

Ottawa-Carleton District School Board

FORMAL REVIEW GLOBAL REPORT

Board Member Code of Conduct Complaint of

Trustee Donna Blackburn, Trustee Donna Dickson, Trustee Kaplan-Myrth

FORMAL REVIEW GLOBAL REPORT

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I. BACKGROUND

A.THE ACCOUNTABILITY FRAMEWORK

i. Office of the Integrity Commissioner

I was appointed as the first Integrity Commissioner of the Ottawa-Carleton District School Board (“**OCDSB**”) in April 2023. As Integrity Commissioner, I was appointed as an independent office tasked with applying the rules of the Code and procedures that govern the ethical behaviour of Trustees.

ii. Confidentiality of the Complaints Process

The Code provides for the confidentiality of the complaints process, and generally requires me to preserve confidentiality in matters that come to my knowledge as I carry out my duties, unless otherwise contemplated by the Code or governing legislation.

Complaints received in accordance with the Code process are presumptively confidential, at least until the Integrity Commissioner reports on the result of their review of a complaint to the Board. In particular:

4.20 The Integrity Commissioner shall provide to the Chair a confidential copy of the Complaint within ten (10) days of a determination that the Complaint will be managed by the formal process following the failure of an informal process.

4.22 The Complaint, any response to the Complaint, and the investigation of the Complaint shall be confidential until it is before the Board for a decision as to whether or not the respondent has breached this policy.

4.24 Procedural fairness and the rules of natural justice shall govern the formal review. The formal review will be conducted in private and, to the extent possible, protecting the confidentiality of the parties involved.

In reporting to the Board, I have maintained the confidentiality of the complainants disclosing particulars other than the identity of the complainants which is not necessary for the Board to understand and consider both the substance of the allegations and the Integrity Commissioner’s findings and recommendations.

The Code does not require the Integrity Commissioner to advise the respondent of the complainant’s identity, providing only that “[t]he respondent shall receive details of the allegation

and have an opportunity to respond to the allegations” both in a private meeting and in writing (Section 4.26).

iii. The Newly Elected Board and its Training

The 2022 municipal elections resulted in the election of five returning and seven newly elected trustees to the OCDSB. The OCDSB website set out that the newly elected trustees “will participate in an extensive orientation program to learn more about their role and responsibilities under the Education Act. Professional development topics included: governance; finance; human resources; strategic planning; family and community engagement; and Indigenous education, equity, and human rights”¹

The OCDSB Board Services scheduled a series of Trustee Orientation “Learning Sessions” to facilitate an understanding of the various roles and responsibilities of Board Trustees. On November 4, 2022, Trustees-elect were each given a copy of the OCDSB Trustee Orientation Handbook Handout.

On November 8, 2022, December 13, 2022, and March 21, 2023, I delivered three Trustee learning sessions with an esteemed Educator and former Director of Education of the Ottawa-District School Board Stephen Sliwa, Executive Program Director / Adjunct Professor| B.Ed. Program Faculty of Education | Queen's University

Concurrent to these scheduled learning sessions, Board Services had provided all Trustees with the Professional Development Program modules to self-schedule and complete. [Good Governance for School Boards: Trustee Professional Development Program \(ontarioschooltrustees.org\)](https://www.ontarioschooltrustees.org)

Training to new Trustees emphasized the requirement for co-operation and good communications among Trustees and that the Board must act together and speak as one body. In addition, Trustees learned in their learning sessions that Trustees must take direction from the Chair during meetings. It was conveyed that one designated person should speak to the media **on behalf of the Board** and if a member disagrees with a decision, they must not denigrate the Board or their colleagues in expressing their disagreement.

At the Trustee orientation sessions, we covered many areas of governance that were included in the Ontario Public School Boards’ Association (“OPSBA”) orientation modules. In our March session, we covered the Code of Conduct, which emphasized the requirement to act in accordance with the letter and spirit of the Code of Conduct and to inspire public confidence in the OCDSB. The final session touched very briefly on the role of the Chair and decorum at Board meetings. Trustees are required under the Code, to conduct themselves at meetings with decorum. Respect for the public, fellow Trustees and staff requires that all Trustees show respect and not distract from the business of the Board during presentations and when other Trustees have the floor.

On June 27, 2023, Board Services circulated a Memorandum written by me as the newly appointed Integrity Commissioner to all Board Trustees. In the Memorandum, I stated:

I am writing today in my capacity of Interim Integrity Commissioner (the “Integrity

¹ Ibid, footnote 1. [OCDSB Welcomes Newly-Elected Trustees - Ottawa-Carleton District School Board](#)

Commissioner”) for the Ottawa-Carleton District School Board (the “OCDSB”). The Board of Trustees approved my appointment at its April 25 2023 Board meeting. As Integrity Commissioner, my Office will provide an independent, transparent and accountable process for resolving complaints and conducting inquiries relative to alleged breaches of the Board Member (Trustee) Code of Conduct (the “Code of Conduct”). As Integrity Commissioner, I will provide advice to the Board of Trustees and individual Trustees on the application of the Board Member Code of Conduct, which was recently updated in May 2023. Duties of the Integrity Commissioner: All Board Trustees are required to follow POLICY P.073.GOV

The Integrity Commissioner’s primary role is to ensure that the Code of Conduct is followed. This includes: - Receiving informal and formal complaints alleging that a Board member has violated the rules of the Code of Conduct - Providing recommendations on sanctions or remedial action following the investigation of a formal complaint - Providing advice to the Board of Trustees and individual Board Trustees on the application of the rules of the Code of Conduct and the Municipal Conflict of Interest Act (the “MCIA”) The Integrity Commissioner does not have any authority to receive complaints against actions, decisions or omissions of Board staff or decisions of the Board as a whole.

