

Court of King's Bench of Alberta



Citation: LaGrange v Red Deer Catholic Separate School Division, 2024 ABKB 665

Date:
Docket: 2310-01422
Registry: Red Deer

Between:

Monique LaGrange

Applicant

- and -

The Board of Trustees of Red Deer Catholic Separate School Division

Respondent

**Memorandum of Decision
of the
Honourable Justice C.L. Arcand-Kootenay**

Introduction

[1] Monique LaGrange (“Applicant”) seeks judicial review of a Decision of the Board of Trustees (“Board”) of Red Deer Catholic Separate School Division (“Division”).

[2] The central issue for determination is whether it was reasonable for the Board to find the Applicant in contravention of the *Education Act*, SA 2012, c E-0.3 [*Education Act*], and the Board’s policies, and impose sanctions.

[3] I find that the Decision was reasonable and that the Board was correct in finding that it did not have jurisdiction to determine constitutional questions. These are my reasons for confirming the Decision.

Issues

[4] The issues in this application are as follows:

- 1) What is the standard of review?
- 2) Was the Decision finding the Applicant in breach of the Board's policies and the *Education Act* reasonable?
- 3) Were the sanctions imposed by the Board reasonable?
- 4) Was the Decision procedurally unfair?

Procedural History

[5] The Board released its Decision via motion at a special Board meeting on September 26, 2023. The written reasons for Decision were released on October 13, 2023. The Applicant filed an Originating Application for Judicial Review on December 18, 2023. Notice was served on the Respondent Board.

[6] The Certified Record of Proceedings was filed on February 1, 2024, and an Amended Certified Record of Proceedings was filed on February 23, 2024. Both form part of the Court Record.

[7] After hearing submissions from counsel during the judicial review hearing, counsel for the Board filed an Amended Amended Certified Record of Proceedings to include an unredacted copy of the "Reasons for Decision in Furtherance of the September 25 and 26, 2023, Special Board Meeting" as directed.

Background

The Meme Posting

[8] The Applicant was elected as a Trustee of the Board in 2021.

[9] On or about August 27, 2023, the Applicant posted on her personal Facebook account a meme displaying two images:

- (a) an historical photo of a group of children holding Nazi flags with Swastikas; and
- (b) a contemporary photograph of children holding rainbow Pride flags; and captioned "Brainwashing is brainwashing". (collectively the "Meme Posting")

[10] The Meme Posting came to the attention of the Board, and an informal meeting was held on September 6, 2023. The meeting was conciliatory and was before any official complaint was made. During the meeting the Applicant "was offered the opportunity to explain her actions and to potentially put forth an apology." The Applicant neither apologized nor demonstrated remorse, holding the conviction she had done nothing wrong or inappropriate in making the post.

[11] On September 7, 2023, Murray Hollman, Board Chair, wrote to the Minister of Education regarding the Meme Posting. In his letter, he stated:

[...] As we continue to strive to support our Division, staff and students, I will recommend that we seek additional training from the Alberta Human Rights Commission in the areas of 2SLGBTQ+, diversity, equity, and inclusion, as well as social media training. Additionally, on September 5, 2023, our Board passed, by majority vote a motion (Motion) seeking your assistance to have the Trustee dismissed.

[12] That same date, the Applicant was interviewed by the Western Standard Newspaper. In the interview, the Applicant was quoted as saying:

The story meme is centered around indoctrination and how children are vulnerable to evil agendas (agendas coming from organizations like Planned Parenthood, the UN or SOGI 123) filtering through culture. This meme is not comparing or attacking the LGBTQ community, it is about protecting our children and keeping parents as the primary educators.

[13] On or about September 13, 2023, the Applicant was interviewed by True North newspaper. The Applicant was quoted as saying:

The intention was to and always is to bring awareness to protecting the kids. This is why I stepped up, it's about protecting the kids from agendas that are not healthy. This is something that shouldn't be in schools. This should be between kids and their parents.

[14] In the article, Jason Schilling, Alberta Teachers Association president, condemned the Applicant's post, calling it "repugnant" and a "form of repression." Schilling said:

Not only does it serve to undermine the atrocities of the Nazi regime, but it also acts as a form of oppression to entice further hatred towards members of the 2SLGBTQ+ community. So to see this posting by Ms. LaGrange that is repugnant, vile and hate-filled really undermines that safe space that we try very hard to create at schools.

The Complaint

[15] On September 7, 2023, Dorraine Lonsdale, Board Vice Chair ("the Complainant"), sent a letter of complaint to Board Chair Murray Hollman. That letter stated:

I request that a formal hearing be held for the review of Policy 4: Trustee Code of Conduct in respect of the recent social media story posted by Trustee Monique LaGrange. I understand to ensure that the complaint has merit to be considered and reviewed, at least one other trustee must provide to the Board Chair, within three (3) days of this notice in writing of the complaint being forwarded to all trustees, a letter indicating support for having the complaint heard at a Code of Conduct hearing.

[16] On the same date, Cynthia Leyson, Board Trustee, wrote to Board Chair Murray Hollman as follows:

I am writing this letter in support of Dorraine Lonsdale's letter of complaint [...] I wholeheartedly endorse her letter, and her complaint should indeed be heard at a Code of Conduct hearing.

[17] The complaint alleged that the Applicant's Meme Posting violated Board Policy 4 - Trustee Code of Conduct, clauses 1, 6, 7 and 22, in addition to Policy 3 – Trustee Role Description, clauses 6.3, 6.4, 6.7 and 6.20.

The Board Meeting

[18] The Board called a meeting on September 25, 2023, to review the complaint and determine if there was a breach of the Code of Conduct by the Applicant. Deliberations continued September 26, 2023. This procedure was done in accordance with Appendix 'A' to Board Policy 4 – Trustee Code of Conduct.

[19] The Complainant did not participate in any way other than as the maker of the complaint. Each Board member confirmed their ability to hear the matter in a fair and unbiased manner.

[20] Materials considered by the Board include:

(a) From the Complainant

- i. A photocopy of the Meme Posting.
- ii. The letter of complaint and supporting letter from Trustee Cynthia Leeson.
- iii. September 7, 2023, media article from the Western Standard, "Exclusive: Trustee says her post was about protecting children, involving parents".
- iv. September 13, 2023, media article from True North, "Alberta trustee reprimanded for Instagram post critical of gender "indoctrination".
- v. a copy of:
 - a. Board Policy 1: Divisional Foundational Statements;
 - b. Board Policy 4: Trustee Code of Conduct (including Appendix 'A' and 'B');
 - c. Board Policy 3: Trustee Role Description (including Appendix 'A');
 - d. the Council of Catholic School Superintendents of Alberta's LIFE (Living Inclusion Faithfully for Everyone) Framework; and
 - e. Statement 2358 from the Catechism of the Catholic Church, 1994.
- vi. September 7, 2023, letter to the Minister of Education, from Board Chair Hollman.
- vii. Emails and letters submitted to the Board in response to the Meme Posting, including:
 - a. emails/letters from School Division employees, parents, School Division student alumni, and the Simon Wiesenthal Centre of Holocaust Studies which were critical of the Meme Posting; and
 - b. four emails from individuals who expressed support for the Applicant's actions in relation to the Meme Posting.
- viii. Written submissions.

- (b) From the Applicant
 - i. Written submissions.
 - ii. Emails in support of the Applicant.

[21] The Complainant and the Applicant were both present and were represented by legal counsel at the meeting.

Position of the Complainant

[22] The Complainant argued that the Applicant's social media post undermined the Division's legal obligations imposed by the *Education Act*, and its commitment to inclusion. It was submitted that the Meme Posting was contrary to Roman Catholic teachings and was a direct attack on work done by Division teachers to support 2SLGBTQ+ initiatives by equating these initiatives to brainwashing and indoctrination of evil agendas.

[23] The Complainant confirmed in her written submissions that she believed the Applicant had violated Board Policy 4 - Trustee Code of Conduct, clauses 1, 6, 7 and 22, as well as Policy 3 – Trustee Role Description, clauses 6.3, 6.4, 6.7 and 6.20.

[24] In her written submissions, the Complainant stated:

How can we as a board of trustees on the one hand expect our Division staff and students to be respectful of 2SLGBTQ+ initiatives and create policy and administrative procedures to support these initiatives and yet allow a member of the board of trustees to espouse views that undermine these same initiatives, which views are anything but inclusive?

[25] The Complainant cited Policy 1 – Division Foundational Statements (“Foundational Statements”) as governing the interactions of the Division in their role as stewards of Catholic education. Specifically, Belief 10:

The schools will foster and maintain a safe, secure, caring, respectful and inclusive learning environment for all students, families and staff that is free from physical, emotional and social abuses and models our Catholic faith and values. Schools will be comprehensive and holistic in their approach to inclusion and other potential student issues including bullying, justice, respectful relationships, language and human sexuality.

