

CITATION: Zemer et al. v. Toronto District School Board, 2025 ONSC 4551
DIVISIONAL COURT FILE NO.: DC-25-16-00JR
DATE: 20251010

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

D.L. Corbett, Faieta, Doi, JJ.

B E T W E E N:)
)
FRIDA ZEMER, AVITAL ZEMER,) *Jillian Siskind & Mark J. Freiman, for the*
JORDANA LEVENTHAL-VERMAAT,) Applicants
MELANIE KOMLOS, ROTEEM GOLAN,)
MICKY LEHAVA, DAVE DEUTSCH, JOHN)
BEHAN, NINA SHIPILLO, HAYLEY)
ROCHBERT, LAURA BRASS, TOBIAS)
SHEPHERD AND LYNN SOMMER)
)
Applicants)
)
- and -)
)
TORONTO DISTRICT SCHOOL BOARD) *Lucas E. Lung & Efua Gyan, for the*
) Respondents
Respondent)
) **Heard at Toronto:** May 20, 2025

REASONS FOR DECISION

Faieta J.

Overview

[1] Rawlinson Community School (“Rawlinson”) is a public elementary school operated by the respondent Toronto District School Board (“TDSB”) under the *Education Act*, R.S.O. 1990, c. E.2 (the “*Education Act*”). The applicants are parents of students at Rawlinson and, on September 24, 2024, they were elected as members of the Rawlinson School Advisory Council (the “School Council”). By letter dated December 4, 2024, a Superintendent of Education for the TDSB notified the Rawlinson community that an error had been made in the School Council’s electoral process and that the TDSB had determined that a second election for Rawlinson’s School Council was required due to a procedural irregularity and would be held in January 2025.

[2] This application for judicial review was brought for, amongst other things, a declaration that the TDSB’s decision to disband the School Council and to direct a new election was made without jurisdiction and that the School Council members as of December 3, 2024 remain members of the School Council.¹

[3] I would grant the requested declaration that the impugned decision was made without jurisdiction. The applicable bylaws of the School Council made under the authority of O. Reg. 612/00 gave the Principal and at least two parents/caregivers the responsibility to supervise elections. There is no evidence that this supervisory authority was exercised. Had these individuals collectively exercised such authority, then their decision would have been subject to judicial review before this court. Apart from the Principal’s joint authority with at least two parents/caregivers to convene and conduct elections, the TDSB has no supervisory role over the election of a school council under the *Education Act* or under the *School Councils and Parent Involvement Committees*, O. Reg. 612/00, s.10. The TDSB has no authority to decide, two months after-the-fact, whether a school council’s election was “fair and transparent” or to disband a school council and direct a new election.

Background

Election of School Council

[4] In September 2024, Rawlinson’s new Principal, Cathy Macina-Ciardullo, took the lead in fixing the date for the election of parent members to the School Council.

[5] On September 12, 2024, Principal Macina-Ciardullo sent an email to parents announcing that an election for all positions on the School Council would be held on the evening of September 24, 2024 and that nominations would be welcomed. The Principal’s email states:

We are now welcoming nomination forms for the Rawlinson School Advisory Council 2024/2025. Please see the attached forms and other important information. The first School Advisory Council will take place on Tuesday September 24th at 6:15 pm and child care will be provided. All positions are available including Chair, Co-Chair and Treasurer.

¹ On June 28, 2025, an Order in Council was made pursuant to s. 257.31(2) of the *Education Act* to vest in the Ministry of Education control and charge over the administration of the affairs of the TDSB. Subsection 257.32(2) of the *Education Act* provides that once notice of an order pursuant to s. 257.31(2) is published in the Ontario Gazette, “no proceeding against the board shall be commenced or continued in any court without leave of the Minister”, and “no order of any court shall be enforced against the board without leave of the Minister”. By letter dated August 5, 2025, the parties were advised that the Minister of Education had granted the Applicants’ request for leave to continue this proceeding pursuant to s. 257.32(2)(a) of the *Education Act*.

[6] This email attached a link to a nomination form which states “Please complete and return to [Principal Macina-Ciardullo] by Thursday, September 19, 2024.