A Board member who has a concern that another Board Member may have engaged in conduct which represents a breach of the Code of Conduct may first consider whether there is an opportunity for resolution of the concern through direct discussion with the Board Member. Board members are encouraged to pursue the informal complaint procedure as a means of stopping and remedying behaviour or activity that they believe violates the Code of Conduct. The assistance and advice of the Integrity Commissioner may be requested by either Board Member. However, it is not a precondition or prerequisite that a Board member with a concern, pursue the informal complaint procedure prior to pursuing the formal complaint procedure. The Integrity Commissioner will assess the suitability of the informal complaint process for addressing the concern and may at any time decline to address the complaint through the informal process. This informal complaint procedure will not apply to complaints against Members in respect of alleged violations of the MCIA.

Under the revised Code of Conduct, a Board member may bring directly to the Integrity Commissioner, any concern that they have that another Board Member may have engaged in conduct which violates the rules. Where a Board member wants to pursue a Code complaint under the formal complaint procedure, a written complaint must be submitted directly to the Integrity Commissioner following the steps set out in section 4.10 of the Code of Conduct.

I am confident that all Board members are committed to their public service responsibilities and requirement to adhere to the rules of the Code of Conduct in its entirety. I look forward to serving the OCDSB Board of Trustees in its execution of its duties, in my role as Interim Integrity Commissioner.

B. CONTEXT FOR THE PRESENT COMPLAINTS

The two complaints that are the subject of this report relate to three meetings that took place on September 7 and 11, 2023 and public comments related to those meetings. Those events cannot be understood without reference to events prior; specifically, the circumstances that resulted in the prior complaint against Trustee Kaplan-Myrth which was considered and voted on at the September 11 board meeting.

The contextual evidence demonstrates that witnesses perceived Trustee Kaplan-Myrth's behaviour as intimidating. It also illustrates Trustee Kaplan-Myrth's behavior prior to the current Complaint, which is the context within which the September 11th meeting took place. The September 7th meeting was affected by the ongoing animus, the issues underlying which, pre-date the September 11 meeting at which the Code Complaint Report was submitted.

The context evidence goes back to near the beginning of the term of this Board. The evidence suggests a history of political infighting and conflict within the Board which started during the 2022 municipal election and continued after the inauguration of the new Board. Many with whom I spoke shared that at the beginning of the Board term, relations seemed to be reasonably collegial, but very quickly matters deteriorated and collegiality and civility declined.

i. November 2022 Trustee Vote on temporary mask mandate

In November 2022, one month after the 2022 municipal elections, the Trustees faced deliberation and decision on a very important and polarizing item: whether to institute a temporary mask mandate in all OCDSB schools.

The report before the Board on September 11th considered allegations of misconduct against Trustee Kaplan-Myrth dating back to November 2022. Trustee Kaplan-Myrth sent a text message to Trustee Dickson defining her vote on a motion as tantamount to "voting with white supremacists". Trustee Dickson believed that the OCDSB chair had applied a different standard to her circumstances and to that of Trustee Kaplan-Myrth. In particular, Trustee Dickson believed that there was a desire to be sensitive to how Trustee Kaplan-Myrth may react to a Code review of her conduct, but the same sensitivity was not afforded to Trustee Dickson. Trustee Dickson felt disrespected and intimidated when she received Trustee Kaplan-Myrth's text messages and saw them as a suggestion that she was incapable of distinguishing who authored the emails she received from members of the public. There is a real possibility that some of the emails that Trustee Dickson received were from "anti-vaxxers" and individuals who had participated in the Ottawa 2021 protest against mask mandates; however, the assumption that Trustee Dickson is unable to separate the emails containing inflammatory hateful rhetoric sent by individuals who may identify with "white supremacists" from emails sent by bona fide constituents without a sinister political agenda felt offensive to her. It suggested to Trustee Dickson that Trustee Kaplan-Myrth a) did not believe that Trustee Dickson was capable of making such distinctions autonomously and b) believed that all (or most) of the individuals who sent in emails to Trustee Dickson in opposition to the Motion (to institute a mask mandate at the OCDSB) were "white supremacists" and those whose intent was to disrupt and be violent. It was against that backdrop of a perceived unfairness and "cover up" that Trustee Blackburn communicated her disagreement with the Board's decision not to find Trustee Kaplan-Myrth in violation of the Code in respect of the matter under review in this investigation.

ii. January 2023 Trustee Blackburn request to Trustee Kaplan Myrth

On January 25, 2023, Trustee Blackburn wrote to Trustee Kaplan-Myrth asking her not to send her emails:

Dear Trustee Kaplan-Myrth. I respectfully request that moving forward you not send me emails that you send to all of us.

In the event there is information contained in any correspondence from you that I need know in order to fulfill my duties as Trustee, I will be made aware of such.

As a long time champion of student and staff well-being, I must walk the walk as the saying goes.

You should also be aware that you are not the first colleague or even the second, that I have made this request to.

Take care

iii. May 2023 Trustee Kaplan-Myrth's requested clarification to Minutes

In an email of May 21, 2023, Trustee Kaplan-Myrth wrote to the Manager of Board Services and the (then) Vice-Chair of the Board:

"Please make the following revision to the March 28, 2023 COW in Camera meeting minutes:

- 1) delete the comment under point 5 "mitigating inflammatory reaction from the public by limiting use of social media" – that was an inappropriate comment made by Trustee Dickson, was dismissive of the persistent, serious death threats sent to Trustee Kaplan-Myrth from November until March (irrespective of whether or not social media was used), and should NOT be included as though it was a suggestion from the Director of Education.
- 2) add a note under point 5, to acknowledge that Trustee Kaplan-Myrth asked the Board to move to a virtual meeting, that Vice-Chair Bell responded that she would support that if it were a motion on the table, but that the request was not discussed further.