[26] All Division staff are responsible for providing a “Christ-centered, welcoming, caring, respectful and safe learning environment that respects diversity, equity and human rights and fosters a sense of inclusion and belonging.”

[27] These broad foundations are defined with more specificity in how they are to apply to trustees in Policy 4 – Trustee Code of Conduct (“Code of Conduct”). The Code of Conduct provides that the Board must commit itself and its members to conduct that “meets the highest ethical standards.” In doing so it is expected that all members of the Board of Trustees treat others with mutual respect and affirm the worth of each person.

[28] The Complainant submitted that the trustees as a Board have adopted these Foundational Statements and commitments set out by the Code of Conduct, and that these expectations form the core of their identity and obligations as members of the Board, Roman Catholics, and leaders in the Division.

[29] In support of her argument that supporting those students who openly identify as members of the Two-spirit, Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and Non-Binary (“2SLGBTQIA+”) community is in line with Board policies and inclusivity initiatives, the Complainant provided the Council of Catholic School Superintendents of Alberta document entitled CCSSA’S LIFE Framework “Living Inclusion Faithfully for Everyone”. Specifically, the Complainant cited the following passage:

Catholic Schools are committed to using the Pastoral Guideline for the LIFE Framework (2018) and the LIFE Framework (2015, revised 2018 & 2019) to inform the creation and operation of student groups and activities which seek to promote student inclusion within the schools and, in fidelity to Catholic teachings, eliminates all forms of bullying including – but not restricted to – harassment and discrimination with regard to sexual orientation and gender identity; and to promote justice, respectful relationships and language within Catholic schools.

[30] As a result of these initiatives espoused by Bishops and relayed by Superintendents to teachers, the Complainant argued that the Applicant’s Meme Posting - equating these initiatives to brainwashing and indoctrination akin to those employed by Nazi Germany – undermined work toward inclusivity undertaken by the Board and the Division. This work included Board training throughout early 2023 on a pastoral perspective on supporting 2SLGBTQIA+ students.

[31] The Complainant cited *Del Grande v Toronto Catholic District School Board*, 2023 ONSC 349 [*Del Grande*], in demonstrating the seriousness of public comments made by trustees. That case involved inappropriate comments being made by a trustee over a mandate to protect 2SLGBTQIA+ students. The trustee acknowledged the flippant comments and did not claim that he was justified or accurate in making them. As a result, he was sanctioned. The Complainant contrasted this with the conduct of the Applicant, whose comments she described as “planned, repeated, intentional, inflammatory, hurtful, [and] disrespectful of staff and students”. She pointed to the Applicant’s comments in the Western Standard article and the True North interview as examples of this repetitive pattern of behaviour, and of the Applicant’s belief that she did nothing wrong in making the Meme Posting.

[32] The Complainant referenced several emails both for and against the Meme Posting. Those opposed were marked as Schedule “L” to the Complainant’s written submissions. Those in favour were marked as Schedule “M”. Some excerpts from these letters are as follows:

- (a) [...] Hearing that Monique Lagrange [sic] has compared my love to Nazism is downright unacceptable after all the love, hope, and student connection I have spurred within the past three years at one of the schools under RDCRS. I am not a Nazi. I am not a threat [...]: Schedule “L” at p 68.
- (b) [...] While I respect that every individual reserves the right to have their own opinions and views, for someone as important and trusted in the educational lives of thousands of children in the Red Deer area as School Board Trustee, should not be posting openly hateful content on social media, nor should they promote hateful, outdated and potentially misleading ideas...I ask that Monique LaGrange issues a formal apology for this action, as it is damaging to the queer community present in the RDCRS division [...]: Schedule “L” at p 69a.

- (c) [...] The fact that this trustee likens the pride movement to Nazism is absolutely abhorrent particularly as the Nazis sent thousands upon thousands of homosexuals to their death in concentration camps. Instead of promoting and teaching tolerance and diversity to school children, she is advocating a viewpoint that supports creating an environment that promotes bullying, prejudice and discrimination..., perhaps this board should reflect that in 1999 the minister responsible for education Lyle Oberg dismissed all the Calgary Board of Education Trustees after they had become “completely dysfunctional”. The failure of your board to act on this hate propaganda brings into question the integrity of the entire board: Schedule “L” at p 72.
- (d) [...] As both an employee of Red Deer Catholic Regional Schools and as a parent of two children in the division, I am profoundly concerned about the message conveyed by Trustee LaGrange and its inevitable, albeit wrongful, comparison to the 2SLGBTQIA+ community and the Nazis is not only hurtful to the members of both communities and their loved ones, but extremely offensive.
- Trustee LaGrange’s claim that the aforementioned post was about “protecting our children and keeping parents as the primary educators” unfortunately, fails to address the fact that the views she expressed by making that post directly contradict the fundamental values of both Red Deer Catholic Regional Schools and Catholic education as a whole. These are the values and principles that she has sworn to uphold as an elected official in our community: Schedule “L” at pp 72-73.
- (e) [...] I teach and have taught many members of the 2lgbtqia+ community that are very open. They have been very open because we have provided a safe space for these students to be themselves, without having to conform to some archaic 20th or 19th century beliefs. I cannot fathom what these students must be thinking, going to school in a division where one of the board members who runs the school division posts something of this sort on social media. Further to that, your post is extremely hurtful to any members of our Division who are or have family of Jewish descent that may have been affected by the Holocaust.
- Perhaps you can explain to me what my response should be to students on Tuesday morning when I am asked why a member of our school board is posting homophobic social media posts? Is that inclusion? Is that welcoming? [...]: Schedule “L” at p 76a.
- (f) [...] Regardless of the flag being flown the classroom and at school is not the place where adults should be spreading ideology [...]: Schedule “M” at p 78.

- (g) We support Monique Lagrange [sic] who has identified, rightly, that children in the school system are being indoctrinated and confused about their gender, without parental consent or involvement [...]: Schedule “M” at p 79.
- (h) [...] She is protecting kids from ideology that is too complex for children to navigate [...]: Schedule “M” at p 80.
- (i) I am very ashamed of you, how easily you sold out. Instead of protecting family values, protecting your children. You have sold your soul to the devil. You and your push fo [sic] satanic LGBTQ agenda [...]: Schedule “M” at p 81.

[33] Finally, a letter from Melissa Mikel, Director of Education at the Friends of Simon Wiesenthal Center was attached as Schedule “N” and stated the following:

This post is a form of Holocaust distortion and minimization and feeds into rhetoric promoting anti-LGBTQ+ hate and discrimination. What makes this post even more abhorrent is the fact that tens of thousands of victims of the Nazis were people who identified as part of the LGBTQ+ community.

Unfortunately, we have yet to see an apology from LaGrange nor details of the actions being taken by the school board to rectify this concerning situation.

In addition to a public apology from LaGrange, we encourage the school board to work with our organization to provide Holocaust education to all members of the board. At this time of rising hate in Canada, with Jewish, Black and LGBTQ+ communities seeing the biggest surge, it’s critical for leaders in education to stand against hate and intolerance and empower students to do the same [...]

[34] The Complainant asked the Board to vote for a disqualification of the Applicant or alternatively, to issue a motion of censure which would include the following:

- removal of the Applicant from all Division committees;
- Suspension of all remuneration in any form to the Applicant;
- that a letter be issued by the Board Chair condemning the comments;
- that the motion be made in public to condemn the comments in the most strenuous terms;
- the censure can only be purged by a sincere letter of apology to Division students, staff and members of the Board of Trustees;
- that the Applicant cease making any public statements on this matter including interviews with the various news outlets save for issuing a suitable letter of apology all to demonstrate sincere remorse, and
- that the Applicant agrees to undergo some form of suitable sensitivity training relative to the challenges and discrimination faced by members of the 2SLGBTQIA+ community along with sensitivity training about the Holocaust.

Position of the Applicant

[35] The Applicant submitted that the Meme Posting did not contravene Roman Catholic values.

[36] The Applicant argued that the Meme Posting did not contravene the *Education Act*, although gave no reasons for this submission beyond a blanket denial.

[37] She further argued that the Meme Posting did not violate the Code of Conduct or Board policy. In making this blanket denial, she stated that her intention was to protect children from indoctrination in any form and argued that “no reasonable person would assume that [the Applicant] was comparing RDCSS’s inclusivity initiatives with death camps”. The Applicant called this “a tortured interpretation by any standard.”

[38] The Applicant distinguished *Del Grande* as factually different. She submitted the concerns in that case were about the specific language that was used, which was characterized as “disrespectful, not inclusive and lacking in compassion”; “distressing and demeaning” and “extreme and derogatory”. The Applicant further submitted that the Meme Posting was put up on her personal social media account and not while on school board business, making this clearly different than the situation in *Del Grande*.

