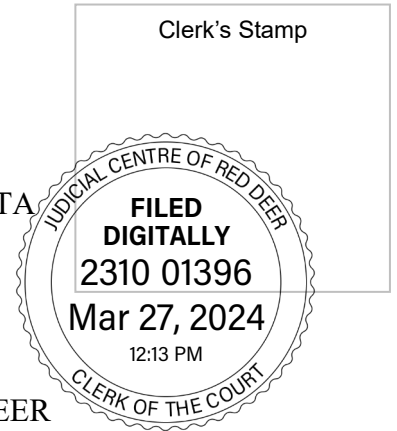


COURT FILE NUMBER 2310 **01396**  
COURT COURT OF KING'S BENCH OF ALBERTA  
JUDICIAL CENTRE RED DEER  
APPLICANT MONIQUE LAGRANGE  
RESPONDENT THE BOARD OF TRUSTEES OF RED DEER  
CATHOLIC SEPARATE SCHOOL DIVISION  
  
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## **INTRODUCTION**

1. The Applicant, Monique LaGrange, is a former trustee of The Board of Trustees of Red Deer Catholic Separate School Division.
2. The Respondent is The Board of Trustees of Red Deer Catholic Separate School Division (“Board”).
3. The Applicant herein challenges the Board’s November 14, 2023 decision and November 24, 2023 reasons (collectively “Decision 2”) to disqualify her on the basis of contravention of the Board’s policies and associated sanctions. Specifically, the Applicant challenges Decision 2 procedurally on the basis of fairness and substantively on the basis of a number of legal errors including misinterpretation of Board policies; application of invalid, inappropriate and/or disproportionate sanctions flowing from a previous decision and reasons (collectively “Decision 1”); and invalid, inappropriate and/or disproportionate sanctions levied in Decision 2.

## **BACKGROUND**

4. On or about August 27, 2023, the Applicant posted a “disappearing” story on her personal Facebook account. The post took the form of a meme, displaying two photographs: a historical photograph of children holding swastika flags; and a contemporary photograph of children holding progress pride flags. The meme was captioned, “Brainwashing is brainwashing”.<sup>1</sup>
5. The Applicant considered the post to succinctly address an issue that troubled her, both politically and spiritually: promoting ideology to and through children who are too young to understand it, grapple with its implications, and endorse it amounts to brainwashing.
6. Reaction to the Applicant’s post was mixed, but the vast majority of people who weighed in on the controversy agreed unequivocally with the Applicant’s view both of the post and of

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<sup>1</sup> Amended Certified Record of Proceedings (“CROP1”) at 29.

the overarching issue to which the post was addressed.<sup>2</sup> The Board received six letters, largely from offended teachers, denouncing the Applicant's post.<sup>3</sup>

7. On September 5, 2023, "a motion was passed by the board of trustees to send a letter to the Minister of Education...seeking the removal of Trustee LaGrange".<sup>4</sup>
8. On September 6, 2023, a "conciliatory" meeting was held during which the Applicant "was offered the opportunity to explain her actions and to potentially put forth an apology".<sup>5</sup> The Applicant neither apologized nor demonstrated "remorse", holding the conviction she had done nothing wrong or inappropriate in making the post.
9. In a letter dated September 7, 2023, Chair Murray Hollman attempted to enlist the assistance of the Minister of Education to remove the Applicant: "[O]n September 5, 2023, our Board passed, by majority vote a motion (Motion) seeking your assistance to have the Trustee dismissed".<sup>6</sup>
10. On September 7, 2023, Board Vice Chair Dorraine Lonsdale sent a letter to Board Chair Murray Hollman, alleging that the Applicant's communication breached sections 1, 6, 7 and 22 of Policy 4: Trustee Code of Conduct.<sup>7</sup> On the same date, Board Trustee Cynthia Leyson provided a letter in support of Vice Chair Dorraine Lonsdale's complaint, pursuant to the policy requirement.<sup>8</sup>
11. On September 7, 2023, the Applicant was interviewed by a reporter from the *Western Standard*, in which the Applicant conveyed her position that the 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" and

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<sup>2</sup> See CROP1 at 78-81, 113-45 for 37 pages of letters supporting the Applicant and the post.

<sup>3</sup> CROP1 at 68-77.

<sup>4</sup> CROP1 at 25.

<sup>5</sup> CROP1 at 19.

<sup>6</sup> CROP1 at 67.

<sup>7</sup> CROP1 at 30.

<sup>8</sup> CROP1 at 32.

stated, “I did not resign because I believe I didn’t do anything wrong. I was elected to stand up and protect our children and that is what I am doing”.<sup>9</sup>

12. On or about September 13, 2023, the Applicant gave an interview to a reporter from *True North*, in which she reiterated her position: “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 the schools. This should be between kids and their parents”.<sup>10</sup>
13. Vice Chair Dorraine Lonsdale subsequently provided undated written submissions containing an expanded list of “infractions” entitled, “TRUSTEE CODE OF CONDUCT SUBMISSION TO THE BOARD OF TRUSTEES BOARD POLICY 4”.<sup>11</sup>
14. The Applicant responded, through counsel, with written submissions<sup>12</sup> in advance of a September 25, 2023 special meeting convened by the Board (the “Hearing”).
15. On September 26, 2023, the Board passed a motion<sup>13</sup> censuring the Applicant, with reasons<sup>14</sup> in support of the motion issued on October 13, 2023 (collectively “Decision 1”).
16. Prior to Decision 1, the Applicant participated in an interview on a show entitled *Laura-Lynn and Friends*. The episode aired after Decision 1.<sup>15</sup>
17. Following Decision 1, *Talk Truth* published a video interview with the Applicant.<sup>16</sup> Various media outlets also published, by way of video and print, comments from the Applicant’s counsel. Neither the Applicant nor her counsel “represented” the Board in an “official capacity” in their media comments. Neither the Applicant nor her counsel took aim at any “community”.

