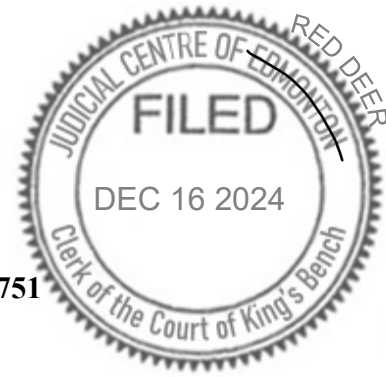


Court of King's Bench of Alberta

Citation: *LaGrange v Red Deer Catholic Separate School Division*, 2024 ABKB 751



Date:
Docket: 2310-01396
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 Decision #2 of the Board of Trustees (“Board”) of Red Deer Catholic Separate School Division (“Division”). My reasons with respect to the judicial review of Decision #1 are set out in *LaGrange v Red Deer Catholic Separate School Division*, 2024 ABKB 665 [*LaGrange #1*]. Following the release of *LaGrange #1*, I invited counsel for both parties to submit supplemental written submissions on this second review. Both parties did so, and I have considered those additional submissions.

[2] The issue in this judicial review is whether it was reasonable for the Board to find the Applicant in breach of sanctions issued as a result of Decision #1, in further breach of the Code of Conduct, and to disqualify the Applicant from serving as a trustee.

[3] I find that Decision #2 was reasonable in finding that the Applicant breached the sanctions imposed. I also find that it was reasonable to disqualify the Applicant. These are my reasons for confirming Decision #2 of the Board.

Issues

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

- 1) What is the standard of review?
- 2) Was it reasonable to find the Applicant in breach of the sanctions issued following Decision #1?
- 3) Was it reasonable to find the Applicant in breach of the Code of Conduct?
- 4) If the answer to question 2 or question 3 is “yes”, was it then reasonable to disqualify the Applicant from serving as a trustee?

Procedural History

[5] The Board released Decision #1 via motion at a special Board meeting on September 26, 2023. The written reasons for Decision #1 were released on October 13, 2023. Decision #2 was released via motion following special Board meetings on November 13 and 14, 2023. The written reasons for Decision #2 were released on November 24, 2023. The Applicant filed an Originating Application for Judicial Review of both Decisions. Notice was served on the Respondent Board.

[6] The Certified Record of Proceedings was filed on February 1, 2024.

Background

Decision #1

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

[8] 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”)

[9] The Meme Posting became the subject of a complaint that formed the basis for Decision #1. An extensive factual background is set out in detail in *LaGrange #1* at paras 8-41. For the purposes of these reasons, it is sufficient to re-state that the Board found that the Applicant’s Meme Posting was a violation of several policies under the Code of Conduct and the Board’s statutory obligations pursuant to the *Education Act*, SA 2012, c E-0.3 [*Education Act*]. As a result, the Board issued the following sanctions (the “Censure Motion”) on September 26, 2023:

As a result, as 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 a similar nature relating to Meme. (This term and condition shall be ongoing up to and including the End Date.)

September 28, 2023, Social Media Posts

[10] On September 28, 2023, the Applicant posted the following (collectively “the Social Media Posts”) to her Facebook account:

- a) An image of a wolf wearing makeup and licking its lips, with the caption “I just want to read some books to your chickens”; and
- b) A link to an article showing a photograph of a non-binary author with the caption “Parental rights really anger me.”

[11] On September 29, 2023, Board Chair Murray Hollman emailed the Applicant and attached the Social Media Posts. He reminded the Applicant of the serious implications of Decision #1 and the Applicant’s obligations as a trustee. He pointed out that violating the terms of the Censure Motion or further Code of Conduct breaches could lead to another hearing and possible disqualification depending on the outcome.

The Interviews

[12] On October 2, 2023, an online video program called “*Laura-Lynn Talks*” streamed an interview (“*Laura-Lynn Interview*”) with the Applicant as a guest. The Applicant was introduced as a trustee and the title beneath her name that was shown on screen at various points during the interview identified her as a “Red Deer Catholic School Board Trustee.” Throughout the program, the Applicant discussed the Meme Posting and the resulting complaint proceedings before the Board.

[13] On October 19, 2023, another online video program called “*Talk Truth*” aired an interview (“*Talk Truth Interview*”) with the Applicant (collectively the “Interviews”). The hosts introduced her as and the title shown beneath her name throughout the program declares her a “Red Deer School Trustee.” The Applicant discussed the Meme Posting, the Code of Conduct hearing, and citations with the hosts for the duration of the interview. The hosts indicated that they would like to have her back on the program on a subsequent date to discuss the outcomes of her case.

