



# Justice Centre for Constitutional Freedoms

June 30, 2021

*Sent via regular mail and via email to*

[REDACTED]

University of Winnipeg  
Senate Appeals Committee  
515 Portage Avenue  
Winnipeg, MB Canada  
R3B 2E9

Dear Committee Members,

**RE: Appeal of Performance Review Committee recommendation and decision of Dean of Education against [REDACTED] [REDACTED] (the “Decision”)**

We act for [REDACTED] [REDACTED] who—until June 9, 2021—was heading into her final year in the Education program at the University of Winnipeg. On that date, she received a letter from the Dean of Education, Dr. Laurie-Ann Hellston.

The letter quoted the following recommendations that had been made by the Performance Review Committee (“PRC”), which the Dean was imposing on Ms. [REDACTED]

1. You must to [sic] sit out for the 2021/2022 academic year and will not be permitted to register for Education courses or practicum during that time.
2. The Committee will meet again in May of 2022 to decide if you will be allowed to continue in the program in 2022/2023.
3. If allowed to return, you will be required to sign a Performance Contract with the Practicum Office.

The letter concluded by noting that this Decision could be appealed to the Senate Appeals Committee on the following basis:

- The student has reason to believe that all pertinent information was not available when the case was considered by the PRC.
- The student has reason to believe and can demonstrate that the PRC did not give the appeal a fair hearing.

## Factual Context

Ms. [REDACTED] has been an exemplary student at the University of Winnipeg. She has excelled academically and has even been on the Dean's list. She has also received excellent reviews for her interpersonal and teaching skills.

Ms. [REDACTED] is a kind and compassionate person, motivated to support and advocate for others experiencing suffering and hardship. It is this compassion that motivated Ms. [REDACTED] to attend a single outdoor demonstration in Winnipeg on April 25, 2021, calling on the Government of Manitoba to ease overbroad restrictions that were causing severe hardship to many Manitobans.

Ms. [REDACTED] did not conceal her participation in the outdoor protest. The principal of the school where she was doing her practicum asked her, out of an abundance of caution, to not attend in-person at the school during the last two days of her practicum. Ms. [REDACTED] completed her practicum teaching remotely – a skill many teachers have had to utilize this past year.

Ms. [REDACTED] received one phone call on April 30 from Ms. [REDACTED] of the Faculty of Education, telling her that she was under review for attending the outdoor protest. Ms. [REDACTED] confirmed to Ms. [REDACTED] that she had only attended one outdoor protest, that she always wears a mask in indoor public places and that she maintains social distancing. Ms. [REDACTED] asked to be kept up to date on any developments.

On May 5, 2021, Ms. [REDACTED] received an email from Ms. [REDACTED] which stated:

Debra [REDACTED] <[REDACTED]@uwinnipeg.ca>  
Wed 2021-05-05 12:48 PM  
To: [REDACTED]  
Cc: [REDACTED]@uwinnipeg.ca>

Hello [REDACTED]

Further to our conversation last week, your removal from your practicum school will be reviewed by the Performance Review Committee (PRC), who will decide on further action if deemed necessary. This committee meets the last week in May once all grades have been received from Senate. Any further questions or concerns must be directed to the PRC via your Academic Advisor [REDACTED]

Regards,  
[REDACTED]

[REDACTED]  
[REDACTED]  
Director, Student Teaching  
Faculty of Education  
University of Winnipeg  
[REDACTED]

Ms. [REDACTED] was not afforded any opportunity to address any concerns the PRC had or given notice that she was facing possible suspension from the Faculty of Education.

Rather, without any further communication, on June 9, 2021, Ms. [REDACTED] received the letter from the Dean notifying her of the Decision suspending her from the Faculty of Education for at least a year.

On June 23, 2021, Ms. [REDACTED] met with the Dean virtually to discuss her situation. Later that day, the Dean provided Ms. [REDACTED] with the following email:

Good afternoon [REDACTED]

It was lovely meeting you today – although I am sorry it was under such difficult circumstances.

In making their recommendation, the PRC committee considered the following:

The Certification Student Handbook:

<https://www.uwinnipeg.ca/education/docs/practicum/cert-student.pdf>

The relevant section is on page 35 “Removal from Host School” but the MTS Professional Code of Professional Practice was also discussed (Page 44)

The PRC also discussed section XI of the Academic Calendar “Standards of Professional Conduct for Pre-Service/In-Service Teachers” and the subsection 2. “Professional Misconduct” which includes “Serious breaches of health and safety rules”. This can be found on page 26 of the Academic Calendar here:

<https://www.uwinnipeg.ca/academics/calendar/docs/educ.pdf>

The PRC also considered the email communication between yourself and the Principal of your Host school.