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<sup>9</sup> CROP1 at 35.

<sup>10</sup> CROP1 at 63.

<sup>11</sup> CROP1 at 19.

<sup>12</sup> CROP1 at 83.

<sup>13</sup> CROP1 at 148.

<sup>14</sup> Certified Record of Proceedings (“CROP2”) at 42.

<sup>15</sup> CROP2 at 61.

<sup>16</sup> CROP2 at 62.

18. Following Decision 1, the Applicant posted a news article about a non-binary children’s book author who had stated, “Parental rights really anger me”,<sup>17</sup> and a meme depicting a wolf wearing makeup with the caption, “I just want to read some books to your chickens”.<sup>18</sup>
19. On October 16, 2023, Trustee Sharla Heistad submitted to the Board a further complaint (the “Second Complaint”), alleging that the Applicant contravened various sections of the Trustee Code of Conduct and Trustee Role Description and breached the conditions contained in Decision 1.<sup>19</sup> On November 3, 2023, Trustee Sharla Heistad produced written submissions in support of the Second Complaint.<sup>20</sup>
20. Trustee Sharla Heistad asserted the Applicant breached sanctions 1(b) and 1(c) of Decision 1,<sup>21</sup> yet failed to connect any of the impugned actions of the Applicant or her counsel to those sanctions.
21. Sanction 1(b) of the Decision states: “The Trustee **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**”.<sup>22</sup>
22. No definition of “represent” or “official capacity” was provided by the Board.
23. Sanction 1(c) of the Decision states: “The Trustee shall cease making any public statements in areas touching upon or relating to (i) the 2SLGBTQ+ community...including...speaking with various news outlets”.<sup>23</sup>
24. No definition of “community” or explanation of the scope of this condition was provided by the Board.

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<sup>17</sup> CROP2 at 59.

<sup>18</sup> CROP2 at 58.

<sup>19</sup> CROP2 at 63.

<sup>20</sup> CROP2 at 22-9.

<sup>21</sup> CROP2 at 39.

<sup>22</sup> CROP2 at 39. [Emphasis added.]

<sup>23</sup> CROP2 at 39.

25. On November 14 and 24, 2023, the Board issued Decision 2,<sup>24</sup> disqualifying the Applicant on the basis of breaches of certain sanctions in Decision 1 and fresh breaches of Board policies.

## LAW AND ARGUMENT

### **The *Vavilov* standard is the standard for a reasonable decision**

26. In order for a decision to be reasonable, the decision maker must base its decision on the facts in the evidence and the applicable law. Where the decision maker misunderstands the facts or the law, fails to consider them, considers them selectively, disregards the inconvenient ones, or otherwise fails to base its decision on the evidence before it and the applicable law, the decision will not be reasonable.
27. *Canada (Minister of Citizenship and Immigration) v Vavilov*<sup>25</sup> is instructive in ascertaining the proper role of the facts and the law in assessing whether a decision is reasonable. In brief, a reasonable decision must actually connect the law on which the decision maker relies to the facts of the case.

### **Procedural Fairness**

#### ***To the extent the disqualification decision flowed from violating sanctions imposed in Decision 1, it is procedurally unfair***

28. Decision 2 flowed in part from the procedurally unfair process employed in arriving at Decision 1, with no clear delineation between new supposed Code violations and former violations of the Code and Decision 1 sanctions. In fact, most of the time, the Board simply referred the Applicant to its previous reasons.
29. No Decision 1 sanctions were validly imposed, because Decision 1 was tainted by procedural unfairness. Accordingly, absent extricable Decision 2 violation(s) which would independently justify disqualification, the disqualification cannot be justified.

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<sup>24</sup> CROP2 at 3-20.

<sup>25</sup> [2019 SCC 65](#) [*Vavilov*] at paras 99-135.

## Sanction Breaches

***The Decision 1 sanctions were not validly imposed, because the Code of Conduct was not breached***

30. As the Applicant explained at some length in her submissions regarding Decision 1, the Board failed to demonstrate in its reasons how her conduct violated any of the Code of Conduct clauses the Board cited.<sup>26</sup>

***The sanctions imposed in Decision 1 were demonstrably unfit***

31. Even had the Code of Conduct been breached, the sanctions were: for the most part, not within the Board’s jurisdiction to issue; manifestly excessive; untethered to the conduct they were purported to repudiate and remediate; and vague.<sup>27</sup>

***The sanctions in question, even if validly imposed, were not violated***

32. Finally, even assuming a Code breach could be legitimately grounded in Decision 1, and the Decision 1 sanctions therefore validly imposed, the Applicant did not breach the specified sanctions, being 1(b) and 1(c). The Applicant neither ***represented*** the Board in any ***official capacity***, nor communicated anything reasonably relating to the 2SLGBTQ+ ***community***.
33. To arrive at the finding the Applicant had breached sanctions 1(b) and 1(c), the Board conflated representing ***herself*** with representing the Board; ***personal*** capacity with official capacity; and ***ideology*** with community.
34. Such false equivocations do not pass *Vavilov* muster, because logical fallacies are fatal to the reasonableness of a decision pursuant to *Vavilov*.<sup>28</sup>

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<sup>26</sup> Court File No. 2310 01422 (“JR1”), Applicant’s Brief (“AB”) at paras 30-71.

