CITATION: *Sloat v. Grand Erie District School Board*, 2025 ONSC 4460
DIVISIONAL COURT FILE NO.: DC-24-296-00JR
DATE: 2025-08-08

ONTARIO

SUPERIOR COURT OF JUSTICE

DIVISIONAL COURT

Heeney, Backhouse and Nakatsuru JJ.

BETWEEN:	
CAROL ANN SLOAT Applicant	*Jordan Lester,* for the Applicant
– and –	
GRAND ERIE DISTRICT SCHOOL BOARD Respondent	*George Avraam and Bryan Hsu,* for the Respondent
	HEARD at Hamilton: June 5, 2025

HEENEY J.:

[1] The applicant seeks judicial review of a decision that was made on June 10, 2024 by the respondent Grand Erie District School Board (the "Board"). This decision determined that the applicant had breached the Board's Trustee Code of Conduct (the "Code"). The allegations that formed the basis of this determination arose from two separate complaints, which will be described below. Various sanctions were put in place by the Board as a result of these findings, although these sanctions have since been deemed to have been served as a result of a reconsideration decision of the Board made on May 5, 2025.

[2] The applicant argues that the Board's decision ought to be quashed because it was unreasonable, and because it was arrived at in a manner that was procedurally unfair. The applicant is also seeking a declaration that her s. 2(b) *Charter* rights were infringed.

[3] The Board submits that this judicial review is moot. Further, the Board submits that there was no breach of the duty of procedural fairness and that the Board's decision was reasonable.

[4] It should be noted at the outset that this application is, in effect, a sequel to a previous judicial review application concerning a series of four decisions of the Board, where it similarly concluded that the applicant had violated the Code, and imposed sanctions against her. In the unanimous decision of this court, reported as *Sloat v. Grand Erie District School Board*, 2024 ONSC 6209 (Div. Ct.), leave to appeal refused, OM-0384 (April 3, 2025), Backhouse J., speaking for the court, quashed all four decisions, on the basis that there was a lack of procedural fairness and the decisions were unreasonable. At para. 68, Backhouse J. commented that "the applicant was being unfairly dealt with and unfairly targeted". In my view, that accurately describes the actions of the Board in the matters now before this court.

BACKGROUND:

[5] The applicant is a trustee of the Board, and has served as such since 2003, including several terms as Chair. The Board is a district school board pursuant to Part II.2 of the *Education Act*, R.S.O. 1990, c. E.2 ("the Act"). The Board oversees all public schools within Norfolk County, Haldimand County, and Brant County. Pursuant to its obligations under the Act, the Board adopted a code of conduct, which sets out a procedure for the Board to follow in determining whether a trustee has breached the Code.

[6] It should be noted that the Board no longer has jurisdiction to deal with conduct complaints. As a result of amendments to the Act that took effect on January 1, 2025, the Minister will appoint integrity commissioners to do this work.

[7] At issue in this application is a decision of the Board made on June 10, 2024, which concluded that the applicant had violated the Code in several respects. This decision arose from two separate complaints, which I will refer to as the "disclosure complaint" and the "call the police complaint".

The "Disclosure Complaint":

[8] As already noted, the applicant had previously commenced an application for judicial review concerning four prior decisions of the Board which concluded she had breached the Code. This was filed on June 30, 2023. In July, 2023, she and her husband drove to Thunder Bay to see some old friends and meet with their legal counsel, who practices law there. During this trip, the applicant visited with a friend, J.N., who is a trustee of another school board, and disclosed that she had brought the judicial review application. There is no evidence that she went into the details of her case.

[9] Toward the end of September 2023, J.N. ran into T.B. (a trustee on the Grand Erie Board) and asked T.B. "what is going on with [Trustee Sloat]?". There is a suggestion by both parties that reference was made to the fact that there was ongoing litigation.

[10] On September 24, 2023, T.B. filed a complaint with the Board claiming that the applicant had breached three provisions of the Code. Specifically, the complainant alleged that she shared confidential, in-camera information relevant to ongoing litigation between her and the Board.

