

The School Board and Principal Have Significant Discretion When Dealing With Parent Volunteers

By Robert McGlashan, McCague Borlack LLP

Introduction

The recent decision of *Foschia v. Conseil Des Ecoles Catholiques de Langue*¹ (hereinafter *Foschia*) defined the school's duty when dealing with a parent volunteer that the school does not want to volunteer or even be on the school premises.

When a parent volunteers at a school, it in many cases can be beneficial for the school, the parent and the students. In some cases, it can create a difficult situation for the school. Parent volunteers are untrained and come from a wide range of backgrounds and have varied goals with respect to their involvement with the school. On occasion, it can expose the school to the risk of liability or complaint from other parents.

Foschia explores the issue of what duty a school owes a parent who wants to volunteer and whether the school has any obligation to the parent to accept their offer of assistance or if any obligations are created by accepting an offer to volunteer that would prohibit a principal from ending a volunteer relationship with a parent or making a decision to exclude a parent from the school premises.

In *Foschia*, the Court held that the school principal does not have any obligation to the parent to accept their offer of assistance and that after the offer is accepted, there is no obligation to continue the volunteer relationship. Moreover, it is within the principal's discretion to exclude parents from the school premises. The only caveat is that arrangements should be made to allow the parent to discuss their own child's progress with their child's teachers.

Background

In *Foschia*, the plaintiff was the father of two girls who attended the school. The plaintiff volunteered at the school in a number of activities, including supervising children in a classroom when they were having their lunch. Two other parents complained twice in April 2005, about the plaintiff's overly attentive behaviour towards their daughters while they were eating their lunch or in the school yard. The parents complained that the attention he gave to the two girls could cause concerns about the safety of the school and the girls in question, and asked that he no longer have the same kind of access to their daughters.

As a result of the complaints, the principal limited the plaintiff's volunteer activities, changed the plaintiff's volunteer work and placed greater limitations on the plaintiff's comings and goings in the school.

¹ 93 O.R. (3d) 731 S.C.J.

The plaintiff viewed the restrictions on his comings and goings and the restrictions on the type of volunteer work he was allowed to partake in as unfair and argued that the complaints were groundless.

The plaintiff complained about the restrictions and the school's treatment of him to the Deputy Superintendent, the Superintendent, the Education Director, the School Board members and a representative of the department of education. He claimed that he felt ignored, injured and slighted by all of these individuals. He became very active in discussing the situation with other parents and the teaching staff. In February 2006, the plaintiff was prohibited all access to school premises and this prohibition continued and was still in place at the time of the litigation. The plaintiff admitted that he was told on numerous occasions that he should be respectful to the school principal and respect her authority as a pre-requisite of having the prohibition removed.

The plaintiff was extremely unhappy with the restrictions, with the attitude taken by the principal who succeeded the first principal, with the lack of action which he thought should be taken by three superintendents, the Education Director and School Board members. The plaintiff was outraged with the Board and the individuals involved. He filed an action against the Board and many of the individuals personally. In total he named 20 defendants. The plaintiff made a broad claim alleging many heads of damage including deliberately causing mental suffering. The plaintiff alleged that the principal at the time, the present principal and the superintendents were negligent in the exercise of their public duty by not allowing him to volunteer. He also alleged negligence against the Education Director and School Board members in that they failed to prevent acts of intimidation and harassment of him by the School Board and the two principals. The plaintiff was seeking a mandatory order that the School Board cause the prohibition to him be lifted. He also sought damages and punitive or exemplary damages.

Motion

In *Foschia*, the School Board defendants moved for an order striking the plaintiff's action under Rule 21 of the *Rules of Civil Procedure*. Alternatively, they sought an order dismissing the action against the individual defendants; and striking several provisions of the statement of claim, without the right to amend.

By the time the motion was heard, the plaintiff had discontinued the claim for mental suffering and essentially claimed the right to proceed with his volunteer activities without hindrance.

