Court of King's Bench of Alberta

Citation: Dion v Peace River School Division, 2025 ABKB 359

Date: 20250611
Docket: 2409 00092
Registry: Peace River

Between:

Moïse Dion

Applicant

- and -

The Board of Trustees of the Peace River School Division

Respondent

Reasons for Decision
of the
Honourable Justice E.J. Funk

I. Introduction

[1] On September 26, 2024, the respondent Board of Trustees of the Peace River School Division passed a resolution declaring the applicant, Moïse Dion, disqualified from remaining as a trustee under s 91(a) of the *Education Act*, SA 2012, c E-0.3. The Board disqualified Mr. Dion after finding he twice breached its Trustee Code of Conduct. On October 7, 2024, the Board issued its written reasons.

[2] Mr. Dion filed an originating application in this Court, under s 92(1) of the *Education Act*, seeking, among other things, an order declaring him to be qualified to remain a school board trustee.

[3] A threshold issue is whether Mr. Dion's application in this Court is in the nature of a statutory appeal or a judicial review. The determination of this question will dictate the applicable standard of review.

II. Relevant Legislative Provisions

[4] Section 87 of the *Education Act* provides a person may be disqualified from remaining as a trustee of the Board if that person has breached the Board's code of conduct: s 87(1)(c).

[5] Section 90 requires a disqualified person to resign as a trustee. If the person refuses to resign, the Board may pass a resolution declaring the person disqualified (s 91(a)) or may apply to this Court for an order determining whether the person is disqualified or an order declaring the person disqualified (s 91(b)).

[6] If the Board passes a resolution, under s 91(a), disqualifying a person from remaining as a trustee, that person may apply to this Court, under s 92. Under this section, the Court may make an order declaring the person to be either qualified or disqualified. Applications made under s 92 must be made within 30 days from the date of the Board's resolution (s 92(3)). Subsection (4) allows the Court to hear such applications on affidavit or oral evidence.

[7] Where this Court finds that a person is disqualified from remaining as a trustee, that person may appeal that decision to the Court of Appeal: s 95.

III. Does s 92 create a statutory appeal or a mechanism for judicial review?

[8] The parties disagree on whether the within application is in the nature of a statutory appeal or a judicial review. The confusion lays in the wording of the section:

> **Appeal of board's resolution**
>
> 92(1) Where a person is declared under section 91(a) to be disqualified from remaining as a trustee, that person may apply to the Court of King's Bench for an order declaring the person to be qualified to remain as a trustee.
>
> (2) Where a person
>
> (a) is declared under section 91(a) to be disqualified from remaining as a trustee, and
>
> (b) makes an application to the Court under subsection (1),
>
> that person remains disqualified unless the Court otherwise orders.
>
> (3) An application under this section must be made within 30 days from the date that the resolution was passed under section 91(a).
>
> (4) On hearing an application and any evidence, whether oral or by affidavit, that the Court requires, the Court may make an order, with or without costs,
>
> (a) declaring the person to be qualified to be a trustee ...

> or
>
> (b) declaring the person to be disqualified from remaining as a trustee and requiring the person to vacate the person's seat on the board. [emphasis added]

[9] In ***Canada (Minister of Citizenship and Immigration) v Vavilov***, 2019 SCC 65, the Supreme Court recognized not all legislative provisions that contemplate a court reviewing an administrative decision actually provide a right of appeal. Some provisions simply recognize that all administrative decisions are subject to judicial review: ***Vavilov*** at para 51.

[10] Under ***Vavilov***, the presumptive standard of review is reasonableness. That presumption can be rebutted "where the legislature has provided a statutory appeal mechanism from an administrative decision to a court, thereby signalling the legislature's intent that appellate standards apply when a court reviews the decision": ***Vavilov*** at para 17. Provisions that "do not give courts an appellate function, do not authorize the application of appellate standards": ***Vavilov*** at para 51.

A. Positions of the Parties

[11] Mr. Dion submits that s 92(1) of the *Education Act* creates a statutory right of appeal to which the appellate standards of review apply. He argues the legislature's use of the word "application" in the text of the section is not determinative of the question. Mr. Dion points to cases where legislation has provided that a party may appeal an administrative decision by way of application and courts have characterized those applications as statutory appeals: ***Young v Alberta (Assessors' Association Practice Review Committee/Executive Committee)***, 2020 ABQB 493 at para 27 referring to the *Professional and Occupational Associations Registration Act*, RSA 2000, c P-26, s 37; ***1914969 Alberta Inc v Alberta (Supportive Living Accommodation Licensing Act, Director)***, 2024 ABCA 82 referring to the *Supportive Living Accommodation Licensing Act*, SA 2009, c S-23.5, s 18; ***Canadian Taxpayers Federation v Alberta (Election Commissioner)***, 2024 ABKB 5 and ***Park v The Election Commissioner of Alberta***, 2023 ABKB 351 and ***Callaway v Office of the Election Commissioner***, 2023 ABKB 233 all referring to section 51.03 of the *Election Finances and Contributions Disclosure Act*, RSA 2000, c E-2.