These are important omissions/amendments, even if you do not reference the names of the Trustees above.

Thank you,

Trustee Kaplan-Myrth

iv. June 2023 Trustee Kaplan-Myrth's Safety Plan communications

Acknowledging the serious threats made against Trustee Kaplan-Myrth, the Board staff created a safety plan for her.

On June 13, 2023 on X, Trustee Kaplan-Myrth posted:

Oh brother, Rebel News just accosted me outside the board of education. I was waiting to speak with a legitimate news agency about real issues. They can take their petition to say

that I shouldn't be a trustee and line a bird cage with it. That's not how democracy works, sillies."

On June 15, 2023, internal OCDSB communications discussed Trustee Kaplan-Myrth's failure to follow the safety plan and her communications with Rebel News, and bore a Rebel News watermark (i.e., someone provided them to Rebel News). In the emails, OCDSB staff says someone named Darren "witnesses Nili bate [sic] the Rebel News reporter by circling the path near the parking lot" and also expresses concerns regarding her safety plan "and [Kaplan-Myrth's] disregard for our efforts." The emails also include drafts of a proposed email to Trustee Kaplan-Myrth reviewing her safety plan, and generally critical of her disregard for that plan:

I spoke with Michele a little about my concerns regarding Nili's safety plan and her disregard for our efforts. After further conversation with [a named individual] who witnessed Nili bate the Rebel News reporter by circling the path near the parking lot I feel that something needs to be said or incorporated more firmly in the Safety Plan. She wondered about an email from me or you addressed to Nili and [redacted word] which shares the following:

After the incident on Tuesday evening I feel it is necessary to review the safety plan with you again (attached – with some additions/revisions). On Monday evening we spoke of your safe arrival at 133 Greenbank on Tuesday evening owing to the possibility of heightened community interest in the meeting owing to the protest and the OPS motion. I reach out to you Tuesday afternoon as promised to share that the perimeter was clear and safe. When you arrived with [redacted word] and were safely ensconced in the locked confines of[...] I had assumed you would remain safely in the [a location]. Without prior discussion you left [...] and proceeded to exit the building and conduct an interview outside and walk around outside where you were subsequently approached by Rebel Media. I think it is necessary for us to review our standards of practice if you intend on leaving the safe space after your arrival. We cannot ensure your safety if you do not make us aware of your intentions. I am hoping that we might connect to review the plan again and ensure a common understanding.

A subsequent iteration of the email draft includes:

Under the circumstances, we do not feel there is anything that we could have done differently – the safety plan measures worked insofar as you were able to enter the building and the meeting area safely and without incident. Given the events that followed, however, we do feel that we may need to review our standards of practice. Specifically, we are concerned about our ability to ensure your safety if you leave the secure space after your arrival without letting anyone know in advance so that we can take the appropriate precautions set out in the safety plan, such as accompanying you, or ensuring we check the area first. I am hoping that we might connect to review the plan again and ensure a common understanding.

In a further email OCDSB staff stated:

This is great [named staff person]. One small change to the last sentence of the first paragraph:

You managed to re-enter the building and did not report the incident to [the Manager Board Services], despite encouragement from [a Board Services staff person] to seek refuge in B tower. You instead spoke directly with the CTV report in the foyer. Only after the interview did you report the incident with Rebel Media to me.

[A Board Services staff person] spoke with Nili when she entered the foyer and told her she needed to speak with me immediately. Nili, in an agitated and angry tone, ordered [a named Board Services staff person] and [a named Board Services staff person] to get the CTV reporter inside so she could finish her interview with him. [A named Board Services staff person] and [a named Board Services staff person] offered help and assistance to Nili but his was met with defiance and anger.

II. THE COMPLAINTS

A. COMPLAINT 1

On September 19, 2023, I received a complaint naming three Trustees as respondents: Trustee Donna Blackburn, Trustee Donna Dickson, and Trustee Nili Kaplan-Myrth ("**Complaint 1**", and collectively, the "**Respondents**").

Complaint 1 was submitted on the Board's Complaint Form and included several links to social media posts and media articles in support of the allegations.

Complaint 1 takes issue with the conduct of the Trustees Dickson, Blackburn, and Kaplan-Myrth in early September 2023, alleging that their conduct and statements at Board meetings, to the media, and on social media in that period violated the following sections of the Code: 3.2, 3.5, 3.7, 3.8, 3.15, 3.17, 3.18, 3.27, 3.28, and 3.30.

I have determined that these allegations in Complaint 1 also engaged section 3.19 of the Code (regarding respectful workplaces), section 3.20 (regarding efforts to resolve conflicts directly), and s. 3.29 (requiring compliance with Board policies, procedures, Bylaws and standing rules), so have exercised my discretion to investigate whether any of the respondents have violated these three sections, in addition to those to which Complaint 1 explicitly refers. I have set out the relevant Code rules in Appendix 1.

The essence of Complaint 1 is that the conduct and statements of the Respondents was rude, insulting, intimidating, and disrespectful of the Board and the rules put in place for decorum at Board meetings; and that this disrespectful behavior during the Board meetings and otherwise constituted a pattern of misconduct conduct that violated the Code.

Before setting out its specific allegations, Complaint 1 states:

...As an elected official and member of the board, I cannot stay silent on what I believe are the breaches of the Code of Conduct that are impeding our ability As a Board to carry out its duties and maintain public confidence...

