecting and promoting Catholic education”.

Kelly Affidavit, paras. 22, 25, A.A.R., Vol 3 Tab J, pp. 1130-1131; Kelly Cross, qq. 112, 115, A.T.B., Tab 5, pp. 285-287; Dixon Cross, q. 188, 283-286, A.T.B., Tab 7, pp. 397, 419.

84. ***The deleterious effect of the breach outweighs the salutary effect of the Section 3.6.***

There is no proportionality between the benefits of having only Catholic student trustees and the impacts of section 3.6 on sections 2(a) and 15(1) of the *Charter*. Any beneficial effect of section 3.6 does not outweigh its negative impact on nearly 30% of students in the YCDSB. Section 3.6 undermines those students’ human dignity, impairs their freedom to hold religious beliefs, and creates a discriminatory environment in schools. It is not those children’s best interests.

**Alternatively, section 3.6 is unreasonable under the *Doré* framework**

85. In the alternative, if the constitutionality of section 3.6 is assessed under the *Doré* framework, the result is the same. Section 3.6 reflects an unreasonable balancing between the *Charter* values of equality and freedom of religion and the relevant statutory objectives.

86. First, the overall purposes of the *Education Act* and the statutory objectives of the student trustee provisions have nothing to do with maintaining the Catholicity of the Board. Second, the *Charter* values underlying sections 2(a) and 15(1) are not “affected as little as reasonably possible in light of the state’s particular objectives”. As discussed above, there are less impairing ways to create a student trustee policy in a Catholic school board as seen in the other student trustee policies referred to in paragraphs 44 and 82 above. These options, which were reasonably open to the YCDSB, would reduce the impact on the protected rights and would be more consistent with the *Education Act*’s objectives of fostering inclusive school communities.

*Loyola*, [2015 SCC 12](#), paras. 39-40; *Law Society of British Columbia v. Trinity Western University*, [2018 SCC 32](#), para. 81.

**Section 93(1) of the *Constitution Act, 1867* does not apply**

87. Despite these *Charter* infringements, the YCDSB will argue that its student trustee policy falls within its denominational rights under the *Constitution Act, 1867*. There is no dispute that Catholic school boards have certain rights and privileges, but these rights and privileges are a limited exception to the *Charter*. Catholic high schools, which are open to all students because of the Bishops' historic compromise, are not *Charter*-free zones. The YCDSB has failed to meet its burden of showing that, in the name of its denominational rights, it can discriminate and violate religious freedom in its student trustee policy.

88. **Legal framework.** Section 93(1) of the *Constitution Act, 1867* protects certain rights and privileges of denominational schools. The scope of the rights and privileges protected under this section “must be determined by ascertaining the rights and privileges in existence at the time of the Union,” taking into account that “the education system of a province is not frozen in time.”

*Reference re Bill 30, An Act to Amend the Education Act (Ont.)*, [\[1987\] 1 SCR 1148](#), p. 1177; *OECTA v Ontario (Attorney General)*, [2001 SCC 15](#), para. 31 [“*OECTA*”].

89. The question before this Court is whether the YCDSB's discriminatory student trustee policy falls within its sphere of power over denominational matters. To show that it does, the YCDSB has the burden of establishing that: (a) there was a right or privilege affecting a denominational school; (b) enjoyed by a particular class of persons; (c) by law; (d) in effect at the time of the Union; (e) and which is prejudicially affected. Within the fifth factor, the board must also show that the prejudicially affected right relates “to denominational education, or those non-denominational aspects necessary to deliver the denominational elements of education”.

*OECTA*, [2001 SCC 15](#), para. 30; *Hall*, [59 OR \(3d\) 423 \(S.C.\)](#), para. 34.

90. The YCDSB will likely argue that the right to set qualifications for student trustees is part of its right to Catholic governance, or alternatively, that student trustees are part of Catholic school board governance. This argument should fail for three reasons, detailed below.

