

**REASONS FOR DECISION IN FURTHERANCE OF THE
SEPTEMBER 25 and 26, 2023, SPECIAL BOARD MEETING**

I. Background

These reasons (“Reasons”) are issued further to the September 25 and 26, 2023, special meeting (“Meeting”) of the Board of Trustees of the Red Deer Catholic Regional Schools (“Board”) during which Meeting the Board passed a motion (“Decision” or “Motion”) in relation to Board Trustee Monique LaGrange (“Trustee” or “Respondent”). The Decision, which is set out at Schedule “A” to these Reasons, found the Trustee to be in violation of the Trustee Code of Conduct and the Alberta Education Act (“*Education Act*”).

The Trustee was elected Trustee of the Board in 2021. The Meeting was called to address a complaint relating to certain conduct of the Trustee on social media, as will be elaborated upon below.

At the Meeting the Trustee was provided with a full opportunity to make submissions, and she was represented by counsel who submitted written and oral arguments to the Board.

It is undisputed that, on or about August 27, 2023, the Trustee posted on her personal Facebook account a meme displaying two photographs which respectively showed:

- a) 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” or the “Meme Posting”).

During the Meeting, the Trustee stated that her intentions were that the Meme Post was not directed toward Red Deer Catholic Regional Schools (“School Division”) (“Understand that this was not directed at Red Deer Catholic”) and that the Meme was not a challenge to School Division practices.

The School Division serves over 10,650 students in twenty-one schools in Red Deer, Blackfalds, Sylvan Lake, Rocky Mountain House, Innisfail, and Olds, as well as an At-Home Learning Program, and supports the learning of over 1,095 students in a Traditional Home Education Program.

II. Procedure

In response to a Board trustee complaint to the Board (“Complaint”) with respect to the Meme Posting, the Board called the Meeting as per Appendix “A” to Board Policy 4: Trustee Code of Conduct (“Code of Conduct”) to review the Complaint and determine if there was a breach of the *Education Act*, the Code of Conduct and/or Board Policy.

Prior to the Meeting, the materials considered by Board included the following:

- a) Written Submissions of the Complainant which included:
 - i. a photocopied picture of the Meme;
 - ii. the Complaint;
 - iii. a package of materials in support of the complaint:
 - September 7, 2023, media article from the Western Standard entitled, *EXCLUSIVE: Trustee says her post was about protecting children, involving parents*;
 - September 13, 2023, media article from the True North entitled, Alberta trustee reprimanded for Instagram post critical of gender “indoctrination”;
 - a copy of Board Policies 1: Divisional Foundational Statements (“Board Policy 1”), the Code of Conduct (including Appendix “A” and “B”), Board Policy 3: Trustee Role Description including Appendix “A” (“Board Policy 3”), the CCSSA’s LIFE Framework, Statement 22358 from the Catechism of the Catholic Church, 1994;
 - iv. September 7, 2023, letter to the Minister of Education, from Board Chair Hollman;

- v. written reaction submitted to the Board in response to the Meme, which consisted of seven emails/letters from School Division employees, parents, School Division student alumni, and the Simon Wiesenthal Centre of Holocaust Studies which were critical of the Meme, and four emails from individuals who expressed support for the Trustee's actions in relation to the Meme;
 - vi. written submissions in support of the Complaint.
- b) Written submissions from the Trustee's legal counsel.

The complainant and Respondent were both present and were represented by Counsel at the Meeting.

Pursuant to Board policy governing trustee-conduct related complaints, the Meeting comprised an *in camera* portion which lasted for more than a full day, at which submissions were made to the Board. Board members also posed questions at the Meeting.

Not having completed their deliberations, the Board reconvened on September 26, 2023, to complete the same. Following the completion of their deliberations, the Board returned to a public session and voted on the Motion. The Board voted 3-1 in favour of the Motion.

III. Alberta's Education Act

The Board's conduct is governed by the *Education Act* which grants the Board jurisdiction to review trustee-related complaints, consider Trustee conduct, and determine appropriate responses and remedies.