[12] I note that in each of those statutes, unlike here, the word "appeal" is used both in the heading and in the text of the section.

[13] The Board submits that applications under s 92(1) of the *Act* are in the nature of judicial review to which the reasonableness standard applies. It argues the word "appeal" in the heading is not part of the statute and should not be used to interpret this section, relying on s 12(2)(b) of the *Interpretation Act*, RSA 2000, c I-8:

> **Preambles and reference aids**
>
> 12(1) The preamble of an enactment is a part of the enactment intended to assist in explaining the enactment.
>
> (2) In an enactment,
>
> (a) tables of contents,
>
> (b) marginal notes and section headers, and

(c) statutory citations after the end of a section or schedule

are not part of the enactment, but are inserted for convenience of reference only. [emphasis added]

[14] The Board argues the use of the word "application" in the text of ss 92-94, contrasted with the use of the word "appeal" in s 95 (and other sections, see ss 230-233), strongly suggests that inclusion of the word "appeal" in the section heading above s 92 was a slip and does not reflect the legislative intent of this section.

B. Analysis

[15] When determining whether an application is a judicial review or a statutory appeal, the "only way of characterizing the application is to examine the governing statute", paying attention to the words used by the legislature: ***MacKenzie v Alberta (Registrar, North Alberta Land Registration District)***, 2022 ABCA 277 at para 75.

[16] Answering the question of whether s 92 of the *Act* creates a statutory appeal or a mechanism for judicial review is an exercise in statutory interpretation. This means that the words of the section must be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the entire *Act*, having regard to the object of the *Act* and the intention of the legislature: ***Rizzo & Rizzo Shoes Ltd (Re)***, [1998] 1 SCR 27 at para 21.

[17] The *Education Act* came into force September 1, 2019,[1] repealing and replacing the *School Act*, RSA 2000, c S-3. Section 92(1) has remained largely unchanged since 1988 where the same provision appeared as s 69(1) of the *School Act*, SA 1988, c S-3.1.[2] Despite being in force for almost 40 years, there has been little judicial consideration of what is now s 92(1).

[18] In a pre-***Vavilov*** decision, this Court held that an application under what is now s 92(1) was a statutory appeal. In ***Howell v Grande Yellowhead Regional Division #35***, 2006 ABQB 387, the board passed a resolution disqualifying Ms. Howell from remaining as a trustee for being in a conflict of interest on a matter before the board on which she voted and was therefore required to resign under what are now ss 88(7) and 90 of the *Act*. Ms. Howell applied under what is now s 92(1). The Court characterized Ms. Howell's application as an "appeal" (paras 4 and 64). The Court did not address the issue of whether the application was a judicial review as opposed to an appeal.

[19] Factors relevant to the characterization of an application as either a judicial review or a statutory appeal include whether the procedure under the statute is the same as the procedure for a judicial review and, if the text of the section is ambiguous, the section heading: ***MacKenzie*** at paras 78-85.

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[1] *Education Amendment Act, 2019*, SA 2019 c 7, s 47.

[2] Section 69(1) of the *School Act*, SA 1988, c S-3.1 provided:

> **Appeal of board's resolution**
> 69(1) Where a person is disqualified under section 68(a) from remaining as a trustee, that person may apply by originating notice to the Court of Queen's Bench for an order declaring him to be qualified to remain as a trustee.

The phrase "by originating notice" was struck out in 2009 under the *Rules of Court Statutes Amendment Act, 2009*, SA 2009, c 53, s 168(2).

[20] Applications under s 92(1) of the *Act* and applications for judicial review are both commenced by way of originating application: *Alberta Rules of Court*, Alta Reg 124/2010, r 3.15(1).

[21] In applications for judicial review, the originating application must be served on the body whose decision is being reviewed, the Minister of Justice, and every person directly affected by the application: r 3.15(3). There is no similar service requirement under s 92(1) of the *Act*.

[22] In judicial reviews, applications proceed on the certified record of proceedings that were before the administrative tribunals: r 3.18-3.19. In applications brought under s 92(1) of the *Act*, the Court is not limited to the record that was before the Board. Instead, the Court may hear "any evidence, whether oral or by affidavit that the Court requires": s 92(4).

[23] The parties here did not follow the procedure for judicial review applications. The applicant did not serve the Minister of Justice and did not file a certified record of the proceedings that were before the Board. Both sides filed affidavit evidence, as permitted under the *Act*. The respondent did not argue that the procedure for judicial review was not followed, which is "telling": ***MacKenzie***, at para 80.

