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IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NICOLE DUNCAN, KARIN KWAN, NATALIE BAILLAUT, ANGELA CARMICHAEL, MAVIS DAVID, DEREK GAGNON, EMILY MAHBOBI, DIANE MCNALLY and ROB PAYNTER

PETITIONERS

AND:

MINISTER OF EDUCATION AND CHILD CARE OF BRITISH COLUMBIA and LIEUTENANT GOVERNOR IN COUNCIL FOR THE PROVINCE OF BRITISH COLUMBIA

RESPONDENTS

AND:

BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION

INTERVENER

WRITTEN SUBMISSIONS OF THE INTERVENOR, BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION, RE HEARING OF PETITION

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**WRITTEN SUBMISSIONS OF THE INTERVENOR,
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

PART I. OVERVIEW

1. This proceeding concerns the dismissal of the democratically elected members of the Board over issues of school safety and the role of policing in schools. The issuance of administrative orders and subsequent termination of the Board was over policy about the role of policing in schools—but the focus in this proceeding is about the *vires* of those orders. This requires a careful analysis of the *School Act* to determine the limits of the government's jurisdiction.

2. By order made on July 14, 2025, the Court granted BCCLA leave to intervene in this proceeding and submit written submissions. BCCLA's submissions focus on two issues.

3. First, in considering the *vires* of the Termination Order,[1] the court should interpret s. 172 of the *School Act* bearing in mind democratic principles. The *School Act* sets out the democratic and independent nature of school boards in respect of policy-making and decision-making powers. School boards are tasked with representing their constituents. Section 172 must be interpreted in a way that respects the intent that school boards are democratically-elected and independent in their policy-making functions.

4. Second, *Charter* values inform the interpretation of "public interest" in ss. 168.03 and 172(e) of the *School Act*, when the government exercises its powers to issue an administrative direction and termination order. The record, including the correspondence with the BC Human Rights Commissioner regarding policing in schools, demonstrates that the equality rights of marginalized students in the district were implicated by the decision to implement a SPLO Program. The values of equality and non-discrimination and the impact of the SPLO Program on marginalized students ought to be considered when interpreting what "public interest" means in the context of issuing an administrative direction or terminating a democratically elected school board and appointing a trustee.

[1] For ease of reference, BC Civil Liberties Association ("**BCCLA**") adopts the defined terms used in the Petitioners' written submissions.

PART II. LEGAL SUBMISSIONS

A. Issue #1: The interpretation of s. 172 of the *School Act* as it relates to the *vires* of the Termination Order

5. The Supreme Court of Canada in *Auer* has emphasized the importance of statutory interpretation when assessing the *vires* of subordinate legislation, holding that the analysis is "fundamentally an exercise of statutory interpretation to ensure that the delegate has acted within the scope of their lawful authority under the enabling statute".[2] The modern approach to statutory interpretation applies.[3] Therefore, in interpreting s. 172 of the *School Act*, regard must be had not only to the text of the provision, but the wider statutory scheme and the object of the legislation.

6. The relevant portion of s. 172 provides:

> Appointment of official trustee
>
> 172 (1) The Lieutenant Governor in Council may appoint an official trustee to any school district to conduct the affairs of the school district if, in the opinion of the Lieutenant Governor in Council,
>
> …
>
> (c) there is substantial non-compliance with this Act or the regulations or any rules or orders made under this Act,
>
> (d) there is substantial non-performance of the duties of the board,
>
> (e) there is a risk to student achievement in the district and it is in the public interest to do so, or
>
> (f) the board has failed to comply with an administrative directive issued by the minister under section 168.03 (1).

i. The democratic and independent nature of school boards under the *School Act*

7. BCCLA submits the scheme of the *School Act*, and the related caselaw, indicate a clear intention by the Legislature for school boards to be democratically elected, represent the local communities in which they operate, and function with a degree of independence from government,

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[2] *Auer v. Auer*, 2024 SCC 36, para. 59
[3] *Auer*, para. 64

particularly in respect to the exercise of plenary powers granted to a school board like the implementation of policy matters in schools.