The Second Complaint

[14] A second complaint letter by a fellow trustee (“Complainant #2”) was provided to the Board’s Chair on October 16, 2023. It alleged further contraventions of the Board’s Code of Conduct by the Applicant as a result of the Social Media Posts and the *Laura-Lynn Interview*. The letter further alleged that the Applicant’s conduct was in breach of the Censure Motion handed down after Decision #1.

[15] This complaint was supported by an additional letter from a second trustee of the Board, requesting that a Code of Conduct hearing be held.

[16] The complaint alleged that the Applicant’s participation in and statements made during the *Laura-Lynn Interview* violate Board Policy 4 – Trustee Code of Conduct, clauses 1 (and by extension Board Policy 3 – Trustee Role Description), 5, 6, 7, 11, and 22.

[17] The complaint further alleged that the Applicant’s participation in the interview violated sanctions 1(b) and 1(c) of the Censure Motion.

November 13 and 14, 2023 Special Board Meeting

[18] The Board held a special meeting on November 13-14, 2023, for the second Code of Conduct hearing. This was done in accordance with Appendix ‘A’ to Board Policy 4 – Trustee Code of Conduct.

[19] Complainant #2 did not participate in any way beyond the scope of making submissions as the trustee who made the second complaint. The trustee who had lodged the first complaint (“Complainant #1”) that was the subject of the proceedings in *LaGrange #1* also did not participate in the second Code of Conduct hearing.

[20] Materials considered by the Board include:

a) From Complainant #2

- i. Board Policy 4: Trustee Code of Conduct;
- ii. Board Motion and Supporting Reasons of October 13, 2023;
- iii. September 29, 2023, email from Board Chair Hollman to the Applicant;
- iv. October 2, 2023, link to Rumble video of *Laura-Lynn* Interview;
- v. October 20, 2023, Email to the Board from Board Chair Hollman with link to Rumble video of *Talk Truth* Interview;
- vi. October 16, 2023, letter of complaint;
- vii. October 16, 2023, supporting letter of complaint;
- viii. Board Policy 1: Divisional Foundational Statements;
- ix. Administrative Procedure No 103 – Welcoming, Safe and Caring, Inclusive and Respectful Learning Environments;
- x. Board Policy 3: Trustee Role Description; and
- xi. Media articles from TrueNorth and LifeSite.

b) Submissions of the Applicant, dated November 10, 2023

c) November 13, 2023, minutes of a Special Meeting of the Board of Trustees of the Red Deer Catholic Separate School Division

d) November 23, 2023, minutes of a Special Meeting of the Board of Trustees of the Red Deer Catholic Separate School Division

i. Position of Complainant #2

[21] Complainant #2 argued that the Applicant’s actions breached the Code of Conduct in four ways:

1. By failing to carry out her responsibilities as a trustee with due diligence, thus breaching Board Policy 4, clause 1 (referring to Board Policy 3, clauses 6.3, 6.4, 6.7, 6.18, and 6.20);

2. By failing to represent the Board with respect and decorum, and failing to reflect Board policies in her public communications, thus breaching Board Policy 4, clauses 7 and 22;
3. By failing to work in harmony with Board members including in communications to the electorate, thus breaching Board Policy 4, clauses 5 and 15; and
4. By failing to conduct herself in a dignified, ethical, and professional manner, thus breaching Board Policy 4, clause 6.

[22] Complainant #2 asserted that the Applicant's actions were also in violation of the Censure Motion. They argued that by continuing to represent the Board in an official capacity to news and media outlets, the Applicant violated sanction 1(b). The Applicant also allegedly violated sanction 1(c) by continuing to make public statements touching upon the 2SLGBTQIA+ community.

ii. Position of the Applicant

[23] The Applicant argued that the definitions used in the Censure Motion, particularly "represent", "official capacity" and "community", are vague and uncertain, and must be interpreted according to their ordinary meaning in the absence of a specified definition. She alleged that the Censure Motion was unclear and that she did not violate any of its terms. She fairly acknowledged that she did not seek clarification of any of the terms of the sanctions. However, her position was that the onus was on the Board to make the Censure Motion clear, and not on the Applicant to seek clarification.

[24] The Applicant stated that she did not communicate in the Interviews in her official capacity as a trustee, either intentionally or unintentionally. She asserted that the second complaint arose because of a disagreement over her personal beliefs, and in no way did her actions violate the Code of Conduct.

[25] The Applicant advanced the argument that she was expressing her rejection of 2SLGBTQIA+ (and more specifically transgender) ideology and was not speaking specifically about any individual member or collective person of that community. She claimed to love all students but asserted that transgender ideology is a mental disorder and that rejecting this purely ideologically was consistent with her pastoral obligations and adherence to traditional Catholic values.

Standard of Review

[26] As in *LaGrange #1*, the parties agree that the standard on this judicial review is reasonableness as set out by the Supreme Court of Canada ("SCC") in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*]. I remind myself that 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.

[27] The focus of my 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. 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.