The preamble of the *Education Act* provides strong statements supporting the importance of inclusiveness and respect in the provision of education to Alberta students:

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;

These recitals are reflected in clauses 9 and 10 of Board Policy 1:

- 9. The schools will foster the mental and physical well-being of all students through:
 - 9.1 Selection of appropriate programs which emphasize physical, leisure activities; and
 - 9.2 A respect for the worth and dignity of the individual.
- 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.

Section 2 of the *Education Act* states:

Limitations

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.

Section 33 of the *Education Act* imposes statutory duties on the Board, some of which are:

- develop and implement a school trustee code of conduct: s. 33(1)(k);
- establish and maintain governance and organization structures that promote student well-being and success, and monitor and evaluate their effectiveness: s. 33(1)(h);
- 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: s. 33(1)(d);
- 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: section 33(2); and
- to provide a statement of purpose that provided a rationale for the student code of conduct, with a focus on welcoming, caring, respectful and safe learning environments: section 33(3)(d)(i).

School board trustees in Alberta must adhere to their Code of Conduct. This requirement is contained in Board Policy 1 and is a statutory requirement under the *Education Act* pursuant to s. 34(1)(c) which states:

34(1)(c) A trustee of a board, as a partner in education, has the responsibility to (...) comply with the board's code of conduct (...).

This requirement is also contained at clause 6.20 of Board Policy 3.

Finally, school boards have an obligation to enforce a minimum of standard of conduct expected of trustees. This principle is noted in the Ontario decision of *Del Grande v. Toronto Catholic District School Board*, 2023 ONSC 691 ("*Del Grande*") which is equally applicable here:

(...) the 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. (para. 81).

IV. Board Policy and Compliance with the *Education Act*

The Board's mission is as follows:

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. [Board Policy 1]

The purpose of the Mission statement is to govern the interactions within the School Division and among members of the School Division including Board members. Board Policy 1 sets forth beliefs that are meant to govern the interactions of the Division as stewards of Catholic Education, including Belief 10 which reads:

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. [Emphasis added.]

Administrative Procedure 103 - Welcoming, Safe and Caring, Inclusive and Respectful Learning Environments (“AP 103”) details how the Division Foundational Statements are to be carried out by School Division staff. Among other things, 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” is to be maintained. [Emphasis added.]

The Code of Conduct states that the Board “commits itself and its members to conduct that meets the highest ethical standards.” In doing so it is expected that all Board members treat others with mutual respect and affirm the worth of each person. The preamble to the Code of Conduct includes the following:

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. [Emphasis added.]

The Code of Conduct, which was carefully reviewed, considered and applied by the Board in this matter, is attached to these Reasons at Schedule “B”. The Board addresses the Trustee’s Code of Conduct violations further in these Reasons.

Consequences for the failure of an individual trustee to adhere to the Code of Conduct are specified in Appendix A to the Code of Conduct, which sets out a range of sanctions and remedial measures, which supplement the disqualification sanction at s. 87(1)(c) of the *Education Act*.

V. Position of the Complainant

The Complaint requested that a formal hearing be held with respect to the Meme Posting. It was argued that the Meme Posting and subsequent interviews with the media given by the Trustee were in direct violation of parts of the Code of Conduct, Board Policy and the *Education Act*. In particular, the Complainant submitted that the Trustee’s conduct undermined the Division’s legal obligations imposed by the *Education Act* and its commitment to inclusion. It was further submitted that this was in contravention of Roman Catholic teachings and was a direct attack on work done by Division teachers to support 2SLGBTQ+ initiatives.