<sup>27</sup> JR1, AB at paras 72-90.

<sup>28</sup> *Vavilov* at para 104.



## Code and Other Policy Breaches

### *Section 6.3 of Policy 3*

35. The Applicant communicated in a way that reflects the Roman Catholic principles woven throughout, and upon which are premised, the Trustee Code of Conduct, Policy 3, and the other Board policies, such as:

- *Each trustee, representing all Catholic school supporters of the community and responsible to this electorate through the democratic process, recognizes...[t]hat 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.*
- *Each trustee, representing all Catholic school supporters of the community and responsible to this electorate through the democratic process, recognizes...[t]hat fellow citizens have entrusted them, through the electoral process, with the educational development of the children and youth of the community.*
- *Each trustee, representing all Catholic school supporters of the community and responsible to this electorate through the democratic process, recognizes...[t]hat 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.*
- *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**...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**.*
- *Our schools are gospel-centred communities of hope, **fostering a Catholic Christian value system** within a pluralistic society.*
- *CONTINUING THE MISSION OF JESUS, PROPHET, PRIEST AND SERVANT KING... We make His life, mission and **teaching** our **focal points of belief and conduct** within our Catholic schools. Therefore, the education of the whole child - - intellectual, aesthetic, emotional, social, physical, and **spiritual** -- is our service commitment.*
- *As stewards of Catholic Education **nothing in this policy, or any other policy or administrative procedure, is to be interpreted so as to limit or be a waiver of the***

***Red Deer Catholic Regional School Board's rights and powers pursuant the Constitution Act, 1867 and the Canadian Charter of Rights and Freedoms to maintain the denominational character of Catholic Schools.***

- *If any of the provisions in this policy conflict with the Red Deer Catholic Separate School Division's rights and powers pursuant to the Constitution Act, 1867 and the Canadian Charter of Rights and Freedoms to maintain the denominational character of Catholic schools, the Red Deer Catholic Separate School Division's **rights and powers** pursuant the Constitution Act, 1867 and the Canadian Charter of Rights and Freedoms **to maintain the denominational character of Catholic schools will govern.***
  
- *1. Catholic schools, as stewards of Catholic education, have the responsibility to help all children to develop their unique, individual capabilities to learn and **to live**, and thereby to experience humanity and the world **as created by God and redeemed by Jesus Christ.***
  
- *6. The schools will assist all students to choose and develop a hierarchy of values **consistent with the teachings of the Catholic faith.***
  
- *8. The schools will help all students, families and staff to realize their responsibility to transform the world by **practicing the Catholic faith and values in a pluralistic society.***
  
- *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.***
  
- *11. Staff of The Red Deer Catholic Separate School Division will **support families in the faith development of students by serving as witnesses to their Catholic beliefs.** Catholic social teachings will provide a foundation for the future contributions of our students to society and this connection will be formed by authentic Catholic schools shaped by those employed in the Division. Staff also share in the responsibility of helping students see the relevance of our faith in today's world and solving current problems **within a Catholic world-view.***
  
- ***We live and proudly proclaim our Catholic Christian faith.***
  
- ***We provide quality education in a Catholic environment.***
  
- *Nothing in this administrative procedure is to be interpreted so as to limit or be a waiver of the Red Deer Catholic Regional Division **rights and powers** pursuant the Constitution Act, 1867 and the Canadian Charter of Rights and Freedoms to **maintain the denominational character of Catholic schools.***

- *If any of the provisions in this administrative procedure conflict with the Red Deer Catholic Regional Division rights and powers pursuant to the Constitution Act, 1867, and the Canadian Charter of Rights and Freedoms to maintain the denominational character of Catholic schools, the Red Deer Catholic Regional Division rights and powers pursuant to the Constitution Act, 1867 and the Canadian Charter of Rights and Freedoms to maintain the **denominational character of Catholic schools will govern.***
- *Student and staff self-discipline and appropriate conduct, **consistent with our Catholic Christian morals and beliefs, is an essential part of a positive school climate.***
- *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.*
- *6.1 The trustee will model involvement in the faith community.<sup>29</sup>*

36. Further, the Applicant did not communicate with the public in a way that fails to reflect any other principles of the Trustee Code of Conduct, because the Trustee Code of Conduct does not prohibit communications challenging ideologies.

### ***Section 6.4 of Policy 3***

37. The Board states in Decision 2 what it *wishes* section 6.4 read, as opposed to what section 6.4 *actually* reads. In the Board’s version, the breach was “fail[ing] to reflect any recognition of her obligation to represent the interests of the Board, her duties as a trustee, or awareness of public perception”.<sup>30</sup> That rendering is entirely different than what the section actually states.

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<sup>29</sup> CROP2 at 30-2, 67-9, 71, 80-2. [Emphasis added.]