[39] The Applicant claimed that she was expressing her opinion about an ideology she views as insidious, pervasive and manipulative. She opined that the family home is the proper venue for instilling and promoting values, beliefs, political perspectives, or worldviews.

[40] The Applicant relied on *Strom v Saskatchewan Registered Nurses’ Association*, 2020 SKCA 112 [*Strom*] at para 160, which stated that “Criticism of public institutions is manifestly in the public interest.”

[41] Lastly, the Applicant argued that the Meme Posting is protected by section 2(b) of the *Canadian Charter of Rights and Freedoms*, RSC 1985, App II, No 44, Sched B, Pt 1 [*Charter*], which is the freedom of expression, and section 2(a), which is the freedom of religion.

Reasons of the Board

Did the Meme Posting contravene Roman Catholic values?

[42] The Board focused on the provisions of the *Education Act* and the Board policies in reviewing the complaint. They did not find it necessary to determine whether the Meme Posting ran contrary to Roman Catholic values. As a result, their Decision did not turn on this point and they made no findings with respect to the issue.

Did the Meme Posting contravene Board policy and the Education Act?

[43] Yes. The Board found that the Meme Posting violated the following policies:

- Policy 3 – Trustee Role Description, clause 1;
- Policy 3 – Trustee Role Description, clause 6.2;
- Policy 3 – Trustee Role Description, clause 6.4;
- Policy 3 – Trustee Role Description, clause 6.18;
- Policy 4 – Trustee Code of Conduct, clause 1;

- Policy 4 – Trustee Code of Conduct, clause 6;
- Policy 4 – Trustee Code of Conduct, clause 10; and
- Policy 4 – Trustee Code of Conduct, clause 22.

[44] The Board recognized that elected school board trustees may hold and express their views. *Calgary Roman Catholic Separate School District No. 1 v O'Malley*, 2006 ABQB 364 at para 41:

The trustees collectively and individually owe a public duty to carry out their responsibilities and the work for the Board in good faith and with reasonable diligence. They are elected for that purpose. They need not be of like mind. They may hold strong and conflicting views. They may debate with vigour, and occasionally with rancour. There is no rule requiring trustees to like each other. But they do have one overarching responsibility – a shared public duty to advance the work of the Board to which they had the privilege of being elected.

[45] The Board did not question the sincerity of the Applicant's religious views. However, they found that the Applicant's freedom to express her views must be balanced against the Board's duty and right to operate in the context of, and in a manner consistent with, the preservation and enhancement of the Board's mandate. In support of this proposition, the Board referred to s 2 of the *Education Act* and its reflection in clause 6.4 of Board Policy 3, which directly limits the social media use of trustees:

Trustees will be cognizant that they are representing the interests of the Board while posting or commenting on social media, and aware of public perception that their posts, comments and social media engagement, are in accordance with their duties within the school division.

[46] They held that while the Applicant may hold religious beliefs, in her role as a trustee, her actions may not unreasonably impinge upon the Board's statutory mandate to ensure that each student enrolled in its schools and each staff member employed by the Board is provided with a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging. Students have the right to a school system free from bias, prejudice and intolerance. As a role model and representative of the Board, the Applicant occupies an important role within the school system which is enshrined in their statutory duty pursuant to s 33(1)(d) of the *Education Act* to ensure that students and staff are provided with a welcoming, caring, respectful, and safe learning environment that respects diversity and fosters a sense of belonging,

[47] The Board found that the Applicant violated Policy 3, clause 6.2 by not having a Board discussion and decision regarding the view or idea that she wanted to test or challenge. The Board stated that the place for the Applicant to express her concerns was at the Board table where a fulsome debate may occur. The Board also found that the Applicant did not carry out her responsibilities with reasonable diligence by not having this discussion. As a result, she had also breached clause 1 of the Code of Conduct.

[48] Regarding clauses 6 and 22 of the Code of Conduct, the Board found that:

In her Trustee role, [the Applicant] has an obligation to communicate respectfully and inclusively...The Board does not accept the Trustee's submission that the Meme was clearly unrelated to Nazism. Regardless of the Trustee's intent, in the Board's view, a

reasonable person viewing two photographs (one over the other) could reasonably conclude that a negative comparison was being made.

Further, the complex and nuanced position which the Trustee is attempting to advance is simply not made clear in a Meme which is limited to two photographs and three words.

[49] The Board further stated:

In the Board's view, a reasonably well-informed person would conclude that the Trustee's conduct in having posted the meme reflected behaviour that did not treat individuals respectfully, equitably and with courtesy.

[50] In their reasons for decision, the Board included excerpts from the emails and letters received in support of and against the Meme Posting before finding:

A trustee's personal online conduct can attract as much attention as in-school or at-Board-meeting conduct.

In having posted the meme, the Trustee did not display proper decorum and respect for others.

[...]

In this case, the Trustee placed her personal interests ahead of her public duty to carry out her duties in a dignified, ethical and professional manner, and to represent the Board with proper decorum, which means that the Trustee must conduct herself in her communication in a respectful and professional manner. Posting a highly controversial meme which does not elaborate or explain the Trustee's rationale and requires schoolchildren and their parents to draw significant inferences if they are to understand the meme as the Trustee claims to have intended, does not reflect this standard.

[51] Thus, the Board found the Applicant had breached clauses 6 and 22 of the Code of Conduct, as well as clause 6.18 of Board Policy 3.

[52] In finding that the Applicant also violated Board Policy 3, clause 6.4 (and by extension clause 1 of the Code of Conduct), the Board concluded that:

At the time the Trustee posted the meme, she did not consider the interests of the Board nor did she give consideration to the potential public perception of the same. Again, therefore, the Trustee placed her personal interests ahead of her public duty to carry out and advance the Board work.

[53] The Board of Trustees found the Applicant to be in violation of Board policy and – by extension - the *Education Act*.

Is the Meme Posting protected by the Charter?

[54] The Board found that they did not have jurisdiction to consider a question of constitutional law with respect to the *Education Act*, pursuant to section 11 of the *Administrative Procedures and Jurisdiction Act*, RSA 2000 c A-3. This conclusion was not challenged by the Applicant in this judicial review.

Is the Decision procedurally unfair?

[55] The Board found that the Decision was not tainted by procedural fairness or bias and declined to stay the proceedings or Decision. The Applicant's argument on this issue had focused

largely on the Board's initial motion asking the Minister of Education to dismiss her. This was done on the misunderstanding that the Board required the Minister to review and assess a trustee's conduct. Subsequently, the procedure set out in the Code of Conduct under Appendix 'A' was followed.

[56] They found that each Board member engaged in a careful self-assessment and concluded that individually they were able to be impartial. The Board also did not reach the ultimate decision that dismissal or disqualification was necessary. Instead, the impugned sanctions were imposed. They pointed to this fact as indicative of the Board's ability to remain unbiased.

Standard of Review

[57] The parties agree that the standard on this judicial review is reasonableness. The framework for judicial review has recently been restructured and is now set out by the Supreme Court of Canada ("SCC") in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*]. When a court reviews the merits of an administrative decision there is a presumption that the standard of review is reasonableness: *Vavilov* at para 23.

[58] *Vavilov* specifically provided guidance on the proper application of the reasonableness standard. The focus of the reasonableness review "must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome": *Vavilov* at para 83. The SCC further provided that a "reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Vavilov* at para 85.

[59] The SCC in *Vavilov* at para 99 described the role of the reviewing court to:

...develop an understanding of the decision maker's reasoning process in order to determine whether the decision as a whole is reasonable. To make this determination, the reviewing court asks whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Dunsmuir*, at paras 47 and 74; *Catalyst*, at para 13.

[60] As set out in *Vavilov*, the starting point and focus for the within judicial review is the Decision itself. My role is to review the Decision and in the process of my review, refrain from deciding the issue myself. I must instead look at the rationale and outcome of the Board's Decision to determine whether the Decision was unreasonable, as was argued by the Applicant.

[61] As the application for judicial review in this case was brought by the Applicant, the onus is on the Applicant, who is challenging the Decision, to demonstrate it is unreasonable: *Vavilov* at para 100.

[62] Reasonableness refers to the acceptability and defensibility of the Decision and the justifications offered by the Board on key points.

[63] It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to review, and – at least as a general rule – to refrain from deciding the issues themselves.

[64] Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the “range” of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem. Instead, the reviewing court must consider only whether the decision made by the administrative decision maker – including both the rationale for the decision and the outcome to which it led – was unreasonable.

[65] As explained above, where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with “respectful attention” and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion: *Vavilov* at paras 83-84.

[66] Reasonableness is an attitude of respect to the administrative decision maker. This is a recognition that the legislature has given the administrative decision maker the job of deciding the merits, not the reviewing court.