VI. Position of the Respondent

The Respondent’s Views Expressed at the Meeting

At the Meeting the Trustee made the following statements as summarized by the Board:

- the Meme Post is not about the LGBTQ (“2SLGBTQ1A+”) community;
- the Meme Post is about indoctrination through the United Nations which directly correlates to World War II and Nazism; it is about the agenda of the United Nations and Planned Parenthood which is an attempt to sabotage our youths’ identities and destinies and hijacks the LGBTQ [sic] community’s original mandate;

- if history is not talked about or taught to our children, it will all be forgotten, and if we forget what happened in the past, it will most definitely repeat itself in some form or another. It is important to understand history and teach the lessons we have learned;
- the Trustee's intent of the Meme Post is to show what road we are going down and that we must be vigilant as to what we are allowing in to influence our children;
- the sexuality and beliefs of students is a topic that should be between God, parent and a child; sexual orientation decisions should not be made or influenced at school, especially Catholic Schools;
- that, through the Meme, the Trustee was talking about indoctrination and exposing children who were too young to understand this indoctrination;
- the Trustee posted the Meme to bring attention to what her legal counsel characterized as "objectionable ideology";
- the Respondent's position is that the juxtaposition of the two pictures in the Meme relates to the concept of indoctrination and does not make any particular comparisons to the Nazi regime; and
- that the Pride flag is used to silence people; children are being kicked out of school and people are being fired which is antithetical to the Trustee's religious beliefs; and that "cancel culture" is not what is good, lawful, appropriate or democratic.

The Trustee was clear that her beliefs informed her views: she stated the Holy Spirit had told her to post the Meme and that this was something she should do. The Trustee submitted that Catholic school trustees rely on their beliefs to do their work and should be able to express their religious beliefs as school board trustees.

The Trustee's Rationale for Having Posted the Meme

The Trustee informed the Board that her religious beliefs informed her views. When asked to explain her discernment process around the Meme Post, the Trustee:

- thought that the Meme Post reflected the truth about today;
- was thinking more about the political part of it than anything; asked is this something that would be understood;
- informed the Board that the Holy Spirit said to the Trustee, Go for it;
- trusts the Holy Spirit and decided to share the Meme Post;
- thought it was such a good outline as to what was going on in the world.

In addition, the Trustee and her legal counsel advanced various arguments which were set forth in the Trustee's written submissions filed with the Board. Those written submissions are outlined in the following section.

The Respondent's Written Submissions

The written submissions of Counsel for the Trustee can be broken down into the following main points:

- a) The Meme did not contravene Roman Catholic values in any way, because it was targeted at what the Trustee views to be an objectionable ideology;
- b) The Meme did not contravene the *Education Act* or any Board policy, including the Code of Conduct;
- c) The Meme is protected by the Canadian *Charter of Rights and Freedoms* ("*Charter*"), in particular, the right to freedom of expression and the right to freedom of religion; and

- d) The Board's conduct demonstrates a reasonable apprehension of bias and lack of procedural fairness.

VII. Issues

These Reasons address the following issues:

1. Did the Meme contravene Roman Catholic values?
2. Did the Meme contravene the Code of Conduct?
3. Is the Meme protected by the Trustee's *Charter* rights?
4. Is the Decision reasonable?
5. Was the Decision procedurally unfair?

VIII. Did the Meme Contravene Roman Catholic Values?

Both the Complainant and the Respondent made submissions with respect to whether the Meme and its content were contrary to Roman Catholic values. No expert evidence was adduced at the Meeting with respect to Roman Catholic values in this context. The Complainant's submissions did include the CCSSA's LIFE Framework and a section from The Catechism of the Catholic Church, 1994.

In any event, the Board focused on the *Education Act* and the Code of Conduct in reviewing the Complaint and, therefore, did not find it necessary to determine whether the Meme was in contravention of Roman Catholic values.

To be clear, the Board's decision does not turn on whether the Meme contravened Roman Catholic values and the Board does not make a finding in this respect.

IX. Did the Meme Contravene the Code of Conduct?

The Board does not dispute that the Trustee has sincerely held religious beliefs. However, the primary concern before the Board was whether the Trustee, through her Meme Post, breached the Code of Conduct.

These Reasons are limited to the matter before the Board at the Meeting.