[7] It also included a link to the School Council’s bylaws dated September 29, 2022 (“2022 Bylaws”). The 2022 Bylaws are silent on whether a parent or guardian can be nominated from the floor at the election.

[8] However, the 2022 Bylaws were replaced in June 2023 (“2023 Bylaws”). The 2023 Bylaws expressly prohibit nominations from the floor at the election.

[9] On September 23, 2024, a parent provided Principal Macina-Ciardullo with the 2023 Bylaws. Rather than send another email to parents attaching the 2023 Bylaws, the Principal decided to make paper copies of the 2023 Bylaws available on election night.

[10] Principal Macina-Ciardullo presided over the election that was held on September 24, 2024. She was assisted by Ricardo Francis (“Mr. Francis”), a member of the TDSB’s Parent and Community Engagement Office, who attended to mediate and answer any procedural questions.

[11] On election night, two individuals attempted to stand for election from the floor. They were denied because they had not submitted nomination forms by the deadline. Mr. Francis confirmed that that there were to be no nominations from the floor.

[12] The minutes of the meeting from that evening indicate that there were about 80 people in attendance and state:

“Many parents/caregivers were of the understanding that you can nominate yourself on the night of the meeting, when actually our by-laws say that you cannot nominate voting members at the meeting”.

[13] Despite two individuals being denied the opportunity to seek election from the floor, there is no dispute that none of the attendees that evening raised an objection about the fairness of the election and no one asked that the meeting be adjourned so that further nominations could be made.

[14] A maximum of 35 people could be elected as voting members of the School Council. Twenty-nine people were elected by acclamation. Later that evening the voting members of the School Council elected members of School Council’s executive.

[15] After the meeting, some parents advised that they had submitted four nomination forms to Principal Macina-Ciardullo which were not included at the election. The School Council appointed these four parents as voting members. As a result, there were 33 parents for the 35 voting member positions on the School Council.

October 22, 2024 Meeting

[16] On October 22, 2024, the School Council held its first regular meeting. No concerns were raised about the fairness of the election at that meeting.

November 21, 2024 Meeting

[17] On November 21, 2024, the School Council held its second meeting. Once again, no concerns were raised about the fairness of the election at that meeting.

[18] However, the Principal described that there was a heated and acrimonious discussion about a particular issue related to the School Council's budget. The School Council's executive proposed that \$2,000 in funding for an equity initiative be subsumed in the budget into the School Council's community engagement fund rather than as a separate line item as requested by several parents. The budget, as proposed by the School Council's executive, was approved.

Complaints about the Election and Other Matters

[19] Between November 22 and 24, 2024, Superintendent Currie received emails from seven parents complaining about how: (1) they and other parents felt that their concerns regarding the allocation of funds for the equity initiative were completely disregarded by the Principal and by School Council's executive; (2) certain comments purportedly made by the Principal during the meeting were offensive; (3) they felt disenfranchised by the School Council election process because the Principal provided a link to the 2022 Bylaws that did not include any restriction against parents nominating themselves for council positions from the floor on the evening of the election.

[20] On November 27, 2024, Superintendent Currie advised the members of the School Council that he wished to hold a meeting with them to discuss the complaints that he had received.

Internal TDSB Meeting

[21] On November 28, 2024, Superintendent Currie met with the following TDSB employees: 1) the Principal; 2) the Executive Superintendent responsible for Rawlinson, Jack Nigro; 3) Michelle Munroe, the Central Co-ordinator of the Parent/Caregiver and Community Engagement Office ("PCCEO") and 4) Ricardo Francis, a community support worker at PCCEO who works with school councils. PCCEO has substantial experience dealing with conflict on school councils.

[22] Mr. Currie states during this internal meeting it was agreed that the most concerning issue was the integrity of School Council's election. He states:

We knew that there were at least some parents who attempted to nominate themselves from the floor on the evening of September 24, 2024 but were told that the by-laws did not permit them to do so. It was possible that there were other parents who had attended the meeting with the intention of nominating themselves to be voting members of council but did not attempt to do so after learning that the by-laws prohibited nominations from the floor. Ultimately, we concluded that this type of irregularity had a significant enough impact on the integrity of the election that a re-election was necessary.