[28] The onus is on the Applicant, who is challenging the Decision, to demonstrate it is unreasonable: *Vavilov* at para 100.

[29] Reasonableness refers to the acceptability and defensibility of the Decision and the justifications offered by the Board on key points. The focus of reasonableness review must be on the decision actually made by the Board, including both their reasoning process and the outcome.

[30] In applying the reasonableness standard, I should not ask what decision I 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. I 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. As the reviewing court, I must begin by examining the reasons provided with “respectful attention” and seeking to understand the reasoning process followed by the Board to arrive at its conclusion: *Vavilov* at paras 83-84.

[31] 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.

[32] In assessing reasonableness in this matter, I must ask myself the following questions:

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

[33] The governing legislation is the *Education Act*. The preamble includes the following:

[...]

WHEREAS students are entitled to welcoming, caring, respectful and safe learning environments that respect diversity and nurture a sense of belonging and a positive sense of self;

[...]

WHEREAS the Government of Alberta recognizes the importance of an inclusive education system that provides each student with the relevant learning opportunities and supports necessary to achieve success;

[...]

[34] 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.

[35] 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,

[...]

(2) A board shall establish, implement and maintain a policy respecting the board's obligation under subsection (1)(d) to provide a welcoming, caring, respectful and safe learning environment that includes the establishment of a code of conduct for students that addresses bullying behaviour.

[...]

(3) A code of conduct established under subsection (2) must

[...]

(d) contain the following elements:

(i) a statement of purpose that provides a rationale for the code of conduct, with a focus on welcoming, caring, respectful and safe learning environments;

[...]

[36] 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, [...]

[37] The *Education Act* provides for the disqualification of a trustee in section 87:

87(1)(c) A person is disqualified from remaining as a trustee of a board if that person has breached the code of conduct of the board established under section 33, where the

sanction for the breach under the code of conduct may be determined by the board to be disqualification.

The Decision Was Reasonable

[38] As required by the *Education Act*, the Board has developed policies which apply to all trustees. As I will explain below, 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. Further, their findings that the Applicant's actions contravened the Censure Motion were also reasonable and intelligible.

Context of the Decision

[39] The Board began their analysis by contextualizing their Decision within their mission statement:

The Red Deer Catholic Separate School Division is committed to supporting inclusive communities that foster care and compassion of students, families and staff with a complete offering of learning opportunities delivered within the context of Catholic teachings and tradition, and within the means of the Division.

[40] They then turned to Policy 1 – Division Foundational Statements (“Board Policy 1”), which includes beliefs that are intended to govern the interactions of the Division in their role as stewards of Catholic education. The Board specifically referenced 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.

[41] The Board pointed out that Administrative Policy 103 sets out how Board Policy 1 is to be carried out by Division staff. It requires that personnel maintain 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.”

[42] Trustees are required by the Code of Conduct to uphold the highest ethical standards and govern themselves at all times in a respectful manner that affirms the worth of each person. The Board stressed the importance of doing so with respect to students, as emphasized by the Code of Conduct as follows:

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.

[43] Finally, the Board highlighted Board Policy 3 – Trustee Role Description (“Board Policy 3”), clauses 6.3, 6.4, 6.7, 6.18, and 6.20. They noted that a failure to adhere to the responsibilities outlines in those sections would be considered a breach of clause 1 of Board Policy 4. The Board further highlighted clauses 5, 6, 7, 15, 16, and 22 of Board Policy 4. They noted that Appendix ‘A’ to the Code of Conduct sets out a non-exhaustive list of possible sanctions and remedial measures which supplement s 87(1)(c) of the *Education Act*.

[44] Earlier in their reasons, the Board also referenced *Del Grande v Toronto Catholic District School Board*, 2023 ONSC 691 [*Del Grande*], as they had in Decision #1. They reiterated that the case was useful for the following principle:

[T]he Board has a statutory obligation to promote student well-being and a positive and inclusive school climate. The Board also has an obligation to enforce a minimum standard of conduct expected of its Trustees. All Trustees have an obligation to comply with the *Code of Conduct* and to assist the Board in fulfilling its duties. Sanctioning the Applicant for making disrespectful comments was not contrary to the *Education Act*, but consistent with the *Act's* statutory objectives.

[45] This context – together with the factual background – is helpful in understanding the remainder of the Board's analysis in Decision #2.

Was it reasonable to find the Applicant in breach of the Censure Motion?

[46] Yes. The Board found that the Applicant's actions in both the Interviews and the Social Media posts breached two sanctions in the Censure Motion. I find this conclusion reasonable and confirm it.

a) Sanction 1(b) of the Censure Motion

[47] Sanction 1(b) required that the Applicant:

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.

[48] In considering whether the Applicant had violated this sanction, the Board accepted the Applicant's argument that the interpretation of this section must accord with the plain and ordinary meaning of its language. However, they also found that any interpretation must be reasonable and account for the context in which it was written.