Introduction

The Board recognizes that elected school board trustees may hold and express their views. As noted in *Calgary Roman Catholic Separate School District No. 1 v. O'Malley* 2006 ABQB 364:

The trustees collectively and individually owe a public duty to carry out their responsibilities and the work for the Board in good faith and with reasonable diligence. They are elected for that purpose. They need not be of like mind. They may hold strong and conflicting views. They may debate with vigour, and occasionally with rancour. There is no rule requiring trustees to like each other. But they do have one overarching responsibility – a shared public duty to advance the work of the Board to which they had the privilege of being elected. (...) [para. 41]

The Trustee's argument focused, to a large extent, on her freedom to hold her beliefs and her ability to act on the same in her private life (i.e., to post the Meme).

However, freedom of expression generally, including that of a school board trustee is not absolute. These Reasons will address this concept further below.

The principle that rights are not absolute is recognized at section 2 of the *Education Act*, which reads, "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." This is further addressed in Board Policy 3 and, in particular, clause 6.4 which directly addresses social media use:

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.

The Trustee's freedom to express her views (via the Meme Post) must be balanced against the Board's duty and right to operate in the context of, and in a manner consistent with, the preservation and enhancement of the Board's mandate. This includes the Board's duty to comply with the *Education Act* and to maintain a positive school environment.

While the Trustee may hold religious beliefs, in her role as a school Board trustee, the Trustee's actions may not unreasonably impinge upon the Board's statutory mandate to ensure that each student enrolled in its schools and each staff member employed by the Board is provided with a welcoming, caring, respectful and safe learning environment that *respects diversity and fosters a sense of belonging*.

Students have the right to a school system free from bias, prejudice and intolerance, and as a role model and representative of the corporate Board, the Trustee occupies an important role within the education system that extends beyond the classroom. The Division's principles of respecting the needs of our diverse students are legitimately reflected, for example, in Belief 10 of Board Policy 1, Board Policy 4, and AP 103.

Within the context of the *Constitution Act*, the *Education Act*, the Code of Conduct and corresponding Board Policy, Catholic school board trustees, as role models within the school board and as corporate leaders at the top of the Division hierarchy must be, and be seen to be, tolerant of the pluralistic and diverse nature of society.

Alleged Code of Conduct Breaches

i. Clause 1 of the Code of Conduct and Clause 6.2 of Board Policy 3

Clause 1 of Board Policy 4 requires Board trustees to carry out their responsibilities, as detailed in Board Policy 3, with reasonable diligence.

Under clause 6.2 of Board Policy 3, the Trustee "will refer queries, or issues and problems, not covered by Board policy, to the Board for corporate discussion and decision."

Analysis

The Trustee's position is that she did not violate Board policy because she did not make a comparison; rather, the Meme Post was about layers of ideology and about children not understanding those layers. According to the Trustee, the Meme Post was not about people or individuals, rather, it was about ideas which must always be open to criticism and must be tested and challenged.

If the Trustee were of the view there were ideas that had to be tested or challenged, clause 6.2 of Board Policy 3 required the Trustee to refer the same to the Board for corporate discussion. This was not done. Rather, the Trustee took it upon herself to post the Meme.

Finding

In having posted the Meme, the Trustee breached clause 6.2 of Board Policy 3 and thus is in breach of clause 1 of the Code of Conduct. Pursuant to clause 1 of the Code of Conduct, Board trustees shall carry out their responsibilities in accordance with Board Policy 3 with reasonable diligence. A breach of Board Policy 3, is therefore also a breach of Board Policy 4.

ii. Clauses 6 and 22 of the Code of Conduct

The Code of Conduct provides that the Board must commit itself and its members to conduct that "meets the highest ethical standards." Clause 6 requires the Board trustees to "commit themselves to dignified, ethical, professional and lawful conduct." Clause 22 requires the Board trustees to represent the "Board responsibly in all Board-related matters with proper decorum and respect for others."

