

BOARD OF TRUSTEES OF EDMONTON CATHOLIC
SEPARATE SCHOOL DISTRICT NO. 7

CODE OF CONDUCT HEARING

BETWEEN:

DEBBIE ENGEL

Complainant

- and -

LARRY KOWALCZYK

Respondent

DECISION

[1] This matter arises from a series of events occurring between April 20 and 28, 2012, involving the conduct of Trustee Kowalczyk (the "Respondent").

[2] On April 30, 2012, in an *in camera* meeting of the Board, Chair Engel (the "Complainant") advised the Respondent of the particulars of a complaint that she would be filing pursuant to section 13.0 of the Organizational Bylaw with the Vice Chair of the Board regarding the Respondent's conduct. Following this statement to the Respondent, in a letter dated May 1, 2012, the Complainant requested that the Board of Trustees of Edmonton Catholic Separate School District No. 7 (the "Board") initiate the censure and sanction process provided for in section 13 of the Board's Organization Bylaw.

[3] In a letter dated May 4, 2012, pursuant to section 13.2(f) of the Organizational Bylaw, Trustee Cindy Olsen advised that she was in support of the complaint being heard at a Code of Conduct hearing. In letters dated May 7, 2012, Vice Chair Rebecca Kallal and Trustee Laura Thibert, also advised that each supported the complaint being heard at a Code of Conduct hearing.

[4] Both the Complainant and the Respondent elected to be represented by legal counsel in this matter. Both the Complainant and the Respondent introduced evidence, both documentary and through witnesses, and provided written and oral submissions to the Board on June 18, 2012. For the purposes of this matter and pursuant to the provisions of section 13.0 of the Organizational Bylaw, the Board was comprised of Vice Chair Rebecca Kallal, Trustee John Acheson, Trustee Marilyn Bergstra, Trustee Laura Thibert and Trustee Cynthia Olsen.

[5] The following documents were also marked as exhibits during the hearing:

- a. Exhibit 1 – Compilation of documents to be put to Trustee Debbie Engel as a witness at a Code of Conduct Hearing, June 18, 2012 (13 tabs);

- b. Exhibit 2 – Special Public Board Meeting Minutes 2011-2012 #15 – April 20, 2012;
- c. Exhibit 3 – Edmonton Journal article dated March 17, 2012;
- d. Exhibit 4 – Edmonton Journal article dated April 3, 2012;
- e. Exhibit 5 – Edmonton Journal article dated April 20, 2012;
- f. Exhibit 6 – Edmonton Journal article dated April 27, 2012;
- g. Exhibit 7 – Comments from Edmonton Journal web site re. Edmonton Journal article dated April 27, 2012;
- h. Exhibit 8 – Edmonton Journal article dated May 2, 2012;
- i. Exhibit 9 – Edmonton Journal article dated May 8, 2012;
- j. Exhibit 10 -Statement of Joan Carr, Superintendent, Edmonton Catholic Schools, dated June 6, 2012;

[6] The Respondent further provided written submissions to the Board regarding the issue of bias. Upon hearing no objection from the Complainant in relation to the provision of the written submissions of the Respondent, the Board accepted the submissions of the Respondent on this issue. The Complainant provided oral argument in response.

[7] The Code of Conduct Hearing was conducted formally and the following witnesses were sworn in and gave evidence on behalf of the Complainant and Respondent:

- a. Debbie Engel (for the Complainant);
- b. Joan Carr (for the Complainant);
- c. Tammy Berge (for the Complainant); and,
- d. Larry Kowalczyk (for the Respondent).

[8] The Board also considered the following: *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c.A-3; *School Act*, R.S.A. 2000, c.S-3; Organizational Bylaw of the Board (the "Organizational Bylaw"); the Board Governance Policy inclusive of the Governance Processes; Robert's Rules of Order, 11th ed. (2011).

[9] The Record of this matter consists of the documents tendered by the Complainant and Respondent during the course of the hearing, and the written submission of the Respondent regarding bias.

COMPOSITION AND JURISDICTION OF THE BOARD FOR THE PURPOSES OF THE CODE OF CONDUCT HEARING

[10] Pursuant to section 13.3(a) of the Organizational Bylaw, the Respondent requested that the Board consider a preliminary motion to disqualify some or all of the trustees hearing this matter on the basis of a reasonable apprehension of bias.