The "Call the Police" Complaint:

[11] On February 12, 2024, the applicant was in attendance at the meeting where the Board was addressing the Disclosure Complaint. This was to have been her first meeting after having served the sanctions imposed on her since May, 2023. At this meeting, the Board alleges that they distributed in-camera documents. At the end of the meeting, the Board Chair asked the applicant to return the in-camera documents and she refused to do so. The applicant then left the meeting, took the in-camera documents with her and told the Board to "call the police". The applicant, however, states that these documents were her personal notes of the meeting that she planned on giving to her lawyer, as she had always done. She also states that she left the meeting without handing over these personal notes, and said "call the police" as she exited the meeting. On February 13, 2024, T.D. filed a complaint against the applicant alleging that she breached six provisions of the Code.

The Decision:

[12] On June 10, 2024, based on the complaints of these two separate incidents, the Board found that the applicant had breached the Code. Specifically, the Board found that she failed to maintain confidentiality of privileged information in closed sessions, failed to fulfill her duties as set out in s. 218.1 of the Act, did not work with other Trustees in the spirit of respect, did not treat other trustees with respect, did not base her actions on unimpeachable conduct, and did not accept that authority rests with the board of trustees. No reasons for the decision were provided. As a result of this finding, the applicant was sanctioned by being barred from attending six board meetings from June 2024 to January 2025, barred from sitting on all committees between June 2025 to January 2026, and directed to be subjected to a public censure on a date to be determined.

[13] The applicant appealed this decision through the Board's internal appeal procedure. This appeal was dismissed on June 24, 2024, again without written reasons. The applicant filed the judicial review application that is now before this court two days later.

[14] In November, 2024, the Divisional Court released its decision quashing the four prior decisions of the Board that found the applicant had breached the Code. On April 3, 2025, the Court of Appeal denied leave to appeal that decision.

[15] On May 5, 2025 the Board met to reconsider the sanctions imposed for the Call the Police complaint, which had yet to be served. At that meeting, the sanctions were reduced to "time served", such that no further sanctions remained outstanding with respect to either complaint.

THE ISSUES:

[16] The issues to be addressed are as follows:

1. Is this application moot?

2. Did the Board breach its duty of procedural fairness?

3. Is the Board's decision reasonable?

STANDARD OF REVIEW:

[17] There is no dispute that the substance of the Board's decisions should be reviewed on a standard of reasonableness. The Board's balancing of the relevant *Charter* values with the statutory objectives should also be reviewed on standard of reasonableness.

[18] Regarding breaches of procedural fairness, this Court must determine whether the requisite level of procedural fairness was granted by applying the factors set out in *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817. The question is whether the decision-making procedure was fair having regard to all of the circumstances: see *Afolabi v. Law Society of Ontario*, 2025 ONCA 257, at para. 60.

ISSUE #1: IS THE APPLICATION MOOT

[19] The respondent submits that this application is moot, for two reasons. First, given the reconsideration decision, the applicant faces no further sanctions, which renders the matter moot. Second, it argues that the amendments to the Act, which take authority over conduct complaints away from the Board, also serves to render the application moot.

[20] The applicant made no substantive submissions in her factum on this issue.

[21] The concept of "mootness" was accurately described by DiTomaso J. in *Stewart v. Ontario (Director, Office of the Independent Police Review)*, 2013 ONSC 7907 (Div. Ct.) at paras. 17 - 18 as follows (*footnotes omitted)*:

> A case will therefore be moot if there is no live controversy between the parties. There is no live controversy where the question before the Court has ceased to exist or the substratum of the litigation has disappeared. Further, there is no live controversy where a decision on the merits would have no practical effect on the parties' rights or where the question the Court is now being asked to resolve has been overtaken by post-decision events or a subsequent decision of a board (as in this case). It is not enough that a party has a continuing interest in the outcome of the litigation.
>
> A matter will also found to be moot where the Court would be forced to decide an abstract proposition of law in the absence of a real controversy. Courts will generally decline to hear such cases because courts exist to resolve real disputes between parties and not to provide opinions in response to hypothetical or academic problems.