<sup>30</sup> CROP2 at 15.

38. Clause 6.4 of Policy 3 states: “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”.<sup>31</sup>
39. Those interests are, of course, Roman Catholic interests, as Policy 3 discloses,<sup>32</sup> requiring that trustees reflect Catholic values and principles at all times, even in their daily lives. Clearly, then, a trustee promoting Roman Catholic values, such as those appearing in the Catechism of the Catholic Church, breaches no Board policy by virtue of such promotion, which is framed throughout the Board’s policies as an expectation, a requirement and a duty.<sup>33</sup>
40. However, even if no such duty existed, the Board failed to demonstrate in its decision that the Applicant was not cognizant that she represents the interests of the Board while posting on social media or that the Applicant was unaware of public perception that her posts are in accordance with her duties within the school division. At most, the Board was able to demonstrate that the Applicant viewed her own posts as appropriate to and in accordance with her duties within the school division—a point on which the Board obviously disagreed.
41. For better or worse, however, section 6.4 does not prescribe any particular *conduct*. Neither the actual conduct of a trustee, nor a disagreement arising between the Board and a trustee regarding conduct is covered in this particular clause, which prescribes only a) *cognizance the trustee represents* the Board while posting or commenting on social media, and b) *awareness the public perceives* that the trustee represents the Board while posting or commenting on social media.
42. That the Applicant did not believe her post(s) should create an issue for the Board is the beginning and end of the application of section 6.4, and the Applicant had no reason to believe her post(s) should be disparaged by the Board, accounting for the teachings of the

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<sup>31</sup> CROP2 at 81.

<sup>32</sup> CROP2 at 80-2.

<sup>33</sup> CROP2 at 30-2, 67-9, 71, 80-2.

Roman Catholic church relating to the ideology the Applicant sought to challenge by way of the post(s) and her duty to promote Roman Catholic values. Again, various policies including but not limited to Policy 3 and Policy 4 are replete with the language of each and every trustee's duty to uphold Roman Catholic values.

***Section 6.7 of Policy 3***

43. Section 6.7 states: "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".<sup>34</sup>
44. The Applicant has issued no statement that could be taken as reflecting the corporate opinion of the Board, which is obvious from the circumstances. The Applicant's personal disagreement with the Board's decision to censure her cannot, to the mind of any reasonable person, be taken as reflecting the opinion of the Board with which she plainly disagrees. Further, her public disagreement with the actions the Board has taken against her is not a violation of Board policy, because if it were, then seeking judicial review would violate Board policy. Judicial review of any decision is shorthand for publicly disagreeing, since judicial reviews are both public and judicial reviews occur only where decisions are being challenged, not where parties are in agreement.
45. Finally, this policy is obviously and logically speaking to issues decided by the Board in which the trustee has been involved by way of debate and voting, and the decision has not gone the preferred way of the voting trustee. For example, a dissenting trustee of the Board would probably not be at liberty to publicly disagree with the decision to censure the Applicant, given that he would have been involved in debating the decision, which was then arrived at by majority vote. The Applicant, however, as the subject of that decision, a trustee with no involvement in arriving at that decision, and a person at liberty to challenge that decision in open court, occupies a far different position.

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<sup>34</sup> CROP2 at 81.

***Section 6.18 of Policy 3***

46. *Vavilov* puts reasons first, because “reasons are the means by which the decision maker communicates the rationale for its decision”.<sup>35</sup> Accordingly, where a charge is upheld and no reasons in support of it are given, the decision will not be reasonable.
47. The Board offered no reasons justifying its finding that the Applicant had breached clause 6.18 of Policy 3.
48. Section 6.18 of Policy 3 states: “The trustee will contribute to a positive and respectful learning and working culture both within the Board and the Division”.<sup>36</sup>
49. The plain wording of section 6.18 indicates a positive duty as opposed to a prohibition, which is to say, section 6.18 prescribes trustee contribution—thou shall—as distinct from thou shall *not*. The Board has taken issue with conduct it purports to *prohibit*, as distinct from demonstrating that the Applicant has never positively contributed. Accordingly, the Board’s finding the Applicant breached this particular section is not justified and therefore not reasonable.
50. It was not open to the Board to supplement a finding of what it represents as prohibited conduct with some absence of positive duty fulfilment where positive duty fulfilment is not at issue and no evidence of a failure to contribute positively has been adduced.
51. The flimsy assertion that “a community within the Division has been made to feel unwelcome and unsafe”<sup>37</sup> is unproven and in fact unsupported. On the evidence, the most that could objectively be said is some members of some communities felt offended by an opinion about an ideology. Despite this, once again, the section itself speaks to a positive duty, not a prohibition on offending anyone. The same people who are offended by the Applicant’s posts would be equally offended by the bases of Roman Catholic education, the doctrines of which describe their lifestyles as gravely depraved and intrinsically disordered.<sup>38</sup> Clearly, then, Roman Catholic education itself comes under fire if the

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<sup>35</sup> *Vavilov* at para 84.

<sup>36</sup> CROP2 at 82.

<sup>37</sup> CROP2 at 15.

<sup>38</sup> See para 73 of this submission.

