

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

ROBERT HRABLUK,	)	<u>Kristen M. Worbanski</u>
	)	<u>Amanda R. Cheys</u>
applicant,	)	for the applicant
	)	
-and-	)	
	)	
THE MINISTER OF EDUCATION and	)	<u>Darrin Fenske</u>
EARLY CHILDHOOD LEARNING, for	)	for the respondent
THE GOVERNMENT OF MANITOBA,	)	
THE HONOURABLE TRACY SCHMIDT,	)	
	)	<u>Judgment Delivered:</u>
respondent.	)	August 26, 2026

NEVILLE J.

INTRODUCTION

[1] This is an application for judicial review arising out of a decision of the Minister of Education and Early Childhood Learning (the "Minister") to cancel the Manitoba Permanent Professional Teaching Certificate (the "teaching certificate") of Robert Hrabluk (the "applicant"). The Minister's cancellation decision (the "cancellation decision") was issued on June 3, 2025. The previous day, June 2, 2025, the Minister had issued a different decision in relation to the same matter

in which she suspended the teaching certificate for a one-year period (the “suspension decision”).

[2] The applicant says that the Minister was *functus officio* after issuing the suspension decision and without jurisdiction to issue the cancellation decision. In the alternative, the applicant says that the cancellation decision was unreasonable.

[3] The Minister says the suspension decision was sent in error and did not reflect her manifest intention. As a result, the Minister says that the doctrine of *functus officio* does not apply. She says that her decision to cancel the teaching certificate was reasonable and should not be disturbed.

[4] For the reasons that follow, I am quashing the cancellation decision and remitting the matter back to the Minister.

BACKGROUND

[5] The applicant worked as a teacher for the Louis Riel School Division (the “Division”) for twenty-three years. He primarily taught guitar and band. Prior to the matter that resulted in the cancellation of his teaching certificate, the applicant appears to have enjoyed a successful and untarnished teaching career, during which he had received positive professional evaluations. He appears to have been well respected by students, families, and in the broader community where he volunteered on extracurricular initiatives.

[6] In July of 2024, the Division carried out an investigation into the applicant’s conduct. The investigation arose out of a report that the applicant had been communicating via direct messaging on a social media platform with a 13-year-old, grade

eight female student. The communication began after the student “followed” the applicant on the platform and initiated the direct messaging (the “incident”). The communication continued intermittently over approximately four months until the student’s parent discovered the messages and contacted the applicant. Upon being contacted by the student’s parent, the applicant reported the incident to his school administration.

[7] The Division conducted an investigation and on August 14, 2024, issued a letter setting out its findings and the related discipline. A five-day unpaid suspension and other corrective measures were imposed on the applicant, including reassignment to another school, completion of additional training and intense supervision by school administration. In arriving at the discipline decision, the Division concluded that the applicant had, with hindsight, acknowledged the impropriety of his conduct and demonstrated genuine remorse and insight. The Division also concluded that the applicant could be trusted in the future with students.

[8] Concurrently with the investigation, the Division reported the incident to the Teacher Certification and Standards Branch of Manitoba Education and Early Childhood Learning. The Division advised the Branch it had also reported the incident to the Child and Family Services All Nations Coordinated Response Network (“ANCR”). In the fall of 2024, the Minister obtained and reviewed the Division’s investigation file into the incident. The Minister advised the applicant that she was considering suspending his teaching certificate and invited the applicant to make a submission before a decision was made. Ultimately, the Minister determined that it was contrary to the public interest for

the applicant to hold his teaching certificate while she continued to investigate the incident. She allowed the applicant to voluntarily surrender his teaching certificate, pending the Minister's review, which he did on December 18, 2024.

[9] On January 2, 2025, pursuant to s. 5(6) of ***The Education Administration Act***, C.C.S.M. c. E10 (the "**Act**"), the Minister referred the applicant's case to the Certificate Review Committee (the "CRC"), which under the version of the **Act** then in place, was charged with investigating and reporting back to the Minister with recommendations in circumstances where a teaching certificate has been suspended or where the Minister believed that a review of a teacher's certificate was warranted. The CRC held hearings via Teams on January 29 and February 3, 2025. Both the Minister and the applicant were represented by counsel at the hearings.

[10] On February 24, 2025, the Minister wrote to the applicant to inform him that the CRC had issued a non-binding recommendation that his teaching certificate be cancelled. A copy of the CRC's report, which included its findings and recommendation, was enclosed (the "CRC report"). The CRC report said that its recommendation was based on a series of findings, specifically, that it had determined on a balance of probabilities that the applicant failed to:

- adhere to the Division's policies and protocols;
- adhere to the principles of the "Respect in Schools" training the applicant previously completed in 2022;
- recognize the professional boundaries of a teacher;
- demonstrate honesty during the investigative process;

- express genuine remorse and recognize the potential impact the applicant's conduct had on the student;
- act with reasonable care of the appropriate relationship between teacher and student; and
- maintain the integrity and confidence of the Manitoba education system and the teaching profession.

[11] The Minister provided the applicant with 30 days to respond in writing to the CRC's recommendation. Counsel for the applicant responded on March 26, 2026, with a 26-page submission (the "March 26th submission"). In the March 26th submission, counsel for the applicant highlighted for the Minister's consideration evidence that was before the CRC, including:

- the applicant's statement that he was not specifically aware at the time of the incident of the Division's policy on communicating with students using personal social media accounts;
- a Division official's acknowledgment that the applicant had been hired before the introduction of this policy, so it had not been brought to his attention during onboarding; and that there was no evidence of any communication in relation to this policy having been brought to the attention of staff in the Division (including the applicant) since its inception;
- a Division official's acknowledgement that the training provided to teachers in 2022 (Respect in Schools), with which the CRC stated the applicant had been non-compliant, did not focus on boundaries between students and

teachers, but rather on recognizing signs of abuse with students or children;

- the applicant's statement that the training he took following the incident, and specifically, the Commit to Kids training, made the social media prohibition, and the reasons for it more clear to the applicant;
- the conclusion by ANCR of "Valid Incident – No Abuse";
- the Division did not, following an investigation, consider it to be a risk for the applicant to return to teaching; and
- the Division official's admission that the applicant appeared to show genuine remorse and an understanding of the potential consequences of his behaviour.