Analysis

The Trustee made the following arguments:

- a Trustee cannot be responsible for all reactions to social media posts, in particular when such reactions unreasonably take offence based on unreasonable interpretations;
- respect and decorum go both ways; there will be a negative response to something objectively inappropriate, but offence taken to a reasonable position is simply the reality of free speech and the exchange of ideas in the marketplace;
- that someone might be offended by the Meme is not a basis to institute discipline against the Trustee; and
- while the Complainant had a particular reaction to the Meme, that does not mean that someone's personal subjective definition as to decorum can be imposed on the Trustee. That is the essence of "cancel culture."

The Trustee's position is further that there is nothing unprofessional or undignified about the Meme Post:

- there is nothing unprofessional about sharing a dissident minority opinion which did not give rise to a general level of unacceptability;
- the Meme Post reflects a minority opinion that many people do not like and are offended by, but that is a matter for public comment and disagreement. It is an attempt at censorship to claim something is unethical (instead of saying one does not agree); and
- no reasonable person would conclude from the Meme, that what the Nazis did was acceptable or that had anything to do with the LGBTQ (*sic*) community, and that rather, the Meme is about ideas which must always be open to criticism, tested and challenged.

The Trustee's legal counsel submitted that the first loyalty of a trustee is to the school board, however it was also submitted that the Trustee is espousing a minority view (through the Meme Post) which has struggled to get exposure, and that what the Trustee is saying is that children should not be indoctrinated and that she has a duty to bring up difficult conversations, that she does not lose her rights as a private citizen, and that the Board wants to "shut her up."

The Board is mindful of the September 6, 2023, letter it received from the Friends of Simon Wiesenthal Center noting that the Meme Post is "a form of Holocaust distortion and minimization and feeds into rhetoric promoting anti-LGBTQ+ hate and discrimination. What makes this post even more abhorrent is the fact that tens of thousands of victims of the Nazis were people who identified as part of the LGBTQ+ community."

When asked about this letter, the Trustee indicated that the author may not understand the Meme Post as it did not compare two groups but rather, it is about layers of ideology, and about protecting kids. The Trustee stated that the author of the letter did not understand the meaning of the Meme.

The material from the Complainant contained reactions against and in favour of the Meme. Below are two examples from School Division student alumni:

[REDACTED]

And,

[REDACTED]

A medical professional communicated with the Board as follows:

[REDACTED]

Three School Division employees communicated in writing to the Board their personal offence to the Meme Post. One employee, who is also a parent within the School Division, sent this:

[REDACTED]

Another School Division employee submitted the following:

[REDACTED]

Another:

[REDACTED]

The Board also received four emails from parents who supported the Meme Post. These were included in the materials before the Board and were accordingly reviewed and considered during the Board deliberations.

The Board's summary above is not intended to illustrate that greater weight was given to favourable versus unfavourable comments. The conclusion the Board draws, in part, from the public comments is that, contrary to the Trustee's submissions, it is possible and indeed likely for the Meme to be understood in a

negative and hurtful way towards the 2SLGBTQ1A+ community, and School Division students from that community in particular.

The Board accepts the Trustee's view that she is entitled to her personal religious beliefs, and that she is entitled to express them. However, the Trustee has statutory and ethical obligations towards the School Division students as well. In her Trustee role, the Respondent has an obligation to communicate respectfully and inclusively (pursuant to the *Education Act*, Code of Conduct and other Board Policies already addressed above). The Board does not accept the Trustee's submission that the Meme was clearly unrelated to Nazism. Regardless of the Trustee's intent, in the Board's view, a reasonable person viewing two photographs (one over the other) could reasonably conclude that a negative comparison was being made.

Further, the complex and nuanced position which the Trustee is attempting to advance is simply not made clear in a Meme which is limited to two photographs and three words. Had the Trustee wished to communicate this concept, communication methods set out in Board Policies 3 and 4 should have been used. The Trustee had an obligation to ensure her communication was in accordance with Board policy.