[49] The Board pointed out that the Applicant was identified as a trustee of the Board in the Interviews. Indeed, the title attributed to the Applicant in both Interviews read clearly identified her in her role as a trustee. The Board pointed out that the Interviews both discussed educational issues within the scope of the trustee's job responsibilities and the Code of Conduct hearing at issue in Decision #1, which was a procedure applicable only to her in her capacity as a trustee.

[50] The Board concluded that a reasonable person hearing the comments of a Board trustee, identified verbally and in writing as such, would not anticipate that such comments were offered solely in the trustee's personal capacity absent, at minimum, a specific declaration to that effect from the trustee.

[51] The Applicant argues on this judicial review that the Board conflated representations made on her own behalf with representations made in her official capacity as a trustee. She was representing herself in her own personal capacity.

[52] I am not convinced that the Board engaged in any logical fallacy as asserted by the Applicant. They viewed the Interviews as a public member of the Division might and considered the commentary within its context. No clarification was offered by the Applicant. She self-

identified, was titled as, and was introduced in the Interviews as a Board trustee. She made extensive representations about what was happening in schools and in education of children generally.

[53] The Board’s decision finding that the Applicant had violated sanction 1(b) of the Censure Motion was reasonable and I confirm it.

b) Sanction 1(c)(i) of the Censure Motion

[54] Sanction 1(c)(i) required that the Applicant:

- c. shall cease making any public statements in areas touching upon or relating to,
 - i. the 2SLGBTQ+ community

[55] The Board considered and rejected the Applicant’s argument that the term “community” was not defined in the Censure Motion and must therefore be understood to refer to specific persons or group of 2SLGBTQIA+ persons. The Applicant claimed that her comments related purely to ideology, not a particular individual or group of individuals. The Board did not find this parsing convincing.

[56] In considering the Applicant’s position, the Board first pointed out the artificiality of separating individual members of the 2SLGBTQIA+ from the gender and sexual orientation expression that forms a core understanding of their identity.

[57] The Board then rejected the Applicant’s assertion that the Social Media Posts communicated her opposition to “transgender ideology” and not the 2SLGBTQIA+ community for the same reasons provided in Decision #1. Namely, that there is no adequate way to communicate such a nuanced message – especially to children – in a meme with no further explanation.

[58] The Board found that the Interviews were public statements in areas touching upon or relating to the 2SLGBTQIA+ community. They also found that the Social Media Posts were content of a similar nature to the Meme Posting at issue in *LaGrange #1*, and also touched upon issues relating to the 2SLGBTQIA+ community.

[59] In this judicial review, the Applicant advances the same argument that she did not communicate anything reasonably relating to the 2SLGBTQIA+ community because her comments were about ideology and not individuals.

[60] The evidence before the Board and their reasons for rejecting this argument are sound. The Applicant attempts to separate beliefs at the core of some 2SLGBTQIA+ persons’ identity from them as a person. Shared ideas and beliefs are arguably what makes a community a community. I do not find that a reasonable person, let alone a child, would make such a distinction.

[61] As an example from the evidence before the Board, the Social Media Posts included an image of a wolf wearing makeup with the statement “I just want to read some books to your chickens.” The statement does not read “My ideas about gender expression want to read some books to your chickens.” The image does not carefully identify that the wolf is not meant to represent a person. Indeed, a reasonable person viewing an image of a wolf wearing facial makeup might conclude that this was an attempt to anthropomorphize the wolf. The Board

pointed out the problem with communicating nuanced ideas with broad strokes memes in Decision #1 and did so again in Decision #2. I find that this reasoning is intelligible and based in the evidence before the Board.

[62] The Board was reasonable to conclude that both the Interviews and the Social Media Posts constituted violations of sanction 1(c)(i), and I confirm their finding as a result.

Was it reasonable to find the Applicant in breach of the Code of Conduct?

[63] Yes. The Board was reasonable in concluding that the Interviews and the Social Media Posts by the Applicant constituted further breaches of the Code of Conduct.

[64] As the Applicant largely relied on the arguments she had advanced in Decision #1, the Board similarly relied on their previous reasons in rejecting those arguments. I have already found those reasons to be justifiable and logical in *LaGrange #1*. As a result, I will make reference to my reasons in that decision where the Board has similarly referenced their conclusions in Decision #1.

a) Board Policy 3, Clause 6.3

[65] Clause 6.3 of Board Policy 3 reads as follows:

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.

[66] On this finding, the Board largely relied on their reasoning in *LaGrange #1*. They noted that the Applicant has continued to engage in conduct that is disparaging of the 2SLGBTQIA+ community despite guidance with respect to Division and Board inclusivity initiatives. She does this via a variety of communication methods made public, including posts on social media and through talk interviews.