[12] The March 26th submission identified a series of issues with the CRC report. It said that the CRC recommendation should not be accepted because the reasons were deficient and inadequate, comprised only of a summary of the evidence with stated conclusions and no analysis. It argued that the key issue of future risk was not addressed by the CRC, nor did the CRC explain why a lesser penalty was insufficient. The March 26th submission raised concerns about the appropriateness of the maximal penalty of cancellation, saying that the evidence supported a lesser sanction, one which would still protect students and maintain the integrity and confidence of the education system. It also posited that the adoption of the CRC recommendation and reasons by the Minister, without further reasons, would not satisfy the requirements of procedural fairness, nor would it sufficiently meet the Minister's obligation to justify the basis on which the decision was reached.

[13] On June 2, 2025, the Minister sent an email to the applicant's counsel, attaching the suspension decision. The decision, which was on the Minister's letterhead and signed by the Minister, said that the applicant's teaching certificate was being suspended for one year. The suspension decision acknowledged receipt of the applicant's March 26th submission and summarized the recommendation and findings of the CRC as outlined in the CRC report. It made note of the concerns raised by the applicant's counsel related to the adequacy of the CRC's reasons but did not directly address or respond to those concerns. It also noted the applicant's position that a cancellation of his certificate would not be appropriate in the circumstances, and that the applicant had completed additional training in relation to "sexual abuse, professional boundaries and electronic communication".

[14] In the suspension decision, the Minister determined that the applicant's conduct amounted to grooming behaviour (the "grooming finding"). She wrote:

... I do not find your previous teaching record to be a relevant factor.

. . .

I accept the Committee's determination that you have demonstrated behaviour that is not compatible with teaching and the teaching profession. My finding, based on the evidence and testimony presented to the Committee, is that your behaviour, and in particular, your engagement in private, inappropriate social media communication with a student over a sustained period of time, was intended to and had the effect of isolating and gaining trust with the targeted student, establishing secrecy and normalizing an inappropriate relationship with the student. In my opinion, your actions amounted to grooming behaviour.

Although you denied at the hearing that it was your intention to groom the student, I do not find your denial to be credible. I place considerably more weight on your actions, particularly your decision to engage in persistent, secretive and obviously inappropriate online communication with the student, than on the explanations that you provided to the Committee.

[15] The suspension decision concluded with the following paragraph outlining the Minister's decision (the "decision paragraph"):

In terms of an appropriate consequence, I have considered both the Committee's recommendation to cancel your teaching certificate as well as your proposal for a less severe action, such as a short suspension, as well as your arguments regarding forward looking risk. Having accepted the determination that you have demonstrated behaviour that is incompatible with certification, it is necessary for me to take action against your teaching certificate. I am not prepared to tolerate online grooming behaviour from a certified Manitoba teacher, as doing so would weaken public trust in the integrity of teacher certification in Manitoba and the safety of Manitoba schools. However, considering that there were no previous instances of similar behaviour and there was no evidence that your interactions with the student were sexual in nature, I am prepared to impose a lesser penalty than the maximal penalty of cancellation. I am therefore imposing a one-year suspension of your teaching certificate.

[emphasis added]

[16] Approximately thirty minutes later, the Minister's office sent a second email to counsel for the applicant in reply to the previous email attaching the suspension decision (the "June 2nd error email"). The June 2nd error email stated: "Please disregard the email below and attachments. This was sent in error." No further information was provided.

[17] On June 3, 2025, a third email was sent from the Minister's office, enclosing a second and new letter of decision from the Minister, the cancellation decision. The email correspondence attaching the cancellation decision stated that the suspension decision had been sent "in error", that the suspension decision "was not and never was approved by the Minister", and that the Minister's decision "is, and was, to cancel" the applicant's teaching certificate. The email concludes with an apology "for any confusion our error has caused".

[18] The cancellation decision largely mirrors the suspension decision but includes a series of material changes.

[19] The grooming finding was largely left intact, with the following underlined additions or changes:

I agree with the Committee's determination that you have demonstrated behaviour that is not compatible with teaching and the teaching profession. My finding, based on my own review of the evidence and testimony presented to the Committee, is that your behaviour, and in particular, your engagement in private, inappropriate social media communication with a student over a sustained period of time, was intended to and had the effect of isolating and gaining trust with the targeted student, establishing secrecy and normalizing an inappropriate relationship with the student. In my opinion, your actions amounted to grooming behaviour. Although you denied at the hearing that it was your intention to groom the student, I do not find your denial to be credible. I place considerably more weight on your actions, particularly your decision to engage in persistent, secretive and obviously inappropriate online communication with the student, than on the explanations that you provided to the Committee. Considering the seriousness of your conduct, I do not find your previous teaching record to be a significant factor in my decision.

[emphasis added]

[20] The cancellation decision included a modified version of the decision paragraph, which reads as follows and included the additional underlined words:

I have considered your proposal for a less severe action against your certificate, such as a short suspension, as well as your arguments regarding forward looking risk. However, having determined that you engaged in behaviour that is incompatible with certification, I am not prepared to continue to grant you that certification. I am not prepared to tolerate online grooming behaviour from a certified Manitoba teacher, even on a one time basis, as doing so would weaken public trust in the integrity of teacher certification in Manitoba and the safety of Manitoba schools. It is also not clear to me what a suspension with further training and/or supervision would accomplish, given that, at the time of the behaviour in question, you already knew or should have known that it was highly unacceptable, based on both your training and ongoing professional development as a teacher and the school division's policies and protocols. I therefore accept the Committee's recommendation that the appropriate action in response to this behaviour is cancellation of your teaching certificate.