Applicant’s opinions about ideology that contravenes the doctrines of the Roman Catholic church come under fire. *These are inseparable.*

***Section 6.20 of Policy 3***

52. The Board offers as “reasons” for the Applicant’s supposed contravention of section 6.20 the blanket statement that “[f]or the reasons noted, the Respondent has not adhered to the Code”.<sup>39</sup> However, for the reasons noted by the Applicant, throughout every submission she has made in these matters, she did not breach the Code. Moreover, this charge is insupportable for vagueness.

***Section 1 of Policy 4***

53. Section 1 of Policy 4 states: “Trustees shall carry out their responsibilities as detailed in Policy 3 – Role of the Trustee with reasonable diligence”.<sup>40</sup>
54. Having failed to demonstrate breaches of sections 6.3, 6.4, 6.7, 6.18 and 6.20 of Policy 3, on which a breach of section 1 of Policy 4 relies, the Board failed to demonstrate a breach of section 1 of Policy 4.
55. The Board pretends the Applicant has breached specific duties with respect to the LGBTQ community—“The Respondent instead knowingly has declined to carry out the above-described responsibilities with respect to the 2SLGBTQ+ community”<sup>41</sup>—but has pointed to no breach pursuant to its cited sections of Policy 3. Reading from the very Catechism in public would breach all of these policies if the policies are taken to mean what the Board attempts to represent.

***Section 5 of Policy 4***

56. The Board’s truncated version of section 5 attempts to alter the meaning of the section, but what it actually states is, “Trustees shall endeavour to work with fellow Board members in

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<sup>39</sup> CROP2 at 15.

<sup>40</sup> CROP2 at 30-1.

<sup>41</sup> CROP2 at 16.

a spirit of harmony and cooperation **in spite of differences of opinion that may arise during debate**”.<sup>42</sup>

57. Clearly the section is speaking to a particular context—one wherein there has been a difference of opinion arising during a debate. A trustee is, in such circumstances, expected to work together with fellow Board members in spite of such differences so arising. The Board takes this section entirely out of context and attempts to apply it to a set of circumstances to which it is not addressed. The Board’s machinations reflect neither a reasonable reading of the section, nor a reasonably grounded breach of the section.
58. The Board is welcome to write policies that address the precise issues that have arisen in this context and in this case; but it is not at liberty to pretend sections speaking to something else read as the Board wishes they read.

#### ***Section 6 of Policy 4***

59. The finding that the Applicant breached section 6 of Policy 4 is tenuous, because both the section and the conduct are too open to various competing interpretations.<sup>43</sup>
60. The posts and interviews are obviously not ***unlawful*** on any reasonable interpretation of the section.
61. That leaves “dignified”, “ethical” and “professional”, which are nowhere defined. This suggests an aspirational, as opposed to prescriptive, direction. Absent a subjective definition of those terms in the relevant policies, an objective definition must be assigned. Insofar as the response emanating from the public is a consideration, support has been received from both camps.
62. The dignity, ethics and professionalism of the posts and interviews are mere ***opinion***, and ***opinion*** is clearly divided, though support for the Applicant has proven more plentiful. But even if it were otherwise, the way a person or various people feel about a thing does not ground an objective finding that thing is undignified, unethical or unprofessional. In the

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<sup>42</sup> CROP2 at 31. [Emphasis added.]

<sup>43</sup> CROP2 at 31.



present case, the Applicant was comparatively restrained and spare in her remarks, militating against a finding that she engaged in behaviour beneath the dignity of the Board.

63. By contrast, the trustee in the Board's comparator case *Del Grande v Toronto Catholic District School Board*,<sup>44</sup> in his **public capacity** as trustee,<sup>45</sup> at a public meeting<sup>46</sup> attended by members of the LGBTQ community,<sup>47</sup> attacked the **activities** of the LGBTQ **community**<sup>48</sup> by comparing LGBTQ activities with rape, bestiality, vampirism, pedophilia, and the like,<sup>49</sup> and as he later admitted, with the intention of promoting the idea that the **activities** of the LGBTQ **community** are repulsive and deviant.<sup>50</sup> The Applicant in the present case, in her personal capacity, presented on her personal social media and in interviews, a political opinion intertwined with her religious beliefs and not out of alignment with the Catechism of the Catholic Church.<sup>51</sup> Nothing in the Code of Conduct, including section 6, indicates in any way that a trustee is prohibited from expressing a political or ideological opinion, or that presenting such political or ideological opinion is inherently undignified, unethical or unprofessional.
64. The Board here conflates disagreement with the Applicant's personal opinion and religious belief—and how such disagreement made a number of people *feel*—with whether the Applicant's conduct was dignified, ethical, professional or lawful. These are, of course, two different things.
65. Another section of the Code of Conduct might be suited to articulating a breach, but a section this subjective in the face of subjective conduct is a reach. The Applicant's conduct was certainly not unlawful; whether it was undignified or unprofessional is altogether subjective. Whether it was unethical is at best in the eye of the beholder. The Board subjectively believes the Applicant breached this section; perhaps some others would subjectively agree. However, on any sort of objective standard, whether the Applicant

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<sup>44</sup> [2023 ONSC 349](#) [*Del Grande*].

<sup>45</sup> *Del Grande* at para 17.

<sup>46</sup> *Del Grande* at para 15.

<sup>47</sup> *Del Grande* at para 16.

<sup>48</sup> *Del Grande* at para 17.