***A. Student trustees were not part of Catholic governance in 1867***

91. First, it is uncontested that student trustees are a new creation: Dr. Dixon and Ms. Cotton confirmed that student trustees were created in 1997. Thus, the YCDSB fails to meet parts (c) and (d) of the section 93(1) test. Matters respecting student trustees were not rights or privileges affecting denominational schools that were prescribed by law at the time of Confederation. The YCDSB may argue that s. 93(1) is not “frozen” in time, and that student trustees are “akin” to voting trustees. But a form of non-voting student representation on school boards is without precedent and is distinct from the role that trustees have played on boards for centuries.

Expert Report, Dixon Affidavit, Exhibit A at pp. 416-417, R.A.R., Vol 2, Tab 2-A, pp. 416-417; Dixon Cross, qq. 120, 122-125, A.T.B., Tab 7, p. 382-383; Cotton Cross, q. 208, A.T.B., Tab 1, p. 49.

***B. Student trustees are not part of Catholic governance now***

92. Second, the YCDSB may attempt to surmount parts (c) and (d) of the s. 93(1) test by arguing that student trustees are part of the governance or management of the school board, the right to which Catholic boards have held since Confederation. That is the position that the YCDSB took in its responding letter to Dasha, and Ms. Cotton inappropriately provides a legal interpretation of the *Education Act* in her affidavit to arrive at that conclusion.

Cotton Affidavit, para. 12-15, R.A.R., Vol 1, Tab 1, p. 12; Kandaharian Affidavit, Exhibit 34, A.A.R., Tab F-34, pp. 343-355.

93. But since 1997, the *Education Act* has never provided any governance powers to student trustees. At all times, they have: (1) “not [been] a member of the board”; (2) not been entitled to vote at board and committee meetings; and (3) been excluded from closed board meetings. While

a student trustee has participatory rights at board meetings, so does any member of the public that registers to speak or present at a meeting.

Dixon Cross, q. 157, A.T.B., Tab 7, p. 390; Cotton Cross, qq. 65-73, 260, A.T.B., Tab 1, pp. 17-18, 59; *Education Act*, [R.S.O. 1990](#), c E.2, s. 55 as it appeared on June 4, 2003; *Education Act*, [R.S.O. 1990](#), c E.2, s. 55.

94. Because student trustees exercise no power at board meetings, their influence is entirely dependent on voting trustees. Mr. Daly and Ms. Cotton speak at length about contributions that student trustees can make, but as Mx. Kelly explained, voting trustees can dismiss any student trustee viewpoint or proposed motion that they dislike. Voting trustees may work with student trustees, as they did in Mr. Smith’s experience, but they are under obligation to do so. And if “one voting trustee [cannot] determine board policy on their own,” as Ms. Cotton confirmed, surely non-voting participants at board meetings cannot determine board policy, either.

Kelly Affidavit, paras. 14-15, A.A.R., Tab J, p. 1127; Smith Affidavit, paras. 12-15, 19, R.A.R., Vol 2, Tab 5, pp. 558-560. Cotton Cross, q. 138, A.T.B., Tab 1, p. 34; Cotton Affidavit, paras. 20-2, 30-36, R.A.R., Vol 1, Tab 1, pp. 13-14, 18-20; Daly Affidavit, paras. 34-36, R.A.R., Vol 2, pp. 547-548.

95. Dr. Dixon’s admission about the insignificance of the student trustee position supports this view. When explaining why he did not mention the student trustee position in his history of Catholic education in Ontario, Dr. Dixon said he did not realize the position was important at the time. That is because from a governance perspective, it is not – the role provides a meaningful student leadership opportunity, but these students cannot prejudicially affect board governance.

Dixon Cross, q. 162, A.T.B., Tab 7, p. 391.