[emphasis added]

[21] The cancellation decision removed the acknowledgment included in the suspension decision paragraph (as the basis for the lesser penalty), that there were no instances of similar behaviour and no evidence that the interactions were sexual in nature.

[22] On June 4, 2025, counsel for the applicant wrote to the Minister outlining the applicant's position that the Minister was *functus officio* after issuing the suspension decision and without authority to issue the cancellation decision.

[23] On August 27, 2025, the Minister wrote to the applicant's counsel indicating that the cancellation decision was the final decision and "reflects the seriousness of the conduct in question". The letter advises that the suspension decision was sent in error with the cancellation decision representing the Minister's "intended decision in this matter".

THE LEGISLATIVE FRAMEWORK

[24] Teacher certification in Manitoba is governed by the **Act**.¹ At the time of the incident giving rise to this matter, the relevant provisions of the **Act** were as follows:

Certificate Review Committee

5(1) The minister shall appoint a Certificate Review Committee (hereinafter referred to as the "review committee") comprised of

- (a) three persons nominated by The Manitoba Teachers' Society;
- (b) three persons nominated by the Manitoba School Boards Association;
- (c) two persons nominated by The Manitoba Association of School Superintendents; and
- (d) two from the department,

for such term as the minister may fix and thereafter until their successors are appointed.

¹ Recent amendments to the *Education Administration Act*, which came into force on January 6, 2025, established the Commissioner of Teacher Professional Misconduct, and a new professional conduct and competence regime for certified teachers. This matter was concluded under the previous statutory regime, as it read prior to January 6, 2025.

. . .

Referral of suspension

5(5) In all cases in which a teacher's certificate has been suspended by the minister or by a field representative, the minister shall forthwith refer the matter to the review committee.

Other referrals

5(6) The minister in his discretion may refer to the review committee for investigation and report any case in which a teacher's certificate is to be reviewed for any cause which the minister deems sufficient.

. . .

Review committee to report

5(10) Where the review committee holds a hearing for the purposes of subsection (5) or (6), the review committee shall within 14 days after completion of the hearing, submit a written report thereon to the minister.

. . .

Report to include recommendation

5(12) The report of the review committee shall include recommendations as to what action, if any, is to be taken in respect of the matters that are the subject of the investigation and hearing.

. . .

Right to counsel

5(14) Where under this section a teacher's certificate is to be reviewed, the teacher has the right to be notified of the time, date and place of the review to be held by the review committee and to be present and to be represented by counsel.

. . .

Issuing, etc. of teachers' certificates

6(1) The minister may issue teachers' certificates of such grades or classes, and in such form and for such period as he prescribes, and may cancel or suspend a certificate issued to a teacher for any cause that he deems sufficient.

Reasons for cancellation or suspension

6(1.1) The minister, upon cancelling or suspending the certificate of a teacher under subsection (1), shall forthwith provide the teacher with written reasons for the cancellation or suspension.

[25] There was no provision in the ***Act*** or the regulations specifically allowing the Minister to reconsider her own decision to suspend or cancel a teaching certificate, or for that decision to be reviewed by another body.

ISSUES

[26] This application for judicial review raises the following key issues:

- Was the Minister *functus officio* and without jurisdiction to issue the cancellation decision?
- If the Minister was not *functus officio*, did the Minister's decision-making process give rise to a breach of procedural fairness?
- Alternatively, was the cancellation decision unreasonable?
- If the process ultimately resulting in the cancellation decision was procedurally unfair, or the cancellation decision was unreasonable, or both, what is the appropriate remedy?

THE RECORD AND THE USE OF EXTRINSIC EVIDENCE

[27] It is well established that on judicial review, the record before the reviewing judge is generally limited to the record which was before the administrative decision-maker. In this case the record is fairly substantial, consisting of the significant hearing package that was before the CRC, the transcripts of the CRC hearings, the CRC report, the submission of the applicant to the Minister in response to the CRC report, and the suspension decision itself (which the Minister would have needed to consider and ultimately reject when arriving at her cancellation decision).

[28] There are limited exceptions which allow for the consideration of extrinsic evidence, including on questions related to jurisdiction and procedural fairness (see for example, ***Lazy Bear Lodge Ltd. v. Manitoba***, 2026 MBKB 3, at paras. 31 and 32, ***Manitoba Métis Federation Inc. v. Brian Pallister et al***, 2019 MBQB 118, at para. 68, and ***AOV Adults Only Video Ltd. v. Manitoba Labour Board***, 2003 MBCA 81, at para. 34).

[29] In this case, the Minister has also filed affidavit evidence in which she explains the process by which she reached her decision in relation to the teaching certificate and the circumstances by which the wrong decision was issued. The Minister was cross-examined on her affidavit, a transcript of which has also been filed in these proceedings. Counsel agreed, as do I, that the Minister's affidavit and the transcript of her cross-examination on that affidavit may be used by the court in the context of my determination as to whether or not the Minister was *functus*. I have also considered the affidavit and cross-examination transcript in determining whether the Minister's decision-making process, which includes the duty to provide written reasons, gives rise to procedural fairness concerns. I agree with both counsel, however, that the Minister's evidence should not be used to assess whether the cancellation decision was reasonable, and I have not considered it in coming to my decision on this point.

DOCTRINE OF FUNCTUS OFFICIO

The Law

[30] The doctrine of *functus officio* provides that once an adjudicator has decided a matter, they have “discharged their office” and may not revisit or correct that decision (***Canadian Broadcasting Corp. v. Manitoba***, 2021 SCC 33, at paras. 32-35; ***Chandler v. Alberta Association of Architects***, 1989 CanLII 41 (SCC), [1989] 2 S.C.R. 848, at p. 860.)

[31] In ***Chandler***, the Supreme Court of Canada held that the doctrine of *functus officio* applies to administrative tribunals, based on the policy ground favouring the finality of proceedings (at pp. 861-862). The Court also observed that in the administrative law context, the doctrine is to be applied in a more flexible and less formalistic manner. The doctrine would not apply, for example, where the statutory regime contemplates the reopening of a decision by a tribunal. Similarly, where a decision-maker fails to dispose of an issue it is empowered to decide, it “ought to be allowed to complete its statutory task” (***Chandler***, at p. 862).