<sup>49</sup> *Del Grande* at para 17.

<sup>50</sup> *Del Grande* at para 84.

<sup>51</sup> See para 73 of this submission.

breached this section is by no means definite. An example of a section, whether existing in the policy or not, that the Applicant would likely have breached, might read something like, “A trustee shall not post or otherwise publicly communicate, in his/her personal capacity, anything with any political or ideological overtone”. The Applicant’s posts and participation in interviews opposing an ideology, in the context of a section like that, would likely be a breach. But no such section appears to exist in any of the Board policies.

#### ***Section 7 of Policy 4***

66. The Board states, “the Respondent has not reflected Board policy and resolutions in her public communications”.<sup>52</sup> This is a close cousin of section 6.7 of Policy 3. If the Applicant were obliged to feign support for a resolution against her, she would be prohibited from seeking judicial review in open court, which obviously publicly signals disagreement with the resolution of the Board against her. Since the Applicant takes the position that the sanctions against her are legally invalid, she is obviously going to challenge them. And if the sanctions against her are found to be legally invalid, she will have breached absolutely nothing, be it her intention or lack thereof to submit to them or her actual submission or lack thereof. But either way, the Applicant’s public disagreement is not in and of itself a breach; were it otherwise, this very process of reviewing the Board’s decision in public would be forbidden. And that would be absurd, to say nothing of draconian.

#### ***Section 15 of Policy 4***

67. Working together with fellow trustees to communicate with the electorate is a positive duty and one the Board has in no way proven the Applicant has breached. In all likelihood, the trustee has discharged the duty to work together with fellow trustees to communicate with the electorate over the term of her trusteeship. The larger point, however, is that the Board has not ***demonstrated*** the Applicant has not ***discharged*** this duty. The wording of the section is that this is a thing she must do, not that this is a thing she must do to the exclusion of all other things.<sup>53</sup>

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<sup>52</sup> CROP2 at 16.

<sup>53</sup> CROP2 at 32.

***Section 22 of Policy 4***

68. Section 22 of Policy 4 states that the Trustee shall “[r]epresent the Board responsibly in all Board-related matters with proper decorum and respect for others”.<sup>54</sup>
69. While some other section may prohibit the Applicant’s personal use of social media or participation in interviews, the Applicant was not engaged in a Board-related matter concerning the posts and interviews in question. Accordingly, the Board has no justification for finding that either constitutes a representation of the Board in a Board-related matter, as the section specifies.
70. No Board business was discussed in the public interview(s) in which the Applicant participated, and the Applicant was obviously speaking to her own circumstances and her own opinions concerning an ideology to which she is opposed, and notably, to which Roman Catholic doctrine is opposed.<sup>55</sup> In this way, the Applicant was at once reflecting the Roman Catholic values she is required to personally reflect,<sup>56</sup> and in no way representing the Board in any official capacity. Contrary to the Board’s assertion that the Applicant was required to somehow disclaim any representation of the Board, this requirement exists in no section of any Board policy. Moreover, ***the Applicant clearly was not representing the views of the Board when speaking about something the Board did to her with which she did not agree.*** The Board has throughout its reasons sought to charge the Applicant both with representing the Board and with not representing the Board. The Board cannot have it both ways, and its grasping machinations and everything-but-the-kitchen-sink approach reveals muddled analysis fraught with contradiction and lacking in the cogency *Vavilov* requires of all decisions in order to adjudge them ***reasonable.***<sup>57</sup>
71. While some other clause may prohibit the Applicant’s personal use of social media or personal participation in interviews, the Applicant was not engaged in a Board-related matter in making the posts or participating in the interviews in question. Accordingly, the

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<sup>54</sup> CROP2 at 32.

<sup>55</sup> See para 73 of this submission.

<sup>56</sup> CROP2 at 30-2, 67-9, 71, 80-2.

<sup>57</sup> *Vavilov* at paras 99-104.

Board has no justification for finding that the posts or interviews constitute a representation of the Board in a Board-related matter, as the section specifies.

***The Board's continued refusal to pronounce on the "Roman Catholic values" issue is unreasonable***

72. In both official complaints brought against the Applicant, the Complainants have specifically cited **Roman Catholic values** as a reason the Applicant ought to be censured. In response to both official complaints, the Applicant has answered the challenge, with reference to the Catechism of the Catholic Church.<sup>58</sup> In both decisions, the Board has refused to pronounce on the Roman Catholic values issue ***raised by its own complainants***. This is not reasonable for at least two reasons: the Board's policies are premised on Roman Catholic values,<sup>59</sup> and the Board requires the Applicant to at all times project Roman Catholic values.<sup>60</sup> The very conduct the Board has impugned both adheres to the Roman Catholic values underpinning the Board's policies and reflects an effort on the part of the Applicant to live as a Roman Catholic every day, in accordance with the Board's expectation of trustees.
73. The Board's characterization of the Applicant's "Roman Catholic values" as "her personal interpretation of Catholic doctrine" is absurd. The Board has never bothered to explain how the Catechism passages included in the first complaint can possibly be interpreted any other way. The Catechism ***literally*** refers to any sexuality other than man-woman sexuality as intrinsically disordered, gravely depraved, and unacceptable:

Homosexuality refers to relations between men or between women who experience an exclusive or predominant sexual attraction toward persons of the same sex. It has taken a great variety of forms through the centuries and in different cultures. **Its psychological genesis remains largely unexplained.** Basing itself on **Sacred Scripture, which presents homosexual acts as acts of grave depravity**, tradition has always declared that **"homosexual acts are intrinsically disordered."** **They are contrary to the natural law.** They close the sexual act to the gift of life. **They do not proceed from a genuine affective and sexual complementarity. Under no circumstances can they be approved.** [CCC #2357, 1997 Second Edition.] [Emphasis added.]