In coming to this conclusion, we took into account the history and intensity of parent conflict at Rawlinson. ...

Ultimately, we concluded that there was no peaceful path forward where certain parents believed they were disenfranchised as a result of an error that was made by school officials with respect to the election process.

We understood that TDSB administrators did not have the authority to disband a properly-elected council. However, school administrators were ultimately responsible for ensuring that any council election was transparent and fair. Also, as the superintendent, I was responsible for ensuring the effective operation of school councils. Given that the integrity of the election was impacted by an error made in the election process that was conducted by school officials, we concluded that we had no choice but to hold a re-election.

Superintendent Currie's Decision to Call a Re-Election

[23] On December 4, 2024, Superintendent Currie met with the School Council's executive and notified them that he had decided to disband the School Council and hold another election. Later that day, Superintendent Currie sent the following letter to parents at Rawlinson:

We are writing to inform you that, after working closely with the TDSB's Parent Engagement department to address an error made in this year's school council electoral process, it has been determined that a re-election for Rawlinson's 2024-25 school council will be necessary. This decision was not made lightly, and we sincerely apologize for this inconvenience.

To support this process the school, with support of Parent Engagement staff, will hold an information session on the election process and the roles and responsibilities of school council members on December 16th. Further details about this session will be shared with the school community by the end of the week.

The re-election process will begin in January, and once the new council is elected, professional development sessions will be offered to all members to help them in their roles.

Thank you for your understanding and patience as we work to ensure a fair and transparent process.

TDSB Information Session to Explain Decision to Hold a New Election

[24] On December 16, 2024, Superintendent Currie held a virtual information session for parents. He states that he provided the following reasons for deciding to hold a new election:

I explained that following the November 21, 2024 council meeting, a number of parents raised concerns about the election process in September. In particular, an old version of the

by-laws was shared with the community when the election was announced on September 12, 2024. The by-laws had been updated in June 2023 and one of the key additions was that there was a clear message that nominations would not be accepted from the floor on the evening of the election. As nominations had been permitted from the floor in previous years, this contributed to confusion on the night of the election.

I explained that because the error was made at the beginning of the process, we decided that in order to uphold the transparency of the process, the entire process had to be re-done. I explained that we did consider allowing the election results to stand, but given that the error impacted the integrity of the election, we concluded that simply allowing the election results to stand was not a desirable outcome.

I noted that section 4.0(f) of the TDSB's Operational Procedure #558 provides that Superintendents of Education will assume responsibility for monitoring the operation of School Councils in their respective Family of Schools, and provide support and problem-solving intervention as required, to facilitate their effective operation". I explained that the decision to hold a new election was made in the context of my responsibility to ensure that we have effective operation of the school council at Rawlinson. [Emphasis added]

[25] Superintendent Currie explained that "as nominations had been permitted from the floor in previous years, this contributed to confusion on the night of the election. This created a procedural unfairness that impacted the integrity of the election".

[26] On January 3, 2025, this Application for Judicial Review was commenced.

TDSB Announces the Re-Election Date

[27] On January 7, 2025, the Principal sent a notice to Rawlinson parents providing details of the re-election process. Her email states:

We are opening the re-election process by welcoming nomination forms for the Rawlinson CS School Council. Please use the link to complete online. Hard copies of nomination form will also be available in the school office beginning today, January 7, 2025 until Tuesday, January 14, 2025 at 12:00 pm.

Please note nominations will close on Tuesday, January 14, 2025, at 12:00 pm.

- Thursday, January 16, 2025 – Candidate information will be shared with the community (per section 3.1 of the Rawlinson CS SC By-Laws)
- Thursday, January 23, 2025 – In person elections (per section 3.6 of the Rawlinson CS SC By-Laws)

The School Council By-Laws are also attached to this email for your reference.

[28] The election did not proceed on January 23, 2025.