[32] The doctrine is also subject to two specific exceptions: correcting clerical errors, (i.e., “a slip in drawing up” the judgment), and addressing an error in expressing the manifest intention of the decision-maker (see ***Paper Machinery Ltd. et al. v. J.O. Ross Engineering Corp. et al.***, 1934 CanLII 1 (SCC), [1934] SCR 186, at p. 188; ***Chandler***, at p. 860). A decision cannot be revisited because the decision-maker has changed their mind, made an error within jurisdiction, or because there has been a change of circumstances (***Chandler***, at p. 861).

[33] None of the cases identified by counsel in their submissions involved situations where an administrative decision, complete with reasons, was issued in direct contradiction to what the decision-maker says was their stated intention. Some of the jurisprudence counsel relied on involved circumstances where it was argued that the first decision was *arrived at* in error (see, for example, ***Narvaez v. Canada (Citizenship and Immigration)***, 2009 FC 514, and ***Zelzle v. Canada, (Minister of Citizenship and Immigration) (T.D.)***, 1996 CanLII 4043 (FCTTD)). By contrast, ***Nozem v. Canada (Minister of Citizenship and Immigration)***, 2003 FC 1449, involved “true” administrative error where the applicant was mistakenly provided *notice* of a positive decision (without reasons), when in fact the board had reached a negative decision.

[34] The manifest intention exception was specifically considered in ***Nova Scotia Government and General Employees Union v. Capital District Health Authority***, 2006 NSCA 85, (“***NSGEU***”). Cromwell, J.A. (as he then was) observed the difficulty in applying the exception, noting that he would not attempt to “exhaustively” state how the exception should be applied. He proposed a framework for considering the issue, observing that a tribunal’s manifest intention “will generally be found in the reasons for its initial decision” and that “unless some disharmony or contradiction is apparent between the allegedly erroneous choice of words and that intent” the language chosen by the decision-maker in that initial decision “should stand” (at para. 42). That decision also involved circumstances different than the ones before me, in that the administrative decision-maker in ***NSGEU*** was required to complete a task (by way of a supplemental decision) left unfinished in the initial decision (at paras. 45-46). In the case before me,

it is clear that I cannot look to the suspension decision to determine the Minister's manifest intent, because the crux of her argument is that the suspension decision in no way reflected her intent.

Positions of the Parties

[35] Both parties agreed that the doctrine of *functus officio* normally operates to bar a decision-maker that has issued a decision—be it a court or an administrative tribunal—from changing or revising that decision. This is especially so where, as was the case here, the decision bears all of the hallmarks of being a final decision. Both parties also agree that there are narrow exceptions to that rule, including circumstances where there has been a clerical error in the original decision that needs to be corrected, and where there has been an error in expressing the manifest intention of the court or decision-maker. Neither party characterizes the error made by the Minister as a clerical error. However, the Minister describes it an “administrative error” and submits that the “manifest intention” exception applies, while the applicant says that it does not.

[36] The applicant says the suspension decision is a valid final decision. He makes reference to a series of indicia as evidence of the finality of the decision. To start, the applicant says that the decision was on letterhead, date stamped and signed in ink. He says that the decision clearly states the Minister's decision to suspend for one year and provides complete reasons in support of that decision. The applicant notes the suspension decision concludes by stipulating that the Minister “now considers this matter to be concluded” and that the decision was sent via email with an indication that no hard copy would follow. The applicant points to the Minister's admissions in cross-examination

that there was nothing to suggest that the suspension decision was not final, and to her acknowledgment that finality and certainty are important to a fair process.

[37] The applicant submits that none of the exceptions to the doctrine of *functus officio* apply. He says that there is no clerical error in the suspension decision requiring correction. He also says there is no mechanism in the legislation or in the broader statutory framework through which the Minister may revisit a final decision regarding a teaching certificate. The applicant further argues that it is not a case where the manifest intention exception applies. Relying on ***NSGEU***, the applicant asserts that this exception only applies in circumstances where a secondary supplemental decision clarifies language in an initial decision that does not give effect to the manifest intent of that first decision.

[38] The applicant also contends that the evidence does not support the Minister's assertion that, "at all material times after May 29, 2025", she had intended to cancel the applicant's teaching certificate. He points to the fact that the Minister was unable to recall when she made a decision to cancel the teaching certificate and provided inconsistent evidence around how that decision had been communicated. Finally, the applicant says the Minister did not provide clear direction around the specific reasons she wanted included in the cancellation decision and left the crafting of the decision to staff.

[39] For her part, the Minister disputes neither the importance of the doctrine of *functus officio*, nor its applicability to administrative decision-makers. Rather, she says that it does not apply in these circumstances. This is so, according to the Minister, because the issuance of the suspension decision was an administrative error and did not reflect her manifest intention. As to how she made her decision, and how the suspension

decision came to be sent out, the Minister says that staff had drafted the suspension decision, in anticipation that she would agree with their recommendation (contained in a May 16, 2025 Departmental Briefing Note) to suspend the applicant's teaching certificate for one year. However, she says she did not agree with this recommendation. She asserts that this situation did not involve a change of heart. Rather, she "took time" with the decision and that it was not a decision she made "within the span of one meeting" and that it would have involved "a lot of taking away ... and thinking". What happened was that she simply signed the wrong letter, the original letter drafted by staff, which had mistakenly been left in a pile of documents for her signature, despite her earlier instructions to prepare a different letter with a different decision. She describes signing the letter as a "regrettable, unfortunate, embarrassing error".

[40] The Minister points to the short period between issuing the suspension decision and the June 2nd error email in support of her assertion that the suspension decision was sent in error. Counsel acknowledged that the Minister was unable to recall details of the discussions leading to the issuance of the suspension decision but argued that the Minister was unambiguous about her intention to cancel. While not disputing that the Minister should have taken greater care, counsel urged the court to consider the reality that Ministers have many things before them on a given day, to "exercise a degree of common sense in consideration of the surrounding circumstances" and to uphold the cancellation decision.