96. Regardless of how the YCDSB frames its argument, it has not established that the right to regulate student trustees is a non-denominational aspect of Catholic schools that is “necessary to give effect to denominational guarantees”. Student trustees are student leaders. Unlike the Catholic teachers in *Daly*, they play no role in educating students. Allowing non-Catholics to run

for student trustee will not expose students to non-Catholic educators and will not affect any denominational aspect of Catholic schools – voting trustees will remain Catholic, teachers and principals will remain Catholic, and the curriculum will retain its Catholic character.

*Daly, et al v. Attorney General of Ontario*, [44 OR \(3d\) 349 \(C.A.\)](#); *Greater Montreal (Protestant School Board) c. Québec (Procureur général)*, [\[1989\] 1 S.C.R. 377](#), p. 416.

***C. In any event, no prejudicial effect on Catholic governance***

97. Third, even if this Court finds that student trustees have some limited role in the governance of the school board, the YCDSB’s has failed to show that allowing non-Catholics to run for student trustee would prejudicially affect the governance of the school board.

98. On the YCDSB’s own evidence, section 3.6 is unnecessary to ensure that suitable student trustee candidates are nominated. Ms. Cotton confirmed that school principals, who Policy 107 entrusts with recommending students for the student trustee position, would only recommend candidates who are supportive of Catholic values and education. There is no evidence that an applicant vetted by a school principal would have a prejudicial effect on school governance.

Cotton Cross, qq. 239-244, 247, A.T.B., Tab 1, pp. 55-56.

99. Rather, providing all students, including non-Catholics, with the opportunities for participation at the board level would be consistent with Catholic doctrine and the mission of the Catholic school. Dr. Dixon explained that the “mission of the Catholic school is to create the lived experience of what it is like to be welcomed, cared for, [and] loved without conditions.”

Dixon Cross, qq. 95, 243-244, 250, A.T.B., Tab 7, pp. 376, 409, 411-412.

100. Other Catholic boards have crafted student trustee policies that embrace this mission. Those policies contain no Catholicism requirement or permit non-Catholic students to run for student trustee on the student’s affirmation of support for the mission of Ontario’s Catholic



schools. These Catholic boards do not view the possibility of a non-Catholic student trustee as a prejudicially affecting the governance of their board. Mx. Kelly agrees.

First Stoiber Affidavit, Exhibits 1-3, A.A.R., Vol 2, Tabs H-1, H-2, H-3, pp. 424-433, 435-436, 438-439.

101. So despite the YCDSB's position in this litigation, including the opinions expressed by the YCDSB's affiants, there is "diversity of opinion within the Catholic community" about whether a student must be Catholic to fulfill the role of student trustee. And there is no evidence that allowing non-Catholic students to be student trustees will undermine the Catholic character of Catholic schools or denigrate a denominational aspect of Catholic education. Non-Catholics can learn and embody Catholic values.

*Hall* (2002), [59 OR \(3d\) 423 \(S.C.\)](#) para. 45; Kelly Affidavit, paras. 22-24 A.A.R., Vol 3, Tab J, p. 1130; Kelly Cross, qq. 109-16, A.T.B., Tab 5, pp. 284-287.

102. Dasha was recommended as a suitable candidate by her principal, but section 3.6 prevented her candidacy. Catholic values teach that "no one person can be reduced to one aspect of their person", but section 3.6 does exactly that. She was qualified in every way but her religion. While non-Catholic students may feel uncomfortable with aspects of Catholic rituals, this does not render them unsuitable, and there is no evidence that this, on its own, prejudicially affects the governance or management of the school board.

Dixon Cross, qq. 273-274, A.T.B., Tab 7, p. 416.

### **PART III - ORDER REQUESTED**

103. Dasha asks this Court to quash or declare without legal effect section 3.6 of the YCDSB's Policy 107 and award no costs, regardless of result. If the application is dismissed, and the Court considers awarding costs, Dasha seeks an opportunity to make written submissions on the public interest factors to be considered in awarding costs.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 19<sup>th</sup> day of April 2022.