Issues

[29] This application for judicial review raises the following issues:

- a. Did the TDSB have the authority to disband the School Council and direct a new election?
- b. In making the decision to disband the School Council and hold a new election, did the TDSB breach any duty of procedural fairness owed to the Applicants?
- c. Was the TDSB's decision to disband the School Council and hold a new election unreasonable?
- d. If the decision to disband the School Council and hold a new election was procedurally unfair and/or unreasonable, what is the appropriate remedy?

Analysis

Standard of Review

[30] There is no standard of review regarding an issue of procedural fairness. In such circumstances, the question is whether the decision-making procedure was fair having regard to all of the circumstances: *Afolabi v. Law Society of Ontario*, 2025 ONCA 257, at paras. 59-60.

[31] The presumptive standard of review for all other issues on an application for judicial review is reasonableness, including where the decision maker is interpreting the scope of its own jurisdiction: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at paras. 65-68. However, "[r]easonableness review does not give administrative decision makers free rein in interpreting their enabling statutes, and therefore does not give them licence to enlarge their powers beyond what the legislature intended. Instead, it confirms that the governing statutory scheme will always operate as a constraint on administrative decision makers and as a limit on their authority": *Vavilov*, at para. 67. The TDSB must reasonably interpret what it is able to do.

[32] A reasonable decision is one that is "based on an internally coherent and rational chain of analysis" and "justified in relation to the facts and law that constrain the decision maker": *Metrolinx v. Amalgamated Transit Union, Local 1587*, 2025 ONCA 415, at para. 4; *Vavilov*, at paras. 85, 101.

[33] I disagree with the Applicant's view that the issue of whether the Superintendent has the authority to disband a school council and direct a new election is to be reviewed on a standard of correctness as that issue does not engage any of the enumerated exceptions that trigger the use of the correctness standard: *Vavilov*, at paras. 53-72.

Did the TDSB have the authority to disband the School Council and hold a new election?

[34] The Applicants submit that there is nothing in the *Education Act*, its regulations, or the policies of the TDSB that give the Superintendent of Education or the TDSB the right to disband, “pause”, or prematurely end the term of a school council and call for new elections midway through the school year, or at all. The TDSB takes the opposite position.

[35] In *Ontario (Health Insurance Plan) v. K.S.*, 2025 ONCA 306, Zarnett J.A. described the principles for the interpretation of a statute and a regulation as follows:

[46] Text, context and purpose are the touchstones of statutory interpretation. “[A]ll statutes...must be interpreted in a textual, contextual and purposive way”. Legislative intent – the discernment of which is the goal of the exercise – “can be understood only by reading the language chosen by the legislature in light of the purpose of the provision and the entire relevant context”.

[47] “The rules governing statutory interpretation apply equally to regulations” with the added consideration that “a regulation must be read in the context of the enabling Act, having regard to the purpose of the enabling provisions”. This latter point is especially important where an apparent reading of a regulation runs contrary to the intent of the enabling legislation. In such a case, “[t]he intent of the statute transcends and governs the intent of the regulation”. [Citations omitted]

The Purpose and Advisory Function of a School Council

[36] The *Education Act* provides that:

- (a) Every board shall establish a school council for each school operated by the board, in accordance with the regulations: See *Education Act*, s. 170(1)(17.1)
- (b) The Lieutenant Governor in Council may make regulations respecting school councils, including regulations relating to their establishment, composition and functions: See *Education Act*, s. 170(3).

[37] Although such focus may not always be apparent, the primary purpose of a school council is to improve pupil achievement. Section 2 of O. Reg. 612/00, provides:

- (1) The purpose of school councils is, through the active participation of parents, to improve pupil achievement and to enhance the accountability of the education system to parents.
- (2) A school council’s primary means of achieving its purpose is by making recommendations in accordance with this Regulation to the principal of the school and the board that established the council. [Emphasis added]

[38] A school council may make recommendations to the principal of the school or to the board that established the council on any matter: O. Reg. 612/00, s. 20. In addition, a school board must solicit the views of a school council with respect to a variety of matters including:

- (a) The establishment, amendment, development, implementation, and communication of board policies and guidelines that relate to pupil achievement or to the accountability of the education system to parents as well as criteria applicable to the selection and placement of principals and vice-principals: O. Reg. 612/00, s. 19(1).
- (b) The establishment and periodic review of policies and guidelines with respect to the conduct of persons in schools: Education Act, ss. 302(1), (8).
- (c) The establishment of bullying prevention and intervention plans for schools: Education Act, ss. 303.3(1), (3).