[67] The Applicant in written submissions on this review cited a number of passages from the Code of Conduct to highlight that her communications were in line with the Code of Conduct's requirement that trustees are stewards of Catholic education. She further argued that there is nothing in the Code of Conduct preventing her from challenging differing ideologies.

[68] All of this was discussed at some length in *LaGrange #1* at paras 42 and 73-81. My findings with respect to theological arguments stand. As the Board indicated in their reference to Belief 10 and Administrative Policy 103, trustees are to take a holistic and inclusive view in applying Board Policy 1 – a view that “respects diversity, equity and human rights and fosters a sense of inclusion and belonging.”

[69] These principles are clearly not reflected in the Applicant's communications. As a result, the Board's decision with respect to Board Policy 3, clause 6.3 is reasonable and I confirm it.

b) Board Policy 3, Clause 6.4

[70] Clause 6.4 of Board Policy 3 reads:

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.

[71] The Board relied on their reasoning in Decision #1. My rulings with respect to the Applicant's Meme Posting and public perception can be found in ***LaGrange #1*** at paras 88-93. As the Board found, the Social Media Posts at issue in this case continue to fail in representing the interests of the Board, her duties as a trustee, or the public's perception of her actions.

[72] The Applicant's repeated arguments in this judicial review, asserting that her communications are in line with her duty to promote Roman Catholic values, continue to fail for the same reasons. They take a narrow and exclusionary view of what those Catholic values are, in a manner that is inconsistent with Division goals with respect to inclusivity. The Interviews can be said to go even further by either denigrating the Board or giving the impression that the Board holds views which it does not.

[73] I find further support for this conclusion from the Ontario Court of Appeal's decision upholding ***Del Grande***. They held that the lower Court's finding that the appellant trustee had not been sanctioned for his personally held Catholic religious ideology, but for his extreme and derogatory rhetoric that the Board had found fell below the standard required of a trustee: ***Del Grande v Toronto Catholic District School Board***, 2024 ONCA 769 [***Del Grande CA***] at para 39. In finding that this decision was reasonable as it reflected a proportional balancing, the Court continued:

I see no error in the Divisional Court's analysis on this point. Mr. Del Grande's argument on this point was rejected in *Volpe v. Wong-Tam*, 2023 ONCA 680, 487 D.L.R. (4th) 158, leave for appeal refused, [2024] S.C.C.A. No. 41041, in which publishers of anti-LGBTQ+ tracts argued that their speech could not be accurately characterized as discriminatory because it was an articulation of Roman Catholic doctrine. As Miller J.A. eloquently stated, at para. 42 of *Volpe*:

The problem with the appellants' articles was not that they took a position adverse to that of LGBTQ2S+ advocates with respect to Roman Catholic doctrine and education about sexuality. The problem was that they "used derogatory and prejudicial language" to do so, using stereotypes of "predation, pedophilia, and socially destructive behaviour." This was the aspect of the appellants' speech that exposed them to the complaint that they expressed discriminatory statements.

Del Grande CA at para 40.

[74] This is similarly the case here. By using Social Media Posts like the wolf meme, the Applicant similarly invited stereotypes of 2SLGBTQIA+ persons as predators. The nuanced argument that the Applicant claims she was advancing is lost in such a broad posting open to interpretation. This lack of care is precisely what the Board discusses at length throughout their reasons.

[75] As a result, the Board's decision with respect to Board Policy 3, clause 6.4 is reasonable and I confirm it.

c) *Board Policy 3, Clause 6.7*

[76] Clause 6.7 of Board Policy 3 reads:

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.

[77] The Board found that the Applicant had openly failed to support Decision #1 and the Censure Motion. They noted that the Applicant had publicly denigrated the Board and expressed her intention not to comply. This is evident in the Interviews, during which it can be observed that the Applicant nearly laughs at the decision of the Board and ridicules the sanctions imposed on her as a result.

[78] The Applicant argued in this judicial review that her statements were clearly personal and in no way reflect the corporate opinion of the Board, as such the clause does not apply. She further argued that the provision is obviously intended to address situations where a trustee may be required to speak after opposing a Board motion.

[79] This interpretation is selective and narrow. Filing for judicial review can be said to be disagreeing with the Board and not supporting their decision. However, that is a process provided for in the Code of Conduct and the appropriate forum for such conflict. Instead, the Applicant took to various forms of media to openly deride the decision of the Board and to continue to make statements and Social Media Posts that might leave a member of the public with the impression that the Board and Division were not inclusive of the 2SLGBTQIA+ community.