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<sup>58</sup> See para 73 of this submission.

<sup>59</sup> CROP2 at 30-2, 67-9, 71, 80-2.

<sup>60</sup> CROP2 at 30-2, 67-9, 71, 80-2.

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**. These persons are called to fulfill God's will in their lives and, if they are Christians, to **unite to the sacrifice of the Lord's Cross the difficulties** they may encounter from their **condition**. [CCC #2358, 1997 Second Edition.] [Emphasis added.]

**Homosexual persons are called to chastity**. By the virtues of **self-mastery** that teach them inner freedom, at times by the support of **disinterested** friendship, by **prayer** and **sacramental grace**, they can and should gradually and resolutely approach Christian perfection. [CCC #2359, 1997 Second Edition.] [Emphasis added.]

74. Pretending the Applicant has invented an interpretation of the Catechism of the Catholic Church untethered to an objective understanding of what it says and what it means is disingenuous. The Catechism could not possibly be clearer.
75. Refusing to deal with an issue the *complainants* continually raise and the Applicant continually answers is unreasonable, as is hiding behind the *Act* and the Code of Conduct, neither of which contains any clause indicating that what the Applicant has done is a breach.
76. At a minimum, the Roman Catholic values the Applicant is **required to at all times project** ought to be weighed against any other section or clause to determine whether the Applicant can reasonably be found in breach.
77. The Code of Conduct prescribes living out Roman Catholic values. It is not optional. Accordingly, a decision failing to weigh the Applicant's diligence in projecting Roman Catholic values, as required under the Code, with all other conduct required by the Code, is not a reasonable decision. The Board's response is nothing short of a cop-out. Rather than engaging in its responsibility as a separate school constitutionally entitled to hold and disseminate the doctrines of the Catholic faith, it throws its trustee under the bus—a trustee acting in faithful service to Catholic constituents as all Board policies make clear is appropriate, desirable and expected. Statements such as “[T]he issue before the Board does not turn on whether the Respondent's impugned conduct contravened Roman Catholic

values but whether the same violated the *Act*, the Code and the First Motion”<sup>61</sup> and “The Board does not find that the Catholicity-related arguments have a bearing on its decision as to whether or not the Respondent is in breach of the Code or the First Motion”<sup>62</sup> are incongruent with the preambles to the Board policies holding forth concerning the Board’s mandate to root everything it does in Roman Catholic teachings, values and principles.

78. Absent any consideration of the Roman Catholic values woven throughout and forming the basis for the Code of Conduct, the Board did not, in fact, focus on the Code of Conduct; it focused on *part* of the Code of Conduct. This is not reasonable. *Vavilov* stipulates that decision makers must have regard to all the relevant pieces: “A decision, to be reasonable, must be justified in relation to the **constellation of law and facts** that are relevant to the decision...Elements of the legal and factual contexts of a decision operate as constraints on the decision maker in the exercise of its delegated powers”.<sup>63</sup>
79. It was not open to the Board to ignore the very basis of its Code of Conduct, Policy 3, Policy 1, and other Board policies in order to “reverse-engineer” its way to an “expedient” decision it desired to make.<sup>64</sup> It was equally incumbent on the Board to “*meaningfully grapple*” with the evidence before it<sup>65</sup> concerning the intersection of Roman Catholic values with the Applicant’s conduct, and its failure to do so renders its decision unreasonable. The Board’s disregard for an integral aspect of its Code of Conduct and other policies—Roman Catholic values—necessarily impacts, and interacts with, every other finding of contravention. *The failure to deal with the Roman Catholic values issue undermines every other decision the Board made concerning every other alleged infraction.*

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<sup>61</sup> CROP2 at 17.

<sup>62</sup> CROP2 at 17.

<sup>63</sup> *Vavilov* at para 105. [Emphasis added.]

<sup>64</sup> *Vavilov* at para 121.

<sup>65</sup> *Vavilov* at paras 127-8. [Emphasis added.]

## Disqualification Sanction

### *No sanction issues absent breach*

80. No sanction, let alone the most severe sanction, is lawful in the Applicant's circumstances, because a sanction could only issue had the Applicant breached the Code of Conduct, which she did not.