Analysis

[41] Both parties acknowledged that the circumstances in this case giving rise to the *functus officio* question appeared to be novel in Canadian administrative law jurisprudence. This was not a situation in which a party was provided incorrect notice of a decision-maker's finding. Nor was it a situation where a decision-maker revised a decision based on corrected or new information. Rather, despite having issued a particular decision complete with reasons, the decision-maker—the Minister—thereafter issued an altogether different and much more consequential decision for the applicant.

[42] It is sensible to me that the Minister's evidence described a busy office, with multiple priorities, regular meetings (both formal and informal), and the involvement of multiple staff (both departmental and political). The Minister acknowledged that, at the time she made her decision, the teacher's certification regime was in flux, with several certification related files still making their way to her office under the provisions of the old statutory regime. Within the context of a busy and demanding office, and with more than one certification matter before her, I accept that the Minister could not recall the precise sequence of her review of the materials involved in this matter, nor do I take issue with her inability to recall with precision the dates on which she reviewed which item. The Minister was forthright about the documents she recalled having reviewed, and those that she had not, noting for example that she had not reviewed the full case law authorities, which had been attached to the March 26th submission (and which appear not to have formed part of the briefing package provided to her).

[43] It is clear from her evidence that the Minister had some broad familiarity with the circumstances and process giving rise to the cancellation of the applicant's teaching certificate. For example, although uncertain of the dates, she recalled that matters related to the teaching certificate had been before her more than once. She also recalled the decision as being important, which required that she take some time with it. Within this context, I accept that the Minister had indeed put her mind to the issue before her and particularly that she had grappled with the question of how to reconcile the competing recommendations of Department staff and the CRC. She specifically noted that it was not often the case that the Department and CRC were not aligned, a factor which she seems to suggest added to the complexity of her own decision-making process. In my view, the Minister answered the questions put to her on cross-examination directly and with a reasonable amount of specificity. This included making a series of somewhat embarrassing admissions whereby she took responsibility for what she acknowledged to be a regrettable mistake on her part.

[44] I accept the Minister's evidence that, irrespective of precisely when and how her reflection happened—either before or after the May 29th meeting—she had in fact reflected on this matter such that she had made a decision to cancel the applicant's teaching certificate. I also accept the Minister's evidence that the decision on this outcome was ultimately communicated in some way to either Department or political staff, such that she believed, having made her determination, that reasons supporting such a decision were being drafted on her behalf. The short duration between the issuance of the suspension letter and the June 2nd error email supports the Minister's

assertion that an error was immediately identified by Departmental staff, who, in turn, quickly confirmed the error with Ministerial staff before alerting the applicant's counsel. I accept the Minister's evidence that "everyone knew" her intention was to cancel the teaching certificate, such that "the wheels were already in motion to correct the error" before she was even notified. I would observe that the 34-minute period between the two emails would have been sufficient time to confirm that an error had been made, while also short enough that it would not give rise to a suggestion of external influence or reconsideration of an original decision. This is supported by the recent decision in ***R. v. Khill***, 2025 ONCA 146, where the Ontario Court of Appeal (albeit in very different circumstances) determined that a trial judge who had issued an incorrect sentence would not have been *functus officio* had he decided to correct his error in the immediate aftermath of making it (at paras. 132-135).

[45] Having reviewed the Minister's testimony both through her affidavit evidence and her cross-examination and putting aside the question of how she arrived at her decision (i.e. the rationale for the cancellation outcome), I accept that the Minister had in fact determined that she intended to cancel the teaching certificate. In that respect, I accept that the suspension decision did not reflect the Minister's manifest intention. Accordingly, the Minister was not *functus officio* when the error was noted and had not lost jurisdiction when she issued the cancellation decision.

PROCEDURAL FAIRNESS

[46] Although not the focus of counsel's arguments, concerns about procedural fairness were clearly reflected in the applicant's submissions, with counsel for the applicant

arguing that the Minister's process "was a careless one, the outcome of which cannot fairly and reasonably be permitted to stand".

[47] On questions of procedural fairness, the law is clear that I must decide whether the process was fair or not fair. This, in essence, requires the application of a "correctness" standard of review (*Canadian Association of Refugee Lawyers v. Canada (Immigration, Refugees and Citizenship)*, 2020 FCA 196, at para. 35; *Boeing Canada Operations Ltd. v. Winnipeg (City) Assessor*, 2017 MBCA 83, at paras. 32-36; *Lazy Bear*, at para. 22).

[48] As stated by the Supreme Court of Canada in *Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, where an administrative decision affects "the rights, privileges or interests of an individual", a duty of procedural fairness is owed (at para. 20). Guidance on the nature and content of that duty is also set out in *Baker*, which outlines a series of factors courts must consider when determining the degree of procedural fairness required in a given case. This "non-exhaustive" list includes (*Baker*, at paras. 23-28):

- The nature of the decision being made and the process followed in making it.
- The nature of the statutory scheme.
- The importance of the decision to the individual affected.
- The legitimate expectations of the person challenging the decision.
- The choice of procedure made by the decision-maker, particularly where the statute gives the decision-maker the authority to choose its own procedures.

[49] In respect of the third factor, the Court in ***Baker*** made the following observation, which is particularly apt in the context of this case:

25 ... The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated. This was expressed, for example, by Dickson J. (as he then was) in *Kane v. Board of Governors of the University of British Columbia*, 1980 CanLII 10 (SCC), [1980] 1 S.C.R. 1105, at p. 1113:

A high standard of justice is required when the right to continue in one's profession or employment is at stake . . . A disciplinary suspension can have grave and permanent consequences upon a professional career.