Finding

By posting the Meme the Trustee violated clauses 6 and 22 of the Code of Conduct.

Providing, through the Meme Post, a display of students waving Pride flags and a display of children of Nazi Germany waving flags and thereby inferring that children waving Pride flags have been brainwashed in a manner akin to children in Germany at or before WWII, conveys a negative implication. The Meme Post is not, on a reasonably objective standard, dignified nor professional, and based on the above reactions to the Meme Post, was not viewed as inclusive or reflective of supportive school environments that welcome students of all orientations.

The Board disagrees with the Trustee's submission that there is no lack of decorum in the Meme Post or that the same does not show disrespect for others, and that the Meme Post was more about raising the conversation about really difficult controversial issues that are important to parents and students.

School board trustees are open to public inspection - employees, students and their parents and other school stakeholders scrutinize trustee conduct. A trustee's personal online conduct can attract as much attention as in-school or at-Board-meeting conduct. Though posted on a personal Facebook page, the Meme Post, in fact, did attract media attention: the September 7, 2023, media article from the Western Standard entitled, "EXCLUSIVE: Trustee says her post was about protecting children, involving parents"; and, the September 13, 2023, media article from the True North entitled, "Alberta trustee reprimanded for Instagram post critical of gender "indoctrination".

The Trustee holds a position of trust and influence within the education system. As a role model within the school system, the Trustee is required to represent the Board in all Board-related matters with proper decorum and respect for others. In having posted the Meme, the Trustee did not display proper decorum and respect for others. The principles noted in *Del Grande* are equally applicable here (at para. 55):

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

The Board acknowledges that the Trustee sought to distinguish the *Del Grande* decision and argued that the Saskatchewan decision in *Strom* is more applicable. While noting that the law in Ontario is not identical to that in Alberta, the Board finds that the principles outlined in *Del Grande* as noted in these Reasons are applicable to the issues before the Board.

The Board Motion is intended to allow the Trustee to continue to bring forward issues before the Board. Elected school trustees may form views and opinions and declare themselves on issues. However, the place for the Trustee to express her views was at the Board table where a fulsome debate may occur. In this instance, the Meme Post did not reflect reasonable decorum. In the Board's view, a reasonably well-informed person would conclude that the Trustee's conduct in having posted the Meme reflected behaviour that did not treat individuals respectfully, equitably and with courtesy.

The Trustee's legal counsel noted that the Trustee espouses a minority view (through the Meme Post) which has struggled to get exposure. However, the Board has established a strong policy framework that demonstrates its unequivocal position that Red Deer Catholic Regional Schools require schools to 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.

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

Additional Comment

While this section deals with clauses 6 and 22 of the Code of Conduct, the Board is also of the view, for the reasons noted above, that by the Meme Post the Trustee did not "contribute to a positive and respectful learning and working culture both within the Board and the Division" and thus breached clause 6.18 of Board Policy #3 and thus was an additional violation of the Code of Conduct.

iii. Clause 6.4 of Board Policy 3

Clause 6.4 of Board Policy 3 states that trustees "will be cognizant that they are representing the interests of the Board while posting or commenting on social media, and aware of public perception that their posts, comments and social media engagement, are in accordance with their duties within the school division."

Analysis

When asked at the Meeting how the Trustee squares her duty under Board Policy 4 to act for all voters with the posting of the Meme, the Trustee indicated that just because one person does not like it does not mean that everyone else should not like it.

When asked what the Trustee was thinking when she posted the Meme, she stated that she thought the Meme Post was the truth about today. She had asked The Holy Spirit about it. She stated that she was more thinking about the political part of the Meme Post than anything; that it was something that would be understood; the Holy Spirit said, "Do it, go for it." So, the Trustee "shared it and that was it." The Trustee thought it was such a good outline as to what was going on in the world. The Trustee also indicated that

you read books and this is happening and it is right there in your face. “I did not think “education when I looked at this.” That was my thought process walking through that.”