[11] The Respondent submitted that a reasonable apprehension of bias existed on the part of some or all trustees as a result of a statement of the Complainant included in an article published in the Edmonton Journal on April 27, 2012, and a letter written by the Complainant to Vice Chair Kallal on May 31, 2012.

[12] In the article published by the Edmonton Journal on April 27, 2012, the Complainant was quoted as stating: "Engel said upset parents from Sister Annata Brockman School and several trustees started calling her about Kowalczyk's letter early Friday morning. 'I can't say how the board is going to deal with it, but I've already got calls from three of my colleagues saying 'I hope we're going to discuss this'".

[13] In a letter dated May 31, 2012, from the Complainant to Vice Chair Kallal, the Complainant advised that "I brought the matter forward as Chair, and after several trustees indicated to me that as board members, they felt a censure/sanction complaint should be brought forward regarding Trustee Kowalczyk's conduct ...".

[14] The Respondent submitted that while s. 13.2(l) of the Organizational Bylaw addressed letters of support that may be provided after a formal complaint was filed, these statements indicate that trustees contacted her prior to the complaint being filed. As such, the statements were not inoculated by s. 13.2(l) of the Organizational Bylaw. The Respondent further submitted that these statements constituted opinions to the effect that a censure/sanction complaint should be brought forward, and as such, were an expression of opinion that raised a reasonable apprehension of bias. Accordingly, it was the Respondent's position that any trustee referred to by the Complainant should be disqualified from participating in the panel of the Board considering the complaint. The Respondent acknowledged that no allegations of bias were being raised in relation to any of the letters of support provided by trustees pursuant to s. 13.2(f) of the Organizational Bylaw.

[15] The Complainant submitted that the statements of the Complainant referenced mere expressions of support that the conduct of the Respondent be reviewed and did not constitute opinions regarding the conduct itself. The Complainant submitted that there is a distinct difference between a belief on the part of a trustee that full disclosure and investigation of conduct occur and formation of an opinion by a trustee as to what the result of the full disclosure and investigation may be.

[16] Both the Complainant and Respondent agreed that whether the statements constituted a reasonable apprehension of bias on the part of some or all the trustees should be determined prior to the presentation of the allegations contained in the formal complaint regarding the Respondent's conduct. The Board agreed and provided oral decision and reasons after recessing to deliberate.

[17] The Board advised the parties that it considered the statements of the Complainant to be indicative of mere statements on the part of other trustees that the conduct be reviewed. The Board was of the position that the statements did not indicate that the some or all of the trustees had formed an opinion on the allegations forming the basis of the complainants, or that there was prejudgment of any of the issues in question. The Board determined that the existence of the statements did not support the conclusion that there was bias or a reasonable apprehension of bias on the part of some or all of the trustees.

[18] Although both the Complainant and Respondent submitted to the Board that all preliminary matters involving possible conflicts of interest must be dealt with by the Board prior to the presentation of

the allegations contained in the formal complaint regarding the Respondent's conduct, in closing remarks, the Respondent made further statements that appear to raise further arguments in this regard. While the Board will not take any position regarding whether it was proper to raise further issues of bias at that stage in the proceeding, it would like to address those statements at this time.

[19] Counsel for the Respondent suggested in closing remarks that as a result of public statements made by the Respondent regarding the conduct of Board, all trustees charged with hearing this matter would be biased as a result. The Respondent suggested that since the Board is comprised of all trustees, statements regarding the Board's conduct are in essence statements regarding the conduct of each trustee. In cross examination, the Respondent testified as to the meaning of his statement published in the Edmonton Journal that alleged that the Board had been 'negligent in its fiduciary responsibilities'. The Respondent testified that it was his position that the Board had not acted prudently, in good faith, with candor, in the character of trusteeship. The Respondent testified that he knew this was a serious allegation against his fellow trustees. Counsel for the Respondent submitted that as a result of this evidence, a reasonable apprehension of bias would be held by all trustees, and accordingly, the panel in its entirety should be dismissed.