[67] In assessing reasonableness under *Vavilov* in this case, I must examine the following:

1. The acceptability or defensibility of the outcome. Did the Decision stay within the constraints to which the Board was subject?
2. The reasoning of the Board. Was it rational, logical and sufficient?

Governing Legislation

[68] The governing legislation is the *Education Act*.

[69] Section 2 of the *Education Act* states:

2 The exercise of any right or the receipt of any benefit under this Act is subject to the limitations that are reasonable in the circumstances under which the right is being exercised or the benefit is being received.

[70] Section 33 of the *Education Act* sets out the responsibilities of the Board as follows:

33(1) A board, as a partner in education, has the responsibility to

[...]

(d) ensure that each student enrolled in a school operated by the board and each staff member employed by the board is provided with a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging,

[...]

(h) establish and maintain governance and organizational structures that promote student well-being and success, and monitor their success, and monitor and evaluate their effectiveness,

[...]

(k) develop and implement a code of conduct that applies to trustees of the board, including definitions of breaches and sanctions, in accordance with principles set out by the Minister by order,

[...]

(m) establish appropriate dispute resolution processes, [...]

[71] Section 34 of the *Education Act* states as follows regarding Trustee responsibilities:

34 A trustee of a board, as a partner in education, has the responsibility to

[...]

(c) comply with the board’s code of conduct, [...]

The Decision Was Reasonable

[72] In accordance with the *Education Act*, the Board has developed policies which apply to all trustees. The reasons given by the Board in finding that these policies were breached are logical, thorough and grounded in the facts that were before the Board at the time of their deliberations.

Roman Catholic Values

[73] The Applicant argues that because the Board’s policies are “replete with the language of Roman Catholic values” and impart upon trustees the duty to be leaders in espousing those values, the Board needed to make a determination about whether or not the Meme Posting was in accordance with those values.

[74] The Board was reasonable in declining to do so. Their reasons make clear that they accepted that the Applicant may have had a sincerely held belief in the religious justification for the Meme Posting but declined to hold that this personally held belief reflected the wider Catholic community’s belief. The Code of Conduct hearing was not the forum for ideological debate, nor is this judicial review. The Code of Conduct hearing was focused on precisely what the name implies: whether the actions of the Applicant were in breach of the Code of Conduct.

[75] There was no expert evidence put forward on what the conclusion ought to be in any event. There were submissions made both for and against the message of the Meme Posting from a Catholic perspective. The Board was reminded by the complaint letter of pastoral training that they had received on inclusivity and sexuality, and how to support students in this regard earlier in 2023. It made sense why the Board would not want to decide on this point either way. As Catholic leaders in the Division, they must be aware of the broad spectrum of belief within the Church itself and that to call any one person’s personally held belief as definitive would be harmful to anyone who does not agree.

[76] I find this reasonable and confirm the Board’s Decision on this point.

Breaches of Policy 3 –Trustee Role Description, Clauses 1 and 6.18

[77] Clause 1 of Board Policy 3 broadly describes the obligations of a trustee to fulfill their role as a steward of education within the Division. More specifically, clause 6.18 requires that:

The trustee will contribute to a positive and respectful learning and working culture both within the Board and the Division.

[78] The Applicant argues that because the written reasons of the Board do not explicitly outline how the Applicant breached those provisions, the finding is unreasonable. In support of this argument, the Applicant cites *Vavilov* at paras 99, 101, and 104-5. However, none of those paragraphs impose upon an administrative decision maker the requirement of each point to be set out in writing. In fact, at paras 91, 94, and 128 of *Vavilov*, the SCC stated:

A reviewing court must bear in mind that the written reasons given by an administrative body must not be assessed against a standard of perfection. That the reasons given for a decision do “not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred” is not on its own a basis to set the decision aside: *Newfoundland Nurses*, at para. 16. The review of an administrative decision can be divorced neither from the institutional context in which the decision was made nor from the history of the proceedings.

[...]

The reviewing court must also read the decision maker’s reasons in light of the history and context of the proceedings in which they were rendered. For example, the reviewing court might consider the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker’s work, and past decisions of the relevant administrative body. This may explain an aspect of the decision maker’s reasoning process that is not apparent from the reasons themselves, or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency.

[...]

Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis” (*Newfoundland Nurses*, at para. 25), or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion” (para. 16). To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning: *Baker*, at para. 39. [emphasis added].

[79] Read holistically and in the context of the evidence before the Board, it is entirely within reason to conclude that the Applicant failed in her duties as a trustee by communicating a broad comparison between sexual identity and orientation training and the indoctrination of the Nazi party. In doing so, it is very possible that she contributed negatively to the Division’s perception of the Board and to the respectful learning environment that the Board is mandated to foster.

[80] I also do not accept the semantic argument raised by Applicant’s counsel that the Board’s prohibiting a Meme Posting that may be viewed negatively means that the Applicant could not be found to be contributing in an active sense to anything. The Applicant contributed a public, unfiltered, and polarizing statement on her public social media account. This was not *only* prohibited by other Board policies which will follow, but also contributed to a negative

environment within the Division. This was evidenced by the polarized response received from Division staff, students, and members of the public.

[81] I find the Decision with respect to breaches of Board Policy 3 – Trustee Role Description, clauses 1 and 6.18 reasonable and confirm the Board’s Decisions on these points.

Breach of Policy 3 – Trustee Role Description, Clause 6.2

[82] Clause 6.2 of Board Policy 3 requires that:

The trustee will refer queries, or issues and problems, not covered by Board policy, to the Board for corporate discussion and decision.

[83] The Applicant argues that the Board’s analysis in finding this breach is too broad, requiring that a trustee must discuss any and all ideas challenging the status quo must be discussed with the Board regardless of whether or not the idea is related to the work of the Board.

[84] The notion that the Meme Posting was about challenging ideology and therefore unrelated to the work of the Board as stewards of the Division’s educational goals is inconsistent with the Applicant’s own submissions during the Code of Conduct hearing.

[85] The Board had been trained and mandated to create inclusivity in the Division. They had been educated on how to support 2SLGBTQIA+ students from a pastoral perspective. It is reasonable to infer that these topics were expected to form part of the education of children in the Division.

[86] By the Applicant’s own repeated assertion, the Meme Posting was about how these types of initiatives – employed by the Board itself – are inappropriate forms of indoctrination requiring a more layered analysis than children are capable of. The Applicant made it clear that she felt this was an idea to be tested or challenged, as the Board set out in its reasons. It is a reasonable conclusion to reach that the Applicant took issue with work being undertaken by the Board as a result. That issue was never raised with the Board for discussion and decision as required by clause 6.2.

[87] I find the Decision with respect to a breach of Board Policy 3 –Trustee Role Description, clause 6.2 reasonable and confirm the Board’s Decision on this point.

Breach of Policy 3 – Trustee Role Description, Clause 6.4

[88] Clause 6.4 of Board Policy 3 requires that:

Trustees will be cognizant that they are representing the interests of the Board while posting or commenting on social media, and aware of public perception that their posts, comments and social media engagement, are in accordance with their duties within the school division.

[89] The Applicant argues that she has a duty as a trustee to promote Catholic values, which support the Meme Posting’s message. She further argued that even if that duty did not exist, she did not consider that her post would be disapproved of by the public within the Division or by the Board. Counsel for the Applicant asserts that her belief that the Meme Posting would not create an issue for the Board ends the analysis and makes the finding of a breach unreasonable.

[90] It is difficult to square this complete lack of awareness of the controversial nature of the Meme Posting with the Applicant’s own characterization of it as challenging certain ideologies. It

is also difficult to see how she did not believe that the Board may disapprove of the message the Meme Posting may be interpreted as having, having herself undergone inclusivity training regarding gender and sexuality issues from a pastoral perspective as part of her work with the Board.

[91] Further, had she complied with clause 6.2 as discussed above, she would have been made aware of some of the Board's concerns with the Meme Posting in advance of deciding to put it up. The Applicant had a duty to create a safe, respectful, and inclusive environment within the Division and considered none of that in making the Meme Posting. She did not consider the interests of the Board, nor did she consider the potential public perception of the same.

[92] It is justifiable and understandable that some members of the public within the Division would take issue with the broad inferences that can be drawn from the Meme Posting. The Board found that by making the Meme Posting with only three words, the Applicant's conduct reflected behaviour that did not treat individuals respectfully, equitably and with courtesy. A reasonable person could conclude a negative comparison was being made.

[93] I find the Decision with respect to a breach of Board Policy 3 – Trustee Role Description, clause 6.4 reasonable and confirm the Board's Decision on this point.

Breach of Policy 4 – Trustee Code of Conduct, Clause 1

[94] Clause 1 of the Code of Conduct states:

Trustees shall carry out their responsibilities as detailed in Policy 3 – Role of the Trustee with reasonable diligence.