[24] Where the text of a legislative section is ambiguous, the section heading can be a useful interpretative aid: ***MacKenzie***, at paras 81-82. Using the section heading in this manner is consistent with s 12(2)(b) of the *Interpretation Act*, so long as the heading is not used to "control the meaning of enacting words in themselves clear and unambiguous": ***Edmonton Police Service v Alberta (Information and Privacy Commissioner)***, 2022 ABCA 397 at paras 26-27.

[25] In ***Yeadon v Newfoundland and Labrador (Fisheries, Forestry and Agriculture)***, 2023 NLSC 140 at paras 24-26, the word "appeal" in the section heading was given no interpretive weight because the text of the section used the phrase "judicial review".

[26] The use of the word "application" in the text of s 92 creates ambiguity because the legislature permits parties to bring both statutory appeals and judicial reviews by way of "application".

[27] As noted, the heading immediately above s 92(1) reads "Appeal of board's resolution". This heading has not changed since 1988. The headings above ss 93 and 94 ("Hearing of application" and "Dismissal of application for disqualification", respectively) do not include the word "appeal". Section 93 applies only where applications are brought directly to the court, without any board resolutions. In other words, s 93 applies when the Court is making a finding in the first instance as to whether or not a person is qualified to remain as a trustee.

[28] The use of the word "appeal" in the heading above s 92 appears to signal a legislative intent to distinguish between applications brought under s 92 (where there is a prior Board decision) and those brought under s 93 (where there is no prior Board decision).

[29] There are two aspects of s 94 that suggest applications under s 92 are not judicial reviews.

[30] First, s 94 expressly permits the court to go beyond reviewing the decision of the board and to consider new grounds for not disqualifying the person from remaining as a trustee (inadvertence and *bona fide* error in judgment). This suggests that applications under s 92 are more akin to *de novo* appeals, where no deference is owed to the board and the court can decide

the case afresh: ***Pacer Construction Holdings Corporation v Pacer Promec Energy Corporation***, 2018 ABCA 113 at paras 65-66.

[31] This interpretation is consistent with ***Howell***, where the court arrived at its own finding as to whether the disqualified trustee had a pecuniary interest within the meaning of the *School Act* (at paras 15 and 21) and weighed the evidence to make a finding on whether the disqualified trustee voted inadvertently or made a *bona fide* error in judgment (paras 45 and 61).

[32] Second, s 94 allows the Court to "find" that a person is disqualified but may nonetheless declare the person to be qualified. This wording does not accord with the rationale for adopting the presumptive reasonableness standard when the court is conducting a judicial review. As the Supreme Court explained in ***Vavilov***, the presumption of reasonableness respects the legislature's "institutional design choice to delegate certain matters to non-judicial decision makers through statute": ***Vavilov***, at para 26. A reasonableness review must focus on the decision that the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court would have reached in the administrative decision maker's place: ***Vavilov***, at para 15. The wording of s 94 is inconsistent with this rationale and, instead, reflects an "institutional design choice" that invites the Court to interfere with the Board's decision, and arrive at its own conclusions on the question of whether a person is disqualified from remaining as a trustee.

[33] The text and heading of s 95 are also relevant. While the heading for s 92 uses the word "appeal", the text of the section does not. This stands in contrast to s 95, where "appeal" is used both in the section heading and in its text. While the presence of the word "appeal" in a statute indicates a statutory right of appeal (***Vavilov*** at para 44), the opposite is not necessarily true. See for example ***McCarthy et al v Guest et al***, 2020 NBQB 150 at paras 34-35 where the absence of the word "appeal" was not determinative, rather, use of the word "review" paired with a detailed statutory mechanism to involve the courts to review an administrative decision was found to be akin to a statutory appeal.

[34] The wording used elsewhere in the *Education Act* is also relevant. Section 225.99998 sets out the procedure on an "application for judicial review" of various decisions made under the *Act*. Both the heading and the text of this section use the phrase "judicial review". While this section appears in a different part of the *Act*, the difference in language demonstrates that if the legislature intended applications under s 92 to be applications for "judicial review" it could have said so in the heading or in the text of the section. This interpretation accords with the presumption of consistent expression: "where a different form of expression is used, a different meaning is intended": Ruth Sullivan, *Sullivan on the Construction of Statutes*, 7th ed (LexisNexis Canada, 2022), at §8.04.