8. In *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86, the Supreme Court of Canada considered the unique role of school boards in British Columbia in deciding whether a resolution passed by the Surrey School Board was valid. The Court stated that "[l]ocal community input is essential to an effective public education system that serves many diverse communities" and described how the "school board is the elected proxy of the collective local community, made up as it typically is of diverse communities" and "must consider the interests of all its constituents". As such, local citizens have a direct voice in the deliberations of school boards through the exercise of their democratic rights.[4]

9. The provisions of the *School Act* support and preserve the role of the Board as the elected proxy of the collective local community, which brings with it a degree of independence from political interference on the part of the Minister.

10. Under the *School Act,* there is to be a board of education for each school district in British Columbia.[5]

11. The *School Act* provides for the election of school boards, including directing that elections of all trustees must be held every four years. Section 37 sets out the bodies that are responsible for conducting elections. If a trustee electoral area is all or part of a single municipality, the municipal council must conduct the trustee elections in the trustee electoral area.[6] The trustee electoral area in SD61 encompasses the municipalities of Esquimalt, Oak Bay, Victoria, View Royal, and a portion of Saanich and the Highlands.[7]

12. In SD61, trustee elections are held as part of municipal general elections. Part 3 of the *Local Government Act*, R.S.B.C. 2015, c. 1 applies to a trustee election and is to be read in accordance with s. 45(2) of the *School Act*, except as otherwise provided. The *School Act* incorporates by reference certain provisions of Part 3 relating to, *inter alia*, holding elections,

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[4] *Chamberlain,* paras. 26-27
[5] *School Act*, s. 30(1)
[6] *School Act*, ss. 35, 37(1)
[7] Affidavit #1 of Nicole Duncan, made 31 Mar 2025 ["**Duncan #1**"], para. 3

registering voters, appointing election officials, candidacy and voting. The voters in a trustee election include registered and eligible residents of the trustee electoral area for which the election is held as well as non-resident property electors.[8]

13. Moreover, reliance may properly be placed on the preamble of the *School Act* as an interpretative aid.[9] The preamble highlights the importance of the principle of democracy in the context of the statutory scheme:

> *WHEREAS it is the goal of a democratic society to ensure that all its members receive an education that enables them to become literate, personally fulfilled and publicly useful, thereby increasing the strength and contributions to the health and stability of that society;*
>
> *AND WHEREAS the purpose of the British Columbia school system is to enable all learners to become literate, to develop their individual potential and to acquire the knowledge, skills and attitudes needed to contribute to a healthy, democratic and pluralistic society and a prosperous and sustainable economy;*
>
> *THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows*
>
> [Emphasis added]

14. The scheme of the *School Act* further demonstrates that school boards are meant to be independent and operate at arms-length from government. The *School Act* grants the board discretion to make decisions regarding the implementation and enforcement of particular policies and regulations.[10]

15. The duties imposed upon school boards by the *School Act* include, *inter alia,* determining local policy for the effective and efficient operation of schools in the school district, and providing educational programs to all persons of school age who enroll in a school in the district.[11]

16. The Board is also a statutory decision-maker and its exercises of discretion are subject to judicial review. The jurisprudence with respect to s. 73 of the *School Act,* which allows a board to

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[8] Duncan #1, para. 2; *School Act*, ss. 39(1), 45; *Local Government Act*, Part 3
[9] *Alberta Union of Provincial Employees v Lethbridge Community College*, 2004 SCC 28, para. 32
[10] *School Act,* ss. 65, 68, 73, 74.1, 75(2), 85, 86
[11] *School Act,* ss. 75, 85(2)(a)

establish and close schools, for example, demonstrates the spectrum of considerations that a board must weigh in the implementation of its policy such as adequate consultation and student needs.[12]