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

The Board is also mindful of clause 10 of Board Policy #4 states that “while elected from specific wards, trustees shall represent the best interest of the entire Division.” This did not occur here.

Finding

In having posted the Meme, the Trustee breached clause 6.4 of Board Policy 3 and thus is in breach of clause 1 of the Code of Conduct.

X. Is the Meme Protected by the Trustee’s Charter Rights?

The Education Act

The Board is aware of the Trustee’s submission that s. 87(1)(c) of the *Education Act* infringes section 3 of the *Charter*. Pursuant to section 11 of the *Administrative Procedures and Jurisdiction Act, RSA 2000 c A-3* (“*Administrative Act*”) this Board does not have the jurisdiction to consider a question of constitutional law with respect to the *Education Act*. Further, and in any event, the Trustee did not provide notice of the intention to raise a question of constitutional law as required by section 12 of the *Administrative Act*. The Board is also mindful of the *Designation of Constitutional Decision Makers Regulation* (Alta Reg. 69/2006).

Further, and in the alternative, the Board has not exercised its jurisdiction to disqualify the Trustee and therefore, s.87(1)(c) of the *Education Act* has not been engaged.

Finally, the Board notes the submission of counsel for the Trustee that section 87(1) violates the section 3 *Charter* rights of Trustee LaGrange’s constituents. This Board lacks jurisdiction to consider the rights of constituents and, in any event, this is not the issue before the Board.

Accordingly, the Board declines to consider the constitutionality of s.87(1)(c) of the *Education Act*.

Charter Rights

As per *Calgary Roman Catholic Separate School District No. 1 v. O’Malley*, 2007 ABQB 574 (paras. 127 to 132) and *Hamilton v. Rocky View School Division No. 41*, 2009 ABQB 225 (paras. 13 to 17), the *Charter* does not have a bearing on the assessment of whether the Trustee violated the Board’s internal Code of Conduct. This matter relates to an internal self-regulatory process governed by Board Policy. Furthermore, the Trustee is not challenging the constitutionality of Board Policy; she made it clear at the Meeting that the Meme Post was not directed toward Red Deer Catholic Regional Schools nor was it a challenge to School Division practices. Accordingly, the *Charter* does not apply here.

In the alternative, if the Board is wrong and the *Charter* does apply in this instance, the Board’s objectives of regulating the Board and school board trustee communications - as per Board Policy, including in relation

to messages of inclusivity within the School Division that foster care and compassion of students and families, and address student issues such as safety, bullying, justice and respectful relationships - outweigh any potential negative effects of the Trustee restrictions set out in the Motion. The Trustee has ethical and fiduciary responsibilities which carry with it a corresponding obligation to communicate appropriately. The Meme does not meet this threshold and in the circumstances, any expressive rights held by the Trustee must properly be subordinate to the obligation to create an inclusive environment for students.

Further, in the Board's view the limitations on the Trustee's conduct are limited, moderate and reasonable. Under the Motion, the Trustee may attend regular Board meetings to bring forward educational-related issues for discussion and debate to the Board through the Board's standard procedures and practices (para. 3 of the Motion).

The Motion strikes a balance between the Board's educational mandate and the Trustee's freedom of expression; the Motion does not interfere with the Trustee's ability, as an elected school board trustee, to act in accordance with her religious beliefs in a manner that is more than trivial or insubstantial. Furthermore, there is evidence noted above before the Board as to the impact of the Meme Post on others (in the context of competing rights and societal concerns).

Charter Values

To the extent an analysis is required as per *Doré v. Barreau du Québec*, 2012 SCC 12 in this matter, the Board is required to balance the severity of the Charter interference with the statutory objectives set out in the *Education Act* and Board Policy, and then ascertain how the Charter values at stake will best be protected in view of these objectives. As described in the prior section, in the Board's view an appropriate balance has been struck.

The Motion is consistent with the statutory objectives set out in the *Education Act* and in Board Policy.