[35] A further indicator that applications under s 92(1) are in the nature of a statutory appeal is that this Court has no discretion to decline to hear an application brought by a disqualified person under this section. In contrast, "courts always and fundamentally retain the discretion to hear, or not to hear, an application for judicial review": Colleen M. Flood & Paul Daly, *Administrative Law in Context* (Toronto: Emond, 2022) at 57; see also ***Yatar v TD Insurance Meloche Monnex***, 2024 SCC 8 at para 54; ***Strickland v Canada (Attorney General)***, 2015 SCC 37 at para 37.

[36] In my view, the use of the word "appeal" in the heading above s 92 was not merely a slip, as the Board argues. Instead, the appearance of the word "appeal" in the heading is properly used

to interpret the ambiguity that exists within the text of the section. In ***MacKenzie,*** as in this case, the word "appeal" appeared in the section heading and the section text used the word "application". After reviewing the statutory procedure and context, the Court of Appeal held there was no reason to treat the application as anything other than what the section heading said it was – an appeal: ***MacKenzie*** at para 85. I arrive at the same conclusion here.

C. Conclusion

[37] Based on the procedure set out in the *Education Act*, the words of the statute, the statutory scheme, and the section headings, I find that applications under s 92(1) are in the nature of a statutory appeal. This interpretation accords with the legislature's "institutional design choice" to include, not exclude, court oversight of board decisions to declare a person to be disqualified from remaining as a trustee.

IV. Standard of Review

[38] Having found that s 92(1) of the *Education Act* creates a statutory appeal, ***Vavilov*** instructs that the appellate standards of review apply: ***Vavilov*** at para 17.

[39] Questions of law, including questions of statutory interpretation and those considering the scope of a decision maker's authority, are reviewed on the correctness standard. Questions of fact or mixed fact and law where the legal principle is not readily extricable are reviewed on the standard of palpable and overriding error: ***Vavilov*** at para 37; ***Housen v Nikolaisen***, 2002 SCC 33 at paras 8, 10, 19 and 26-37.

V. Background Facts

[40] The underlying facts are not in dispute. I will review them only briefly here.

[41] Mr. Dion was a trustee for the Peace River School Division. His term as a trustee was to run from 2021-2025.

[42] Starting in the fall of 2023, issues began to arise between Mr. Dion and others. In September 2023, Mr. Dion sent an email to the Board Secretary-Treasurer, copying all members of the Board and the Superintendent, that ultimately resulted in a Code of Conduct complaint and the Board's decision to impose sanctions on Mr. Dion (the "First Sanctions").

[43] In May 2024, while still under those sanctions, Mr. Dion made comments at, or about, the School Deputy Superintendent that resulted in a second Code of Conduct complaint. Following a hearing, the Board wrote to Mr. Dion on June 23. In this communication, the Board stated it was providing Mr. Dion with the opportunity to issue an "appropriate" apology to the Deputy Superintendent and to attend a meeting with the Deputy Superintendent, at which others would also be present, to convey his apology. Mr. Dion did not issue the apology and a meeting did not take place.

[44] The Board then called a Special meeting on September 26, at which the Code of Conduct complaints were addressed. This meeting resulted in the Board's decision to declare Mr. Dion disqualified from remaining as a trustee, pursuant to s 91(a) of the *Education Act*. Mr. Dion now appeals that decision to this Court.

VI. Issues

[45] Mr. Dion does not appear to take issue with the Board's findings that he acted in breach of the Code of Conduct. Instead, he alleges two errors of law:

1. That the Board erred in law by compelling him to issue an "appropriate" apology, and
2. That the Board's decision to disqualify him was unjust, disproportionate and excessive.

A. Did the Board err in law by compelling Mr. Dion to apologize?

[46] Mr. Dion submits that while the Board has authority to *request* a trustee issue an apology, the Board exceeded its authority when it *required* him to issue an apology. Even if the Board has authority to *require* an apology, Mr. Dion says the Board erred in law by requiring the apology to be of a certain quality ("appropriate") that is not objectively measurable and therefore unenforceable. He further submits that the requirement to issue an "appropriate" apology is compelled speech that violates his freedom of expression and is therefore unlawful.

1. The Sanctions and Remedial Actions

[47] The First Sanctions were imposed after the Board received an investigation report that concluded that Mr. Dion personally harassed the Board Secretary-Treasurer when he sent the email and copied the Board and the Superintendent. The First Sanctions included seven discrete sanctions, passed by a motion on December 22, 2023 (Motion 15747). For the purposes of this appeal, the following sanction is relevant:

> 7. That Trustee Dion shall participate in mediation and/or training and cause for a positive report to be issued to the attention of the Board Chair to be shared with the Board of Trustees regarding the mediation process.

[48] In a letter from the Board to Mr. Dion, dated January 4, 2024, the Board provided reasons for the First Sanctions and concluded the letter as follows:

> The members of the board of the trustees have decided to take a progressive discipline approach, since this is the first formal incident of a Trustee Code of Conduct violation by Trustee Dion. However, the members of the board of the trustees want to emphatically state that if there is any further violation of the Trustee Code of Conduct that no more chances will be afforded, and disqualification will result.