[20] The Board respectfully rejects this position. The Board operates in an environment where bias and the reasonable apprehension of bias is codified in its enacting legislation, and reiterated in its Organizational Bylaw. Trustees are publicly elected to govern a publicly funded school district, and are subject to strict provisions governing their conduct in this regard, including provisions which allow for self-reporting and disclosure of bias and the reasonable apprehension of bias in their dealings. The Board and trustee conduct is routinely subject to public scrutiny, and criticism does not in and of itself give rise to bias or a reasonable apprehension of bias. Furthermore, the Board recognizes the provisions governing its conduct in terms of self-reporting of bias or a reasonable apprehension of bias, and notes that no trustee on the panel hearing this matter either excluded oneself or questioned the position of another trustee in this matter.

FACTS AND EVIDENCE

[21] On April 20, 2012, prior to a public Board meeting, the Respondent advised the Complainant that he had a matter that needed to be brought before the Board in a private, *in camera*, meeting. The Respondent advised the Complainant that it involved an issue with an employee group. The Complainant asked the Respondent whether the matter had to be put on the Board's agenda for that day, and the Respondent stated that the matter was of a very serious nature and again requested that it be included on the April 20, 2012 agenda.

[22] At the commencement of the public meeting of the Board on April 20, 2012, the Complainant in her capacity of Chair of the Board requested unanimous approval of the Board to add the *in camera* item requested by the Respondent to the agenda. The Complainant's request for unanimous approval of the addition to the agenda was in accordance with the provisions of the *School Act*, R.S.A. 2000, c.S-3, in this regard. The Board was advised that the matter involved an employee group. The motion to add the *in camera* item was passed unanimously.

[23] Also on the agenda for the public Board meeting was a motion to approve an expenditure from the district's capital reserves to fund the purchase of three modular classrooms and to move another three portables from two other schools to support increased student enrollment at Sister Annata Brockman School. The motion was passed with the support of a majority of trustees. The Respondent opposed the motion.

[24] Upon moving *in camera*, the Respondent brought the matter forward that he requested be added to the agenda. The Respondent stated that he was upset with having received a copy of a letter from District junior high principals. The subject matter of the letter was regarding the Board's recent decision not to proceed with the closure of St. Mark School. The Respondent had voted against a motion to close the school, and the Board and trustees had received several letters regarding the decision in addition to the one from the District junior high principals. The Respondent proceeded to direct several comments to the Superintendent, Joan Carr.

[25] The Respondent asked the Superintendent why she had allowed principals to chastise the trustees, and he stated that he could not believe that the Superintendent would "let this happen". The Respondent testified that he believed the Superintendent had known about the letters, and had allowed them to come forward to trustees. The Respondent felt this was improper, and that principals should not have the ability to question trustees in light of protocols in place that governed trustee communications with staff. The Respondent then proceeded to accuse the Superintendent of providing support only to schools located in west Edmonton and at the expense of those in north Edmonton, in apparent reference to the decision made by the Board regarding Sister Annata Brockman School at the public portion of the meeting. During the exchange, the Respondent and Complainant admitted they were angry.

[26] Upon being advised by the Complainant that his comments were out of order, the Respondent admitted that he raised his hand to his mouth and mouthed the words "fuck off" to the Complainant. The profanity was observed by both the Complainant and the Superintendent.

[27] At this point in the meeting, the Superintendent advised that she would not participate any longer in the meeting and began to leave. The Respondent testified that he did not believe that the Superintendent could have observed the profanity he directed at the Complainant, and began to further question the Superintendent. The Respondent again verbally confronted the Superintendent, and questioned her as to what she heard, what she thought she saw happen and what she thought she heard him say. The Superintendent advised the Respondent that she did not use such language and left the meeting. The Superintendent testified that as a result of the Respondent's conduct in the meeting, she felt attacked, demeaned, bullied, and devalued, and that the experience was the most stressful event of her tenure as Superintendent.

[28] After the adjournment of the meeting and after leaving the meeting room for a moment, the Complainant returned to further discuss the matter with the Respondent. The Complainant challenged the Respondent as to the information he had supplied in support of his position that the matter be heard *in camera*. In response to the Complainant's position that the matter should have been brought forward in a public meeting, the Respondent stated to the Complainant that if any of his conduct were to be made public, he would "crush you" like a "bug". When questioned as to the intent of his statement in cross

examination, the Respondent testified that when a bug is crushed, it would be squished and it would die. The Respondent denied that he intended any violence though against the Complainant. The Complainant testified that she felt threatened by the Respondent at this point, and left the area.