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Jonathan Silver / Henry Federer /  
Allison Williams

April 19, 2022

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

B E T W E E N:

DARIA KANDAHARIAN by her Litigation Guardian  
ANDRANIK KANDAHARIAN

Applicant

- and -

YORK CATHOLIC DISTRICT SCHOOL BOARD

Respondent

**CERTIFICATE OF ESTIMATE OF TIME REQUIRED**

I estimate that one day will be needed for my oral argument on this the application.



---

Henry Federer

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## SCHEDULE “A”

### LIST OF AUTHORITIES

1. *Alberta v. Hutterian Brethren of Wilson Colony*, [2009 SCC 37](#)
2. *Andrews v. Law Society of British Columbia*, [\[1989\] 1 SCR 143](#)
3. *Canadian Civil Liberties Assn. v. Ontario (Minister of Education)* (1990), 71 OR (2d) 341 (C.A.)
4. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65](#)
5. *Canada (Union of Correctional Officers) v. Canada (Attorney General)*, [2019 FCA 212](#)
6. *Carter v. Canada (Attorney General)*, [2012 BCSC 886](#)
7. *Carter v. Canada (Attorney General)*, [2015 SCC 5](#)
8. *Daly, et al v. Attorney General of Ontario*, [44 OR \(3d\) 349 \(C.A.\)](#)
9. *Fraser v. Canada (Attorney General)*, [2020 SCC 28](#)
10. *Freitag v. Penetanguishene (Town)* (1999), [47 OR \(3d\) 301 \(CA\)](#)
11. *Greater Montreal (Protestant School Board) c. Québec (Procureur général)*, [\[1989\] 1 S.C.R. 377](#)
12. *Hall (Litigation Guardian of) v. Powers* (2002), [59 O.R. \(3d\) 423 \(S.C.\)](#)
13. *Hudson’s Bay Company ULC v. Ontario (Attorney General)*, [2020 ONSC 8046](#)
14. *Kahkewistahaw First Nation v. Taypotat*, [2015 SCC 30](#)
15. *Katz Group Canada Inc. v. Ontario (Health and Long-Term Care)*, [2013 SCC 64](#)
16. *Law v. Canada*, [\[1999\] 1 SCR 497](#)
17. *Law Society of British Columbia v. Trinity Western University*, [2018 SCC 32](#)
18. *Loyola High School v. Quebec (Attorney General)*, [2015 SCC 12](#)
19. *Miron v. Trudel*, [\[1995\] 2 SCR 418](#)
20. *Mouvement laïque québécois v. Saguenay*, [2015 SCC 16](#)
21. *Multani v. Commission scolaire Marguerite-Bourgeoys*, [2006 SCC 6](#)

22. *OECTA v Ontario (Attorney General)*, [2001 SCC 15](#)
23. *Ontario (Attorney General) v. G*, [2020 SCC 38](#)
24. *R. v. Big M Drug Mart Ltd.*, [\[1985\] 1 SCR 295](#)
25. *R. v. Edwards Books and Art Ltd.*, [\[1986\] 2 SCR 713](#)
26. *R. v. Kapp*, [2008 SCC 41](#)
27. *R. v. Oakes*, [\[1986\] 1 SCR 103](#)
28. *Reference re Bill 30, An Act to Amend the Education Act (Ont.)*, [\[1987\] 1 SCR 1148](#)
29. *Ross v. New Brunswick School District No. 15*, [\[1996\] 1 SCR 825](#)
30. *The Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario*, [2018 ONSC 579](#)
31. *Trinity Western University v. Law Society of Upper Canada*, [2018 SCC 33](#)
32. *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, [2018 SCC 22](#)
33. *Withler v. Canada (Attorney General)*, [2011 SCC 12](#)
34. *Zylberberg v. Sudbury Board of Education* (1988), 65 OR (2d) 641 (Ont. C.A.)