[80] I find the Board's decision with respect to Board Policy 3, clause 6.7 reasonable and confirm it.

d) Board Policy 3, Clause 6.18

[81] Clause 6.18 of Board Policy 3 reads as follows:

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

[82] The Board found that the Applicant's actions had made a community within their Division feel unwelcome and unsafe. In their reasons, the Board referred to a specific quote drawn from the *Talk Truth* Interview:

Teachers they're not in the profession to indoctrinate your children. They, they love children. They're there to make the world better, um, and so, you know, you have to understand that part of it. But most of us that have gone to university in the last 20 years, we have been victims of this indoctrination ourselves. And so, when you're indoctrinated, you don't think anything of what you're, you know, the way you're teaching it the words you're using. And so, it just becomes your normal, um, and so this filters down it's a very slow drip into our classrooms. And so, it's you know it's just being aware of how the process works and the whole agenda of how they're indoctrinating us, where that's coming from you have to understand that as well. So be aware, um, as a parent take your authority back. So, you are the primary educator and we can't forget that. We as parents, so I have a unique perspective here because I'm a parent, I have a background I was a teacher and I'm now a school trustee. So, I've seen the whole gambit basically and so I have a very interesting perspective and authority is huge. So, parents have given their authority away to something that maybe they perhaps didn't recognize. And so, it's

getting that authority back and educating your kids. You should be educating your kids, you know, about relationships and sexuality, that's your job as a parent. That's between you, your child, and God. Not the teachers. And so, the teachers are there to do reading, arithmetic, you know that sort of thing right. And you know we need to just make sure that we are as a parent, we know what the boundaries are.

[83] It is easy to see how a 2SLGBTQIA+ student or teacher might feel unwelcome in the Division as a result of a trustee speaking about your identity and discussion of the validity of your identity as a form of indoctrination. It is clear from the evidence before the Board how they could logically reach their conclusion.

[84] The Applicant in her written submissions states that anyone made to feel unwelcome or unsafe by her comments are just "some members of some communities" that feel "offended by an opinion about an ideology." Those same people would be equally offended by the fact that Roman Catholic doctrine describes their lifestyles as "gravely depraved and intrinsically disordered." I pause here to note that the Applicant – in support of this argument – refers to a number of passages from Catholic Catechism. However, she highlights but seems to disregard the following excerpt:

The number of men and women who have deep-seated homosexual tendencies is not negligible. This inclination, which is objectively disordered, constitutes for most of them a trial. They must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided. [Emphasis added.]

[85] However, the Board found and I have agreed that this is not the forum for theological debate about whether or not Catholicism is inclusive of 2SLGBTQIA+ individuals. The Board has pointed out in Decision #1 and again in Decision #2 that the place to debate the ideological basis for Board policies and inclusivity initiatives is at the Board table and not on social media. The Board's mandate – as set out in their reasons – is to include and welcome all students, whether or not the Applicant agrees with their lifestyle.

[86] I find the Board's reasons – viewed holistically – are reasonable and confirm their decision with respect to Board Policy 3, clause 6.18.

e) Board Policy 3, Clause 6.20

[87] Clause 6.20 of Board Policy 3 reads as follows:

The trustee will adhere to the Trustee Code of Conduct.

[88] Given the Board's findings with respect to numerous breaches of the Code of Conduct, their reasons as a whole amply support this conclusion. Having found that the Applicant was in breach, it follows that she will have violated clause 6.20 of Board Policy 3.

[89] The Applicant on this judicial review asserts that because she has not violated the Code of Conduct, she has not breached this clause. She also argues that the Board's reasons are vague.

[90] I fail to see how that can be the case. The Board set out 6 breaches of the Code of Conduct that it found the Applicant had breached. After those findings are made, the violation of clause 6.20 is made out. As will be explained below, I find the Board's explanation for each of these breaches to be justifiable on the evidence before them.

[91] As a result, I confirm the Board’s decision with respect to Board Policy 3, clause 6.20.

f) Board Policy 4, Clause 1

[92] Clause 1 of Board Policy 4 reads:

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

[93] The Board found that the Applicant had failed to carry out her responsibilities as a trustee with reasonable diligence. They held that she had knowingly declined to do so with respect to the 2SLGBTQIA+ community.

[94] The Applicant argues in this review that because the Board has failed to justify any breaches of Board Policy 3, she cannot be found to be in breach of this clause. She also relies once again on the Catholic Catechism to justify her choice to unilaterally decide that 2SLGBTQIA+ ideology has no place in their Division with no discussion with the Board.

[95] I have found – for the reasons set out above – that the breaches of Board Policy 3 were justifiable and I have confirmed them. As a result, I confirm the Board’s finding with respect to Board Policy 4, clause 1 and confirm it as well.

g) Board Policy 4, Clause 5

[96] Clause 5 of Board Policy 4 states:

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.

[97] The Board found that the Applicant had not endeavoured to work with her fellow trustees in a spirit of harmony and cooperation. Instead, they found that she had conducted herself contrary to Board and Division guidance, disregarded Decision #1 and the Censure Motion, and denigrated and disrespected her fellow trustees.