[29] Then, on April 27, 2012, a letter to the editor was published in the Edmonton Journal authored by the Respondent. The letter was critical of the April 20, 2012 decision of the Board to use capital reserves to purchase three modular classrooms and to move another three portables from two other schools to support increased student enrollment at Sister Annata Brockman School. In the letter, the Respondent attributed positions to the Minister of Education and the parent community which were contrary to his position on the matter. The Respondent concluded his letter by stating:

"As a trustee, I believe the board is negligent in its fiduciary responsibilities. The needs of one school are being put ahead of the common good of the entire district".

[30] In response to the letter to the editor, on April 28, 2012, the Edmonton Journal published an article regarding the Board's response to the enrollment issues at Sister Annata Brockman School. The Respondent was quoted as follows:

"We do not know whether the final cost of these portables will be \$1.5 million, \$2 million or closer to \$3 million, however, the motion was passed," Kowalczyk said in the email: "We need a more business-oriented board and a board that takes into account the needs of all the schools in the district."

[31] On Wednesday, June 13, 2012, five days prior to the hearing of the complainant by this Board, the Respondent sent an email to the Board, including the Complainant and the Superintendent. The Respondent apologized for his "unparliamentary language" uttered during the April 20, 2012, *in camera* meeting, and advised that he intended to govern himself and work in a cooperative, collegial and respectful fashion in the future. Prior to this communication, the Respondent made no effort to contact the Board, any trustees or the Superintendent in relation to his conduct. The Respondent testified that he intended the email to address all of his conduct at the *in camera* meeting. The Respondent also acknowledged that the email did not contain any retraction of his statements.

[32] Tammy Berge, a parent representative from the Sister Annata Brockman School community testified regarding her perception of the letter and its impact upon the community. Mrs. Berge testified that the letter to the editor in her opinion did not portray all of the information involved in the issue, and spoke to costs which were yet to be identified. She testified that the letter was very angry in her opinion, and she was shocked and disappointed upon reading it. She felt the letter was irresponsible and hypocritical in light of the fact that the Respondent had earlier in the year fought very hard and voted to keep St. Mark School open. That decision kept a school open for only 77 students, and the costs associated with the decision on Sister Annata Brockman School were not comparable. She testified that she believed the letter would make the public feel negatively about Edmonton Catholic Schools, and that she had not had a negative experience to date with the District.

[33] The Respondent maintained in his testimony that he had the right to write the letter, and maintained his position that the statements made in both the letter and the subsequent article were appropriate. The Respondent acknowledged that upon becoming a trustee, he was provided and had read the Organizational Bylaw, but refused any knowledge whatsoever of the responsibilities and duties he owed as set out in the Organizational Bylaw when writing his letter. The Respondent further acknowledged that he was aware of certain practices through his personal observations of day to day operations, including that the Chair was to be the official spokesperson of the Board, but did not fully acknowledge that he was not to officially represent the Board. The Respondent testified that in stating that the Board was negligent in its fiduciary responsibilities, his fellow trustees had not done what a reasonable person would do. He testified that his fellow trustees had not been guided by ordinary considerations, were not doing things that would ordinarily guide a reasonable person, were not doing what a prudent person would do, were not acting in good faith, were not acting with candor and were not acting in accordance with the character of trusteeship. He acknowledged that he knew his statement to be a serious allegation against other trustees, and wanted the public to know that the Board did business very badly.

[34] The Respondent further testified that he felt that the debate regarding the issues at Sister Annata Brockman School was reopened after a presentation by Mrs. Berge to the Board. He felt this occurred because Sister Annata Brockman School was located in the Complainant's ward, and that the Complainant coached Mrs. Berge. The Respondent testified that in doing so, the Complainant had acted in bad faith. He further stated that when other trustees voted in favour of the motion to use capital reserves to accommodate students at Sister Annata Brockman School, they were going along with the Complainant and were acting for improper purposes.

[35] Although the Respondent testified that he felt badly about his comments in the *in camera* meeting, admitted it was not one of his smartest days, and felt his email apology addressed his sincere intentions regarding his conduct in the future. He reiterated these comments upon further questioning by Trustee Acheson. The Board remains of the position though that the timing of the apology and the Respondent's testimony overall left doubts as to its sincerity in the opinion of the Board.