[50] Concerns related to the Minister's decision-making process were reflected in many of the applicant's submissions surrounding the question of *functus officio*, specifically as it related to the clarity of the Minister's intention to cancel the teaching certificate, and what was communicated at a May 29th meeting with Department staff. While I did not find the applicant's submissions on these points to be determinative in the context of the *functus officio* analysis, in my view they raise legitimate questions around the fairness of the Minister's own decision-making process, and how and why she formed the view that cancellation of the teaching certificate was warranted. Having accepted as I have, that the Minister's manifest intention was to cancel the teaching certificate, it fell to the Minister to ensure—given the stakes—that her own process in articulating and communicating the reasons for her decision was careful and fair. This seems especially so given the comprehensive procedural protections provided to the applicant at other stages of the certificate review process.

[51] The Minister acknowledged that the outcome of an individual's certification status is profoundly important to them and as such, it is reasonable to expect the decision-maker

to review the decision in full before signing it. However, she also acknowledged that having “directed Department Staff” to prepare a revised letter, she inquired as to “what reasons would be included in the letter” but did not provide clear direction “about what reasons specifically” she wanted included. Rather she confirmed that she provided her staff with “a sense” of her rationale, which would have been reflected in their meeting notes. With her staff having indicated that they had a good “summary” of the discussion, the Minister left it to staff to prepare a new version of her reasons. She did not conduct an interim review of a revised draft, nor did she hold further related discussions with staff regarding the reasons prior to June 2nd, when she found the suspension decision on her desk. The Minister acknowledged that—having assumed that a revised letter was in front of her—her review of that decision may well have been limited to the addressee and signature page. The Minister also acknowledged that had her staff prepared a cancellation decision the first time around, she would have signed it without confirming the substantive contents, just as she signed the suspension decision. The Minister testified that she could not “specifically recollect” whether she had read the cancellation decision which was issued on the heels of her initial error, noting instead that she thought that she had “probably” read it “in great detail”.

[52] Notwithstanding the broad discretion granted to the Minister under s. 6(1) of the **Act**, the obligation to provide reasons as set out in s. 6(1.1) of the **Act** reflects the stakes of certification decisions insofar as they can have serious consequences on an individual’s teaching career.

[53] Notably, s. 6(1) of the **Act** does not provide for delegation of the Minister's powers related to teacher certification (in contrast, for example, to s. 8(2) of the **Act** which specifically provides for delegation of the evaluation of education systems). That is not to say that a decision-maker—in this case, the Minister—may not delegate some aspects of their decision-making functions to another (see **The Queen v. Harrison**, 1976 CanLII 3 (SCC), [1977] 1 S.C.R. 238, and in particular discussion of **Carltona Ltd. v. Commissioners of Works**, [1943] 2 All E.R. 560 (C.A.)).

[54] There was no suggestion in this case, however, that the Minister had intended to delegate her decision-making in this matter, although she certainly relied—as she is entitled to do—on her staff to draft a decision which reflected her intention and her rationale (see Sara Blake, *Administrative Law in Canada*, 7th ed. (Toronto: LexisNexis, 2022), at pp. 164-166). Indeed, my decision on the question of *functus officio* rests on my determination that the Minister's own manifest intention—irrespective of her rationale—was to cancel the teaching certificate.

[55] Yet with the consequences as high as they were, and a statutory duty to provide written reasons, procedural fairness would seem to dictate that the Minister do more than provide generalized direction to staff and then allow her reasons to be sent out without reading them. As the Supreme Court observed in **Canada (Minister of Citizenship and Immigration) v. Vavilov**, 2019 SCC 65, “reasons shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power” (at para. 79). In circumstances such as this, where the Minister acknowledges that their reasons have been drafted by others, the Minister's signature on a letter would normally function as

indicia that the Minister has herself considered and adopted the reasons as her own. Put differently, that signature would suggest that in issuing the reasons, the decision-maker has “carefully examine[d] their own thinking” (*Vavilov*, at para. 80) prior to issuing the decision in question. In the particular and unusual circumstances of this case, given that the Minister attested to the fact that she had provided no clear direction as to the nature of the reasons she wished to include; that she did not read the suspension decision before it was sent out; that she would not have read the first letter before signing it even if it had been the cancellation decision; that there had been no draft cancellation decision provided to her; and that she could not specifically recall if she had ultimately read the cancellation decision itself, there are certainly reasonable questions around the extent to which either of the rationales contained in the two decisions sent to the applicant were adopted by the Minister as her own. Moreover, the very short turnaround in issuing the cancellation decision following the discovery of the error, coupled with the minimal changes made to the reissued letter, raises questions as to whether the substantially different penalty imposed in the cancellation decision, had, in fact, received the level of deliberation that such a significant consequence would ordinarily require.

[56] The applicant makes reference to both the “careless” and the “inattentive” nature of the Minister’s decision-making process. Having reviewed the Minister’s own evidence, it is hard to see how the applicant, faced with the prospect of losing his lifelong career, could possibly think he had been dealt with fairly. Given the stakes for the applicant, I am of the view that the process giving rise to the issuance of the cancellation decision was therefore flawed and lacking in procedural fairness.

[57] Alternatively, if the identified process concerns are not sufficient on their own to challenge the Minister's decision, these concerns are still relevant to my determination as to the reasonableness of the cancellation decision. In arriving at this conclusion, I find the comments of Greenberg J. in ***Lazy Bear*** instructive:

[30] ...even if the lack of procedural fairness does not itself give rise to a basis for challenging the Minister's decision in this case, it is a relevant factor in considering the reasonableness of that decision. As explained in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65:

[133] It is well established that individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm: Baker, at para. 25. However, this principle also has implications for how a court conducts reasonableness review. Central to the necessity of adequate justification is the perspective of the individual or party over whom authority is being exercised. Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.

[emphasis added]

WAS THE CANCELLATION DECISION REASONABLE?

[58] Both parties agreed, as do I, that the applicable standard of review is reasonableness.