[22] I agree with the Board that the reconsideration decision renders the issue of sanctions moot, because all remaining sanctions have been eliminated. Thus, a review of this aspect of the

decision would have no practical effect on the parties' rights. However, the reconsideration decision left intact the decision of the Board which concluded that the applicant had breached various provisions of the Code. That remains a live issue between the parties. Had the Board, when they reconsidered the sanctions imposed, also decided to rescind their findings of misconduct, that would have rendered the application moot. However, they did not do so.

[23] An analogy can be drawn with a criminal case. It frequently happens that an appeal of a conviction and sentence is not heard until the sentence has already been served. While that renders the sentence appeal moot, the appeal of the conviction itself remains a live issue. This is because the continuing existence of the conviction on the appellant's record has a practical effect on the appellant's rights.

[24] A decision of this court as to whether the decision regarding misconduct should be quashed would similarly have a real and practical effect on the rights of the applicant. As a trustee, the applicant is a democratically elected official. It is obvious that her ability to be re-elected in the future could be adversely impacted by having a "record" of having committed multiple breaches of the code of conduct.

[25] As to the submission that the amendments to the Act render this application moot, I fail to see the logic in this argument. To be sure, the amendments will have an impact on the order this court will make if we find that the decision must be quashed, in that there would be no reason to remit the matter to the Board for a further hearing, given that the Board now lacks jurisdiction to consider these matters.

[26] The amendments will also have an impact on the degree of detail that I must engage in in these reasons. In other words, since the Board no longer has jurisdiction over conduct matters, this decision will not need to serve as a precedent by which the Board must guide itself in connection with future conduct complaints.

[27] However, none of that means that a review of the Board's decision, rendered while it had jurisdiction to make such a decision, is somehow rendered moot by these amendments. The finding of misconduct will remain on the applicant's "record", affecting her rights, unless this court decides it must be quashed.

[28] I conclude that this application is not moot.

ISSUE #2: PROCEDURAL FAIRNESS

[29] There are two ways in which the Board is alleged to have breached their duty of procedural fairness.

[30] The first is that the Disclosure Complaint was not submitted within the timelines provided by the Code. Subsection 4.2(a) of the Code provides as follows:

> The complaint must be submitted no later than six (6) weeks after the breach becomes known to the Trustee reporting the breach. Notwithstanding the foregoing, in no circumstance shall an inquiry into a breach of the Code be

> undertaken after the expiration of six (6) months from the time the contravention is alleged to have occurred.

[31] The contravention complained of allegedly occurred in Thunder Bay in July, 2023. The complainant, T.B., brought a complaint forward on September 24, 2023. However, the inquiry into that complaint did not begin until T.B. was first interviewed by the investigator on February 6, 2024. This is clearly out of time. According to the clear terms of this section, the inquiry should have been undertaken by the end of January, 2024 at the latest.

[32] This section was interpreted by Backhouse J. at para. 66 of this court's November 2024, decision, which I will refer to as *Sloat #1*, where she said the following:

> The Oxford Advanced Learner's Dictionary states that to "undertake something" is to "make yourself responsible for something and start doing it". Clearly the intention is that inquiries should not commence after the expiration of six months but need not be completed within six months.

[33] Here, the inquiry did not commence until after the expiration of six months from the time the contravention is alleged to have occurred, and is therefore out of time.

[34] The second way in which the Board is alleged to have breached its duty of procedural fairness is in failing to provide a copy of the investigator's report to the Board, as required by ss. 4.4(b) of the Code. That subsection, and ss. 4.4(c) that immediately follows it, provide as follows:

> (b) The report shall be delivered to the Board of Trustees, and a decision by the Board of Trustees as to whether the Code of Conduct has been breached and the sanction, if any, for the breach shall be made as soon as practical after receipt of the report by the Board.
>
> (c) Trustees shall consider only the findings in the final report when voting on the decision and sanction. No Trustee shall undertake their own investigation of the matter.

[35] Rather than receiving a copy of the report, as required by the Code, the trustees were instead given a PowerPoint presentation which purported to summarize the investigation report. Indeed, the report was never given to the trustees at any time, nor was it ever provided to the applicant herself, despite repeated requests, up to and including a final request made during the hearing before this court.