[39] A school board shall consider each recommendation made to the board by the council and shall advise the council of the action taken in response to the recommendation: O. Reg. 612/00, s. 21

Election of Parent Members of a School Council

[40] Section 4 of O. Reg. 612/00 specifies who is qualified to be a parent member of a school council, who is qualified to vote in an election of parent member, when the election of parent members is to take place, how the election of parent members is to be held, and how notice of the election is to be given and to whom such notice is to be given.

[41] Under O. Reg. 612/00, a principal has a limited administrative role in the election of parent members:

- (a) The principal must be consulted on the date to be fixed for the election. Specifically, the date of the election is fixed by the chair or co-chairs of the school council after consulting with the principal. : O. Reg. 612/00, s. 4(4).
- (b) The principal must, on behalf of the school council, give written notice of the date, time, and location or means to access the election to every parent of a pupil who, on the date the notice is given, is enrolled in the school: O. Reg. 612/00, s. 4(6).

[42] O. Reg. 612/00 gives a school council the authority to make by-laws governing the conduct of its affairs. It also requires that a school council shall make a by-law that governs election procedures and the filling of vacancies in the membership of the school council: O. Reg. 612/00, ss. 15(1), 15(2)(i).

[43] In this case, paragraph 3.1 of the 2023 Bylaws states:

Elections will be inclusive, transparent and accountable, ensuring that all members of the school community are included, welcomed and feel valued. Elections for the School Council:

- shall be supervised by the Principal (or designate) and at least two parent(s)/caregiver(s) not seeking election;
- the school (Principal or designate) will receive and file all nomination forms;
- written information (picture not required) about each candidate, supplied by the candidate, shall be made available to the school community prior to the election;
- nominations will not be accepted from the floor on the evening of the elections;
- candidates may not utilize School Council resources, including School Council social media or other tools, to promote their candidacy; and
- the names of the successful candidates shall be shared with the school community and posted on the school website.

[44] While para 3.1 authorizes the Principal along with at least two other parents/caregivers are to supervise the election, it does not authorize any of them, individually, or the Superintendent, to decide that the election should be set aside or to direct that a new election be held.

[45] The Principal and the two supervising parents/caregivers could have decided that the election had been tainted by an irregularity that required the election being set aside and another election being held. They could have decided to adjourn the election to permit further nominations to “cure” the irregularity. They could have decided that such steps should not be taken and then conducted the election as scheduled (which is what happened). The bylaws do not contain any review mechanism for such decisions, and so any such decision would be subject to review before this court on a standard of reasonableness: there is no jurisdiction for the Superintendent, or the TDSB in general, to review the conduct of elections.

[46] In any event, there was no formal objection made on the night of the election to the Principal’s direction that there would be no nominations from the floor. If this issue had been raised with the Principal and the two other supervising parents/caregivers, then it would have been for them to decide what to do in light of the objection. The supervisory authority of the Principal and supervising parents/caregivers arguably continues for a short, reasonable time after the meeting, if something is brought to their attention that affected the propriety of the elections: in such a situation, the Principal and the supervising parents/caregivers would have to consider whether delay in raising the objection was a basis to decline to entertain the objection: if recourse was had to this court by way of judicial review (for example), s. 5 of the *Judicial Review Procedure Act*, RSO 1990, c. J.1, requires that, generally, applications must be commenced within thirty days of an impugned decision.

[47] As described below, the TDSB submits that a school board has the authority and obligation to oversee and ensure the effective operation of school councils, including the election of parent members to a school council. However, neither the *Education Act*, O. Reg 612/00, nor any other regulation gives the TDSB control over a school council’s activities other than in respect of fundraising: See ss. 22(2) and 22(3) of O. Reg. 612/00.