[49] In June 2024, Mr. Dion and the Board Secretary-Treasurer participated in mediation. In July, the mediator met with Mr. Dion and conveyed that Mr. Dion would be required to provide formal written acceptance of the investigator's report, commit to support the related Board motions, and provide an unequivocal apology to the Board Secretary-Treasurer. Before further mediation could take place, someone instructed the mediator to cease mediation. The record does not reflect who issued this instruction, or why.

[50] On August 23, 2024, Mr. Dion submitted an apology letter. On September 19, the Board Secretary-Treasurer responded that she did "not agree with the fundamental premise and tone" of the apology and requested a "meaningful apology" that included "sincere remorse" and that she was seeking a "genuine apology".

[51] In its disqualification decision, the Board stated that as of September 26, 2024, the First Sanctions were "not purged to the satisfaction of the members of the board of trustees".

[52] Mr. Dion's second breach of the Code of Conduct occurred during a May 28, 2024, Board meeting. This second breach was the subject of a motion passed June 20, 2024 (Motion 15862) where the Board imposed the following "Remedial Actions":

> 1. It is held that Trustee Dion made inappropriate comments that amount to Discreditable Conduct directed at an employee in violation of articles 10.1 and 10.2 of Board Policy 4 Trustee Code of Conduct.
>
> 2. That the remedial actions that Trustee Dion must complete include:
>
> > a. issuing an appropriate letter of apology to the employee and copied to all members of the board of the trustees;
> >
> > b. that Trustee Dion be required to meet with the employee and the employee's supervisor to provide an appropriate apology to the employee for the inappropriate comments with Vice-Chair Buchinski being present as an observer; and
> >
> > c. that Vice-Chair Buchinski will be required to issue a report to the members of the board of the trustees regarding the meeting.
>
> 3. That with respect to the sanctions this meeting shall be adjourned to the August 15, 2024 board meeting, to receive the report of Vice-Chair Buchinski and then the board of trustees shall vote on the appropriate sanctions.

[53] Unlike the First Sanctions, where the Board acted upon the findings of an investigative report, the record reveals no investigative report following the second Code of Conduct complaint. The record further reveals no findings by the Board regarding Mr. Dion's comment that amounted to "discreditable conduct".

[54] There is no recording or transcript of what Mr. Dion said at the May 28, 2024, Board meeting that was deemed inappropriate. In an affidavit filed on appeal, Mr. Dion attested to his recollection of what he said. The Deputy Superintendent and the Board Chair submitted complaints in June 2024 detailing their recollections of what Mr. Dion said. The recollections are not consistent beyond Mr. Dion said something about qualifications of staff to provide legal advice.

[55] In a letter to Mr. Dion dated June 23, 2024, the Board informed him that he had until August 15, 2024 to complete two steps: (1) retract the statement made to the employee, and (2) to apologize to the employee for the inappropriate comments made. The Board advised that the "severity of the final sanctions will be dependant on the satisfactory completion of the two steps."

[56] The Board attempted to schedule a meeting in early August 2024 between Mr. Dion and the employee for Mr. Dion to issue his letter of apology. That meeting never took place. Mr. Dion attests that he requested clarification regarding the allegations made against him, including any documentation regarding the nature of the alleged inappropriate comments, as well as permission to have legal counsel attend. He further attests that when he was not provided with documentation about the alleged inappropriate comment or permission to bring legal counsel, he felt he could not attend the meeting and issue an apology as this would be compelled speech.

[57] In its disqualification decision, the Board stated that Mr. Dion failed to complete the Remedial Actions, specifically Mr. Dion refused to meet with the employee and did not issue a letter of apology. The Board determined there had been a "recurring pattern of problematic behaviour" and that while still "working through the censure related to the first matter, former Trustee Dion when speaking to staff members continued to use a harsh tone for no justifiable reason". The Board held it had "done all it can do from the perspective of training and sanctions to change the inappropriate behaviours leaving trustee disqualification as the only remaining option".

2. Authority to Impose Sanctions and Remedial Actions

[58] Broadly, a school board has a responsibility 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": *Education Act*, s 33(1)(d).

[59] Regarding sanctions, the board has the responsibility to "develop and implement a code of conduct that applies to trustees of the board, including definitions of breaches and sanctions, in accordance with principles set out by the Minister by order": *Education Act*, s 33(1)(k). The *Act* does not prescribe the content of the code of conduct, demonstrating the legislative intent for conduct issues to fall within the Board's authority.