ISSUES

[36] Based upon the submissions of the parties, the Board has identified the following issues for determination:

- a. Does this matter involve a single complaint consisting of several components, or does this matter involve two distinct matters?
- b. Was the Respondent's conduct in terms of his request to move *in camera* in breach of the duty of conduct set out in s.13.1 of the Organizational Bylaw?
- c. Was the Respondent's conduct in the *in camera* meeting in breach of the duty of conduct as set out in s. 13.1 of the Organizational Bylaw?
- d. Was the Respondent's conduct in the terms of writing the letter to the editor and the statements contained therein in breach of the duty of conduct as set out in s. 13.1 of the Organizational Bylaw? and,

- e. In the event that any of the conduct is in breach of the duty of conduct as set out in s. 13.1 of the Organizational Bylaw, what if any sanction should be imposed by the Board?

DECISION

A. Does this matter involve a single complaint consisting of several components, or does this matter involve two distinct matters?

[37] Based upon all of the foregoing, the Board is of the position that this complaint arose as a result of a series of related incidents involving the conduct of the Respondent. The Board rejects the position of the Respondent that this matter involved two distinct incidents.

[38] There is nothing distinct about the conduct that occurred between April 20, 2012 and April 28, 2012. The Respondent was obviously not pleased with the direction of the debate regarding an appropriate response to the issues at Sister Annata Brockman School. The Respondent testified that he believed the issue to have been manipulated by the Complainant, and that other trustees were going along with that direction for improper purposes. The conduct in question began on April 20, 2012 and continued until on April 28, 2012, when the Respondent would have reasonably become aware that his conduct may be subject to review based upon the public comments of the Complainant.

[39] The request for an *in camera* item came immediately prior to the commencement of the public Board meeting on April 20, 2012, where the issues with Sister Annata Brockman School were going to be considered. The *in camera* conduct that followed occurred immediately after the vote was taken. The Respondent did not support the motion passed by the Board. The subsequent issues in relation to his public statements were all related to the Respondent's issues with this decision.

[40] The Board has determined that all of the conduct forming the subject matter of this complaint is sufficiently related in time and subject matter such that the complainant is one with several components.

B. Was the Respondent's conduct in terms of his request to move *in camera* in breach of the duty of conduct set out in s.13.1 of the Organizational Bylaw?

[41] During the course of the hearing, the Board was provided much evidence as to the appropriate circumstances in which a matter would be heard *in camera*. The Board heard that according to the provisions of the *School Act*, Robert's Rules of Order, and established Board practices, a matter is properly called *in camera* when the subject matter to be discussed involves matters of land, labour, legal or laundry. Much evidence was provided as what common operational matters generally fall within those categories in order to provide further guidance as to the practices of the Board in this regard. The Board agrees with the evidence that matters of the above noted nature are matters properly to be dealt with *in camera*.

[42] Further evidence was provided as to the circumstances leading to the unanimous vote by the Board to add the Respondent's matter to the Special Board meeting agenda for April 20, 2012, and the

information supplied by the Respondent in that regard. It is clear to the Board that in support of the Respondent's request to add the matter to the agenda as an *in camera* matter, the Respondent advised that the matter involved an employee group. The Board further accepts that the use of the term "employee group" in the context of Board practice in the past would have reasonably led trustees to assume that the matter would have involved one of the employee groups subject to a collective agreement with the Board. In other words, the Board accepts that by using the term "employee group", it was unreasonable on the part of the Respondent to assume that his colleagues would know that the subject matter would have been the letter from the junior high principals. The Respondent should have simply advised the Complainant that the subject matter of his request involved the letter from the junior high principals.

[43] The Respondent also acknowledged in his testimony that he advised the Chair that the matter had to be brought before the board on that day. The Complainant testified that the Respondent advised that the matter was of a serious nature. In light of the Respondent's testimony, the Board is of the position that the Respondent intended the Complainant to infer from his words that the matter was of significance, and had every reason to rely upon the judgment of the Respondent that the matter should be brought *in camera*. It is the Board's position that this reliance was misplaced and the matter should not have been one properly addressed *in camera*.