### *The sanction of disqualification is demonstrably unfit*

81. Even had the Applicant breached the Code of Conduct, however, disqualification, the severest sanction conceivable, is manifestly excessive. Even the Applicant in the Board's exemplar case of *Del Grande* was not disqualified from service, after intentionally insulting a **community in public** and while on **official board business**. Expressing a political opinion, however uncherished by the other Board members, does not rise to the level of disqualifiable conduct.
82. The penalty of disqualification of the Applicant is a substantial and marked departure from *Del Grande*, which, while dissimilar in some important ways, is the only case that is remotely comparable to the present case. It should thus be overturned:

In respect of the Sanctions Decision in particular, this court has held that to overturn a penalty imposed by a regulatory tribunal, "it must be shown that the tribunal made an error in principle or that the penalty was clearly unfit, which is to say that it manifestly is 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.<sup>66</sup>

### *The sanction of disqualification fails to be prescribed by the common law*

83. The sanction of disqualification imposed by the Board has no basis in common law in the present circumstances. *Calgary Roman Catholic Separate School District No. 1 v O'Malley*, 2006 ABQB 364 and *Calgary Roman Catholic Separate School District No. 1 v O'Malley*, 2007 ABQB 574—cases on which the Board relies—speak only to **common law disqualification for conflict of interest**. Neither disqualification nor the conflict of interest as the impetus for such is at play in the present matter.

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<sup>66</sup> *Del Grande* at para 88.

***The sanction of disqualification fails to be prescribed by the Act and/or the Code of Conduct***

84. Neither does the *Act* provide for disqualification in the present circumstances. Other than specifically enumerating various conflicts of interest and conflict of interest-adjacent activities as reasons for, specifically, disqualification, the *Education Act*<sup>67</sup> points only to the provisions of the Code of Conduct. The *Act* states at section 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**”. [Emphasis added.]
85. If section 87(1)(c) were intended to impose disqualification for a breach of the Board’s Code of Conduct ***with nothing else***, section 87(1)(c) would end at the words “section 33”, as in, “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”.
86. But section 87(1)(c) does not end there. Section 87(1)(c) goes on to state, “**where the sanction for the breach under the code of conduct may be determined by the board to be disqualification**”. [Emphasis added.]
87. This qualifying clause in section 87(1)(c) means something. The legislature is presumed always to be speaking. The legislature does not add words for the sake of adding words. Those words have a meaning. No interpretation of those words exists in the case law. But those words do have a meaning, and this Court must decide what those words mean.
88. The Applicant says those words mean that the Board’s ability to disqualify on the basis of a Code breach depends on whether the Board has allowed for the Board to disqualify on the basis of a Code breach. What the Board has allowed itself to do is contained in the Board’s ***Policy***. No sanction of disqualification exists in the Board’s Policy.
89. While the Court has, up to now, had no opportunity to weigh in on this issue in Alberta, the Ontario case of *Del Grande* lends some perspective. In that case, the applicant pled that the

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<sup>67</sup> [SA 2012, c E-0.3](#).



sanctions imposed against him were manifestly excessive. The Court disagreed, **for the reason that all of the sanctions imposed were enumerated in either the Act or the board policy**: “The majority of the sanctions are provided for in s. 218.3(3) of the *Education Act*”; and “The remainder are authorized by Article 10 of the Code of Conduct”.<sup>68</sup>

90. In the present case, Alberta’s *Education Act* merely **provides for the Board to provide for the sanction** of disqualification if it wants to. The Board’s Code fails to so authorize the Board in this regard. Nothing in the Code of Conduct prescribes the sanction of disqualification for breaches of the Code of Conduct. The Code of Conduct enumerates only censure and removal from Board appointments, and the like.<sup>69</sup> The words “without limiting what follows” found in the sanctions section<sup>70</sup> do not imply there is absolutely no limit on what the Board can do to a trustee. The regular principles of statutory interpretation **limiting to other like things** that which might be implicitly included still apply. Were it otherwise, the enumerated list would be meaningless. If the Board could censure and remove from committees, enumerated remedies, or end the trustee’s career entirely—one would expect something so radically disparate and comparatively severe as the latter to make an appearance on the list. Otherwise, the default presumption would be that the Board can do the things on the list and other things in a similar vein to those things appearing on the list.
91. Therefore, when the Board states, “The Act grants the Board jurisdiction to review trustee-related complaints, consider trustee conduct, and determine appropriate responses and remedies”, which is to say, “govern its internal procedures by regulating the conduct of its members”,<sup>71</sup> it is only half correct. The Board can make a policy specifying disqualification; but ***the Board cannot make it up as it goes***. The Board’s ability to do what it attempted to do—disqualify the Applicant—depends entirely on whether its own Policy permits that.

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<sup>68</sup> *Del Grande* at para 90.

<sup>69</sup> CROP2 at 36.

<sup>70</sup> Policy 4, Appendix A, Section 9, CROP2 at 36.

<sup>71</sup> CROP2 at 4.

92. The dissenting trustee understood this, and placed it squarely before the Board, which admitted in its reasons to having been made aware that there was some doubt as to whether disqualification was even available to it,<sup>72</sup> yet did not meaningfully grapple with this legal issue. Its failure to do so *alone* renders its decision to disqualify unreasonable on the *Vavilov* standard. Additionally, however, the Board's decision is substantively unreasonable because it misinterprets what the Board is permitted to do.

### **REMEDY SOUGHT**

93. The Applicant applies to this Honourable Court for the following relief:
- a) An Order quashing the Decision;
  - b) An Order directing the unconditional reinstatement of the Applicant as a trustee of the Board;
  - c) Costs of this Application; and
  - d) Such further and other relief as this Honourable Court deems just and equitable.

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<sup>72</sup> CROP2 at 18.

## LIST OF AUTHORITIES

1. *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#)
2. *Del Grande v Toronto Catholic District School Board*, [2023 ONSC 349](#)
3. *Education Act*, [SA 2012, c E-0.3](#)