Kind regards,

Laurie

### **Grounds of Appeal**

Ms. [REDACTED] has reason to believe that all pertinent information was not available when the case was considered by the PRC including the following:

- Ms. [REDACTED] was not removed from her practicum at her host school.
- Ms. [REDACTED] host school objected to the punishment recommended by the PRC.

- Ms. [REDACTED] attendance at the outdoor protest did not create a health risk.
- Ms. [REDACTED] attendance at the outdoor protest was an exercise of her fundamental constitutional freedoms.

Ms. [REDACTED] further has reason to believe and can demonstrate that the PRC did not give her a fair hearing for the following reasons:

- There was no notice of the hearing.
- There was no opportunity for Ms. [REDACTED] to address the PRC’s concerns.
- Ms. [REDACTED] has not been provided with sufficient reasons for the Decision.
- The Decision is unreasonable and is a grossly disproportionate punishment.

## A. INFORMATION NOT CONSIDERED

### 1. Ms. [REDACTED] was not removed from her practicum at her host school

It is clear that “removal from host school” references not merely a request to not physically attend the host school for a couple days, but rather the removal of a student from the practicum:

#### **Removal From Host School<sup>1</sup>**

Note: In this document “Dean” or “Associate Dean” refers to the Faculty of Education administration. If a principal (or designate) requests that a student be removed from their host school the following process will be undertaken:

1. The Director of Student Teaching will request that the Principal or designate provide, in writing, reason(s) for the removal of the student from the school. This documentation may also be supplemented with notes from the Co-operating Teacher.
2. The student will immediately be removed from the host school and **their practicum suspended**. The student may also be suspended from all Education classes (see point 8 under “Removal from the Faculty of Education”).
3. The Director of Student Teaching will discuss the circumstances with the Faculty Supervisor and/or Cooperating school participants.
4. The Director of Student Teaching will meet with the student to **review the circumstances of removal from practicum**.
  - If the student fails or refuses to attend the meeting, the process will continue without the student being present and decisions will be made on the information available.

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<sup>1</sup> See *Certification Student Practicum Handbook 2020-2021*, Page 35

5. The Director of Student Teaching may do one or more of the following:

- if warranted, institute **a process for continuation in the practicum**. This may include a performance contract
- consult with the Dean and /or Associate Dean
- refer the case to the Performance Review Committee

6. In the case of a Performance Review Committee referral:

- The Committee will review the circumstances. The purpose of this review is to make a recommendation to the Deans regarding the status of the student in the Faculty of Education. The Committee will review the performance of the student to date including academic performance, student teaching evaluations, etc.

- The Committee will recommend to the Deans one of the following:

- » That the student be allowed to continue in the Faculty of Education. The student will be required to sign a Performance Contract. See the Performance Contract section for more information. Or,

- » That the student may be allowed to remain in the Faculty but must sit out for a period of time. The student may be required to provide medical or other documentation in order to be allowed to resume their studies in the Faculty. In addition to being removed from practicum, these students may be removed from some or all of their Education courses. Or,

- » That the student be removed from the Faculty of Education program.

- The Dean will issue a final decision.

The foregoing evidences that this matter should not have been referred to the PRC for “removal from host school” as Ms. [REDACTED] practicum was never suspended. She was asked to finish her last couple of days virtually with her students. She completed her practicum on time. (See below for more details.)

**2. Ms. [REDACTED] host school objected to the punishment recommended by the PRC**

It appears that the PRC was not aware of the actual situation which occurred at Ms. [REDACTED] host school. It is clear that the school, out of an abundance of caution asked Ms. [REDACTED] not to attend the school in person.

[REDACTED]

Wed, Apr 28, 2021 at 10:41PM

To: [REDACTED]

Cc: [Redacted]  
[Redacted]

[Redacted] it has come to my attention that you attended the anti-mask demonstration at the Forks Sunday and posted on Instagram about this as well. If this is indeed the case you will not be able to enter the school. If true, you have put our school's staff and students at risk, and their families as well. My hope is that this is erroneous information. Please contact me about this concern.

Sent from my iPhone

[Redacted]  
[Redacted]  
Thu, Apr 29, 2021 at 6:20 AM  
To: [Redacted]  
Cc: [Redacted]  
[Redacted]

[Redacted]  
This information is correct, I was in attendance. I will respect your wishes to have me not re-enter the building for my final two days. Please don't hesitate to contact me if you have any further questions or concerns.

[Redacted]  
[Redacted]  
[Quoted text hidden]

[Redacted]  
[Redacted]  
Thu, Apr 29, 2021 at 6:30 AM  
To: [Redacted]  
Cc: [Redacted]  
[Redacted]

I would also like to add that I apologize for any stress this has caused you, the staff, students, and their families.