Duty to Ensure Effective Stewardship of the Board’s Resources and Promote this Goal through Policies and Organizational Structures

[48] The TDSB submits that every board is obligated to ensure effective stewardship of the board’s resources and shall develop and maintain policies and organizational structures that promote this goal: *Education Act*, ss. 169.1(1)(b), 169.1(5).

[49] “Effective stewardship” means that a board shall, (a) effectively use the resources entrusted to it; (b) use the resources entrusted to it for the purposes of delivering effective and appropriate education; and (c) manage the resources entrusted to it in a manner that upholds public confidence: *Education Act*, s. 169.1(5).

[50] A school council is not a resource (e.g. good or service) that a school board can allocate. Further, a school council is not “entrusted” to a school board. A school council is at arms-length from a school board and the rest of the education system.

[51] In any event, any policies of a school board that are to apply to a school council are expressly authorized in very few areas by O. Reg. 612/00:

(a) Every board shall establish policies respecting the reimbursement of members and officers of school councils established by the board: s. 11(2);

(b) Every school council shall make a by-law that, in accordance with any applicable policies established by the board that established the council, establishes a conflict resolution process for internal school council disputes: s. 15(2)3;

(c) A school council shall not engage in fundraising activities unless, (a) the activities are conducted in accordance with any applicable policies established by the board; and (b) the activities are to raise funds for a purpose approved by the board or authorized by any applicable policies established by the board: s. 22(2);

(d) A school council shall ensure that the funds raised by it are used in accordance with any applicable policies established by the board: s. 22(3)

[52] There would be no need for these specific authorizing provisions under O. Reg. 612/00 if a school board had broad authority to control a school council’s activities under s. 169.1(1)(b) of the *Education Act*. There is no redundancy in the above provisions of O. Reg 612/00 because s. 169.1(1)(b) does not have the breadth advanced by the TDSB.

A Principal has Charge of the Organization and Management of a School

[53] The TDSB also relies on s. 11(1) of *Operation of Schools – General*, R.R.O. 1990, Reg. 298 (“O. Reg. 298”) which provides that the principal of a school, subject to the authority of the appropriate supervisory officer, is in charge of, (a) the instruction and the discipline of pupils in the school; and (b) the organization and management of the school.

[54] “School” is not defined in the *Education Act*, O. Reg. 298, or O. Reg. 612/00. A “school” is “an institution for educating children”: Concise Oxford Dictionary, 12th Edition, 2011. Once again, the TDSB’s argument is flawed given the nature of the largely independent relationship established under O. Reg. 612/00 between school council and school/school board. A school council is not a school.

[55] Similarly, the TDSB relies on s. 11(3)(f) of O. Reg. 298, which provides that the principal of a school shall provide for the supervision and the conducting of any school activity authorized by the board. The TDSB submits that a “school activity authorized by the board” includes school council activities. An activity of a school council is neither a “school” activity nor an activity “authorized” by the board. The activities of a school council have their basis in the *Education Act* and O. Reg. 612/00.

[56] To find that a school council is a “resource” of a school board within the meaning of s. 169.1(1)(b) or s. 169.1(5) of the *Education Act* or that it is a “school” for purposes of s. 11(1) of O. Reg. 298 such that a principal or superintendent has authority to manage a school council, or that a school council is a “school activity authorized by the board” would be inconsistent with one of the purposes of a school council which is “... to enhance the accountability of the education system to parents”. Such an interpretation would result in a school council being controlled by a school board when the clear legislative intention is that school councils be independent of and advisory to schools.

[57] If the activities of a council were subject to the control of a school board under ss. 169.1(1)(b) or 169.1(5) of the *Education Act* or under s. 11(1) or 11(3)(f) of O. Reg. 298, then there would have been no need for ss. 22(2) and 22(3) of O. Reg. 612/00 to expressly provide that the fundraising activity of a school council shall be conducted in accordance with the policies of a school board. Every school council shall annually submit a written report on its activities, including fundraising activities, to the principal of the school and to the board that established the council. O. Reg. 612/00, ss. 24 (1), (2).