[36] The Board argues that it is of no consequence that the report itself was not provided to the trustees, because the PowerPoint presentation contained "the investigator's verbatim findings". However, given the Board's refusal to provide a copy of the report to the applicant, it is impossible for her to confirm this.

[37] The same situation was before this court in *Sloat #1*. The Board conducted the discipline hearing regarding those four complaints in the same way, by providing the trustees with a PowerPoint presentation summarizing the findings of the investigator rather than the report

itself, as required by ss. 4.4(b). Backhouse J. made the following comments about that practice, at paras. 55 – 58:

> It is not a reasonable interpretation of s. 4.4 (c) of the Code to withhold the full investigation report from the decision-makers as required by s.4.4 (b). It effectively turns the Board into a rubber stamp of whoever prepares the PowerPoint presentation, being the only thing that the person charged with the complaint and the decision-makers are allowed to see. Section 218 of the *Education Act* gives the responsibility of determining whether a member has breached the Code to the Board.
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> In the PowerPoint slides, portions of the evidence the applicant provided in the investigation were excluded. For example, the PowerPoint slides do not reference that the applicant told the investigator that she never tried to listen and did not hear what was said when she was waiting outside the in camera Board meeting on June 5, 2023. The slides merely state that she was "within listening range". Further the slides do not reference the fact that she bumped her arthritic finger during the June 12, 2023 meeting and had an overreaction or that a witness who was sitting 3 or 4 feet away from the applicant could not recall if the applicant was present and did not hear any sighs or anyone looking over at the applicant in an unusual way.
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> It was impossible for the applicant to know, apart from what she told the investigator, if the PowerPoint slides accurately reflected the content of the investigator's report.
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> The applicant had a legitimate expectation that the investigation report in which she participated would be available to her. This goes to her ability to answer the case against her. The applicant also had a legitimate expectation that the investigation report would be provided to the decision-makers in accordance with the Code. The concern that trustees not undertake their own investigation does not justify omitting potentially exculpatory information from the full investigation report and from those who are tasked with making the decision. The respondent's argument in its factum that "the applicant had a full opportunity to provide any information to the trustees in her internal appeals" ignores that in the internal appeals, the applicant's hands were tied by not having the investigation reports and by there being no reasons or even an explanation for which allegations related to the breaches the applicant was found to have contravened.

[38] She concluded her reasons on this issue at paras. 61- 62 as follows:

> In a situation where a party is not allowed to participate, make submissions, or answer questions during deliberations, there is a heightened responsibility to ensure that a fair and balanced picture is presented to the decision-makers. In this regard, the applicant was not afforded the requisite procedural fairness.

> None of the investigation reports in the four Decisions were provided either to the applicant or the Board members. Potentially exculpatory information was withheld from the Board. On that basis alone the Decisions are procedurally unfair and must be quashed.

[39] I am in complete agreement with those comments, and am satisfied that they apply squarely to the case before the court.

[40] The Board argues that the present case is distinguishable from *Sloat #1* because there it was clear that potentially exculpatory information had been left out of the PowerPoint presentation, which is not the case here. I disagree. There is no way that the applicant can confirm that all potentially exculpatory information was included in the presentation without seeing a copy of the report itself. This court has already ruled that the applicant has a legitimate expectation that the report would be available to her. In spite of that ruling, the Board has continued to stonewall, and refuses to release a copy to her. I find that conduct to be unreasonable, and draw an adverse inference against the Board. Thus, I am not prepared to take the Board at its word that the PowerPoint presentation contains all relevant and potentially exculpatory information contained in the report.

[41] The Board also argues that the applicant did not raise this concern about procedural fairness until the application for judicial review, such that the court should refuse to consider this issue. It relies, *inter alia*, on *A.T.A. v. Alberta (Information & Privacy Commissioner)*, 2011 SCC 61, where Rothstein J., speaking for the majority, said the following, at paras. 22 – 25:

> The ATA sought judicial review of the adjudicator's decision. Without raising the point before the Commissioner or the adjudicator or even in the originating notice for judicial review, the ATA raised the timelines issue for the first time in argument. The ATA was indeed entitled to seek judicial review. However, it did not have a right to require the court to consider this issue. Just as a court has discretion to refuse to undertake judicial review where, for example, there is an adequate alternative remedy, it also has a discretion not to consider an issue raised for the first time on judicial review where it would be inappropriate to do so: see, for example, *Canadian Pacific Ltd. v. Matsqui Indian Band*, [1995] 1 S.C.R. 3 (S.C.C.), per Lamer C.J., at para. 30: "[T]he relief which a court may grant by way of judicial review is, in essence, discretionary. This [long-standing general] principle flows from the fact that the prerogative writs are extraordinary [and discretionary] remedies" (para. 30).
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> Generally, this discretion will not be exercised in favour of an applicant on judicial review where the issue could have been but was not raised before the tribunal (*Toussaint v. Canada (Labour Relations Board)* (1993), 160 N.R. 396 (Fed. C.A.), at para. 5, citing *Poirier v. Canada (Minister of Veterans Affairs)*, [1989] 3 F.C. 233 (Fed. C.A.), at p. 247; *MacNutt v. Shubenacadie Indian Band* (1997), [1998] 2 F.C. 198(Fed. T.D.), at paras. 40-43; *Legal Oil & Gas Ltd. v. Alberta (Surface Rights Board*), 2001 ABCA

> 160, 303 A.R. 8 (Alta. C.A.), at para. 12; U.N.A., *Local 160 v. Chinook Regional Health Authority*, 2002 ABCA 246, 317 A.R. 385 (Alta. C.A.), at para. 4).
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> There are a number of rationales justifying the general rule. One fundamental concern is that the legislature has entrusted the determination of the issue to the administrative tribunal (*Legal Oil & Gas Ltd*., at paras. 12-13). As this Court explained in *Dunsmuir*, "[c]ourts ... must be sensitive ... to the necessity of avoiding undue interference with the discharge of administrative functions in respect of the matters delegated to administrative bodies by Parliament and legislatures" (para. 27). Accordingly, courts should respect the legislative choice of the tribunal as the first instance decision maker by giving the tribunal the opportunity to deal with the issue first and to make its views known.
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> This is particularly true where the issue raised for the first time on judicial review relates to the tribunal's specialized functions or expertise. When it does, the Court should be especially careful not to overlook the loss of the benefit of the tribunal's views inherent in allowing the issue to be raised. (See *VIA Rail Canada Inc. v. Canadian Transportation Agency*, 2007 SCC 15, [2007] 1 S.C.R. 650 (S.C.C.), at para. 89, per Abella J.)

[42] Given that this is a matter within this court's discretion, I would not exercise my discretion so as to deny the applicant the opportunity to raise this issue for the first time on judicial review. To begin with, the applicant had no participatory rights during the discipline hearing, so she had no standing to raise this or any other procedural issue at that time.

[43] Furthermore, there is no doubt that, had the issue been raised, the applicant's concern about the failure to provide her and the trustees with a copy of the investigator's report would have been summarily dismissed, without any reasons, just as the internal appeal of the Board's decision itself was. This conclusion is supported by the Board's continued refusal to produce a copy of the report even to this day. The failure to indulge in such a perfunctory exercise should not bar the applicant from raising, before this court, a legitimate concern as to the fairness of the proceedings.

[44] Finally, one of the fundamental rationales for insisting that the matter be raised before the administrative tribunal is the importance of obtaining the views of that tribunal on the issue at hand. Here, the Board provided no reasons for the decision itself, and no reasons for rejecting the appeal of that decision. There is simply no realistic expectation that it would have provided any views at all in response to a procedural objection by the applicant.

[45] For the reasons of Backhouse J., above, which I adopt, I am satisfied that the Board's refusal to provide the applicant, and the trustees, with a copy of the investigator's report renders the decision procedurally unfair such that it must be quashed.

[46] I am similarly satisfied that the applicant had a legitimate expectation that the Board would follow its own procedure for dealing with Code complaints: see *Theresa McNicol v. York*

Catholic District School Board, 2024 ONSC 2919 (Div. Ct.) at para. 4. Thus, the failure of the Board to commence its inquiry into the Disclosure Complaint within six months from the date the contravention is alleged to have occurred constitutes a breach of procedural fairness, such that the decision must be quashed.