[Redacted] [Quoted text hidden]

[Redacted]  
[Redacted]  
Thu, Apr 29, 2021 at 6:36 AM  
To: [Redacted]  
Cc: [Redacted]  
[Redacted]

Thanks for getting back to me. Feel free to contact me at school if you wish.

Sent from my iPhone

On Apr 29, 2021, at 6:30 AM,  
[REDACTED] <[REDACTED]> wrote:

[Quoted text hidden]

The school however did not view Ms. [REDACTED] to have caused a serious health risk and was clear that Ms. [REDACTED] would in fact complete her practicum.

From: [REDACTED]  
Date: Thu, Apr 29, 2021 at 8:47 AM  
Subject: please note  
To: [REDACTED]

Hi, all. It has come to our attention that our teacher candidate, [REDACTED] [REDACTED] attended the much publicized rally at the Forks Sunday. She will not be in the building for the last two days of her practicum. [REDACTED] was diligent in her proper mask use and social distancing while in school so I anticipate that would not put our students and staff at direct risk. If infection risk is heightened, public health will be in contact to direct the school's next move.

[REDACTED]

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Greetings, Grade [REDACTED] parents/guardians.

From: [REDACTED]  
Date: Thu, Apr 29, 2021 at 8:47 AM  
Subject: please note  
To: [REDACTED]

It has come to the school's attention late last night that our teacher candidate that had been conducting her practicum with the Grade [REDACTED] cohort chose to attend an anti-mask rally at The Forks Sunday. She will not be in the building for **the last two days of her practicum.**

The teacher candidate was diligent with her mask use and her social distancing practices while in our building and **we do not anticipate that significant risk has occurred.** However, the

school relies on public health directives to determine if any action by the school needs to be followed.

The teacher candidate has expressed regret for the stress her action has caused the school and its families.

[REDACTED]

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From: [REDACTED] >  
Date: Thu, Apr 29, 2021 at 8:15 AM  
Subject: Today and tomorrow  
To: [REDACTED] <[REDACTED]>

Hi [REDACTED]

[REDACTED] have told me that you need to isolate from school for public health reasons. I think that it is possible for you to finish your block from home. I'm thinking that I will get each student on a chrome book and you can teach via Google Meet. You'll be able to see them all clearly that way. So, half will be in the classroom and the other half in another space, but you'll see them each in their computers.

Does that make sense? Let me know if you have any questions,

[REDACTED]

PS: I'll be in the room to help them get set up

The School Principal expressed concern at the decision of the PRC and Dean:

June 15, 2021

Laurie-Ann Hellsten

Dean of Education, University of Winnipeg

I have come to understand that the teacher candidate our school was assigned last year, [REDACTED] [REDACTED] has been removed from your Bachelor of Education program. I wish to express my surprise with this decision and ask you to reconsider Ms. [REDACTED] status so she can complete her certification year commencing this fall.

I felt compelled to inform the program's coordinator when I learned that Ms. [REDACTED] had attended a public rally that contravened a public health order. I appreciated that Ms. [REDACTED] was forthright when I asked her about her involvement in this protest and she did recognize and did apologize for the



response the school received in the following days. Indeed, I did need to discuss her action with some parents, with a few wondering why she was permitted to teach her remaining classes of her practicum safely via online delivery. Nonetheless, I had expected that the Education faculty would engage in a conversation with Ms. [REDACTED] with the intent of having her recognize that similar actions in the future might result in significant career implications. While she is expected to assume near professional responsibilities as a teacher candidate, I feel in this circumstance she could be afforded some grace, where this experience could inform her professional decisions in the years to come. Please feel free to contact me if you wish further discussion.

Yours truly,

[REDACTED]

The Vice Principal and a teacher at Ms. [REDACTED] host school wrote her a supportive letter on June 28, 2021:

To Whom it May Concern,

[REDACTED] [REDACTED] was a teacher candidate at [REDACTED] [REDACTED] during the 2020-2021 school year.

In the classroom, [REDACTED] was a hard working teacher candidate who spent energy connecting with her students and making learning enjoyable. She followed the routines set by the classroom teacher, while creatively engaging students in her own unit. She listened to feedback and worked well in a team in the classroom.

In her time here at [REDACTED], [REDACTED] did a good job becoming part of our staff. She related well to both the teachers and support staff. It was not uncommon to see [REDACTED] sitting in the staffroom with other staff members, engaged in conversation. Her friendly personality and her patient approach to relationships made her a great fit here at our school.