[95] The Applicant argues that this breach is unreasonable as a result of the unreasonableness of all of the breaches of Board Policy 3. As set out above, I have found it reasonable to conclude that the Applicant breached all of those provisions.

[96] As a result, I find the Decision with respect to a breach of Board Policy 4 – Trustee Code of Conduct, clause 1 reasonable and confirm the Board's Decision on this point.

Breach of Policy 4 - Trustee Code of Conduct, Clause 10

[97] Clause 10 of the Code of Conduct requires that “[w]hile elected from specific wards, trustees shall represent the best interest of the entire Division.”

[98] The Applicant argues that this provision is aimed at preventing a trustee from privileging the interests of their own ward above others. She also argues that the Board ignored the fact that the Meme Posting fulfilled her positive duty to promote Roman Catholic values.

[99] Another reasonable and plain reading of this clause is a requirement that a trustee must represent the best interests of everyone in the Division. This includes members of the 2SLGBTQIA+ community and their family members. This may also include Holocaust survivors and their family members. In making the Meme Posting, the Applicant privileged her own interests above those of members of the entire Division.

[100] The context disclosed by the record before the Board demonstrates that although some expressed support for the viewpoint expressed by the Meme Posting, there were also Division members who took profound issue with it. Even within Roman Catholics, the Meme Posting was polarizing. The Applicant's own counsel acknowledged in submissions to the Board that she was espousing a minority viewpoint.

[101] I find the Decision with respect to a breach of Board Policy 4 – Trustee Code of Conduct, clause 10 reasonable and confirm the Board’s Decision on this point.

Breach of Policy 4 – Trustee Code of Conduct, Clause 22

[102] Clause 22 of the Code of Conduct requires the Board trustees to represent the “Board responsibly in all Board-related matters with proper decorum and respect for others.”

[103] The Applicant argues that because this was a personal social media post and not at all Board-related in the mind of the Applicant, it cannot be said that she failed to conduct Board matters with proper decorum and respect for others. The Applicant does not view the Meme Posting as unprofessional and considers it her right as a private citizen to bring up difficult conversations to protect children.

[104] The Board accepted that the Applicant is entitled to her personal religious beliefs and is entitled to express them. However, the public nature of her position as a trustee means that her public conduct online can attract as much attention as in-school or at-Board-meeting conduct. Indeed, the media interviews that the Applicant conducted afterwards is evidence of this fact. By her own admission, it was the Applicant’s intent to post pictures related to children to stimulate discussion and consideration of her viewpoint.

[105] It was certainly reasonable and even likely that the Meme Posting might be understood by members of the community as negatively comparing 2SLGBTQIA+ persons to Nazism. Again, the evidence makes it clear that many Division members did see the Meme Posting as such.

[106] In making the posting, which the Applicant claims to have done to raise issues important to parents and students – something her work as a trustee is integrally related to – the Board found that she did not conduct herself with the proper respect for others or decorum expected of a trustee. Indeed, the Board pointed out that the proper place to express and debate these views was at the Board table.

[107] In reaching this conclusion, the Board cited *Del Grande* at para 55:

The focus of the *Education Act* is thus the public education system and the wellbeing and achievement of the students who participate in it, with the goal of ensuring they develop into caring, contributing citizens. It is the Board, and therefore its Trustees, who are in service to these objectives and not the public education system that serves a trustee’s objectives. [emphasis added]

[108] Although *Del Grande* is factually distinct from the facts of this hearing, it was cited for principle and not analogous facts. The Applicant’s reliance on *Strom* in advocating for her ability to criticize public institutions also betrays a possible inference that in making the Meme Posting, the Applicant was criticizing the work of the very Board she had been elected to serve with which she disagreed.

[109] There are clear and reasonable ties between what should and should not be taught to children, and the Applicant’s role as a member of the Board. It was reasonable to conclude that she did not conduct herself in a manner that was respectful or demonstrated the proper decorum when she made the Meme Posting which included an image of children in a classroom.

[110] I find the Decision with respect to a breach of Board Policy 4 – Trustee Code of Conduct, clause 22 reasonable and confirm the Board’s Decision on this point.

Breach of Policy 4 – Trustee Code of Conduct, Clause 6

[111] Clause 6 of the Code of Conduct states:

Trustees shall commit themselves to dignified, ethical, professional and lawful conduct.

[112] The Applicant argues that this clause is too subjective to be reasonably enforceable. There are no definitions in the Code of Conduct for the terms ‘dignified’, ‘ethical’, or ‘professional’. The Applicant appears to submit that the Board needed to base this assessment on the volume or quantity of public comments on the issue in the absence of such definitions. Her counsel even goes as far as suggesting that less weight should be given to the opinions of teachers (who were supposedly often against the Meme Posting) because they are not representative of the larger community which was overwhelmingly supportive of the Meme Posting’s message.

[113] This is a strange claim made alongside the Applicant’s assertion that she was espousing a minority viewpoint, but the Board was not required to settle this in any event. The Board has never avoided the fact that there was evidence of people in support of the Meme Posting. Even the complaint letter attached some of those views received from Division members.

[114] The Board’s obligation is to safeguard the interests of all Division members in accordance with Board policies and procedures, the Code of Conduct, and statute. Inclusion and respectful communication with members of vulnerable groups forms part of that obligation. It is entirely justifiable that the Board conclude that a reasonable person viewing the Meme Posting could conclude that a crude and irresponsible comparison was being made between the 2SLGBTQIA+ community and Nazism. The images were both of children. The images both showed them holding flags representative of what the Applicant calls “ideologies” (I say this to reiterate the view of the Applicant and not to be reductive of the personhood of 2SLGBTQIA+ individuals whose identity is not a political ideology). One set of flags bore swastikas, the other rainbows. The children holding rainbow flags are in a classroom. The images are placed one on top of the other. The eye first sees the image of children holding the Nazi flags, then the lower image of the children with rainbow flags. An entirely reasonable conclusion would be that a direct comparison was being made that would be harmful to community members. It certainly could have the effect of undermining the dignity of a 2SLGBTQIA+ student, staff, or family member in a Division working towards inclusion.

[115] *Del Grande* is helpful because it talks about the high standard of conduct that is required of a publicly elected trustee. Undoubtedly there are factual differences. However, attempts to downplay the gravity of the comparison invited in the Meme Posting risk the Holocaust minimization warned of in the letter from Melissa Mikel, Director of Education at the Friends of Simon Wiesenthal Center. To do this in a public forum on social media, which is easily and rapidly disseminated throughout the Division, can draw just as much attention as in-person communication or Board meeting communications (as in *Del Grande*). The Board acknowledged this and was reasonable to do so.

[116] Guided by the Code of Conduct and the *Education Act*, the Board found that the Meme Posting was not communication of a dignified, ethical or professional nature.

[117] I find the Decision with respect to a breach of Board Policy 4 – Trustee Code of Conduct, clause 6 reasonable and confirm the Board’s Decision on this point

Overall

[118] Viewed holistically and in the context of the evidence, I find that the Board’s Decision, both the reasons and further direction, did meet the requisite standard of justification, transparency and intelligibility and is justified within its factual and legal constraints.

The Reasonableness of the Sanctions Imposed

[119] Following their Decision, the Board did not determine that disqualification or removal of the Applicant was warranted. Instead, they passed the following resolution:

BE IT RESOLVED THAT,

1. further to the, on or about August 27, 2023, posting on Trustee LaGrange’s personal Facebook account which took the form of a meme displaying two photographs:

a) one of a group of children holding Nazi flags with swastikas; and

b) a contemporary photograph of children holding rainbow Pride flags; and

c) the meme was captioned “Brainwashing is brainwashing” (collectively, the “meme”),

the Board of Trustees (“Board”) finds Trustee Monique LaGrange (“Trustee”) to be in violation of Trustee Code of Conduct and the Education Act.