[60] There were two different Trustee Codes of Conduct under the Board Policy 4 in place at the material times. At the time of the imposition of the First Sanctions, the Code of Conduct provided the following under the heading "Trustee Code of Conduct Sanctions":

> 1. Trustees shall conduct themselves in an ethical and prudent manner in compliance with the Trustee Code of Conduct, Policy 4. The failure by trustees to conduct themselves in compliance with this policy may result in the Board instituting sanctions.
>
> ...
>
> 9. A violation of the Code of Conduct may result in the Board instituting, without limiting what follows, any or all of the following sanctions:
>
> > 9.1 Having the Board Chair write a letter of censure marked "personal and confidential" to the offending trustee, on the approval of a majority of those trustees present and allowed to vote at the special meeting of the Board;
> >
> > 9.2 Having a motion of censure passed by a majority of those trustees present and allowed to vote at the special meeting of the Board;
> >
> > 9.3 Having a motion to remove the offending trustee from one (1), some or all Board committees or other appointments of the Board passed by a majority of those trustees present and allowed to vote at the special meeting of the Board, for a time not to exceed the trustee's term as trustee.

[61] At the time of the imposition of the Second Sanctions, the Code of Conduct contained a new section titled "Remedial Action":

> **16. Remedial Action**

16.1. Remedial action is intended to be corrective, serve as a deterrent, and follow the principle of progressive discipline. Prior to imposing any remedial action, the Board will take into consideration the nature and severity of the breach as well as whether the Trustee has previously breached this Code of Conduct.

16.2. If the Board determines it appropriate to do so, the Board may impose sanctions on a Trustee who contravenes this Code of Conduct. Sanctions that may be imposed on a Trustee by the Board include

16.2.1. issuing a letter of reprimand addressed to the Trustee,

16.2.2. requesting the Trustee to issue a letter of apology,

16.2.3. publicly reprimanding the Trustee by motion of censure with or without conditions on how to purge the censure,

16.2.4. publishing a letter of reprimand or request for apology and the Trustee's response,

16.2.5. requiring the Trustee to attend training either at the expense of the Board or the Trustee,

16.2.6. suspending or removing the Trustee from membership on a committee,

16.2.7. suspending or removing the Trustee from chairing a committee,

16.2.8. requiring the Trustee to reimburse the Board for monies received,

16.2.9. reducing or suspending remuneration paid to the Trustee in respect of the Trustee's services,

16.2.10. requiring the Trustee to return Division property or reimburse its value,

16.2.11. restricting the Trustee's access to Division facilities, property, equipment, services and supplies,

16.2.12. restricting the Trustee's contact with Division staff,

16.2.13. restricting the Trustee's travel and representation on behalf of the Board,

16.2.14. restricting how documents are provided to the Trustee (e.g. no electronic copies, but only watermarked paper copies for tracking purposes),

16.2.15. disqualifying the Trustee from the Board,

but nothing in this Code of Conduct requires the Board to impose a sanction for any contravention. [emphasis added]

3. Analysis

[62] I agree with the Board that the use of the words “without limiting what follows” and “include” is expansive language that provides the Board with broad discretion with respect to the sanctions or remedial actions it may impose for a breach of the Code of Conduct. Because of this broad discretion, I find that the Board did not exceed its lawful authority by requiring an apology as opposed to requesting one.

[63] Turning next to the qualifier of an “appropriate” apology, ***LaGrange v Red Deer Catholic Separate School Division***, 2024 ABKB 665 [***LaGrange #1***] is instructive. There, the

school board required the trustee to issue a "sincere" apology. Justice Arcand-Kootenay held that the word 'sincere' ought to be struck from the sanction because it is not "feasible...to prescribe an individuals' personally held feelings. Whether or not the apology is sincere is not measurable by any objective standard": ***LaGrange #1*** at para 125. Mr. Dion submits that the same rationale applies here.

[64] The Board submits that "appropriate" is distinguishable from "sincere" because the appropriateness of an apology can be assessed objectively. The Board points to decisions of other administrative tribunals where "appropriate" apologies were ordered.

[65] I agree with Mr. Dion that the Board erred in law by requiring an "appropriate" apology. The response to Mr. Dion's apology, under the First Sanctions, demonstrates that the Board imposed a sanction where compliance with that sanction was not objectively measurable.

[66] A copy of the apology letter Mr. Dion provided to the Board Secretary-Treasurer is in the record. Mr. Dion acknowledged that regardless of his intention, the way he voiced his concerns caused harm and hurt. He apologized for the harm and distress his communication caused and expressed a commitment to undertake training to ensure a safe work environment going forward.

[67] Objectively, Mr. Dion's apology has all the markers the Board says would make an apology appropriate: timely expression of remorse, recognizes the harm done, and conveys a commitment to refrain from the impugned behaviour. Yet the Board stated in its reasons for disqualification that Mr. Dion's censure was not yet "purged to the satisfaction of the members of the board of trustees".

