



What's New in HR Law

Court of Appeal for Ontario Dismisses Parent's Application to Remove Children from Class to Avoid "False Teachings"

January 4, 2018

BOTTOM LINE

In a decision that raises several questions relevant to public school boards' obligations with respect to religious accommodation requests, the Court of Appeal determined that the appellant parent had failed to provide any objective evidence that the school board's decision to refuse accommodation undermined the parent's ability to teach his children about religion and human sexuality.

Facts: Parent demanded that his children be sheltered from "false teachings"

The appellant was a committed Christian, a member of the Greek Orthodox Church, and parent of two children who attend a school within the Hamilton-Wentworth District School Board ("the School Board").

The parent requested religious accommodation from the School Board such that he and his children would be sheltered from what he viewed as "false teachings" in respect of a number of

vague topics, including certain topics relating to LGBTTIQ (lesbian, gay, bisexual, transgender, transsexual, two-spirited, intersex, queer and questioning) people. He provided the School Board with a standard form list of topics and demanded that the School Board provide him with advance notice of any classroom instruction or discussion where such “false teachings” may arise.

The School Board offered to exempt the appellant’s children from the elementary program’s “Healthy Living” strand but denied the parent’s specific accommodation request on the basis that the School Board is required (both statutorily and under its policies) to promote a positive and inclusive environment that is accepting of all pupils, including LGBTTIQ pupils or pupils from LGBTTIQ families. In addition, the list of topics provided by the parent made it neither practical nor possible for the School Board to comply with his request.

The parent brought an application seeking a declaration that his *Charter* rights had been infringed, as well as other remedies. The Superior Court of Justice dismissed the parent’s case. The Superior Court’s decision was discussed in [one of our earlier articles](#). The parent subsequently appealed to the Court of Appeal for Ontario.

The Decision: No Evidence of an Infringement of Freedom of Religion under the *Charter*

The appeal was heard by a panel of three judges. While the panel members disagreed somewhat with respect to the appropriate analytical framework and standard of review applicable to the School Board’s decision, all three judges appeared to agree on the point that the parent had failed to demonstrate any substantial interference with his freedom of religion on an objective basis.

In particular, all judges agreed that it is not necessarily contrary to a parent’s freedom of religion for his/her children to be exposed to ideas that contradict those of the parent, and that some kinds of “cognitive dissonance” are acceptable.

As per established Supreme Court of Canada jurisprudence on this point, parents are required to prove objectively and on the balance of probabilities that a school board or government program undermines the transmission of the tenets of religious faith to children. In this case, the court found that the lack of such evidence was fatal to the parent’s appeal.

Check the Box

While in the instant case the parent’s *Charter* challenge was dismissed for lack of evidence, whenever there are potential *Charter* implications, school boards should carefully examine religious accommodation requests and seek appropriate legal advice to determine the appropriate substantive and procedural steps.

*Please note that there is a possibility that this Court of Appeal decision may be subject to a further appeal.

Forum: Court of Appeal for Ontario

Date: November 22, 2017

Citation: [E.T. v. Hamilton-Wentworth District School Board](#), 2017 ONCA 893

Need more information?

Mark J. Zega and Giovanna Di Sauro represented the Hamilton-Wentworth District School Board in this case. If you need more information or require advice on creed and freedom of religion issues in the workplace and/or in the education sector, please feel free to contact Mark J. Zega at 905-667-1994, Giovanna Di Sauro at 416-408-5513, or your regular lawyer at the firm.



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