The Law

[59] In ***Vavilov***, the Court acknowledged that the way in which a court conducts a reasonableness review will be impacted by the requirements of procedural fairness, and in particular, any duty of the administrative decision-maker to provide reasons (at para. 76). The Court observed that the process of drafting reasons, "encourages the

administrative decision-maker to more carefully examine their own thinking and better articulate their analysis in the process” (at para. 80). Reasons also help to show parties “that their arguments have been considered”, “that the decision was made in a fair and lawful manner” and “shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power” (at para. 79).

[60] In that regard, it is not enough for the outcome of a decision to be justifiable; where reasons are required, the decision must also be justified by way of reasons (at para. 86). And the decision “must be justified, intelligible and transparent, not in the abstract, but to the individuals subject to” that decision (at para. 95). Where the standard of review is reasonableness “a court must consider the outcome of the administrative decision in light of its underlying rationale to ensure that the decision as a whole is transparent, intelligible and justified” (*Vavilov*, at para. 15). As properly noted by the applicant, a decision may fall “within a range of possible acceptable outcomes which are defensible in respect of the facts and the law” (at para. 86), and yet still not be adequately justified. In *Manitoba Government and General Employees’ Union v. The Minister of Finance for the Government*, 2021 MBCA 36 (“*MGEU*”), the Manitoba Court of Appeal recognized the “slightly higher bar” set by *Vavilov* by virtue of this requirement (at para. 39).

[61] At the same time, the Court in *Vavilov* observed that reasons must not be assessed by a court “against a standard of perfection” (at para. 91), and that administrative decision-makers cannot be expected to use the same legal techniques

“expected of a lawyer or a judge” (at para. 92). The Court also explains that reasons are to be read in the context of the broader proceedings within which they are rendered:

[94] The reviewing court must also read the decision maker’s reasons in light of the history and context of the proceedings in which they were rendered. For example, the reviewing court might consider the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker’s work, and past decisions of the relevant administrative body. This may explain an aspect of the decision maker’s reasoning process that is not apparent from the reasons themselves, or may reveal that an apparent shortcoming in the reasons is not, in fact, a failure of justification, intelligibility or transparency. ...

[62] The Court in **Vavilov** makes clear that an administrative decision must not only be internally coherent (at para. 102) but must also be “justified in relation to the constellation of law and facts that are relevant to the decision” (at para. 105). In determining whether administrative decisions have been adequately justified through their reasons, several contextual factors are to be considered. Those contextual factors, which necessarily interact with one another, include: the governing statutory scheme; other statutory or common law; principles of statutory interpretation; the evidence before the decision-maker; the submissions of the parties; past practices and decisions; and the impact of the decision on the affected individual (at paras. 106-107).

Position of the Parties

[63] The applicant says that even if the Minister was not *functus officio* when she issued the cancellation decision, this court should determine that that decision is unreasonable.

[64] The applicant asserts that in the cancellation decision, the Minister’s finding that the applicant had engaged in “grooming” behaviour was dispositive, leading directly to her conclusion that cancellation was the appropriate sanction. As such, the applicant contends that, consistent with **Vavilov**, the Minister was required to engage with the

evidence and legal authorities on which the grooming finding rests and to account for the central arguments raised by the parties in relation to that issue. The applicant says that the Minister did not do so, insofar as there was no reference to that evidence (including the non-sexualized nature of the messages, the applicant's conduct in relation to the messages, the finding of ANCR that there was no abuse, and the Division's determination that the applicant could return to work). Nor, says the applicant, was there reference to the leading legal authority, *R. v. Bertrand Marchand*, 2023 SCC 26. The applicant points to the fact that the CRC itself had not made a finding of grooming, despite relying on the same evidentiary record which was before the Minister. The applicant also argues that counsel to the Minister had himself acknowledged before the CRC the absence of evidence to support a grooming finding.

[65] The applicant further asserts that the cancellation decision is unreasonable because it fails to meaningfully address the applicant's rehabilitative prospects and mitigating circumstances. Of particular import, says the applicant, is the question of the applicant's future risk, an issue which was flagged by both parties before the CRC. Despite this emphasis on risk determination and mitigation, the applicant says that neither the CRC nor the Minister engaged with this issue, nor did they explain the evidentiary basis for determining that a lesser penalty would be insufficient to address any residual risk the applicant might represent if he were to resume teaching.

[66] The applicant also argued that the Minister should have considered and accounted for her departure from comparable discipline decisions. He points to a series of Ontario College of Teachers decisions referenced in the March 26th submission, with

which he asserts that the Minister should have engaged in determining the appropriate penalty.

[67] For her part, the Minister says that her factual finding of grooming and her decision to cancel the teaching certificate were both reasonable. Although not referenced in the Minister's reasons, counsel nonetheless points to ***Bertrand Marchand*** in support of the Minister's position that the applicant's behaviour constituted grooming, noting that a determination as to whether there has been grooming "should be left to the fact-finder in each case" (at para. 53). The Minister says she appropriately engaged with the evidence before her, as set out in her reasons.

[68] The Minister says that she accounted for questions of risk and mitigation but simply gave them little weight given the serious nature of the applicant's conduct. She also says that she is not bound by findings of employers, Child and Family Services authorities, or tribunals in other provinces. Nor is she bound, she says, by the comments of her Department's legal counsel in the course of a CRC hearing. The Minister says she has the discretion to weigh the relevant factors so long as her choices "fall within a range of defensible outcomes".

Analysis

[69] Mindful of the need to adopt a "posture of restraint" (***Vavilov***, at para. 24), in reviewing the Minister's decision, I must consider whether the decision is appropriately justified, not whether I would have reached the same conclusion as the Minister (***Vavilov***, at para. 15).

[70] Returning to my earlier concerns about the Minister's reasons, I will start by reiterating the principle—well established in **Vavilov** and **MGEU**—that when the stakes are high, more is required both in terms of procedural protections and justification for decision-making. Where the impact is severe, more is necessarily required of an administrative decision-maker in meeting their duty to give reasons. To this point, **Vavilov** speaks to the principle of “responsive justification” and the requirement that the reasons provided to an individual “reflect the stakes” (at para. 133). As noted by the Court, “... a decision-maker's failure to meaningfully grapple with key issue or central arguments raised by the parties may call into question whether the decision-maker was actually alert and sensitive to the matter before it” (at para. 128). As also stated by the Court, “concerns regarding arbitrariness will generally be more acute in cases where the consequences for the affected party are particularly severe or harsh, and a failure to grapple with such consequences may well be unreasonable” (at para. 134).