The Court considered:

- 1) The allegations that the principals and the superintendents were negligent in their exercise of public duty.
- 2) The plaintiff's request for a mandatory order that the School Board lift the prohibition against him.
- 3) The allegations of negligence against the Education Director and School Board members individually for failing to prevent acts of intimidation and harassment of the plaintiff by the School Board and the principals.

- 4) The allegation of negligence against the School Board members for failing to lift access restrictions imposed on the plaintiff or failing to recommend their lifting to the School Board.

The Principals and Superintendants Were Not Negligent in the Exercise of Public Duty

The Court considered the duties of a principal as mandated by the *Education Act* and the relevant regulations to find that the principal is responsible for the management of the school including volunteers and had significant discretion with respect to these issues. Specifically, the Court considered:

Duties of principal

265(1) It is the duty of a principal of a school, in addition to the principal's duties as a teacher,

access to school or classroom

(m) subject to an appeal to the Board, to refuse to admit to the school or classroom a person whose presence in the school or classroom would in the principal's judgment be detrimental to the physical or mental well-being of the pupils...

Direction to leave

305(4) The principal of a school may direct a person to leave the school premises if the principal believes that the person is prohibited by regulation or under a Board policy from being there.²

Duties of principal

11(1) The principal of a school, subject to the authority of the appropriate supervisory officer, is in charge of:

(b) The organization and management of the school.³

3(1) A person is not permitted to remain on school premises if his or her presence is detrimental to the safety or well-being of a person on the premises, in the judgement of the principal, a vice-principal or another person authorized by the Board to make such a determination.⁴

The Court held that a principal may act in a way which, in his or her opinion, promotes the purpose of the legislation and that this power included excluding particular persons including parents and volunteers if the principal considers that the individual's presence is detrimental to

² *Education Act*, R.R.O. 1990, c. E.2, ss. 265(1)(n), 305(4)

³ *Operation of Schools – General*, R.R.O. 1990, Reg. 298

⁴ *Access to School Premises*, O. Reg. 474/00

the safety and well being of persons in the school. The Court specifically held that the principal acted in the course of her duties in dealing with the plaintiff. It is within the scope of a principal's authority to exclude people if the principal considers their presence detrimental to the safety and well being of the school. A principal has a fair range of discretion when making this determination.

The Court also held that with respect to the superintendents, there were no facts in the statement of claim to support the suggestion that they acted beyond the scope of their duties or in their own interests. The plaintiff did not identify any unlawful act as being committed by the defendants in the statement of claim. The Court therefore held that any of the plaintiff's allegations of unlawful conduct in the exercise of public duty and the action were without foundation and inadmissible against the principals and superintendents.

Plaintiff's Request for an Order That the School Board Lift the Prohibition Denied

The Court next considered whether the plaintiff's request for a mandatory order, that the School Board lift the prohibition against him, and considered that this type of mandatory order concerns the exercise of or refusal to exercise a legal power and is a motion for judicial review within the jurisdiction of the Divisional Court.

The Court considered sections 2, 6 and 7 of the *Judicial Review Procedure Act*, which state:

Applications for judicial review

2(1) On any application by way of originating notice, which may be styled "Notice of Application for Judicial Review", the Court may, despite any right of appeal, by order grant any relief that the applicant would be entitled to in any one or more of the following:

1. Proceedings by way of application for an order in the nature of *mandamus*, prohibition or *certiorari*.
2. Proceedings by way of an action for a declaration or for an injunction, or both, in relation to the exercise, refusal to exercise or proposed or purported exercise of a statutory power.

Application to Divisional Court

- 6(1) Subject to subsection (2), an application for judicial review shall be made to the Divisional Court.

Summary disposition of mandamus, etc.

7. An application for an order in the nature of *mandamus*, prohibition or *certiorari* shall be deemed to be an application for judicial review and

shall be made, treated and disposed of as if it were an application for judicial review.⁵

Pursuant to this legislation, the Court held that the transfer of this cause of action is in the interest of justice. The Court held that with respect to the School Board, this cause of action is not admissible against the School Board and further as an artificial person, the School Board could not act this way.