While these unfortunate behaviours are not new, repeated attempts to convince these trustees to act in a more appropriate way have been unsuccessful. To the

best of my knowledge and understanding, these attempts of reconciliation by various members of staff and the Board have not presented a change in behaviour(s) from the aforementioned trustees.

The date of these most recent breaches occurred between September 7th-11th 2023. Most notably, September 7th 2023 during a Board Professional Development Session, September 11 2023 during an in-camera session, public board meeting, and immediately following the conclusion of that same meeting.

B. COMPLAINT 2

On September 22, 2023, I received two re-submitted complaints from one complainant, each naming one of Trustee Donna Blackburn and Trustee Donna Dickson (collectively, “**Complaint 2**”).

Though I have chosen to refer to these two subsequent re-submitted complaints collectively, I have considered the allegations in them, against two different trustees, separately.

Complaint 2 alleges that each of Trustee Blackburn and Trustee Dickson made statements and engaged in conduct at Board meetings and to the media which breached Code sections 3.17 and 3.18 in the course of many of the same (and otherwise proximate to the) events and exchanges raised in Complaint 1.

C. CHRONOLOGY OF TIMELY COMPLAINT ALLEGATIONS

The following chronology sets out the events that gave rise to the allegations in Complaint 1 and Complaint 2, and what the Complainants say happened.

This chronology is limited to those events that are (pursuant to Section 4.11 of the Code, and as will be discussed in more detail below) within my jurisdiction given the three-month ultimate limitation period in Section 4.11 of the Code:

4.11 Any allegation of a breach of the Code of Conduct must be filed with the Integrity Commissioner no later than four weeks after the alleged breach comes to the knowledge of the complainant. Notwithstanding the foregoing, in no circumstance shall a review of the Complaint be initiated after the expiration of three months from the time the contravention is alleged to have occurred.

(i) September 7, 2023 – Board Professional Development Session

Each year, the OCDSB holds a Trustee Reflection Session at which Trustees are provided with an opportunity to share their views on the past year, including issues, challenges, and concerns, successes, and suggested improvements. The session is intended to be a confidential, safe space in which Trustees are encouraged to reflect on the topics of Self Evaluation, Board Efficacy, and Relationships with the Director.

Trustees express where they believe the Board requires change and propose ways to change behaviour. Given its focus is on the well-being and success of students, at times, trustees will have made unpopular decisions, but if there is long term benefit, it will be in the best interest of the students of the District. This session allows trustees to consider these past decisions and learn from them.

Complainant 1 alleges that at this meeting:

- **Trustees Blackburn and Kaplan-Myrth** engaged in a “yelling match”; and
- **Trustee Dickson** made “[...] comments regarding [...], which was not an issue based comment, and also was demeaning and disparaging”; and

Complainant 2 alleges that:

- **Trustee Dickson** continued her pattern of dismissing antisemitic death threats against Trustee Kaplan-Myrth. In particular, by “brush[ing] off [Trustee Kaplan-Myrth’s] concerns while receiving threats that [she] would be [harmed] if [she] attended OCDSB meetings” and saying “[i]f you don’t want threats, stop speaking on social media”; and
- **Trustees Dickson and Blackburn** “may” have leaked to parties associated with Rebel News/True North that Trustee Kaplan-Myrth was the subject of a Code complaint that would be discussed at a special in-camera Board meeting scheduled for September 11.

(ii) **September 11, 2023 – In-Camera Board Meeting**

On September 11, 2023, the Board considered the complaint against Trustee Kaplan-Myrth in relation to text messages exchanged in November 2022 which allegedly breached the Code.

The September 11 meeting began with an in-camera session—to which Trustee Kaplan-Myrth was not invited (and did not attend)—at which the Board discussed, and sought clarification from external legal counsel and OCDSB General Counsel regarding the Code of Conduct Complaint Investigation Report of ADR Chambers and the Legal Opinion from Aird and Berlis LLP. Trustees asked questions about the procedure that would be followed in the public portion of the Special Board Meeting.

Complainant 1 alleges that at some point in time in and around this in-camera Board session:

- **Trustee Kaplan-Myrth** used her social media to “accus[e] members of OCDSB staff of ‘leaking confidential in-camera items’ to members of the media” (*i.e.*, the fact that the complaint against her would be considered at a meeting on September 11), and that she made these allegations in a manner that was “disparaging and demeaning, and further damaged public confidence of the Board, and our school district”.

Complainant 1 alleges that at the in-camera Board session:

- **Trustee Blackburn** raised “several personal comments that were not issue based, including that she felt she was not afforded the same opportunity to ‘defend herself’ as was afforded to Trustee Kaplan-Myrth, in a rude and unprofessional manner”; and

(iii) **September 11, 2023 – Subsequent Public Special Board Meeting**

The in-camera session was immediately followed by a public Special Board meeting at which the Board voted on a motion to find Trustee Kaplan-Myrth in breach of the Code and impose

sanctions. With 7 votes in favour, 0 against, and 4 abstentions/absences, the motion did not receive the 2/3 support to pass a motion finding Trustee Kaplan-Myrth in violation of the Code.²

Complainant 1 alleges that at this September 11 public Board meeting:

- Both **Trustees Blackburn** and **Kaplan-Myrth** “spoke out of turn, raised objections that were not in order, and verbally assaulted each other”.
- In particular, **Trustee Kaplan-Myrth**:
 - Accused Trustee Blackburn of “having it out for her since day one”, thereby “engaging in a conduct that discredits the integrity of the Board” and “eroding public perception of confidence and ability of the board”; and
 - “Spoke out of turn many times and did not conduct herself with the decorum expected of a board member”.
- In particular, **Trustee Blackburn**:
 - Responded to a comment by stating “I don’t care, I don’t want a wordsmith”, which statement “undermined the authority of the chair of the board”;
 - “used her time during the Board meeting before the vote to disparage other members of the Board, which led to a recess given her behaviour”;
 - while providing comments in discussion, “continuously addressed the attending members of the public as opposed to fellow board members, which demonstrated a lack of common respect courtesy and willingness to work together as part of a board when making decisions”; and
 - used her closing remarks for the motion “to personally attack Trustee Kaplan-Myrth”.