[71] I agree that the law is clear that it is not sufficient for a decision to fall within a range of acceptable outcomes, unless that decision itself is properly justified. Normally, when determining whether a decision is properly justified, both the court and the applicant have only one set of reasons before them. In this highly unusual situation, however, both the court and the applicant are privy to both the erroneously issued suspension decision and the intended cancellation decision. But for a handful of changes, including the ultimate outcome, the substance of the two decisions is virtually identical. This includes the grooming finding, made in the context of both decisions, and described in identical terms in both letters. As noted above, the main difference appears to be the

weight accorded the absence of any prior instances of similar conduct by the applicant and the non-sexualized nature of the interactions with the student, when viewed in light of the grooming finding in the suspension decision. This is in contrast to the overwhelming weight given the grooming finding in the cancellation decision, such that little else appears to factor into the Minister's decision. The copy-and-paste nature of those reasons raise questions about the extent to which the Minister's reasons, in the cancellation decision, are sufficiently justified (i.e., grapple with the individualized circumstances of the applicant's case in arriving at the cancellation decision and articulate her rationale for that decision).

[72] Viewed alongside its counterpart, the deficiencies in the cancellation decision are particularly stark insofar as the consequences of that decision are dramatically different and more severe than those in the suspension decision. Viewed together, the imitative character of these two sets of reasons stands out with particular clarity, despite the vastly different results, reinforcing both the earlier identified procedural concerns as well as concerns in relation to the sufficiency of the justification. Simply put, what might be sufficient by way of rationale in the context of a one-year suspension does not meet that threshold when the applicant's entire career is on the line. The Minister is "entrusted with an extraordinary degree of power over the lives of ordinary people" including both the applicant and students (*Vavilov*, at para. 135). The reasons she provides need to reflect those stakes.

[73] I consider the Minister's reasons insufficient in two principal ways. The first relates to the Minister's grooming finding, which does indeed appear to have been dispositive of

the decision to permanently bring the applicant's teaching career to an end. Having made the grooming finding, the Minister identifies the seriousness of the applicant's conduct as the basis to give little weight to the applicant's evidence of "forward-looking risk" (including the applicant's lengthy history with the Division, the Division's own corrective actions, the ANCR determination, the applicant's subsequent training and counselling, and the applicant's remorse for his conduct). As such, the basis for the Minister's determination that the applicant, through the messages he sent to the student, was engaging in grooming behaviour—a determination that she was of course entitled to make—required at least some engagement with the evidentiary record and the submissions of the applicant, rather than simply a conclusory finding connected to a cursory credibility determination.

[74] The Minister cites ***Bertrand Marchand*** for the proposition that when assessing whether grooming has occurred, the fact finder should "focus on the character, content, and consequences of the messages, as well as whether the communication resulted in psychological manipulation of the child" (at para. 53) yet the Minister fails to explain how she did so in this case. This despite having made clear in the cancellation decision (by the addition of words not included in the suspension decision) that the determinations were based on the Minister's "own review" of the evidence. Moreover, there is no explanation as to why the non-sexualized nature of the applicant's messages was not considered as a mitigating factor in the cancellation decision, notwithstanding that it had been specifically identified in the suspension decision as a mitigating factor and the basis for the lesser penalty.

[75] Secondly, the cancellation decision rationalizes against issuing a suspension with further training on the basis that such training would be of little value. The cancellation decision paragraph says that the applicant “should have known” based on his existing training that his behaviour was unacceptable. Yet the applicant’s evidence was that he was unaware of the Division’s policy as it relates to personal social media communication with students, and that the training he had received was not directed at the question of teacher-student relationships. His evidence outlined what he had learned from additional training received subsequent to the incident, training which appears to have more directly addressed issues related to safe and effective student-teacher boundaries and appropriate forms of communication. In arriving at the cancellation decision, the Minister makes conclusions that are inconsistent with that evidence without any explanation as to why she did not find the applicant’s evidence to be credible or why she chose to give it little weight. Moreover, given the vastly different nature of the two penalties, more was required of the Minister in justifying why a lesser penalty would not have been appropriate or sufficient (see *The British Columbia College of Teachers v. P.E.M.*, 2005 BCCA 76, at para. 12). In this context in particular, some engagement was warranted on the question of future risk, including in connection with the evidence before the Minister in relation to the applicant’s rehabilitative prospects and mitigating circumstances.

[76] Certainly, it would be difficult for the applicant, as the recipient of both decisions, to conclude that the Minister, in the cancellation decision, meaningfully grappled with the evidentiary record before her, or the March 26th submission of counsel. Given the effect of the cancellation decision was to put an end to the applicant’s teaching career, the

Minister had a responsibility to address the applicant's submissions, rather than merely noting them, and to explain why she found them unpersuasive or outweighed by other factors. I remain mindful of the **Vavilov** caution that reasons need not be held to a standard of perfection and that they must be read in view of the history and context in which they were rendered. Viewed with an eye to the history and context of this particular case, including the erroneously issued suspension decision, the Minister's reasons are simply not good enough.

CONCLUSION

[77] I am quashing the decision and remitting it back to the Minister for reconsideration. The applicant asks that in so doing, I order the Minister to impose a penalty which is fair and reasonable. This, of course, should go without saying, however I will reemphasize the individualized nature of this process and the related need to consider the specific circumstances and context when considering the appropriateness of the decision. I am not prepared to direct the Minister as to which factors she must or must not take into account in issuing a new decision. That said, as detailed above, any outcome must be properly justified with regard to the evidentiary record and submissions of the parties in the very specific circumstances before the Minister.

[78] Costs may be spoken to if they cannot be agreed upon.

J.