The Board has a statutory duty under s. 33(1)(d) of the *Education Act* to 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. (As earlier noted, the preamble in the *Education Act* states that "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.) The Board is also required to implement and maintain a policy to provide a welcoming, caring, respectful and safe learning environment; school principals must provide a welcoming, caring, respectful and safe learning environment that respects diversity and fosters a sense of belonging.

All Board members, including the Trustee, have a duty to comply with the Code of Conduct, and to assist the Board in fulfilling the above-referenced duties.

The Trustee, as per the Motion, was not sanctioned for holding certain religious beliefs. Rather, the Trustee was sanctioned for having posted the Meme in violation of the Board's Code of Conduct: 6.2, 6.4 and 6.18 of Board Policy 3 and clauses 1, 6, 10 and 22 of Board Policy 4.

The Motion reflects an appropriate balance between the statutory objectives of the *Education Act* and Board Policy and, the Charter values at stake should they be applicable in the unique facts of this case. When a

Board member wishes to advance education-related issues, they must do so in accordance with the Code of Conduct. This did not occur in this instance.

XI. Is the Decision Reasonable?

The Trustee's written submissions at paragraphs 54 to 62 advance the argument that the outcome of the Decision must be reasonable. The Board agrees. In the Board's view, the Decision was made carefully and with full consideration of the evidence and argument presented to it and reflects an appropriate balancing of the Trustee's ability to hold and express beliefs with the Board's statutory mandate to provide a safe and inclusive environment for its students. The Decision was accordingly reasonable as measured by the principles brought forward by the Trustee.

XII. Was The Decision Procedurally Unfair?

The Trustee argued that these proceedings are tainted by procedural unfairness and bias, and as such, should be stayed. The Board has carefully considered this argument and dismissed the stay of proceedings request.

The foundation of this argument is that, prior to the commencement of the Code of Conduct complaint process, the Board initially passed a motion asking the Minister of Education to dismiss the Trustee. This process was undertaken based on the Board's initial misunderstanding that the Minister was responsible for the review and assessment of the Trustee's conduct. However, the Minister's response informed the Board that this process was in fact the Board's responsibility.

Subsequently, a letter of complaint was filed which triggered the Code of Conduct hearing under Appendix "A" of the Code of Conduct. Prior to the Meeting, each Board member hearing this matter conducted a serious and self-reflective assessment of its ability to hear the matter impartially and without bias. Each Board member determined that they held an open mind and were able to fairly and impartially hear the Trustee's arguments, consider them without pre-determination, and render a fair decision.

The proof of this ability is the outcome of the hearing. Although the Trustee's argument (reflected in her written submissions at paragraphs 96 to 99) focused on the Trustee's objection to the possibility of her disqualification or Trustee removal - including arguments as to the unconstitutionality of the relevant section of the *Education Act* - ultimately the Board did not decide that disqualification or removal was the appropriate sanction. Instead, the above-described Motion was passed.

The Board finds that:

1. the careful and considered self-assessment by each Board member who heard this matter, concluding each maintained an open mind and was able to be impartial; and
2. the fact that the Board's ultimate decision was not, in fact, the same sanction as initially referenced in the request to the Minister of Education,

shows that the Board's decision in this case is not tainted by procedural unfairness or bias. Accordingly, the Board declines to stay these proceedings or the Decision.

XIII. Conclusion

The Board finds that the Trustee breached clauses 1, 6.2, 6.4 and 6.18 of Board Policy 3 and clauses 1, 6, 10 and 22 of Board Policy 4.

The Board finds that the appropriate sanctions are those set out in the Motion.

Finally, the Board wishes to comment on paragraph 1(e) of the Motion.

The Board has required the Trustee to issue a sincere public letter of apology to School Division students, staff and the Board in relation to the Meme Post.

The Trustee is being asked to recognize that her communication in relation to the Meme Post was not in accordance with Board Policy and to recognize that members of the School Division found it offensive and experienced hurt feelings. This, in the Board's view, does not offend the Trustee's sincerely held beliefs.

Dated this 13th day of October 2023.