[44] The Board is of the position that the Respondent's position that the matter was involving an employee group was not forthcoming. The Respondent clearly wished to address the letter from the junior high principals, and could have easily identified that purpose in his request. He did not. Trustees must be forthcoming and honest regarding the information they supply in support of their request. The fact that rules of order provide for an objection in the event that the matter is not properly one to be heard *in camera* does not provide excuse for the failure to properly identify the matter intended to be spoken to by a trustee. The unanimous approval of the addition of the matter to the agenda does not cure this either, since fellow trustees are relying in part in good faith upon the honesty and knowledge of procedure of their colleagues. In this instance, the Respondent identified the matter as one dealing with an employee group, and due to the usage of the term, inferences were made by a number of parties as to what the subject matter of the *in camera* item would be. These inferences were markedly different from what was in fact intended to be discussed.

[45] The Board recognizes though that as a result of the Respondent's tenure with the Board, he may not have intended for the term employee group to be interpreted in the manner it was, and thus, there may not have been an active intention to mislead the Board. In recognition of this determination, the Board does not find that there was a breach by the Respondent of the duty as set out in s. 13.1 of the Organizational Bylaw in regards to the request and information supplied in support of that request. With that said, the Board would like to recognize that in the future, in light of the laudable goals of transparency and public engagement, trustees be prepared to be forthcoming with the Chair of the Board in the future when requesting that *in camera* items be added, and be cognizant that once *in camera*, only those items identified by the trustee be discussed. In turn, trustees voting to move *in camera*, or in this instance, to add a matter to the agenda, can be assured that the matter is properly characterized to avoid future issues.

C. Was the Respondent's conduct in the *in camera* meeting in breach of the duty of conduct as set out in s. 13.1 of the Organizational Bylaw?

[46] Based upon all of the foregoing, the Board has determined that the Respondent's conduct in the course of the *in camera* meeting on April 20, 2012, was in breach of the duty set out in section 13.1 of the Organizational Bylaw.

[47] In reaching this conclusion, the Board noted that the position of trusteeship is based upon trust, and as the Respondent himself identified, is one that is fiduciary in nature. Disagreement, vigorous debate and contrary opinions are common on a board of this nature and are acknowledged in the Board's governance documents as a reasonable reality. Trustees must have the professionalism and maturity to accept that the will of the Board is determined by a democratic process and it may be contrary to one's personal opinion.

[48] Trustees are also charged with discharging their duties in a manner consistent with the teachings of the Catholic Church, and trustees are in the position to be one of the most visible and influential models in that regard. As trustees, one cannot demand behavior of others when one is not willing at all times to model that behavior themselves. Conduct like that demonstrated by the Respondent begs consideration of the public's reaction to such conduct and how one could possibly justify this conduct to the greater community, inclusive of the greater Catholic community.

[49] The use of profanity or profane gestures is clearly in breach of the duty owed by a trustee. Furthermore, the behavior continued, and in the opinion of the Board, involved bullying, an attempt to continue the conflict and possibly escalate it. The conduct was directed at two parties – the Complainant and the Superintendent. The Respondent's testimony at the hearing clearly indicated that issues still remain amongst the parties. The Respondent's testimony and demeanor on several instances demonstrated that the Respondent continues to feel significant animosity and has challenges in choosing appropriate communication strategies to appropriately advance his issues. In particular, the Board notes that the Respondent referred to the Complainant as having gone 'bananas' when meeting with him. After stating that the incident was the most stressful of her entire tenure as Superintendent, the Respondent continued to take issue with her conduct and submitted that his email referencing 'unparliamentary language' was sufficient to address his conduct.

[50] The Board considered in detail the effect of the Respondent's apology, which it understands only to have been intended to address the *in camera* conduct. Again, based upon the Respondent's testimony and demeanor throughout the hearing, little weight was attached to the email in terms of sincerity. Also of note by the Board was the method in which the apology was delivered, its failure to address the specific conduct and the timing of the apology. The Board has a sincere hope that the expressions of intent by the Respondent regarding his future conduct are sincere.

D. Was the Respondent's conduct in the terms of writing the letter to the editor and the statements contained therein in breach of the duty of conduct as set out in s. 13.1 of the Organizational Bylaw?

[51] In argument, the Respondent submitted that the proper response to bad speech was more speech, not the limitation of speech. The Board recognizes that this premise is fundamental to a free and democratic society, as is the premise that some rights must be limited in some instances to preserve the balances inherent and necessary in a free and democratic society. The Board is of the position that its Organizational Bylaw, Board Policy and Governance Policies are reflective of that balance and do not unduly hinder the expression of trustees.