## **SCHEDULE “B”**

### **TEXT OF STATUTES, REGULATIONS & BY - LAWS**

Policy 107 of the YSCDSB, ss. 3.6, 3.7, 3.8, 3.9, 3.11, 3.13, 3.14, 3.17, 3.22:

- 3.6 A Student trustee must be a Roman Catholic whose residence is designated English Separate Supporter/Elector and be registered and enrolled in religious education courses.
- 3.7 A Student Trustee must demonstrate that he/she is able to complete the duties of student trustee without jeopardizing his/her academic standing.
- 3.8 A Student Trustee must be enrolled in a YCDSB secondary day school program and must have the written recommendation of their school principal. Parental consent will also be required.
- 3.9 A Student Trustee will have the opportunity to attend workshops, courses, conferences, symposiums, committee meetings and community events which relate to the governance of education and the delivery of educational programs and services as reviewed and approved by the Superintendent who oversees Student Trustees in accordance with the Education Act, s. 55(7).
- 3.11 A Student Trustee will not count towards quorum at Board meetings.
- 3.13 A Student Trustee is not entitled to move a motion but is entitled to suggest a motion. If no Board member moves the motion the record shall show the suggested motion.
- 3.14 Student Trustee votes do not count towards the approval of a motion. However, a Student Trustee has the right to have his/her vote recorded in the minutes.
- 3.17 A Student Trustee has the same status as a board member with respect to access to board resources and opportunities for training [Education Act, section 55(7)].
- 3.22 The amount of the honorarium referred to in subsection 55(8) of the Education Act is:
  - 3.22.1 \$2,500.00 per year if the Student Trustee holds office for a complete term of office;
  - 3.22.2 \$2,500.00 per year prorated according to the proportion of a term for which the Student Trustee holds office, if the Student Trustee holds office for less than a complete term of office.

Education Act, [RSO 1990, c E.2](#), ss. 0.1(2), 1(4.1), 55(1)-(6), 169.1(1), 218.1:

#### **Purpose of education**

- 0.1(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. 2009, c. 25, s. 1.

### **Interpretation, other general matters**

- 1(4.1) Every authority given by this Act, including but not limited to every authority to make a regulation, decision or order and every authority to issue a directive or guideline, shall be exercised in a manner consistent with and respectful of the rights and privileges guaranteed by section 93 of the Constitution Act, 1867 and by section 23 of the Canadian Charter of Rights and Freedoms.

### **Student trustees**

- 55(1) The Minister may make regulations providing for elected student trustees to represent, on district school boards and on boards established under section 67, the interests of pupils in the last two years of the intermediate division and in the senior division. 2006, c. 10, s. 6.

### **No membership or binding vote**

- 55(2) A student trustee is not a member of the board and is not entitled to exercise a binding vote on any matter before the board or any of its committees. 2006, c. 10, s. 6.

### **Recorded vote**

- 55(3) A student trustee is entitled to require that a matter before the board or one of its committees on which the student trustee sits be put to a recorded vote, and in that case there shall be,
- (a) a recorded non-binding vote that includes the student trustee's vote; and
  - (b) a recorded binding vote that does not include the student trustee's vote. 2006, c. 10, s. 6.

### **Motion**

- 55(4) A student trustee is not entitled to move a motion, but is entitled to suggest a motion on any matter at a meeting of the board or of one of its committees on which the student trustee sits, and if no member of the board or committee, as the case may be, moves the suggested motion, the record shall show the suggested motion. 2006, c. 10, s. 6.

### **Certain closed meetings**

- 55(5) A student trustee is not entitled to be present at a meeting that is closed to the public under clause 207 (2) (b). 2006, c. 10, s. 6.

### **Participation**

- 55(6) Subject to subsections (2) to (5), a student trustee shall have the same opportunities for participation at meetings of the board and of its committees as a member has.