As a result of today’s date and up to and including the Trustee’s Term of Office (“End Date”), the Trustee

a. is censured from being part of all and any part of Board Committees and is censured from attending and participating in all Board committee meetings, including any part thereof. This also includes all and any ASBA and ACSTA meetings and conferences;

b. shall not represent the Board/School Division in any official capacity, including Board/School Division functions, events, award ceremonies, conferences, assemblies, school masses, graduation events, school council meetings and speaking with news/media outlets;

c. shall cease making any public statements in areas touching upon or relating to,

i. the 2SLGBTQ+ community; and

ii. the Holocaust,

including presenting at meetings and conferences on these topics or related areas and speaking with various news outlets.

d. Within 90 days of this motion, the Trustee shall enroll in, at her own expense, and successfully complete:

i. suitable sensitivity training about the Holocaust;

ii. suitable sensitivity training relative to the challenges and discrimination faced by members of the 2SLGBTQ+ community; and

iii. suitable sensitivity training covering professional school trustee boundaries and appropriate use of social media, cultural sensitivity and human rights;

iv. The Trustee shall inform the Board as to the proposed training, and prior to the Trustee's commencement of said training, the Board shall determine the suitability of the proposed training and approve each course;

v. the Trustee shall provide the Board with written certificate from the course providers stating that the Trustee has successfully completed said sensitivity training courses; and

vi. The above training is intended to remind the Trustee of her role and responsibilities as a school board trustee and to assist the Trustee to make better decisions in any further communications, including on social media.

e. Shall issue at the first public Board meeting following the completion of the ninety (90) day period set out above at paragraph 1(d), a sincere public letter of apology to School Division students, staff, and the Board in relation to the Meme; said sincere apology shall recognize the inappropriateness of the Trustee's actions and that the Trustee is deeply sorry for having offended anyone through her actions; and

f. Shall refrain from posting any content of similar nature relating to Meme (This term and condition shall be ongoing up and including the End Date.) [emphasis added]

[120] The Resolution also included the following:

4. The Board hereby directs the Superintendent of Schools, Dr. Kathleen Finnigan, to arrange for the following within the next twenty (20) days:

a) a meeting with the Director of Education of the Friends of Simon Wiesenthal Centre to discuss their September 6, 2023, letter and to confirm the date of an educational workshop by the Friends of Simon Wiesenthal Centre for the Board;

b) a meeting with Alberta Human Rights Commission to confirm an educational workshop for the Board;

c) a follow up meeting further to the January 16, February 13 and March 13, 2023, Board workshops on a pastoral approach to support students in the development and understanding of their sexuality for the purpose of confirming a follow up workshop for the Board.

[121] The Applicant argues that the Board had no ability to issue sanctions 1(a) and 1(c) through 1(e) because they are neither based in the *Education Act* or in the Code of Conduct.

[122] I disagree. Appendix 'A' to the Code of Conduct includes clause 9, which reads:

A violation of the Code of Conduct may result in the Board instituting, without limiting what follows, any or all of the following sanctions [...] [emphasis added]

[123] The *Education Act* requires the Board to implement a Code of Conduct. The above clause is a part of that Code of Conduct and uses expansive language that is meant to provide broad

discretion with respect to remedies for breaches by trustees. These sanctions must be reasonable and proportional.

[124] The only sanctions that do not seem reasonable are sanctions 1(d)(i) through (iii). They appear redundant, as the Board had also resolved to participate and engage in similar training as a group. There is no reason the Applicant could not participate in this training alongside her peers.

[125] Further, I would strike the word ‘sincere’ from sanction 1(e). The rest of the sanction should remain. It does not seem feasible to me to prescribe an individual’s personally held feelings. Whether or not the apology is sincere is not measurable by any objective standard.

[126] I confirm all other sanctions of the Board. They are consistent with the concerns of the Board and members of the Division. It is clear that they are intended to prevent further harm and also reconciliation through education.

The Decision Was Procedurally Fair

[127] The Applicant alleges that the proceedings were unfair for two reasons:

1. The Applicant claims that the Board failed to follow its own procedures in the correct order; and
2. The Board demonstrated bias by prejudging the matter.

[128] The core of both issues is the letter sent to the Minister of Education requesting assistance in dismissing the Applicant. This letter was sent before the complaint process was triggered and was based upon a misunderstanding of how a trustee’s conduct was reviewed. Upon receipt of the formal complaint, the procedure set out in the Code of Conduct was followed. Therefore, there was no procedural unfairness that occurred as a result of the letter to the Minister.

[129] The test for prejudgment amounting to impermissible bias is set out in *Old St Boniface Assn Inc v Winnipeg (City)*, [1990] 3 SCR 1170, 1990 CanLII 31 (SCC) [*Old St Boniface*] at p 1197:

The party alleging disqualifying bias must establish that there is a prejudgment of the matter, in fact, to the extent that any representations at variance with the view, which has been adopted, would be futile. Statements by individual members of Council while they may very well give rise to an appearance of bias will not satisfy the test unless the court concludes that they are the expression of a final opinion on the matter, which cannot be dislodged. In this regard it is important to keep in mind that support in favour of a measure before a committee and a vote in favour will not constitute disqualifying bias in the absence of some indication that the position taken is incapable of change.

[130] It is not enough for the Applicant to point to the formation of an opinion by the Board in advance of hearing the matter. The Applicant must also demonstrate that the opinion cannot be changed or dislodged.

[131] Prior to the Code of Conduct hearing following the formal complaint letter, each individual Board member conducted a serious self-assessment of their ability to hear the matter without bias. Each Board member confirmed that they were able to fair and impartially hear the Applicant’s arguments and render a fair decision. The Complainant did not participate in any deliberations of

the Board. Ultimately, the Board's Decision was not the same sanction as referenced in the letter to the Minister of Education, which demonstrated a clear ability to shift and change opinion.

[132] There was no prejudgment amounting to procedural unfairness due to impermissible bias. The Applicant's argument on this point fails to establish the second part of the test set out in *Old St Boniface*.

Conclusion

[133] I find the Board's Decision reasonable and confirm it.

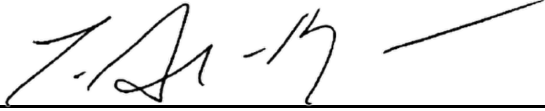
[134] I quash sanctions 1(d)(i) through (iii), and the word 'sincere' in 1(e). All other sanctions are confirmed and should remain.

Costs

[135] The parties may appear before me to speak to costs.

Heard on the 20th day of May, 2024.

Dated at the City of Red Deer, Alberta this 14th day of November, 2024.



C.L. Arcand-Kootenay
J.C.K.B.A.

Appearances:

James SM Kitchen
for the Applicant

Teresa Haykowsky, KC
Kathleen Garbutt
for the Respondent

Appendix A: Policy 3 – Trustee Role Description

POLICY 3: TRUSTEE ROLE DESCRIPTION

The role of the trustee is to contribute to the work of the Board as it carries out its mandate to govern and achieve its vision, mission, beliefs, values and principles. The Board believes that its ability to fulfill its obligations is enhanced when leadership and guidance are forthcoming from within its membership. The oath of office taken by each trustee when she/he assumes office binds that person to work diligently and faithfully in the cause of public education.

Catholic trustees have a unique, dual challenge. They must ensure that students are provided an education which meets or exceeds the goals of Alberta Education and at the same time, ensure that Catholic values and principles are reflected at all times in its policies and practices.

As leaders in the Catholic faith community, Catholic trustees require an understanding, a willingness to grow and a commitment to bearing daily witness to the faith. To meet this challenge, Catholic trustees are entrusted with certain denominational school rights, powers and privileges enshrined in the Canadian Constitution. They exercise these rights with the religious guidance of parish and diocesan authorities.

The Board is a corporation. The decisions of the Board in a properly constituted meeting are those of the corporation. A trustee who is given corporate authority to act on behalf of the Board may carry out duties individually but only as an agent of the Board. In such cases, the actions of the trustee are those of the Board, which is then responsible for them. A trustee acting individually has only the authority and status of any other citizen of the Division.

1. Board Orientation

As a result of elections, the Board may experience changes in membership. To ensure continuity and facilitate smooth transition from one Board to the next following an election, trustees must be adequately briefed concerning existing Board policy and practice, statutory requirements, initiatives and long-range plans.

The Board believes an orientation program is necessary for effective trusteeship. All trustees will attend all aspects of the orientation program.

The Division will offer an orientation program for all newly elected trustees that provides information on:

- 1.1 Role of the trustee and the Board;
- 1.2 Organizational structures and procedures of the Division;
- 1.3 Board policy, agendas and minutes;
- 1.4 Existing Division initiatives, annual reports, budgets, financial statements and long-range plans;
- 1.5 Division programs and services;
- 1.6 Board's function as an appeal body; and
- 1.7 Statutory and regulatory requirements, including responsibilities with regard to conflict of interest.

2. The Division will provide financial support for trustees to attend Alberta School Boards Association (ASBA) and Alberta Catholic School Trustees Association (ACSTA) sponsored orientation seminars.
3. The Division will provide financial support for trustees to attend Alberta Education sponsored trustee workshops or information sessions.
4. The Board Chair and Superintendent are responsible for developing and implementing the Division's orientation program for newly elected trustees. The Superintendent shall provide each trustee with access to the Board Policy Handbook and the Administrative Procedures Manual at the organizational meeting following a general election or at the first regular meeting of the Board following a by-election.
5. Incumbent trustees are encouraged to help newly elected trustees become informed about the history, functions, policies, procedures and issues.