(iv) **September 11-16, 2023 – Conduct and Statements Following the Public Special Board Meeting**

Immediately following the September 11 public Board meeting, members of the Board spoke to the media, both in a separate meeting room proximate to where the public Board meeting was held and in the parking lot outside the building.

Complainant 1 alleges that, upon conclusion of the public Board meeting:

- **Trustee Blackburn** “followed Trustee Kaplan-Myrth into a room where she went to take an interview...and refused to leave, even after Trustee Kaplan-Myrth repeatedly asked Trustee Blackburn to leave, and stated that Trustee Blackburn would have ample opportunity to speak to media once Trustee Kaplan-Myrth had finished giving her statement”;
- **Trustees Dickson, Blackburn** and **Kaplan-Myrth** all made statements to the media that “suggested that trustees should resign”;

² The Board interprets its policy to require 2/3 of the total membership of the Board to vote in favour of a finding of breach of the Code.

- All of **Trustees Dickson, Blackburn** and **Kaplan-Myrth** “verbally fought with members of the public after the board meeting”;
- All of **Trustees Dickson, Blackburn** and **Kaplan-Myrth** did not make clear that their statements were their personal opinions, and not official statements from the Board or Chair of the Board;
- All of **Trustees Dickson, Blackburn** and **Kaplan-Myrth** gave statements that were “personal comments that demeaned or dis[p]araged their fellow Board Members” and “were not respectfully presented”;
- All of **Trustees Dickson, Blackburn** and **Kaplan-Myrth** made statements to the media and on their personal social media accounts that undermined the Board’s resolution and its implementation, including by making “emotionally charged” comments that “shared their personal thoughts on the decision that went against the decision of the Board”; and
- All of **Trustees Dickson, Blackburn** and **Kaplan-Myrth** gave statements the media that “did not inspire public confidence” and “actively participated in the dismantling of the already precarious perception and trust in the Board”.
- **Trustees Dickson and Blackburn** ignored a direction from Chair Evans who had “explicitly stated that the [September 11 in-camera] meeting “we were about to enter would be contentious and reminded trustees and staff that the Chair was the official spokesperson for the board. Comments and questions from the media regarding this matter should be directed to the Chair”.

In relation to this same period following the September 11 Board meeting, Complainant 2 alleges that:

- On September 11 and 12, **Trustees Dickson** (CBC, CTV, and CFRE Radio) and **Blackburn** (on CBC) defamed (and for Trustee Dickson, also endangered) Trustee Kaplan-Myrth on news outlets;
- On September 11, **Trustee Blackburn** engaged the far-right to encourage harassment of Trustee Kaplan-Myrth, including by asserting that Chanel Pfahl is her “media advisor”;
- On September 13, **Trustee Dickson** defamed, called for the resignation of, and endangered Trustee Kaplan-Myrth in an exclusive interview with True North, and also defamed Chair Evans, Trustees Alysia Aziz, Amanda Presley, and Justine Bell, and the OCDSB Director and Executive Officer;
- On September 16, **Trustee Blackburn** continued to post personal attacks about Trustee Kaplan-Myrth on her social media.

III. Reformulated Allegations

- (1) Did Trustees Blackburn, Dickson, and/or Kaplan-Myrth violate the Code by virtue of their conduct or statements at the September 7 Board Professional Development Session.
- (2) Did Trustees Blackburn and/or Dickson violate the Code by virtue of their conduct or statements at the September 11 in-camera Board meeting³.
- (3) Did Trustees Blackburn, Dickson, and/or Kaplan-Myrth violate the Code by virtue of their conduct or statements at the September 11 public Board meeting.
- (4) Did Trustees Blackburn, Dickson, and/or Kaplan-Myrth violate the Code by virtue of their conduct or statements immediately following the September 11 meeting, including in their interactions with media present following the meeting.
- (5) Did Trustees Blackburn, Dickson, and/or Kaplan-Myrth violate the Code by virtue of their public statements made September 8-16, either to media representatives or via their own personal social media accounts.

IV. PRELIMINARY JURISDICTIONAL REVIEW

A. GUIDING PRINCIPLES

All of the Respondents to both Complaint 1 and Complaint 2 submitted that I should exercise my discretion not to proceed with a review of the Complaints, largely on the basis that the Complaints were frivolous, vexatious or not made in good faith. Although I did not disclose the name of the Trustee who lodged Complaint #2, in her reply to this Complaint Respondent Trustee Dickson submitted that whomever the Complainant was, they had brought forward the Complaint as a reprisal to Trustee Dickson having filed a Code complaint against Trustee Kaplan-Myrth in 2022.

Sections 4.12-4.14 of the Code address such jurisdictional prerequisites to the Integrity Commissioner engaging in a review of a Code complaint:

4.12 It is recognized that from time to time a Board member may engage in conduct which is inappropriate but which occurred through inadvertence, or an error of judgement made in good faith. In the spirit of collegiality and the best interests of the Board, the first purpose of alerting a trustee to such a potential breach of the policy is to assist the trustee in understanding their obligations under this policy. Whenever possible, Complaints shall be managed using the Informal Review Process.