17. While statutory decision-makers do not have the same constitutional guarantee of independence as the judiciary, such bodies may require a measure of constitutionally-protected independence. This principle is particularly relevant to decision-makers on the adjudicative end of the spectrum. The rules of natural justice require an independent and impartial decision maker, unless expressly ousted by contrary statutory language. Although a school board is not an adjudicative body, it has a duty to observe the principles of natural justice and act fairly in accordance with the principles of administrative law. Moreover, school boards make decisions that have a significant impact on the lives of students and teachers. The gravity of these types of decisions suggests that school boards must maintain a degree of independence from political interference.[13]

18. Overall, the scheme of the *School Act* demonstrates that school boards are meant to be independent and operate at arms-length from government, particularly in respect to the exercise of those plenary powers granted to the Board under the *School Act*, such as implementing local policy decisions like the SPLO Program.

ii. The role of democratic principles in the interpretation of the exercise of powers under section 172 of the *School Act*

19. The jurisdiction to terminate a school board under s. 172 must be consistent with the democratic and independent nature of the board and respect the board's policy-making functions. The principle of democracy and the right to vote is a central tenet which confines the ability for government to interfere in a system of local authority. The Supreme Court of Canada has interpreted democracy to mean the process of representative and responsible government and the rights of citizens to participate in the political process as voters and as candidates.[14] It is also an

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[12] *Comox Valley Citizens v. School District No. 71 (Comox Valley)*, 2008 BCSC 1071; *Cook v. Board of School Trustees of School District No. 43 (Coquitlam)*, 2007 BCSC 1229, paras. 43-44; *Queen Elizabeth Annex (QEA) Parents' Society v. Vancouver School District No. 39*, 2025 BCCA 160

[13] *Walter v. British Columbia*, 2019 BCCA 221, paras. 56-59; *Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2001 SCC 52, paras. 21-22

[14] *Reference re Secession of Quebec*, 2 S.C.R. 217, 1998 CanLII 793, para. 65

unwritten constitutional principle which "can guide and constrain the decision-making of the executive and legislative branches".[15]

20. These principles, and the importance of the representative nature of local democratic systems, clearly extend to duly elected school trustees. In the school board context, upholding democracy means preserving the will of constituents to elect trustees and preserving the ability of trustees to act in furtherance of their democratic mandate to represent constituents, particularly in respect of issues of policy. In other words, one of the fundamental ways in which democratic principles find expression in the *School Act* is by granting school boards the right to implement local policies that relate to the communities in which they operate. This model is conceptually analogous to a municipal government scheme in the Province, and the proposition finds support in the caselaw.

21. For example, in *Godbout*[16], the Supreme Court observed that municipal councils are democratically elected by members of the general public and are accountable to their constituents in a manner analogous to that in which Parliament and the provincial legislatures are accountable to the electorates they represent. While the Court was opining in that instance on municipal councillors, the same proposition is germane to trustees elected as part of the municipal general elections to represent the constituents of SD61. Government interference with a local citizen's ability to exercise their democratic will and ability to provide input into the system of public education must only be tolerated in the narrowest of circumstances.

22. It is also useful to draw from the caselaw in respect to the expulsion of public officials pursuant to a writ of *quo warranto*. In Canadian law, the *quo warranto* remedy arises primarily in the circumstances of challenging whether a person has the legal authority to hold an elected position. In *Jock*,[17] the Federal Court set out certain factors that are within the discretion of the court in exercising the *quo warranto* remedy, including: the standing of the applicant; the reasonableness of the length of time elapsed since the election; and the appropriateness of requiring

[15] *Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34, para. 41
[16] *Godbout v. Longueuil (City)*, 1997 CanLII 335 (SCC), [1997] 3 SCR 844, para. 51
[17] *Jock v. Canada (T.D.),* 1991 CanLII 13610 (FC), [1991] 2 FC 355, p. 371

that all internal relief avenues be first exhausted. The caselaw confirms that this remedy must only be sought in an "exceptional case".[18]

23. The principles regarding *quo warranto* illuminate two central propositions which ought to inform the interpretation of a provision designed to terminate a democratically elected official in these circumstances. First, *quo warranto* is granted in rare circumstances, and the exceptional nature of this remedy highlights the importance of refraining from interference with the office of a democratically elected representative, absent extraordinary circumstances. Second, *quo warranto* may only be granted in situations where all internal relief avenues be first exhausted. As stated by the petitioners in their written submissions, it is notable that Cabinet chose the least democratic option when purporting to exercise its jurisdiction under s. 172, and that it had other options available to it in addressing the situation.[19]