6. Specific Responsibilities of Individual Trustees

- 6.1 The trustee will model involvement in the faith community.
- 6.2 The trustee will refer queries, or issues and problems, not covered by Board policy, to the Board for corporate discussion and decision.
- 6.3 The trustee can engage with the public through a variety of communication methods, understanding that all communications and interactions must reflect the principles of the Trustee Code of Conduct.
- 6.4 Trustees will be cognizant that they are representing the interests of the Board while posting or commenting on social media, and aware of public perception that their posts, comments and social media engagement, are in accordance with their duties within the school division.
- 6.5 If trustees choose to post pictures of students on their social media sites, permission must be given by the relevant school authority.
- 6.6 The trustee will participate in, and contribute to, the decisions of the Board in order to provide the best solutions possible for the education of children within the Division.
- 6.7 The trustee will support the decisions of the Board and refrain from making any statements that may give the impression that such a statement reflects the corporate opinion of the Board when it does not.
- 6.8 The trustee will participate in training opportunities in order to ensure that the appropriate skills, knowledge and understandings are acquired.
- 6.9 The trustee will ensure that Catholic values and principles are reflected at all times in the Board's policies and practices.
- 6.10 The trustee will become familiar with Division policies, meeting agendas and reports in order to participate in Board business.
- 6.11 The Trustee will keep the Board Chair and/or the Superintendent informed in a timely manner of all matters coming to his/her attention that might affect the Division. Refer administration matters to the Superintendent.
- 6.12 The trustee will provide the Superintendent with counsel and advice, giving the benefit of the trustee's judgment, experience and familiarity with the community.

6.13 Trustees are encouraged to share Divisional information, key messages, Board priorities, exemplary practices, and student achievement and learning results.

6.14 The trustee will, in alignment with the Board engagement efforts, provide for the engagement of parents, students and the community in matters related to education.

6.14.1 Respectfully bring forward and advocate for local issues and concerns prior to a Board decision;

6.14.2 Interpret the needs of the community to the Board and the Board's action to those we serve; and

6.14.3 Liaise with designated School Council(s).

6.15 Trustees are encouraged to develop individual growth plans on an annual basis.

6.16 The trustee will share the materials and ideas gained from a trustee development activity with fellow trustees at the next available opportunity.

6.17 The trustee will stay current with respect to provincial, national and international education issues and trends.

6.18 The trustee will contribute to a positive and respectful learning and working culture both within the Board and the Division.

6.19 The trustee will attend Division or school functions where possible.

6.20 The trustee will adhere to the Trustee Code of Conduct.

6.21 The trustee will report any violation of the Trustee Code of Conduct to the Board Chair or when applicable, to the Vice-Chair.

Legal Reference: Section 33, 34, 51, 52 53, 64, 67, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96
Education Act, Section 6 *Commissioner of Oaths Act*

Reviewed: March 2011, January 2018

Revised: November 2019, June 2022

[...]

Appendix B: Policy 4 – Trustee Code of Conduct

POLICY 4: TRUSTEE CODE OF CONDUCT

The Board commits itself and its members to conduct which meets the highest ethical standards. It is expected that all personal interactions and relationships will be characterized by mutual respect, which acknowledges the dignity and affirms the worth of each person.

- Each trustee, representing all Catholic school supporters of the community and responsible to this electorate through the democratic process, recognizes:
 - That trustees are accountable to the Magisterium of the Church, and that, according to the Code of Canon Law, a Catholic school is an instrument of the Church and is one in which Catholic education is established, directed, recognized or converted to, by the local bishop, who is competent to issue prescriptions dealing with the general regulation of Catholic schools.
 - That legally, the authority of the Board is derived from the province, through the Constitution Act, which ultimately controls the organization and operation of the Division and which determines the degree of discretionary power left with the Board and the people of this community for the exercise of local autonomy.
 - That fallow citizens have entrusted them, through the electoral process, with the educational development of the children and youth of the community.
 - That trustees are the children s advocates and their first and greatest concern is the best interest of each and every one of these children without distinction as to who they are or what their background may be.
 - That trustees are educational leaders who realize that the future welfare of the community, of the province, and of Canada depends in the largest measure upon the quality of education provided in schools to fit the needs of every learner.

Specifically

Whereas the aim of Catholic Education is the development of each student towards personal fulfillment and responsible citizenship motivated by the Spirit of the Gospel and modeled on the example of Jesus Christ, the Catholic School Trustee shall, within the duties prescribed in Acts and Regulations and reflecting a ministry within the Church, adhere to the following Code of Conduct:

1. Trustees shall carry out their responsibilities as detailed in Policy 3 - Role of the Trustee with reasonable diligence.
2. Provide an example to the Catholic Community by active participation in the communal life of a parish and by a personal lifestyle that reflects the teachings of the Church.
3. Devote time, thought and study to the duties of a trustee so that they may render effective and credible service.
4. Exercise the powers and duties of their office honestly and in good faith. Trustees shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

5. Trustees shall endeavour to work with fellow Board members in a spirit of harmony and cooperation in spite of differences of opinion that may arise during debate.
6. Trustees shall commit themselves to dignified, ethical, professional and lawful conduct
7. Trustees shall reflect the Board's policies and resolutions when communicating with the public.
8. Consider information received from all sources and base personal decisions upon all available facts in every case; unswayed by partisan bias of any kind, and thereafter, abide by and uphold the final majority decision of the Board.
9. Trustees shall keep confidential any personal, privileged or confidential information obtained in their capacity as a trustee and not disclose the information except when authorized by law or by the Board to do so.
10. While elected from specific wards, trustees shall represent the best interests of the entire Division.
11. Trustees shall honor their fiduciary responsibility to the Board and be loyal to the interests of the Division as a whole in the context of Catholic Education. This loyalty supersedes loyalty to:
 - 11.1. Any advocacy or special interest groups; and
 - 11.2. The personal interest of any trustee.
12. Trustees shall report all conflicts of interest and abstain from voting on or discussing any matter that has been identified as a conflict, in accordance with Appendix; B¹ - Conflicts of Interest.
13. In determining whether an actual or perceived conflict of interest exists, the Trustees shall be guided by the following question:

Would a reasonable person, being informed of all of the circumstances, be more likely than not to regard the interest of the trustee as likely to influence that trustee's action and decision on the question?
14. Maintain the confidentiality of privileged information, including statements made during in-camera sessions of the Board.
15. Work together with fellow trustees to communicate to the electorate.
16. Remember at all times that individual trustees have no legal authority outside the meeting of the Board, and therefore relationships with school staff, the community, and all media of communication is to be conducted on the basis of this fact.
17. Refrain from using the trustee position to benefit either oneself or any other individual or agency apart from the total interest of the Division.
18. Recognize that a key responsibility of the Board is to establish the policies by which the system is to be administered, and that the administration of the educational program and conduct of school business shall be left to the Superintendent and Division staff.
19. Encourage active cooperation by stakeholders with respect to establishing policies.
20. Support provincial and national school board associations for the future of trusteeship in this province and the nation.

21. Provide effective trustee service to the Catholic community in a spirit of teamwork and devotion to education as the greatest instrument for the preservation and perpetuation of our representative democracy.
22. Represent the Board responsibly in all Board-related matters with proper decorum and respect for others.
23. Represent the perceived concerns or needs of the community to the Board or Superintendent as appropriate and accurately communicate the Board's decisions to those who we serve.
24. Abstain from participation in personnel selection when family relatives are involved.
25. Trustees shall disclose any conflict of interest between their personal life and the position of the Board and abstain and absent themselves from discussion or voting on the matter in question.
26. Trustees shall not use their influence to advance personal, family or friends' interests or the interests of any organization with which the trustee is associated.
27. Consequences for the failure of individual trustees to adhere to the Trustee Code of Conduct are specified in Policy 4 Appendix A - Trustee Code of Conduct Sanctions.