Superintendent’s Responsibility to Monitor the Operation of School Council and to Provide Support and Problem-Solving Intervention

[58] The TDSB submits that section 4.0(f) of its Parent and Community Involvement Operational Procedure PR558 provides that “Superintendents of Education will assume responsibility for monitoring the operation of School Councils in their respective Families of Schools, and provide support and problem-solving intervention as required, to facilitate their

effective operation”. Based on the policy, the TDSB submits that a Superintendent has the authority to disband a school council and call a new election to ensure the effective operation of a school council. First, there is no basis for this policy to be broadly interpreted to control the activities of a school council when there is no authority given to a school board to control school council activities under provisions of the *Education Act* described above. Second, “monitoring” and “support and problem-solving intervention” does not cloak a Superintendent with authority to decide school council disputes, including whether a school council election was validly held.

[59] Decision makers are responsible for discerning the legislative intent behind their grant of authority and must interpret the scope of their authority in a manner consistent with the text, context and purpose of that legislation: *Vavilov*, at para. 121. The TDSB did not reasonably determine the underlying intent of the governing legislative instruments in determining it had the authority to disband the School Council and to call a new election. Therefore, the TDSB’s decision that it had the authority to disband the School Council and to call a new election is unreasonable.

Did the TDSB have the authority to set an election for the School Council midway through the school year?

[60] The Applicants further submit that the TDSB did not have the legal authority to direct that an election be held midway through the year, s. 4(4) of O. Reg. 612/00 provides that an election of the parent members of a school council *shall* be held during the first 30 days of each school year on a date fixed by the chair or co-chairs of a school council after consulting with the Principal.

[61] Under s. 2(3.1) of *School Year Calendar, Professional Activity Days*, R.R.O. 1990, Reg. 304, the school year *shall* commence on or after the 1st day of September and end on or before the 30th day of June (emphasis added). Further, every year school shall include a minimum of 194 days.

[62] The Applicants submit that the regulations contemplate that the election is to be held near the beginning of the school year.

[63] The TDSB submits that the word “shall” in s. 4(4) of O. Reg. 612/00 is directory rather than mandatory.

[64] As noted in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 73:

... R. W. Macaulay and J. L. H. Sprague succinctly explain the mandatory/directory distinction as follows:

Where a provision is imperative it must be complied with. The consequence of failing to comply with an imperative provision will vary depending on whether the imperative direction is mandatory or directory. Failing to comply with a mandatory direction will render any subsequent proceedings void while failing to comply with [a]

directory command will not result in such invalidation (although the person to whom the command was directed will not be relieved from the duty of complying with it [Citations omitted]

[65] In *British Columbia (Attorney General) v. Canada (Attorney General)*, [1994] 2 SCR 41, Iacobucci J. stated at pp. 122-123:

In particular, I think it is relevant to note that in *Reference re Manitoba Language Rights*, [1985] 1 S.C.R. 721, this Court commented upon the doctrinal basis of the [*Montreal Street Railway Co. v.*] *Normandin* [33 D.L.R. 195 (U.K. J.C.P.C)] distinction. The Court stated (at p. 741):

The doctrinal basis of the mandatory/directory distinction is difficult to ascertain. The "serious general inconvenience or injustice" of which Sir Arthur Channell speaks in *Montreal Street Railway Co. v. Normandin, supra*, appears to lie at the root of the distinction as it is applied by the courts.

In other words, courts tend to ask, simply: would it be seriously inconvenient to regard the performance of some statutory direction as an imperative?

There can be no doubt about the character of the present inquiry. The "mandatory" and "directory" labels themselves offer no magical assistance as one defines the nature of a statutory direction. Rather, the inquiry itself is blatantly result-oriented. In *Reference re Manitoba Language Rights, supra*, this Court cited *R. ex rel. Anderson v. Buchanan* (1909), 44 N.S.R. 112 (C.A.), per Russell J., at p. 130, to make the point. It is useful to make it again. Russell J. stated:

I do not profess to be able to draw the distinction between what is directory and what is imperative, and I find that I am not alone in suspecting that, under the authorities, a provision may become directory if it is very desirable that compliance with it should not have been omitted, when that same provision would have been held to be imperative if the necessity had not arisen for the opposite ruling.