24. It is noteworthy that two important stakeholders in public education in SD61 expressed serious concerns about the violation of democratic principles if the Board was terminated. The Greater Victoria Teacher's Association ("**GVTA**") President, Carolyn Howe, deposed that "the Minister's decision to terminate the Board undermines democracy and local governance", appending a press release related to the GVTA's concerns about the impact of the termination decision in destabilizing local democratic process.[20]

25. Moreover, on January 9, 2025, the Victoria Confederation of Parent Advisory Councils ("**VCPAC**") sent a letter to the Minister's Office, expressing the following view: "VCPAC is also concerned that the Minister of Education and Child Care, the Honorable Lisa Beare, is allowing one aspect of safety in schools to interfere with a functioning and democratically elected school board within SD61."[21]

26. These views support the importance of the role of a democratic and independent school board, which is set out in the scheme of the *School Act* and expanded upon in the relevant jurisprudence. The circumstances in which the government may terminate a school board and

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[18] *Johnny v. Dease River First Nation*, 2024 FC 1636, para. 91
[19] Petitioners' Written Submissions, para. 297
[20] Affidavit #1 of Carolyn Howe, made 9 April 2026 ["**Howe #1**"], para. 16, Exhibit G
[21] Duncan #1, para. 82, Exhibit III

appoint an official trustee should therefore be interpreted narrowly to preserve these important democratic principles and to ensure the legislative intent of the allowing school boards independence in their policy-making function is respected.

27. In this case, constitutionally rooted principles of democracy work to constrain the ability of the Minister to exercise the powers granted by s. 172 of the *School Act*, especially as it relates to a political dispute about the implementation of a local policy initiative by the Board, with which the Minister disagrees.

B. Issue #2: *Charter* values operate as a constraint in reviewing the *vires* of the impugned orders

28. The *Charter* values of equality and anti-discrimination have a role in the interpretation of whether the Safety Plan Order was in the "public interest" pursuant to s. 168.03, and to the extent the Province relies on s. 172(e), whether government's decision to terminate the Board was in the "public interest".

29. Section 168.03 provides as follows:

> **Administrative directives**
>
> **168.03** (1) The minister may, by order, issue an administrative directive to a board if the minister believes
>
> (a) the board is failing or has failed to meet its obligations under the Act, or
>
> (b) it is in the public interest to do so.
>
> (2) A board that is subject to an administrative directive under subsection (1) may exercise its powers under this or any other Act only in accordance with the terms and conditions of the administrative directive.
>
> (3) During the period of time that a board is subject to an administrative directive, the board may be exempted from the application of any or all of the following:
>
> (a) a regulation of the Lieutenant Governor in Council under this Act, by order of the Lieutenant Governor in Council;
>
> (b) a regulation of the minister, by order of the minister;
>
> (c) a ministerial order, by the administrative directive.
>
> (4) Failure of a board to comply with an administrative directive under subsection (1) is grounds for the appointment of an official trustee.

30. The courts have not yet had an opportunity to interpret s. 168.03 of the *School Act* and the parties' positions regarding the meaning of "public interest" in the statute are certain to differ—for example, the petitioners submit that "public interest" must be considered with the Board's broad jurisdiction in mind, and be implicitly rooted in evidence. Moreover, the petitioners state that "public interest" cannot be interpreted to mean that the Minister is entitled to prioritize and rely on the voices of groups who do not have any role in educational matters under the *School Act.* It is likely that the respondent will offer an interpretation that runs contrary to the submissions on "public interest" made by the petitioner.[22]

31. Therefore, if this Court finds the phrase ambiguous, it ought to resort to *Charter* values in interpreting the phrase to determine whether the Safety Plan Order (or Termination Order) was *ultra vires.*[23]