### **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.

### **Duties of board members**

218.1 A member of a board shall,

- (a) carry out his or her responsibilities in a manner that assists the board in fulfilling its duties under this Act, the regulations and the guidelines issued under this Act, including but not limited to the board's duties under section 169.1;
- (b) attend and participate in meetings of the board, including meetings of board committees of which he or she is a member;
- (c) consult with parents, students and supporters of the board on the board's multi-year plan under clause 169.1 (1) (f);
- (d) bring concerns of parents, students and supporters of the board to the attention of the board;
- (e) uphold the implementation of any board resolution after it is passed by the board;
- (f) entrust the day to day management of the board to its staff through the board's director of education;
- (g) maintain focus on student achievement and well-being; and
- (h) comply with the board's code of conduct

Education Act, R.S.O. 1990, c E.2, s. 55 as it appeared on June 4, 2003:

**Pupil representatives**

55(1) The Lieutenant Governor in Council may make regulations providing for representation on boards, by peer election or by appointment, of the interests of pupils in the last two years of the intermediate division and in the senior division. 1997, c. 31, s. 30.

**Same**

55(2) A regulation under this section may,

- (a) provide for the type and extent of participation by the persons elected or appointed; and
- (b) authorize boards to reimburse the persons elected or appointed for all or part of their out-of-pocket expenses reasonably incurred in connection with carrying out the responsibilities of pupil representatives, subject to such limitations or conditions as may be specified in the regulation. 1997, c. 31, s. 30.

**Same**

55(3) A regulation under this section shall not give voting rights to pupil representatives. 1997, c. 31, s. 30.

**Same**

55(4) In a regulation under this section, the Lieutenant Governor in Council may provide for any matter by authorizing a board to develop and implement a policy with respect to the matter. 1997, c. 31, s. 30.

### **Same**

55(5) A pupil representative on a board is not a member of the board and is not entitled to be present at a meeting that is closed to the public under section 207.

*Student Trustees, O Reg 7/07, ss. 1, 2, 4, 5, 6, 7:*

### **Application**

1. This Regulation applies to every district school board and every secondary school board established under section 67 of the Act.

### **Board policy**

2(1) The board shall develop and implement a policy providing for matters relating to student trustees and to the payment of honoraria for student trustees.

2(2) The policy shall be in accordance with this Regulation and with any policies and guidelines established by the Minister under paragraph 3.5 of subsection 8 (1) of the Act.

### **Election procedure and timing**

4(1) Student trustees shall be elected in one of the following ways:

1. Directly, by students of the board.

2. Indirectly, by student representative bodies such as student councils.

(2) An election for a student trustee position for a one-year term of office shall be held not later than the last day of February in each year.

(3) An election for a student trustee position for a two-year term of office shall be held not later than April 30 in each year.

### **Qualifications**

5(1) A person is qualified to act as a student trustee if, on the first day of school after the term of office begins, he or she is enrolled in the senior division of a school of the board and is,

(a) a full-time pupil; or

(b) an exceptional pupil in a special education program for whom the board has reduced the length of the instructional program on each school day under subsection 3 (3) of Regulation 298 of the Revised Regulations of Ontario, 1990 (Operation of Schools —

General) made under the Act, so long as the pupil would be a full-time pupil if the program had not been reduced.

- (2) Despite subsection (1), a person is not qualified to be elected or to act as a student trustee if he or she is serving a sentence of imprisonment in a penal or correctional institution. O. Reg. 7/07, s. 5 (2).
- (3) A person who ceases to be qualified to act as a student trustee shall resign from the position.
- (4) In this section,  
 “full-time pupil” has the same meaning as in the most recent regulations made under section 234 of the Act.

### **Term of office**

- 6. (1) The term of office of a student trustee may be one year or two years and starts on August 1 of the year in which the student trustee is elected.
- (1.1) Despite subsection (1), the term of office of a student trustee elected in 2020 for a two-year term of office starts on the later of August 1, 2020 and the day the student is elected, and ends on July 31, 2022.
- (2) If a board has two or more student trustees with terms of two years, the board shall ensure that its policy under section 2 provides for the staggering of terms where possible.