4.13 A review of the Complaint shall not be conduct if the Integrity Commissioner determines that the Complaint is:

³ Complaint 1 made a general allegation against all three respondents; however, as Trustee Kaplan-Myrth was not present at the closed meeting, I have removed her in the reformulated allegations. a

- a) out of time;
- b) trivial, frivolous, vexatious;
- c) not made in good faith; or
- d) there are no grounds or insufficient grounds for review.

4.14 If a Complaint of a breach of the Code of Conduct, on its face, is with respect to the non-compliance of a Board policy with a separate and more specific Complaints resolution procedure, the Complaint shall be processed under that procedure.

Many Ontario statutes contain provisions that allow an administrative decision-maker to refuse to investigate, or to dismiss a complaint where the complaint is frivolous, vexatious or not made in good faith. In general, in the administrative law context a complaint is frivolous or vexatious when it is a waste of time or when it aims to harass the subject of the complaint. For example, in the context of the *Ontario Human Rights Code*, the Human Right Tribunal has determined:⁴

... [F]or the complaint to be trivial or frivolous, the issues must be unimportant, petty, silly, or insignificant enough to be a waste of the tribunal's time. In addition, a complaint completely without factual or legal basis might be considered trivial or frivolous. A vexatious complaint is one that aims to harass, annoy or drain the resources of the person complained against. A complaint made in bad faith is one pursued for improper reasons — a vexatious complaint is an example of one made in bad faith.

It is often the case that, on a preliminary review, the Integrity Commissioner is unable to form the opinion that a Complaint is frivolous, vexatious or not made in good faith or that there are no or insufficient grounds for an investigation. Often such a determination cannot be made until after an investigation has commenced and the Integrity Commissioner has heard from both parties.⁵ As a result, I considered and re-evaluated throughout the investigation whether the Complaints were frivolous, vexatious, or not made in good faith.

'Bad faith' in general connotes the conscious doing of a wrong. Thus, the Information and Privacy Commission has held that bad faith has been defined as:⁶

The opposite of "good faith", generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfil some duty or other contractual obligation, not prompted by an honest mistake as to one's rights, but by some interested or sinister motive. ... "bad faith" is not simply bad judgement (sic) or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.

⁴ *Modi v. Paradise Fine Foods Ltd.*, 2007 HRTO 30 at para. 18

⁵ *Durham Region (Council Member) (Re)*, 2018 ONMIC 2 January 26, 2018

⁶ *Town of Ajax (Re)*, 2015 CanLII 2437 (ON IPC) at para. 18.

Importantly, so long as a complaint is properly addressed to matters within the Code, in my view merely having a collateral purpose for making a complaint does not by itself mean the complaint is made in 'bad faith.'. A valid complaint that addresses Conduct caught by the Code will generally not be in bad faith, in the absence of actual or constructive fraud, design to mislead or deceive, or a dishonest purpose.

While, hypothetically, a Code complaint can be filed with the sole purpose to harass, annoy or drain the resources of the Board without merit, the process set out in codes of conduct allow the Integrity Commissioner to conduct an initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct, and not covered by other legislation or other Board policies. If the Integrity Commissioner is of the opinion that the referral of a matter to her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, and where this becomes apparent in the course of an investigation, terminate the investigation. In making a decision to go forward with a formal investigation of the matters raised in the Complaints, I am fulfilling the duties of this Office of an Integrity Commissioner.

I note that as Integrity Commissioner, I may take into consideration circumstances that may impact a finding of inadvertence. If following an investigation and fact finding, the Integrity Commissioner determines that there may have been a contravention of the Code which occurred although the Member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the Code. At times, witnesses suggested that a certain respondent was a "good person". However, there is nothing in the Code or the *Education Act* that allows me as Integrity Commissioner to determine that notwithstanding the conduct of a Respondent has violated the rules of the Code, no sanction be imposed because the respondent is a good person. Conversely, I do not recommend sanctions based on a trustee being viewed by some trustee colleagues as a "not nice" person. I have no jurisdiction to determine the goodness or absence of goodness of a person in their private life, their career or when they carry out their duties as a Trustee. My duty is to find facts based on information and evidence provided to me during the course of a Code investigation and on a balance of probabilities, make a recommendation on whether a Respondent has breached the Code. If I make a finding of a violation of the Code, then I have a secondary step which involves me making a recommendation on appropriate sanction and/or remedial action if I believe the Respondent's violation was trivial or committed through inadvertence or an error in judgement in good faith. The role of an Integrity Commissioner is not to adjudicate policy decisions, allegations of human rights violations, or defamation suits. I agree with the statements made by one of the Respondents that it is not the role of the Integrity Commissioner to regulate "manners" or conduct "psychotherapy or character analysis" of personalities. I agree with the position of the Integrity Commissioner⁷ who in a 2022 Report stated that,

⁷ Bays v. Pinto and Meadows, 2022 ONMIC 16

In my view, this is not a Code of Conduct issue, but a policy disagreement and political disagreement among Council Members. It is not the role of an Integrity Commissioner to determine who is on the right side of a local issue.

Closely related are allegations that the Respondents have communicated falsely about local issues, about Council decision-making, and about the positions of their Council colleagues. While the Code requires Council Members to accurately describe the decisions of Council, it does not require that Members endorse positions with which they disagree and does not prevent Council Members from explaining their reasons for disagreement. Further, the obligation to be accurate in describing Council positions is general in nature. It does not require a microscopic examination of every detail.