32. Moreover, reviewing *vires* is still fundamentally an exercise of reasonableness review, which assessing how the "legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers."[24] The Supreme Court of Canada has held that *Charter* values operate as one such constraint: "An administrative decision maker must consider the *relevant* values embodied in the *Charter*, which act as constraints on the exercise of the powers delegated to the decision maker."[25]

33. In this case, the Board was considering a policy that implicates the *Charter*-protected interests of students. In particular, the *Charter* values of equality and non-discrimination are engaged in this context and are relevant interpretative aids. The equality concerns of students in BC's public school system ought to have infused an analysis of whether the orders were in the public interest.[26]

34. Ms. Duncan deposes that in 2020, policing became a renewed focus of political discord in schools, after the murder of George Floyd and the emergence of research suggesting that certain

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[22] Petitioner's Written Submissions, paras. 284-285
[23] *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, para. 28
[24] *Auer*, para. 59
[25] *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31, paras. 64-66
[26] *Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31, ["***TWU***"] paras. 26-28

policing practice have a highly disproportionate impact on Indigenous, Black and other racialized people.[27]

35. Diversity and inclusion was also at issue before the electorate during the 2022 SD61 election. Ms. Duncan deposes that the stance of various candidates regarding initiatives to provide educators with a set of resources designed to help create safe, inclusive environments for students of all sexual orientations and gender identities was "[p]erhaps the single most significant issue" in the Election. The GVTA endorsed the nine petitioners as its recommended choice of candidates. The GVTA believed the petitioners would advocate for an inclusive and safe public education system.[28]

36. Furthermore, all school districts in British Columbia received a letter, dated November 24, 2022, from the BC Human Rights Commissioner which strongly recommended that all SPLO Programs be terminated until their impact could be established empirically.[29]

37. The BC Human Rights Commissioner's letter concludes as follows:

> Out of respect for the rights of our students, I strongly recommend that all school districts end the use of SLOs until the impact of these programs can be established empirically. For school boards who choose not to take this step, it is incumbent on you to produce independent evidence of a need for SLOs that cannot be met through civilian alternatives and to explain the actions you are taking to address the concerns raised by Indigenous, Black and other marginalized communities.
>
> I know that we share the goal of creating safe and inclusive schools that uphold human rights. I appreciate your attention to these important issues.

38. The Supreme Court of Canada has "long recognized the commitment to equality as a value essential to a free and democratic society". Section 15 protects individuals not only from laws which explicitly or intentionally discriminate but also from laws which are facially neutral and yet discriminate through their impact on certain groups. Given the diversity of the communities served by public school boards, the value of equality animates a consideration of whether it is in the "public interest" to terminate a board.[30]

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[27] Duncan #1, para. 15, Exhibit B
[28] Affidavit #3 of Nicole Duncan made 9 April 2026, paras. 2-9; Howe #1, para. 3
[29] Duncan #1, para. 15, Exhibit B
[30] *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7, paras. 33, 37

39. In *Sparks,*[31] while the applicant did not raise a formal *Charter* challenge, the Nova Scotia Court of Appeal considered the *Charter* value of equality when interpreting a statute related to the "recipient" of social assistance payments. The Court found that the *Charter* value of equality was a valuable interpretive aid. The Court cited international human rights obligations as well as caselaw regarding judicial notice of the feminization of poverty, which lead to an interpretation of the ambiguous legislation in a manner that benefitted the mother and child as recipients of social assistance.

40. In the factual context of this case, the *School Act* should be interpreted bearing in mind *Charter* values, including the s. 15 rights that are at play when a school board decides to implement a policy which has been criticized by the Human Rights Commissioner as having a disproportionate impact on racialized student populations.

41. Moreover, the courts in Canada have taken judicial notice of the existence of overt and systemic anti-Black racism in Canadian society and specifically within the criminal justice system.[32] The impacts of policing on marginalized communities are not abstract. Indeed, these are concerns that were not only raised before the Board by the Human Rights Commissioner, but also by the GVTA, an important stakeholder in public education in SD61.[33]

42. The equality rights of marginalized students in SD61 were at issue before the Board when it exercised its discretion to end the SPLO Program, and indeed when it submitted the three alternative safety plans to the Minister for approval. Accordingly, the *Charter* value of equality, and the impact of the SPLO Program on marginalized students are engaged.