The temptation is very great, where the consequences of holding a statute to be imperative are seriously inconvenient, to strain a point in favor of the contention that it is mere directory....

Thus, the manipulation of mandate and direction is, for the most part, the manipulation of an end and not a means. In this sense, to quote again from *Reference re Manitoba Language Rights, supra*, the principle is "vague and expedient" (p. 742). This means that the court which decides what is mandatory, and what is directory, brings no special tools to bear upon the decision. The decision

is informed by the usual process of statutory interpretation. But the process perhaps evokes a special concern for "inconvenient" effects, both public and private, which will emanate from the interpretive result.

[66] I find that the 30-day requirement for a school council election is directory rather than mandatory given that students and parents could be deprived of the benefit provided by a school council if the 30-day timeline had mandatory effect. This means that if the TDSB had the authority to disband the school council, then it would be reasonable to hold the election midway through the school year, at a reasonably early date. The choice of date in this case would have been reasonable if the impugned decision had been within the TDSB's jurisdiction and was otherwise reasonable.

[67] As noted above, if objection had been made at the meeting and the Principal and supervising parents/caregivers had decided to adjourn or reschedule the election to address any unfairness arising because of the irregularity, the directory 30-day requirement would have been no impediment to such a decision, but rather would have been a constraint to be taken into account – among all the other circumstances, in selecting a reasonably early date to address the unfairness caused by the irregularity. The constraint would also be a factor to take into account in addressing any delay in raising the objection.

Other Issues

[68] The Applicants submit that the TDSB breached the duty of procedural fairness which it owed in making the decisions to disband the School Council and direct a new election. The Applicants also submit that these decisions were unreasonable. There is no need to address these issues given the conclusion that the TDSB did not have authority to make those decisions.

Remedy

[69] The tenure of the Parent Council elected in September 2024 is now over.

[70] On September 4, 2025, while this decision was still under reserve, this court had the following direction sent to the parties:

The decision in this matter remains under reserve. The panel is mindful that election of the Parent Council for the 2025-26 academic year should be taking place in September. Elections for the coming year should not await our decision. If any guidance is required from this court respecting those elections, the parties may seek that guidance from this panel by way of email.

[71] This case was originally brought and scheduled on an urgent basis and was to be heard in March 2025. Had that schedule been followed, this court would have considered issuing its decision immediately, with reasons to follow. The parties adjourned that urgent hearing on consent to develop a richer record and to better develop their evidence and arguments. As a result, the case was not heard until late May, about a month before the end of the school year. The court exercised its discretion not to issue a ruling with reasons to follow in light of this timing: although the Parent

Council should not have been ousted a few weeks into its tenure, the school year had nearly run, and this court considered that the path to reduced conflict lay in a fresh start in September.

[72] Given the timing, and this court's exercise of discretion at the end of the hearing, no purpose would be served by granting anything other than declaratory relief.

Disposition

[73] This court declares that the impugned decision was made without jurisdiction and is of no force. This court declines to grant any other remedies. As agreed by the parties, there shall be no order as to costs.

M.D Faieta J.

I agree: _____
D.L Corbett J

I agree _____
M.T. Doi J

Released: October 10, 2025

CITATION: Zemer et al. v. Toronto District School Board, 2025 ONSC 4551
DIVISIONAL COURT FILE NO.: DC-25-16-00JR
DATE: 20251010

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

D.L. Corbett, Faieta, Doi JJ.

BETWEEN:

FRIDA ZEMER, AVITAL ZEMER, JORDANA
LEVENTHAL-VERMAAT, MELANIE KOMLOS,
ROTEMM GOLAN, MICKY LEHAVA, DAVE
DEUTSCH, JOHN BEHAN, NINA SHIPILLO,
HAYLEY ROCHBERT, LAURA BRASS, TOBIAS
SHEPHERD AND LYNN SOMER

Applicants

– and –

TORONTO DISTRICT SCHOOL BOARD

Respondent

REASONS FOR DECISION

Faieta J.

Released: October 10, 2025