### **Vacancies**

- 7. If the board determines that a vacancy shall be filled, it shall be filled by a by-election.

*Pupil Representation on Boards* [Repealed], O. Reg. 461/97 (“1997 Regulation”), ss. 1(1), 2(1), 3(1), 3(3)(a)-(d):

- 1(1) Every board shall develop and implement a policy providing for the representation of the interests of pupils on the board.
- 2(1) Each board shall have one pupil representative or such greater number of pupil representatives as is specified in the policy.
  - 3(1) The policy shall specify whether the pupil representatives are to be chosen by peer election or by appointment and shall specify the procedures to be followed for the purpose.
- 3(3) The policy shall provide for,
  - (a) the type and extent of participation by pupil representatives;
  - (b) disqualification of pupil representatives;

- (c) the filling of vacancies;
- (d) the term of office of pupil representatives.

*An Act to restore to Roman Catholics in Upper Canada certain rights in respect to Separate Schools, 5 Prov. C. 1863, 26 Vict., c. 5, ss. 3-5*

**Election of Separate School Trustees:**

- 3 A majority of the persons present, being freeholders or separate householders, and being Roman Catholics, and not candidates for election as Trustees, may, at any such meeting, elect three persons resident within such section or an adjoining section to act as Trustees for the management of such Separate School;

and any person, being a British subject, not less than twenty-one years of age, may be elected as a Trustee, whether he be a freeholder or householder, or not.

**Written notice of such meeting to be given an to whom and in what manner:**

- 4 Notice in writing that such meeting has been held and of such of such election of Trustees, shall be given by the parties present at such meeting to the Reeve or head of the Municipality, or to the Chairman of the Board of Common School Trustees, in the Township, Incorporated Village, own or City in which such School is about to be established, designating by their names, professions and residences, the persons elected in the manner aforesaid, as Trustees for the management thereof; and every such notice shall be delivered to the proper officer by one of the Trustees so elected, and it shall be the duty of the officer receiving the same to endorse thereon the date of the receipt thereof, and to deliver a copy of the same so endorsed and duly certified by him to such Trustee, and from the day of the delivery and receipt of every such notice, or in the event of the neglect or refusal of such officer to deliver a copy so endorsed and certified, then from the day of the delivery of such notice,

the Trustees therein named shall be a body corporate, under the name of "The Trustees of the Roman Catholic Separate School for the Section number in the township of, or for the ward of, in the city or town (as the case may be) or for the village of in the county of"

**Union of wards in Towns or Cities**

- 5 The Trustees of Separate Schools heretofore elected, or hereafter to be elected according to the provisions of this Act, in the several Wards of any city or town, shall form one body corporate, under the title of " The Board of Trustees of the Roman Catholic Separate Schools for the city (or town) of ----"

[Charter of Rights and Freedoms, The Constitution Act, 1982, Schedule B to the Canada Act 1982 \(UK\), 1982, c 11, ss. 1, 2\(a\), 15\(1\):](#)

## **Rights and freedoms in Canada**

- 1 The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

### **Fundamental freedoms**

- 2 Everyone has the following fundamental freedoms
  - (a) freedom of conscience and religion;

### **Equality before and under law and equal protection and benefit of law**

- 15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

*The Constitution Act, 1867, 30 & 31 Vict, c 3, s. 93(1):*

- 93 In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:
  1. Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union;

*United Nations Convention on the Rights of the Child, General Assembly resolution 44/25 of 20 November 1989, Art. 3:*

#### Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.



DARIA KANDAHARIAN by her Litigation Guardian  
ANDRANIK KANDAHARIAN  
Applicant

v. YORK CATHOLIC DISTRICT  
SCHOOL BOARD  
Respondent

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

Proceeding commenced at TORONTO

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