43. These values must therefore infuse an analysis of what constitutes "public interest" in the *School Act*. While the Province contends it has "great flexibility" and "wide discretion" to make a decision in the public interest,[34] the Minister's discretion is not so broad as to allow "public interest" to be anything she says it is. With respect, the "public interest" must account for the disproportionate impacts of a decision on certain groups of students. Issues which have an adverse

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[31] *Sparks v. Nova Scotia (Assistance Appeal Board)*, 2017 NSCA 82, paras. 49-61
[32] *R. v. Morris*, 2021 ONCA 680, paras. 41-42
[33] Howe #1, para. 7, Exhibit B
[34] Province's Response to Petition filed 30 May 2025, para. 62

effect on marginalized groups, for example racism in the criminal justice system as detailed by the Human Rights Commissioner, must play into the analysis.

44. This approach is affirmed in the caselaw. In *TWU,* the Supreme Court of Canada found that concerns about equality were appropriately considered by the decision-maker under the "public interest" component of a statute, and that it was entitled to look at the *Charter* and relevant human rights instruments when deciding whether it would be in the public interest to allow public school teachers to be trained at a religious university.[35]

45. In this case, BCCLA submits that the factual context of policing in schools was a live consideration in making an order pursuant to the "public interest", and therefore engaged the *Charter* value of equality, which operates as a constraint to the Minister's decision. It is open for the Court to find that the Minister's discretion exceeded the scope of her lawful authority given the factual and legal constraints to her jurisdiction.

46. BCCLA respectfully seeks leave of the Court to make oral submissions at the hearing of the petition.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: May 4, 2026

Signature of lawyer for Intervener,
British Columbia Civil Liberties Association
David W. Wu, Declan Redman
Hilary Mutch

[35] *TWU*, para. 27

List of Authorities

Tab	Description
Cases	
1	*Auer v. Auer,* 2024 SCC 36
2	*Alberta Union of Provincial Employees v Lethbridge Community College*, 2004 SCC 28
3	*Bell ExpressVu Limited Partnership v. Rex,* 2002 SCC 42
4	*Chamberlain v. Surrey School District No. 36*, 2002 SCC 86
5	*Commissione scolaire francophone des Territores du Nord-Ouest v. Northwest Territories (Education, Culture and Employment),* 2023 SCC 31
6	*Comox Valley Citizens v. School District No. 71 (Comox Valley)*, 2008 BCSC 1071
7	*Cook v. Board of School Trustees of School District No. 43 (Coquitlam)*, 2007 BCSC 1229
8	*Godbout v. Longueuil (City)*, 1997 CanLII 335 (SCC), [1997] 3 SCR 844
9	*Jock v. Canada (T.D.),* 1991 CanLII 13610 (FC), [1991] 2 FC 355
10	*Johnny v. Dease River First Nation*, 2024 FC 1636
11	*Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch),* 2001 SCC 52
12	*Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7
13	*Queen Elizabeth Annex (QEA) Parents' Society v. Vancouver School District No. 39*, 2025 BCCA 160
14	*R. v. Morris,* 2021 ONCA 680
15	*Reference re Secession of Quebec*, 2 S.C.R. 217, 1998 CanLII 793
16	*Sparks v. Nova Scotia (Assistance Appeal Board)*, 2017 NSCA 82
17	*Toronto (City) v. Ontario (Attorney General)*, 2021 SCC 34
18	*Trinity Western University v. British Columbia College of Teachers*, 2001 SCC 31
19	*Walter v. British Columbia,* 2019 BCCA 221

Statutory Provisions

20 *Local Government Act*, R.S.B.C. 2015, chapter 1, Part 3

21 *School Act*, R.S.B.C., 1996, c. 412, ss. 30(1), 35, 37(1), 39(1), 45, 65, 68, 73, 74.1, 75, 85(2)(a), 86, 168.03, 172