ISSUE #3: REASONABLENESS OF THE DECISION

[47] Given my conclusions, above, it is not necessary to deal with the reasonableness of the decision, nor with the other issues raised by the applicant in her factum, including the *Charter* issue. However, there is one aspect of the decision that is so blatantly unreasonable that it cries out for some comment.

[48] The central element of the Disclosure Complaint was the allegation that the applicant shared with her friend, Trustee J.N. confidential, in-camera information relevant to ongoing litigation between her and the Board. The PowerPoint presentation contained the following summary of the investigator's findings regarding this complaint:

> Therefore, without making a credibility or reliability finding in respect of trustees B., N., and Sloat, we conclude that there is clear, convincing, and cogent evidence that in July 2023 Trustee Sloat met with Trustee N., a trustee from another district school board in Ontario, and disclosed that she had been sanctioned by the Board, a fact that was at the time in the public realm, and which decision to sanction she was judicially reviewing with the assistance of lawyers.
>
> We are unable to conclude whether:
>
> - Trustee N. said that he heard Trustee Sloat's "side" and felt that she was "probably right" or that it "didn't sound that she was wrong"; or
>
> - Trustee Sloat discussed particulars beyond the fact of her sanction by the Board and her decision to pursue an application for judicial review.

[49] What this means is that the only thing the investigator was able to conclude is that the applicant discussed information about her judicial review application that was already in the public realm. The investigator was "unable to conclude" whether anything was disclosed by the applicant beyond that. Thus, the investigator was unable to conclude that the applicant had disclosed any confidential information.

[50] Subsection 4.4(c) of the Code, reproduced above, states that "Trustees shall consider only the findings in the final report when voting on the decision and sanction. No Trustee shall undertake their own investigation of the matter." Accordingly, if there is a factual basis for a finding of misconduct, it must be found in the final report.

[51] Clearly, there is no such factual basis. A consideration of the final report could only lead to the exoneration of the applicant from any allegation that she disclosed confidential, in-camera information. However, that is precisely what the Board concluded she did.

[52] Where no reasons are provided, as is the case here, the court must still examine the decision in order to determine whether the decision is reasonable, focussing on the outcome rather than on the decision-maker's reasoning process: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para. 138. Having done so, it is impossible to understand how the Board could rationally arrive at the conclusion it did, given the factual and legal restraints bearing on its decision. The decision is completely lacking in the hallmarks of reasonableness described in *Vavilov* at para. 99. This feeds into the perception, observed by Backhouse J. at para. 106 of *Sloat #1*, "that the applicant was unfairly dealt with and targeted". It might also explain why the complainant ultimately voted against his own complaint.

[53] Thus, the decision must be quashed on that ground as well.

RESULT:

[54] For these reasons, I would quash the decision. Given that the Board now lacks jurisdiction to deal with conduct complaints, the matter cannot be remitted back to the Board for a new hearing. Thus, the litigation ends here.

[55] With respect to costs, counsel were, regrettably, unable to come to an agreement as to the costs to be awarded to the successful party, which is the customary manner of dealing with costs in this court. Counsel for the applicant indicated an intention to make submissions for an elevated quantum if the outcome is the same as in *Sloat #1*. Counsel for the respondent indicated that he will endeavour to come to an agreement on costs as soon as our decision is released.

[56] Given the time and expense that have been consumed by the acrimonious litigation between these parties to date, it is long past time that they came to a resolution and got back to doing what they should be doing, which is working for the betterment of our school system and the students and families who are served by it. We do, therefore, expect that an agreement on costs will be arrived at.

[57] If not, the applicant shall provide written submissions on costs within 20 days, with the respondent's submissions to follow within 10 days thereafter, and any reply to follow within 5 days thereafter.

_____
Heeney J.

I agree _____
Backhouse J.

I agree _____
Nakatsuru J.

Released: August 8, 2025

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B E T W E E N:

CAROL ANN SLOAT

Applicant

- and –

GRAND ERIE DISTRICT SCHOOL BOARD

Respondent

REASONS FOR DECISION

Heeney, Backhouse and Nakatsuru JJ.

Released: **August 8, 2025**