Education Director and School Board Members Were Not Negligent

The plaintiff alleged that the Education Director and School Board members individually were negligent and acted outside the scope of their mandate or duties for failing to prevent acts of intimidation and harassment of the plaintiff by the School Board and the two principals. The plaintiff alleged that they failed to investigate his allegations against the Board or the principals or that they investigated them negligently.

It was the plaintiff's position that it was the mandate of the Education Director and School Board members to prevent breaches of internal policies. The Court held that there were no facts to support such a breach except that the defendants did not respond to the plaintiff's request for assistance in the way he wanted. The Court held that the necessary connections between the alleged offence and each of the individuals named were not there. The Court held that the plaintiff's reference to policies deliberately infringed was vague and imprecise and that it would be impossible for the defendants to defend these allegations due to the lack of specifics in the plaintiff's statement of claim. The Court held that because of this, the plaintiff's allegations were without any foundation.

School Board Members Were Not Negligent For Failing to lift restrictions on the Plaintiff

The plaintiff directed his actions against the principals and School Board members and alleged that they were negligent in failing to lift access restrictions imposed on the plaintiff or recommend their lifting to the School Board. The Court reviewed the statutory and regulatory provisions governing the operation of schools and access to school premises in Ontario and concluded that they state that matters regarding access to a school are within the jurisdiction of the school principal or school supervisor and not the elected members of the School Board. The Court held that the administrative model in effect at the School Board confirmed that the function of the School Board members is to set out general policies for the operation of the school while administration was a matter for the principal and his or her staff. The Court held that the Board members personally have no powers similar to that of the principal and superintendant, who were the ones, he alleged responsible for ensuring that the school is well run. The Court held that the plaintiff did not establish any connection between each of the defendants in their personal capacities and negligence. The Court found that the allegation of negligence was without foundation.

⁵ *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1

Conclusion and Decision

The Court held that the plaintiff's central premises was that he had been "unfairly deprived of" access to the school. The Court held that this may be the way that the plaintiff feels but that it is also a conclusion that in a legal sense is the plaintiff's alone and cannot serve as a fact on which the plaintiff can base his claims.

The Court stated there was nothing in law that required a school principal to accept all offers of voluntary help or to continue to accept them. Moreover, the Court expressly stated that the principal's decision must be accepted. Accordingly, the Court dismissed the plaintiff's action against all defendants pursuant to rule 21.01(b) and the plaintiff's claim was struck out.

The Court noted that parents have a right to know about their children's progress and have a right to be able to discuss this progress with their child's teachers. In situations such as Mr. *Foschia's*, the principal should set out in writing the way in which such discussions can take place.

Significance of the *Foschia*

The role of volunteers in a school raises unique issues. For the most part volunteers are an integral part of the school community and can help facilitate many enhancements of the curriculum. Their presence can from time to time create exposure for the board to liability.

Foschia is significant in that it makes that principals have the right and obligation to manage and direct the presence of volunteers in schools. The principal has the right to refuse offers from volunteers, suspend them or limit their access to the school as he or she sees fit.

Foschia is important because it acknowledges that parents have a right to know about their children's progress and have a right to be able to discuss this progress with their child's teachers, it also gives the principal a significant amount of discretion with respect to how this will be arranged.

The Broader Significance of *Foschia*

Foschia is also relevant to Education Litigation generally as it shows the Court's reluctance to accept actions that name School Board members or principals personally when they are acting within the scope of their duty. The court looks to determine if the statement of claim alleges that the School Board members or personally acted outside the scope of their duty or in their own interest. If this is not the case, then the court will strike the plaintiff's claims. This illustrates that in cases where this is done a motion to strike under Rule 21 may be appropriate with respect to the allegations against Board members personally.