Legal Reference: Section 33, 34, 51, 52, 53, 64, 67, 85, 86, 87, 88, 39 Education Act
April 2008

Reviewed: April 2011, February 2018

Revised: September 2019, June 2022, April 2023

APPENDIX 'A'

1. Trustees shall conduct themselves in an ethical and prudent manner in compliance with the Trustee Code of Conduct Policy 4. The failure by trustees to conduct themselves in compliance with this policy may result in the Board instituting sanctions.
2. A trustee who believes that a fellow trustee has violated the Code of Conduct may seek resolution of the matter through appropriate conciliatory measures prior to commencing an official complaint under the Code of Conduct.
3. A trustee who wishes to commence an official complaint under the Code of Conduct shall file a letter of complaint with the Board Chair within ninety (90) days of the alleged event occurring and indicate the nature of the complaint and the section or sections of the Code of Conduct that are alleged to have been violated by the trustee. The trustee who is alleged to have violated the Code of Conduct and all other trustees shall be forwarded a copy of the letter of complaint by the Board Chair, or where otherwise applicable in what follows, by the Vice-Chair, within five (5) days of receipt by the Board Chair of the letter of complaint. If the complaint is with respect to the conduct of the Board Chair, the letter of complaint shall be filed with the Vice-Chair.
4. When a trustee files a letter of complaint and a copy of that letter of complaint is forwarded to all trustees, the filing, notification, content, and nature of the complaint shall be deemed to be strictly confidential, the public disclosure of which shall be deemed to be a violation of the Code of Conduct. Public disclosure of the complaint and any resulting decision taken by the Board may be disclosed by the Board Chair only at the direction of the Board, following the disposition of the complaint by the Board at a Code of Conduct hearing.
5. To ensure that the complaint has merit to be considered and reviewed, at least one other trustee must provide to the Board Chair, within three (3) days of the notice in writing of the complaint being forwarded to all trustees, a letter indicating support for having the complaint heard at a Code of Conduct hearing. Any trustee who forwards such a letter of support shall not be disqualified from attending at and deliberating upon the complaint at a Code of Conduct hearing convened to hear the matter, solely for having issued such a letter.
6. Where no letter supporting a hearing is received by the Board Chair in the three (3) day period referred to in section 5 above, the complaint shall not be heard. The Board Chair shall notify all other trustees in writing that no further action of the Board shall occur.
7. Where a letter supporting a hearing is received by the Board Chair in the three (3) day period referred to in section 5 above, the Board Chair shall convene, as soon as is reasonable, a special meeting of the Board to allow the complaining trustee to present his or her views of the alleged violation of the Code of Conduct.
8. At the special meeting of the Board, the Board Chair shall indicate, at the commencement of the meeting, the nature of the business to be transacted and that the complaint shall be heard in an in-camera session of the special meeting. Without limiting what appears below, the Board Chair shall ensure fairness in dealing with the complaint by adhering to the following procedures.
 - 8.1 The Code of Conduct complaint shall be conducted at an in-camera session, Code of Conduct hearing, of a special Board meeting convened for that purpose. All preliminary matters, including whether one or more trustees may have a conflict of interest in hearing

the presentations regarding the complaint, shall be dealt with prior to the presentation of the complaint on behalf of the complaining trustee.

8.2 The sequence of the Code of Conduct hearing shall be:

8.2,1 The complaining trustee shall provide a presentation which may be written or oral or both:

8.2,2 The respondent trustee shall provide a presentation which may be written or oral or both:

8.2,3 The complaining trustee shall then be given an opportunity to reply to the respondent trustee's presentation;

8.2,4 The respondent trustee shall then be provided a further opportunity to respond to the complaining trustee's presentation and subsequent remarks;

8.2,5 The remaining trustees of the Board shall be given the opportunity to ask questions of both parties;

8.2,6 The complaining trustee shall be given the opportunity to make final comments; and

8.2,7 The respondent trustee shall be given the opportunity to make final comments.

8.3 Following the presentation of the respective positions of the parties, the parties and all persons other than the remaining trustees who do not have a conflict of interest shall be required to leave the room, and the remaining trustees shall deliberate in private, without assistance from administration. The Board may, however, in its discretion, call upon legal advisors to assist them on points of law or the drafting of a possible resolution.

8.4 If the remaining trustees in deliberation require further information or clarification, the parties shall be reconvened and the requests made in the presence of both parties. If the information is not readily available, the presiding Chair may request a recess or, if necessary, an adjournment of the Code of Conduct hearing to a later date.

8.5 In the case of an adjournment, no discussion by trustees whatsoever of the matters heard at the Code of Conduct hearing may take place until the meeting is reconvened.

8.6 The remaining trustees in deliberation may draft a resolution indicating what action, if any, may be taken regarding the respondent trustee.

8.7 The presiding Chair shall reconvene the parties to the Code of Conduct hearing and request a motion to revert to the open meeting in order to pass the resolution.

8.8 All documentation that is related to the Code of Conduct hearing shall be returned to the Superintendent or designate immediately upon conclusion of the Code of Conduct hearing and shall be retained in accordance with legal requirements.

8.9 The presiding Chair shall declare the special Board meeting adjourned.

9. A violation of the Code of Conduct may result in the Board instituting, without limiting what follows, any or all of the following sanctions:

- 9.1 Having the Board Chair write a letter of censure marked "personal and confidential" to the offending trustee, on the approval of a majority of those trustees present and allowed to vote at the special meeting of the Board:
 - 9.2 Having a motion of censure passed by a majority of those trustees present and allowed to vote at the special meeting of the Board;
 - 9.3 Having a motion to remove the offending trustee from one, some or all Board committees or other appointments of the Board passed by a majority of those trustees present and allowed to vote at the special meeting of the Board, for a time not to exceed the trustee's term as trustee.
10. The Board may, in its discretion, make public its findings at the special meeting or at a regular meeting of the Board where the Board has not upheld the complaint alleging a violation of the Board's Code of Conduct or where there has been a withdrawal of the complaint or under any other circumstances that the Board deems reasonable and appropriate to indicate publicly its disposition of the complaint.

Legal Reference: Sections 60, 61, 68, 72, 80, 81, 82, 83, 84, 85, 86, 246 Education Act

April 2008, Appendix replaced October 2011, Appendix reviewed February 2018, September 2019, June 2022

APPENDIX B- CONFLICTS OF INTEREST

Trustees should not gain benefits or monetary rewards because of their position as a trustee except for any allowances, honorarium or remuneration approved by the Board for duties performed. The requirements outlined herein are in addition to Article 16 of Policy 19- Board Operations.

1. Trustees are expected to avoid both actual potential and perceived conflicts of interest with respect to their fiduciary duties and in all matters considered by the Board. Trustees shall act at all times in the best interests of the Board and the entire Division rather than any personal interests.

2. Trustees shall report any actual, potential or perceived conflict of interest, an actual or potential conflict of interest exists when a trustee is confronted with an issue in which the trustee has a personal or pecuniary interest. A perceived conflict of interest exists when a trustee is confronted with an issue in which the trustee may be seen to have a conflict, such as an issue or question involving or impact a family member of the trustee. For greater clarity,

a. a "personal interest" includes, but is not limited to, matters in which the trustee has any interest that may reasonably be regarded as likely to have influence on them when carrying out their duties and responsibilities; and

b. a "pecuniary interest" includes, but is not limited to, where a matter would or could give rise to the expectation of a gain or loss of money and includes "pecuniary interest" as defined in the Education Act.

3. In connection with any actual, potential or perceived conflict of interest in any matter being considered by the Board or a committee of the Board, a trustee must disclose the existence of the actual, potential or perceived conflict of interest and be given the opportunity to disclose all material facts to the other trustees and members of committees of the Board. Full disclosure, in itself, does not remove a conflict of interest.

4. Upon disclosing the actual, potential or perceived conflict of interest and all material facts, and after any desired discussion with the Board, the trustee shall leave the Board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining Board or committee members shall decide if a conflict of interest exists.

5. If the Board or committee members determine that a conflict of interest does exist, the trustee shall not vote on the matter and shall not participate in the decision and shall not attempt to influence the decision of other Board or committee members.

6. It is the responsibility of other trustees who are aware of an actual, potential or perceived conflict of interest on the part of a fellow trustee to raise the issue for clarification, first with the trustee and then, if needed, with the Board Chair or committee chair.

7. If the Board or committee has reasonable cause to believe a trustee has failed to disclose actual, potential or perceived conflicts of interest, it shall inform the trustee of the basis for such belief and afford the trustee an opportunity to explain the alleged failure to disclose.

a. If, after hearing the trustee's response and after making any further investigation as deemed necessary by the circumstances, the Board or committee determines that the trustee has failed to disclose an actual, potential or perceived conflict of interest, it shall take appropriate disciplinary and corrective action,

8. The minutes of the Board and all committees of the Board shall contain the names of the persons who disclosed or otherwise were found to have an actual, potential or perceived conflict of interest, the nature of the conflict, any action taken to determine whether the conflict was in fact present, and the Board's or committee's decision as to whether a conflict of interest in fact existed.

9. A trustee shall not also be an employee of the Division, nor shall a trustee receive any compensation for services rendered to the Division in any non-governance capacity. This provision shall not prohibit trustees from receiving authorized compensation for serving as a member of the Board or from receiving reimbursement for authorized expenses incurred during the performance of Board duties, as outlined in Policy 19- Board Operations.

10. The Board shall not enter into any contract or arrangement with any of its trustees or with a firm, organization, corporation, or partnership in which a trustee has a financial interest unless a more advantageous contract or arrangement is not reasonable possible with another firm, organization, corporation or partnership and the Board or committee of the Board have determined by majority vote of the disinterested trustees whether the contract or arrangement is in the Division's best interests, for its own benefit, and whether it is fair and reasonable.

April 2023