Throughout this Report, I endeavour to set out the facts that I have gathered throughout this investigation in a way that can make sense to the reader – the Board of Trustees – whose task it is to make a decision on whether or not there has been a breach of the Code. Upon receipt of these Complaints, I anticipated that the investigation would conclude expeditiously. However, during interviews, I determined that there was a need to gather more information to determine the facts as related to the allegations in the Complaints. The length of the Report underscores the amount of information I reviewed, principally because many with whom I spoke provided different perspectives to the same events. While much of the information that I reviewed was in print or on audio or video recordings and thus I was conducting a review of those bald facts, I am dealing with individuals, Board members who are passionate and care about their constituents, students, parents and communities they represent. It may appear that I am writing a story and not chiseling out a hard narrative to submit to the Board. Throughout this investigation, I have applied the rules of the Code and the principles of procedural fairness and natural justices.

B. DETERMINATION OF JURISDICTION

On September 19, 2023, after receiving Complaint 1, I spoke with the Complainant who provided additional oral evidence that the allegations of the complaint were part of a continuation of a pattern of conduct of behaviour that undermined the integrity of the decision-making of the Board, the Chair, other Trustees and staff. The Complainant advised that persons at the Board felt harassed and intimidated in different degrees by the three Respondents due to their behaviour from November 2022 to September 11, 2023, the date on which the Code of Conduct Complaint investigation report was tabled and discussed at Board. After conducting a preliminary review, I decided that I would not investigate a pattern of harassment. I did consider the background to these occurrences but focused the investigation on the specific and limited timeframe.

On a preliminary review, I did not form the opinion that the complaints were frivolous, vexatious or not made in good faith. I commenced an investigation and requested written responses from the Respondents.

i. Timeliness of Allegations

I reviewed the timeliness of the allegations. Some of the allegations in Complaint 2 were out of time as they occurred more than three months before the Complaint was filed. I did not review any alleged misconduct engaged in prior to June 19, 2023.

ii. The Complaints are Not Frivolous, Vexatious or Made in Bad Faith

Rule 4.13(b) and (c) require that I not investigate a complaint where the complaint is (b) trivial, frivolous, vexatious, or (c) not made in good faith.

In her response, Trustee Dickson indicated that she views the Complaints as trivial, frivolous and vexatious. In addition, she stated in her reply that one of the Complaint may constitute a reprisal for her having filed a complaint naming Trustee Kaplan-Myrth as respondent (the report of which was discussed at the September 11th Special Board Meeting). Some of the reasons given for taking this position is the proximity of this Complaint to the Complaint report considered on September 11. In addition, Trustee Dickson sets out that she has not claimed that any of her statements to the media were anything but her opinion and further, she did not solicit media interviews after the Special Board meeting on September 11th. The Media Advisory issue by Trustee Dickson on September 10, 2023 was, in her testimony, to let the many constituents who had been inquiring for months and with whom she could not discuss the Complaint, that the matter was concluding. Also, the interview she did accept and schedule the next day gave voice to her opinions, many of which she stated in her prepared statement which she read at the September 11th meeting. In her response to the Complaint 1, Trustee Dickson stated that:

Before proceeding, it should be noted that in your initial letter addressed to me containing the Complaint, you stated that it was of your professional opinion that the Complaint was valid having met the criteria of not being "...out of time; trivial, frivolous, vexatious, not made in good faith, or there are no grounds or insufficient grounds for a review". While I don't dispute the timing of the Complaint given the allegations deal with recent media interactions, I dispute your opinion that this Complaint is not vexatious in nature. When I brought my complaint against Trustee Kaplan-Myrth earlier this year, it took several months for that complaint to be addressed by the Board of Trustees in a special meeting called for that purpose. Now, in a short period of time following that meeting, this new Complaint has been brought forward against myself with my interactions involving the media being part of the basis for the allegations made in the Complaint as is outlined. brought forward against myself with my interactions involving the media being part of the basis for the allegations made in the Complaint as is outlined.

The timing of this Complaint speaks to its vexatious nature. Prior to September 11th, I've issued a personal media release in response to Chairperson Evans' public position on the Ottawa Police Service and their role as a community partner. The Complaint does not reference these interactions, yet instead references my interactions with the media after the complaint I brought forward against Trustee Kaplan-Myrth was heard by the Board of Trustees. This leads me to conclude that the Complaint was brought forward in response to the complainant's disagreement with the content of the media's reporting rather than the fact that the complainant had a genuine problem with me engaging with the media in general.

Trustee Blackburn's September 30 response stated in part:

One of the most odd complaints I find is "Trustee Donna Blackburn, while providing comments in the discussion, continuously addressed the attending members of the public as opposed to fellow board members, which demonstrated a lack of common respect, courtesy and willingness to work together as a board when making decisions."

I have reviewed the YouTube video of the meeting. When I moved the motion, I rarely looked up to the audience. In my wrap up I did a bit more. Is the person who lodged this complaint really suggesting we need to now monitor who a Trustee makes eye contact with while they are speaking? This I believe is in fact not only frivolous, but very frivolous and I would like you to consider the motivation of the person who lodged the complaint. It seems to me, they are throwing everything at me but the kitchen sink.

In my view, the complaints were not trivial, frivolous or vexatious, nor were they made in bad faith. The issues raised in the complaints are important and significant: they are not a waste of time. The complaints have some factual and legal basis. Moreover, it is not clear that the aim of the complaints was to harass, annoy or drain the resources of the Respondents without merit.