[52] The Board recognizes in this instance, and in many other instances, the opinion of trustees on any given matter may not align with the ultimate direction taken by the Board. Opposition and expression are invited and encouraged. So is respect, honesty, transparency and the values of a shared faith. Expression is encouraged within these parameters. The Organizational Bylaw, Board Policy and Governance Policies are documents created by the Board for the Board. If there is objection to the terms set out, the Board itself through a democratic process can change those terms. Through time, the Board has seen fit to enact the terms contained in its governing documents, and is of the position that such terms are reflective of the balance of many perspectives that have created and amended the terms over time.

[53] The Board is of the position that in keeping with its practice to allow a trustee to express one's position in relation to an issue, the Respondent's action of writing the letter to the editor in isolation was not in breach of the duty of conduct as set out in section 13.1 of the Organizational Bylaw. In many instances, following a decision of the Board, trustees are asked to identify their position on any particular issue. What is lacking in the Respondent's letter though is a recognition of the democratic process, one in which he was a very vocal and animated participant in. The Respondent failed to recognize and identify the Board's position, and that it was a decision of the majority. The Respondent is free to disagree, but as a participant in the democratic process, he must and should have recognized the will of the Board.

[54] Furthermore, the Respondent clearly and with intent breached the duty as set out in section 13.1 of the Organizational Bylaw, in stating that the Board was negligent in its fiduciary responsibilities. The Respondent acknowledged in testimony that he intended that the allegation of negligence be a serious allegation against the Board. He maintained this position at the time of the hearing. Although the Board has serious reservations whether the Respondent knew the full extent of his allegations in relation to his use of the term fiduciary and fiduciary responsibilities, the Respondent acknowledged in testimony that these statements also were intended to have serious implications as well. The Respondent acknowledged these positions in great detail and with little or no apparent remorse, even in light of his email apology. The course of action chosen by the Respondent in this instance was planned and deliberate without regard to his duties as set out in the Organizational Bylaw. The Respondent in this instance was not simply responding to an inquiry about his position on an issue; he embarked upon a deliberate course of action to discredit the Board arising from his dissatisfaction with the position of the majority of colleagues.

[55] Based upon the foregoing, the Board finds the Respondent in breach of section 13.1 of the Organizational Bylaw.


E. Sanction

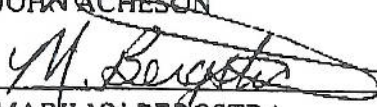
[56] As a result of finding the Respondent in breach of the section 13.1 of the Organizational Bylaw, the Board sanctions the Respondent as follows:

- a. At an *in camera* meeting of the Board, the Board will advise the Respondent that:
 - i. the Respondent's conduct at the *in camera* meeting of the Board on April 20, 2012, and immediately following, was in breach of his duties as set out in section 13.1 of the Organizational Bylaw and remind the Respondent of his responsibilities in this regard;
 - ii. in stating in a letter to the editor of the Edmonton Journal that the Board was negligent in its fiduciary responsibilities, the Respondent's conduct was in breach of his duties as set out in section 13.1 of the Organizational Bylaw; and
 - iii. The Chair of this Board (Vice Chair of the Board as a whole) shall provide further written communication to the Respondent in this regard which shall be sent to the Respondent marked personal and confidential and retained by the Board indefinitely.
- b. At a public meeting of the Board, the Chair of this Board (Vice Chair of the Board as a whole) shall make a public statement to the effect that the Board has recently dealt with an alleged breach of a trustee's duty and the matter was dealt with by the Board in an *in camera* hearing to the Board's satisfaction.

DATED this 26 day of June, 2012.


REBECCA KALLAL, Chair


JOHN ACHESON


MARILYN BERGSTRA


CINDY OLSEN


LAURA THIBERT

TO: Fraser Milner Casgrain LLP
Attention: Kevin Feehan, Q.C.
Counsel for the Complainant, Debbie Engel

AND TO: Simon Renouf Professional Corporation
Attention: Simon Renouf, Q.C.
Counsel for the Respondent, Larry Kowalczyk

AND TO: Edmonton Catholic Schools
Attention: Carole Karbonik
Counsel for the Board