[98] The Applicant argues before me that this clause applies only during debate.

[99] Even if I were to accept the Applicant’s interpretation of the clause as only requiring cooperation and harmony during debate, there are examples within the Board’s very process in debating this Code of Conduct hearing of the Applicant’s dismissive and disrespectful language with respect to her fellow trustees. As noted in their reasons:

- a. The Applicant’s written submissions contained gratuitous sarcastic commentary:
 - i. “[...] submissions of [Complainant #2], such as they are.”;
 - ii. “Unfortunately, the Board fails to grasp this, whether disingenuously or by honest mistake.”;
 - iii. “[...] by believing or convincing themselves [...]”; and
 - iv. “[...] failure on the part of the Board, intentional or unintentional [...]”
[Emphasis added.]

[100] The Board noted as well that the Applicant's written submissions dismiss both complaints against her as the result of a "liberal" or "woke" worldview. From her written arguments, as cited by the Board:

No "expertise" is needed, (...) , to acknowledge that it is severely mentally disordered for someone to think they are not the gender (sex) God created them to be and to further think they can change their gender (sex) to something other than what it is. While such commentary may offend liberal, secular sensibilities, it aligns with Catholic beliefs and the natural law associated with Catholic beliefs, which rejects the man-made idea that only certain "experts", and not lay believers, may identify unnatural and/or sinful behaviours.

[101] This is not an example of cooperative, productive discourse between respected colleagues. The language employed towards the Board in these proceedings was inflammatory and in direct contradiction to clause 5 of Board Policy 4 during the course of debate over Code of Conduct proceedings. This was noted by the Board in their reasons.

[102] I find the conclusion of the Board with respect to Board Policy 4, clause 5 reasonable and confirm it.

h) Board Policy 4, Clause 6

[103] Clause 6 of Board Policy 4 reads:

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

[104] The Board found that the Applicant had failed to conduct herself with dignity, professionalism, and ethically. They found that she had disrespect the Board, as well as a valued and respected community within the educational community that she was elected to serve. The Board relied on their reasons in Decision #1 where this clause had previously been discussed.

[105] The Applicant argues in this judicial review that this clause is too broad and subjective to provide an objective standard against which her conduct must be measured. What is considered professional or ethical by the Board is simply relying on their personal feelings.

[106] This is an untenable position. *Vavilov* mandates that my review demonstrate respect for administrative decision makers like the Board who are experts in their particular fields and bring a level of understanding. The same must be said here, that the Board is presumed to possess the ability to reflect its mandate and policies in assessing the professionalism and ethics required of its members.

[107] As set out in *LaGrange #1* at paras 111-117, I do not find that this clause is too subjective to be enforceable. The Board's reasons amply justify their finding that the Applicant violated Board Policy 4, clause 6 and I confirm it.

i) Board Policy 4, Clause 7

[108] Clause 7 of Board Policy 4 reads:

Trustees shall reflect the Board's policies and resolutions when communicating with the public.

[109] The Board found that the Applicant had not only not reflected Board policy and resolutions in public communications but had spoken about them with open disdain and disregard. The Interviews are clear evidence of this attitude towards both Board policy and Decision #1.

[110] The Applicant argues that – similar to clause 6.7 of Board Policy 3 – this requirement would effectively bar her from seeking judicial review. This is simply not the basis for the Board’s finding of non-compliance. It was her public communications to various media platforms in which she openly flouted Decision #1 and the Censure Motion.

[111] The Code of Conduct provides for a manner in which to express disagreement with the Board’s resolutions via judicial review. The Code of Conduct invites debate over policies at the Board table. Neither option is what was at issue for the Board and this is clear in their reasons.

[112] I find their conclusion reasonable with respect to Board Policy 4, clause 7 and confirm it.

j) Board Policy 4, Clause 15

[113] Clause 15 of Board Policy 4 states:

Work together with fellow trustees to communicate to the electorate.

[114] The Board noted that the Applicant had not worked with the Board to communicate with the electorate. Instead, she engaged in her own media communications in a manner that was contrary to Board and Division policy, and in violation of the Censure Motion.

[115] The Applicant’s argument on this point is confusing and seems to suggest that the Board has not proven a negative. It also appears to suggest that she might have discharged this duty but references no evidentiary foundation for this allusion. In fact, her submissions also appear to admit that she has not collaborated with her fellow trustees in her communications because they possess an opposing ideology.

[116] Nevertheless, these were communications made publicly and widely available without working with fellow trustees. I have already found that they clearly touched upon issues that fell within the scope of the Board’s duties.

[117] I confirm the Board’s conclusion with respect to Board Policy 4, clause 15 as reasonable.

k) Board Policy 4, Clause 22

[118] Clause 22 of Board Policy 4 provides:

Represent the Board responsibly in all Board-related matters with proper decorum and respect for others.

