

**COURT OF APPEAL FOR ONTARIO**

**B E T W E E N:**

**FREEMAN FRACAS**

**(Appellant)**

**- and -**

**THE CENTRAL REGIONAL SCHOOL BOARD**

**(Respondent)**

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**APPELLANT'S / RESPONDENT'S FACTUM**  
**(Select One)**

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**NAME OF LAW FIRM**  
**Address of law firm**

**Names of Counsel (Include First and Last Names)**  
**Of Counsel for the Appellant / Respondent (select one)**

**Telephone:**

**Fax:**

**Email:**

**PART I:**  
**INTRODUCTION**

1. This case is about the [insert a short summary of the main issue raised by this appeal].

**PART II:**  
**SUMMARY OF THE FACTS**

2. Freeman Fracas (hereinafter Fracas) has attended Mountainview Collegiate since Grade 9. He is presently in Grade 12. He has been an average student, maintaining an overall average of 62 to 66% in grades 9 to 11. During that time, he gained a reputation amongst some teachers as a “loudmouth” due to boisterous behaviour in class. He has been described as a person who, while sometimes was a “bit of a pain to teachers,” would recognize if he had crossed a line between tolerable and unacceptable behaviour.
3. Fracas maintains a Facebook page. People who have these pages can post comments, pictures, carry on conversations and so on. Facebook is not something that is in any way maintained by the Central Regional School Board nor is it funded by them. Fracas has never denied anyone “friend” status and described his privacy settings as very liberal.
4. Unhappy differences arose between Fracas and his mathematics teacher, Benjamin Massolano (hereinafter Massolano). This teacher has a reputation for running a very orderly, some might say overly strict, class. Fracas is far from his favourite student. Fracas received failing grades in math, although in his prior years he has received slightly better than 60%.
5. Shortly after Fracas’ history class covered the second World War, Fracas started referring to Massolano as “Benito Mussolini”, the dictator of Italy before and during the war until he was overthrown and executed (his body was hung upside down outside a gas station in Milan). Needless to say, Massolano, who is of Italian descent, was less than pleased with these comments.
6. Matters between these people came to a head when during a class, Fracas, in response to a query from the teacher, stated “well, I really do not know, Benito, oops, I mean Mr. Mussolini”.

Massolano yelled “just get out of my sight, you god damned moron” and one student stated that the teacher looked “like he was going to take Freeman’s head off”. Fracas left the class as ordered and went to the principal’s office.

7. He was told by the principal to apologize formally to Massolano. When he went home he posted a comment on his Facebook page which read, in part, “Mussolini was being a total A-hole today. He tossed me out for talking in class. I don’t know why the school has jerk offs like him around”. A picture of Mussolini in Milan was also posted and tagged with Mr. Massolano’s name. The school vice- principal learned of the Facebook posting, called Fracas to his office, suspended him for 7 days for a breach of the Code of Conduct.
8. The vice-principal suspended Fracas as his actions were a violation of the Code of Conduct, and of s. 306 of the *Education Act* of Ontario. The vice principal also demanded that Fracas remove the offending post from his Facebook site. During his suspension, Fracas was unable to participate in any school extra-curricular activities including the Drama trip to Stratford.
9. The Appellant has challenged s. 306(1) of the *Education Act* and the related Code of Conduct on four grounds:
  - a. that the *Charter* applies to the acts of the school principal and he was required to act in accordance with the *Charter* and its guarantees, rather than act as he did;
  - b. that the Appellant has freedom of expression in his own Facebook page and to be disciplined in this manner violates s. 2(b) of the *Charter*;
  - c. that s.306(1) of the *Education Act* treats students differently based on age, which is a violation of their s.15 *Charter* right;
  - d. that these are not reasonable limits as demonstrably justified in a free and democratic society.
10. At the Superior Court of Justice, Mister Justice Gruff dismissed the Appellant’s application.

[This is where you will need to summarize the Superior Court of Justice decision, by explaining how Justice Gruff decided on each of the four issues. All quotes should be indented and single-spaced, like this paragraph. All quotes must be referenced immediately after the paragraph, noting the page **or** paragraph number of the quote.]

**PART III**  
**GROUND OF APPEAL**

**A ISSUE ONE: APPLICATION OF THE CHARTER UNDER S. 32(1)**

11. [Insert your firm's argument on this issue. Refer to the explanatory notes, *How to Prepare a Factum*, for information on how to refer to cases and how to structure your argument.]

**B ISSUE TWO: FREEDOM OF EXPRESSION UNDER S. 2(B)**

12. [Insert your firm's argument on this issue. Refer to the explanatory notes, *How to Prepare a Factum*, for information on how to refer to cases and how to structure your argument.]

**C ISSUE THREE – EQUALITY RIGHTS UNDER S. 15**

13. [Insert your firm's argument on this issue. Refer to the explanatory notes, *How to Prepare a Factum*, for information on how to refer to cases and how to structure your argument.]]

**D ISSUE FOUR –JUSTIFIABLE LIMITS IN A FREE AND DEMOCRATIC SOCIETY UNDER S. 1**

14. [Insert your firm's argument on this issue. Refer to the explanatory notes, *How to Prepare a Factum*, for information on how to refer to cases and how to structure your argument.]

**APPLICATION TO THIS CASE**

15. [Insert a concluding statement, summarizing how the preceding arguments support the order you have requested.]

**PART IV**  
**ORDER REQUESTED**

16. It is respectfully requested that [Insert the remedy or result that you would like. Refer to the explanatory notes, *How to Prepare a Factum*, for more information.]

**ALL OF WHICH** is respectfully submitted by

\_\_\_\_\_  
**Name of all four counsel**

Of Counsel for the Appellant/Respondent (Select One)

**DATED AT (LOCATION)** this \_\_\_\_<sup>th</sup> Day of (month), (year)

## **APPENDIX A**

### **AUTHORITIES TO BE CITED**

[List all the cases and/or statutes that you have referred to in your factum using proper legal citation. Refer to the explanatory notes, *How to Prepare a Factum*, for formatting guidelines.]