[68] The Board provided no justification for this finding, in particular, the Board did not identify what Mr. Dion had failed to do to purge the censure. The only basis in the record for a finding that the censure had not yet been purged was because the Secretary-Treasurer rejected the apology for not being "sincere" or "genuine" enough. Whether a person accepts the apology cannot be the test for whether an apology is "appropriate".

4. Conclusion

[69] While the Board directed Mr. Dion to provide an "appropriate" apology, the Board's reaction demonstrated it was in fact requiring a "meaningful" apology that expressed "genuine remorse" – both of which are without objective measure. In so doing, the Board erred in law.

B. Was the Board's decision to disqualify Mr. Dion unjust, disproportionate and excessive?

[70] Mr. Dion argues the Board made an extricable error of law by failing to consider relevant factors when it determined that disqualification was the appropriate remedy. While the Board considered the harm to the complainant employees and stated that it was following the principle of progressive discipline, he argues the Board erred in failing to consider other relevant factors, such as:

(i) whether disqualification was consistent with other trustee discipline cases;

(ii) whether disqualification was proportionate to Mr. Dion's conduct;

(iii) whether disqualification was appropriate given that Mr. Dion was democratically elected; and

(iv) whether lesser sanctions would effectively address the conduct.

[71] Mr. Dion acknowledges that the Board has discretion when imposing sanctions but argues the Board has created a low bar for the extraordinary remedy of removing a democratically elected official, and that this Court ought to intervene.

[72] The Board argues that it was fulfilling its mandate under s 33(1) of the *Education Act* and disqualification was consistent with the principle of progressive discipline. The Board submits that Mr. Dion was given opportunities to take responsibility for his conduct but repeatedly failed to do so by refusing to carry out the Remedial Actions after the second breach of the Code of Conduct. It contends that this is an issue of mixed fact and law to which deference is owed.

1. Analysis

[73] There are limited authorities dealing with disqualification of a trustee for breaching a board's code of conduct. In cases dealing with disqualification of democratically elected persons, there is a common thread that since the statutory provisions are penal in nature, the statute must be strictly construed because disqualification operates to defeat the will of the electors: see ***Wanamaker v Patterson***, 1973 CanLII 1126 (ABSC (TD)), aff'd (1973) 37 DLR (3d) 575 (ABSC (AD)); ***Crowsnest Pass (Municipality of) v Prince***, 2001 ABQB 212 at para 14.

[74] That said, a penalty imposed by a Board will not be interfered with unless the Board "made an error in principle or that the penalty was clearly unfit, which is to say that it is manifestly deficient or excessive and is a substantial and marked departure from penalties in similar cases": ***Khan v Law Society of Ontario***, 2022 ONSC 1951 at para 77.

[75] Mr. Dion points to comparator cases which he says show the excessive nature of disqualification in this case.

[76] In ***Del Grande v Toronto Catholic District School Board***, 2023 ONSC 349 at para 88, aff'd 2024 ONCA 769, leave to appeal to SCC refused, 41593 (15 May 2025) [***Del Grande***], the trustee was found to have breached the code of conduct when he made certain comments during a board meeting. An investigator reviewed written complaints, documents, portions of the recorded meetings and interviewed relevant parties. The investigator found that while debating motions the trustee "crossed the line" through use of "inflammatory language" and the "flippant (to use his own word) manner in which he addressed concerns about that language": para 22. The investigator found that Mr. Del Grande had effectively equated criminals, such as cannibals and rapists, to members of the LGBTQ+ community. The trustee was not disqualified but was requested to present a public apology, barred from sitting on committees and being appointed to certain roles for a period of time, and required to take an equity training program. The sanction was upheld on judicial review and affirmed on appeal.

[77] In ***LaGrange v Red Deer Catholic Separate School Division***, 2024 ABKB 751 [***LaGrange #2***], the board's decision to disqualify the trustee was upheld on judicial review and this court found that disqualification was neither excessive nor clearly unfit. In that case, the trustee posted several memes on her personal Facebook account which were found to have violated the board's code of conduct. The board imposed sanctions, which the trustee then deliberate failed to comply with by making further social media posts and participating in interviews. The trustee was disqualified. On judicial review, this court held that since a lesser sanction had not been effective at stopping the behaviour, the board was entitled to find that disqualification was necessary in light of all of the circumstances: para 130.