[119] The Board found that the Applicant had failed to represent the Board responsibly and with proper decorum and respect for others as it relates to Board-related matters. They referenced the Interviews in which the Applicant is clearly and unequivocally identified as a trustee. They note that no indication was given by the Applicant that she was speaking solely in her personal capacity. The Interviews clearly and openly discussed Board business. During these public communications, the Applicant showed no respect for either the Board or the 2SLGBTQIA+ community.

[120] The Applicant argues that her conduct was clearly personal and did not represent the Board. She claims that she has no obligation to disclaim any representation of the Board. She further asserts that she clearly could not be viewed as representing the Board when speaking about something the Board did to her with which she did not agree.

[121] I have already found that her Meme Posting at issue in *LaGrange #1* would lead people to conclude that the Applicant was speaking about issues clearly touching on teaching and education, with a clear connection to her purview as a school trustee: *LaGrange #1* at paras 102-110. I adopt my conclusions in that case with respect to the Social Media Posts and Interviews at issue in this judicial review.

[122] The Interviews not only express her disagreement with the Board – an issue on which the Board fairly concedes there might be any confusion – but her comments are not limited to that. They discuss larger educational policy and the Applicant’s belief that teachers may be unaware of their own brainwashing. She expresses serious concern over inclusivity initiatives in schools. These are broad topics that clearly touch on Board-related matters.

[123] The Social Media Posts reference reading to children and non-binary teachers expressing frustration over “parental rights.” Again, these are topics well within the scope of the Board’s work.

[124] There is no positive obligation on the Applicant to distance herself from the Board. However, as is pointed out by the Board in their reasons, it is an easy step that would help to clarify otherwise blunt statements viewed without the full context.

Overall

[125] Viewed in their entirety and in the context of the evidence and the statutory requirements of the *Education Act*, I find that the Board’s decision did meet the requisite standard of justification, transparency and intelligibility and is justified within its factual and legal constraints.

The Reasonableness of the Sanction Imposed

[126] Following their Decision, the Board determined that the appropriate sanction was disqualification pursuant to section 87(1)(c) of the *Education Act*. They were not unanimous in this motion, with one trustee dissenting.

[127] In their reasons, the Board explained as follows:

The Board wishes to be clear - the Second Motion is not the result of the Original Meme, or a single social media post or single interview. Rather, the conduct considered at the Second Code of Conduct Hearing was as outlined in the Second Complaint. The content of the Social Media Posts and the Interviews also have an impact beyond a single trustee. Trustee conduct which suggests a lack of inclusivity of all individuals, regardless of sexual orientation or gender, impacts the community that the Division serves and students in particular.

[128] The dissenting trustee had suggested that a collaborative resolution could be reached following some form of alternative measure. The Board rejected this idea given the Applicant’s repeated indications both verbally herself in the Interviews and through her counsel that she has

no intention of complying with certain sanctions that the Board considers necessary. The Board also pointed to the Applicant's assertion in the *Talk Truth* Interview that she would not do anything differently given the chance. All of this was taken to be a clear indication that the Applicant did not treat the process with the weight and seriousness they had hoped, accruing a number of breaches within a short period of time.

[129] The Applicant correctly points out that if I am to overturn a penalty imposed by the Board, I must find that they "made an error in principle or that the penalty was clearly unfit, which is to say that it is manifestly deficient or excessive and is a substantial and marked departure from penalties in similar cases": *Khan v Law Society of Ontario*, 2022 ONSC 1951 at para 77.

[130] The Applicant argues that if disqualification was not appropriate in *Del Grande*, then it cannot be appropriate in this case. However, I find that it is distinguishable in light of the fact that *Del Grande* was not dealing with a second set of breaches following deliberate failure to comply with a previous censure motion. A lesser sanction had not been effective at stopping the behaviour in this case. The Board was entitled to find that disqualification was necessary in light of all of the circumstances.

[131] Appendix A to the Code of Conduct provides a non-exhaustive list of potential sanctions and the *Education Act* permits the Board to determine that disqualification is appropriate upon a finding of breaches of a Code of Conduct.

[132] I have been able to find no similar cases in Alberta that would be of assistance, nor did counsel provide any. However, I find that the punishment here is not excessive or clearly unfit. The Board committed no error in principle in determining that disqualification was the appropriate sanction. As a result, I confirm their decision to disqualify the Applicant pursuant to their authority under the *Education Act*.

Conclusion

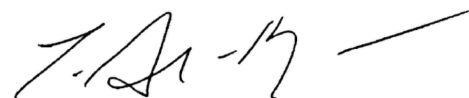
[133] I find the Board's decision reasonable and confirm it, along with the sanction of disqualification.

Costs

[134] 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 16th day of December, 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 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 B - 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