Please let us know if you have any questions. Sincerely,

[REDACTED]

[REDACTED]

### 3. Ms. ██████ attendance at the outdoor protest did not create a health risk

Dr. ██████, an Infectious Disease Specialist and Medical Microbiologist, and Assistant Clinical Professor at McMaster University provided a letter to the Senate Appeals Committee in which he explained that, “The risk of outdoor transmission of SARS-CoV-2 at outdoor protests is negligible, particularly when physical distancing is maintained.” He stated, “The reason for negligible outdoor transmission is that airflow outdoors rapidly dilutes any SARS-CoV-2 virus present to negligible amounts not considered to be infectious,” and, “...outdoor gatherings of short duration (less than 24 hours; no overnight component) such as outdoor public protests should be considered safe based on the evidence.”

In the recent case of *Beaudoin v. British Columbia*<sup>2</sup>, the British Columbia government admitted that its ban on outdoor protests was an unjustified violation of the *Canadian Charter of Rights and Freedoms*. The government could not point to a single Covid transmission in the province throughout the period of the pandemic at any outdoor protest, despite massive rallies being held for Black Lives Matter, anti-lockdown, environmental and other causes.

In *Gateway Bible Baptist Church et. al. v. Manitoba et al.*, the Manitoba government and Dr. Roussin were challenged over whether their public health orders restricting outdoor gatherings (protests) were a justifiable limit on the *Charter*-protected rights of freedom of expression and assembly. They produced **no evidence** that Covid-19 is transmitted outdoors or that they had any outbreaks tied to an outdoor event, and their Infectious Disease expert’s evidence on that point was that evidence of outdoor transmission is “elusive”. The Manitoba Court of Queen’s Bench has not released a decision in this case yet.

### 4. Ms. ██████ attendance at the outdoor protest was an exercise of her fundamental constitutional freedoms

The *Canadian Charter of Rights* is part of *The Constitution Act, 1982*. The *Charter* protects Canadians’ fundamental rights and freedoms. Specifically, subsections 2(b) and 2(c) of the *Charter* protect Ms. ██████ right to attend the protest.

2 Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression**, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly**; and
- (d) freedom of association.**

The Alberta Court of Appeal in *UAlberta Pro-Life v Governors of the University of Alberta*<sup>3</sup> recently held that the *Charter* applied to the University’s regulation of student expression.<sup>4</sup> It is

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<sup>2</sup> 2021 BCSC 512

<sup>3</sup> 2020 ABCA 1

<sup>4</sup> *Ibid.* at paras. 148-149

our position that the *Charter* applies and protects Ms. [REDACTED] from the University of Winnipeg's actions against her exercise of her freedom of expression and assembly.

## **B. UNFAIRNESS OF THE HEARING**

### **1. There was no notice of the hearing**

Ms. [REDACTED] phone call and the Dean's letter do not constitute adequate notice. Ms. [REDACTED] ought to have been notified well in advance that the PRC was going to meet about her situation which could possibly lead to a suspension. She ought to have been properly notified so that she could have begun to obtain the necessary information in order to understand what such a hearing could mean for her future, and how to respond.

### **2. There was no opportunity for Ms. [REDACTED] to address the PRC's concerns**

Had the PRC known that Ms. [REDACTED] was not actually "removed from her host school", and that she finished her practicum on time, they may have made a different decision. Similarly, if Ms. [REDACTED] could have provided the PRC with the letter from the Principal of the host school, and Dr. [REDACTED]'s letter explaining that the risk of outdoor transmission of Covid-19 is negligible, this all could have been avoided.

It is unfair that Ms. [REDACTED] had no opportunity to explain the facts and the science to the PRC prior to their deliberations.

### **3. Ms. [REDACTED] has not been provided with sufficient reasons for the Decision**

The letter communicating the Decision shows errors in the Decision itself:

- Ms. [REDACTED] was not kicked out her practicum at her host school - she was simply asked not to attend in person for two days.
- The letter does not mention protests.
- The letter does not mention violating the health orders.
- The letter is conclusory.
- There is no indication of what the PRC considered warranting the punishment it recommended.

### **4. The Decision is unreasonable and a grossly disproportionate punishment**

For similar reasons, the PRC recommendation and the letter from the Dean are unreasonable as per the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*<sup>5</sup>. The PRC's logic is flawed. Because she was not actually removed from her host school as the PRC assumed, it was not open to the PRC to punish her in this manner.

Further, what the PRC's decision entails is that Ms. [REDACTED] career is in jeopardy because she exercised her *Charter* right to assemble outdoors. It is a grossly disproportionate response to her

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<sup>5</sup> 2019 SCC 65

exercise of her *Charter* freedoms to prevent her from completing her education. At a bare minimum, one whole academic year will be lost.

For the foregoing reasons, the hearing process was *procedurally unfair*.

If this Decision is not immediately reversed, the University of Winnipeg will face immediate legal proceedings.

We look forward to hearing from you.

Yours sincerely,

A handwritten signature in blue ink that reads "A.K. Pejovic".

**Allison Kindle Pejovic/ Marty Moore**  
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