[78] In ***Calgary Roman Catholic Separate School District No 1 v O'Malley***, 2007 ABQB 574 the trustee was disqualified by the board and, following a trial, this court declared him to be disqualified from holding office. The trustee had *inter alia* breached the conflict of interest provision in the *School Act*, attempted to halt the board's budget work, and sued the board. The court described the trustee's actions this way, at para 146:

> It is about an extremist who exploited and abused his elected position - a person who has deliberately and in a calculated way attempted to sabotage and undermine the very organization he was elected to serve. It is about an elected official who has refused to abide by the democratic principle of majority rule. It is about an individual who thought he could do anything he wanted, how he wanted and when he wanted without regard to codes of conduct, internal rules of procedure, majority rule or confidentiality.

[79] Mr. Dion says this case is more akin to ***Del Grande*** and not as serious as the conduct in ***LaGrange #2*** or ***O'Malley***. Mr. Dion points to his attempts to comply with the First Sanctions by attending mediation and delivering an apology. He also points to his attempts to comply with the Remedial Actions but the Board refused to provide further information in response to his requests. This was not a trustee who had gone rogue or who refused to comply with sanctions.

[80] I agree with Mr. Dion that the Board erred in law in its decision to declare him disqualified from remaining as a school board trustee.

[81] First, and related to the first error, the Board erred in relying in part on Mr. Dion's failure to purge his censure under the First Sanctions to justify disqualification. I have already found compliance with an "appropriate" apology was not objectively measurable in these circumstances.

[82] Second, the Board erred in principle in failing to make factual findings about the sanctionable conduct. Without these findings the Board could not, and did not, consider whether disqualification was a fit penalty having regard to Mr. Dion's conduct.

[83] A fit penalty is guided by an assessment of the facts of the particular case and the penalties imposed in other cases involving similar infractions and circumstances: ***Dr. Jonathan Mitelman v College of Veterinarians of Ontario***, 2020 ONSC 3039 at para 18 cited in ***Khan*** at para 77.

[84] Here, the Board minutes from the May 2024 meeting do not contain the alleged inappropriate comments that resulted in the second Code of Conduct complaint. The Board's reasons for disqualifications do not make a finding of what was said beyond the very general allegation that Mr. Dion made comments directed at the employee that were "inappropriate" and that his communications were "harsh".

[85] Given the lack of a record of what was said, it was incumbent on the Board to make a factual finding regarding the specific conduct that was sanctionable. This is because the fitness of a sanction will depend on the seriousness and gravity of the misconduct.

[86] While deference is owed to the board's determination of sanction under s 87(1)(d) of the *Act*, and the factual findings underpinning the sanction, the Board must make the factual findings necessary to underpin that sanction. Especially, as in this case, where the Board chose to impose the most severe sanction available to them and disqualify a democratically elected school board trustee.

[87] While this was Mr. Dion's second breach of the Code of Conduct, and accepting that Mr. Dion made "inappropriate" comments in a "harsh tone", I find that the seriousness of the conduct falls on a much lower scale than ***LaGrange #2*** where the trustee deliberately failed to comply with sanctions and ***O'Malley*** where the trustee was deliberately sabotaging the work of the Board. In light of the comparator cases, and the general allegations made against Mr. Dion, I find that disqualification is unjust, disproportionate and excessive.

2. Conclusion

[88] The Board disqualified Mr. Dion from remaining as a trustee after finding his comments amounted to "discreditable conduct". The Board failed to make any findings regarding what comments Mr. Dion made, other than being "inappropriate" and in a "harsh tone". Without making the necessary factual findings to underpin its decision to disqualify Mr. Dion, the Board's decision was unjust, disproportionate, and excessive.

VII. Conclusion

[89] I have found that the Board erred in law when it required Mr. Dion to issue an "appropriate" apology, when in fact it was requiring a "meaningful" apology that expressed "genuine remorse". I have further found that the Board erred in law by imposing a sanction that was unjust, disproportionate, and excessive when it chose to disqualify Mr. Dion from remaining as a trustee without making the necessary factual findings regarding the sanctionable conduct.

[90] With these findings, and pursuant to s 92(4) of the *Education Act*, Mr. Dion's appeal is allowed. Mr. Dion is qualified to remain as a trustee; he shall be reinstated as a trustee for any unexpired portion of the term of office for which he was elected. If any person has been elected to serve the balance of Mr. Dion's term, that person shall vacate the office.

[91] The Board shall repay to Mr. Dion any honorarium, salary, or entitlement that was not paid during the period of disqualification.

[92] Mr. Dion is entitled to the costs of this appeal. If the parties are unable to agree on costs, they may make written submissions to me within 30 days of receipt of these Reasons. Such submissions are not to exceed five (5) typed pages, excluding authorities or attachments.

Heard on the 23rd day of April, 2025.
Dated at the Town of Peace River, Alberta this 11th day of June, 2025.

E.J. Funk
J.C.K.B.A.

Appearances:

James SM Kitchen
for the Applicant

Yvon V Préfontaine
for the Respondent