I find that the complaints were not made in bad faith. I find no wrongdoing motivating the complaints. I do not find that the complaints were filed as a reprisal against Trustees Blackburn, Dickson, or Kaplan-Myrth . The fact that the Complaints came on the heels of the conclusion of another Code Complaint that had been brought forward by Trustee Dickson is not coincidental as some of the conduct subject of the allegations relate to actions, behaviour and conduct shortly before, at and after the Special Board Meeting considering that Complaint. A complainant is allowed to have a collateral motive in making the complaint, as long as the primary reason for bringing the complaint is not to harass, annoy or punish for having brought forward concerns to the Integrity Commissioner. The motive may be that they believe that there was an improper application of Board rules by a Respondent Trustee who has a leadership role and that the Complainant believed this was exercised with the attempt to unduly influence a decision of the Board to their personal benefit or that of family members, business associates or otherwise. Even with such a collateral purpose, a complaint brought under the Code related to matters within the jurisdiction of the Integrity Commissioner is not necessarily trivial, frivolous, or vexatious, and is therefore capable of receipt and review by the Integrity Commissioner.

It is unfortunate that the climate amongst Board Trustees is so acrimonious; however, the allegations are worthy of consideration.

I ultimately determined that the aim of both Complaints 1 and 2 was not to harass, annoy or drain the resources of the without merit.⁸

Complainant 1 stated that their purpose for bringing forward the Complaint is because:

While these unfortunate behaviours are not new, repeated attempts to convince these trustees to act in a more appropriate way have been unsuccessful. To the best of my knowledge and understanding, these attempts of reconciliation by

⁸ Di Biase (Re), 2015 ONMIC 6 (CanLII), p.19

various members of staff and the Board have not presented a change in behaviour(s) from the aforementioned trustees.

Complainant 1 also stated that:

After much thought and consideration, I have decided to formally pursue these allegations.

... If the alleged breaches had been conducted in private, outside of the public eye, I would have suggested an informal review to hopefully shield the board from the potential of further loss of confidence from the public. However, seeing as how the nature of and the majority of these allegations occurred in a public setting, and have widely been shared through various social media platforms, I feel it is prudent that our Board share with our constituents and the public the steps we are taking to address these serious concerns, and are working in the best interest of our communities.

Complainant #2's stated purpose for bringing forward the Complaint is:

Given that the OCDSB felt it was appropriate to put [Trustee Kaplan-Myrth] through six months of extreme scrutiny for saying privately in one text message in November 2022 that [Trustee] Donna Dickson should not be persuaded by white supremacists and that [...] colleagues should have cared more about vulnerable populations, and that OCDSB felt that was a valid reason to proceed with a full enquiry and public shaming of [Trustee Kaplan-Myrth] – irrespective of the genuine letter of apology that [Trustee Kaplan-Myrth] wrote and [the] request for mediation, and the harm caused to [Trustee Kaplan-Myrth] of six months of significant stress, and danger it caused while [Trustee Kaplan-Myrth is] the target of daily public slander and her attack on the Chair, as well as her disrespect of the colleagues who abstained from voting ([Trustees] Lyra Evans, Alysha Aziz, Amanda Presley, Justine Bell)... Thank you for taking this complaint seriously. There is a pattern here that is far more serious than a mere breach of the code of conduct, as [the Respondents'] behavior endangers [Trustee Kaplan-Myrth's] wellbeing and the safety of [Trustee Kaplan-Myrth's] family.

I found that the Complainants were sincere in their beliefs that the conduct of the Respondents named in the Complaints ran afoul of the Code rules.

iii. Sufficient Grounds to Review

Pursuant to Rule 4.13(d), I am required to not investigate a complaint where there are no grounds or insufficient grounds for the complaint. This is a very low threshold.

I reviewed Complaint 1 and supporting documentation very carefully and with respect to each Respondent individually. Complainant 1 provided me with verbal information in support of their complaint.

I find that there are sufficient grounds to investigate. As Integrity Commissioner, I have conducted a preliminary review to determine if the allegations present grounds to commence an investigation. Sometimes this becomes apparent only after an investigation has commenced and the Integrity Commissioner has the opportunity to consider not just the Complaint but also the Respondent's Reply. In my findings reports, I will set out my determinations on whether the Complaint has been sustained and with respect to all, some or none of the Respondents.

The same is true of Complaint 2. Although Complaint 2 did raise issues that appeared to rest on assumptions and inferences unsupported by alleged facts, and also irrelevant or dismissive allegations that would not on their own establish sufficient grounds to review, I have nevertheless determined that, taken as a whole, Complaint 2 did disclose sufficient grounds to investigate.

The objective of a Code complaint investigation is to discover facts upon which to make a reasonable decision on whether there has been a contravention of the Code rules. As a procedural safeguard, as an Integrity Commissioner, I have applied the established best practice of speaking with an individual Complainant and conducting a preliminary review prior to deciding whether or not to commence an investigation. This practice was followed in this case.

V. DECISION TO PROCEED WITH THE FORMAL REVIEW PROCESS

After receiving Complaint 1, I contacted the Complainant on September 18 by email to advise her of the availability of the Informal Review Process.

On September 19th, the Complainant responded by email stating her preference, after much consideration, for the Formal Review Process:

After much thought and consideration, I have decided to formally pursue these allegations.

Some context for my reasoning: If the alleged breaches had been conducted in private, outside of the public eye, I would have suggested an informal review to hopefully shield the board from the potential of further loss of confidence from the public. However, seeing as how the nature of and the majority of these allegations occurred in a public setting, and have widely been shared through various social media platforms, I feel it is prudent that our Board share with our constituents and the public the steps we are taking to address these serious concerns, and are working in the best interest of our communities.

Thank you again for your time.

Trustee Kaplan-Myrth expressed that she would be willing to mediate the complaints. I was, and remain, appreciative of that position. However, having reviewed the responses to Complaint 1 and all of the supporting documents, and having spoken with the Complainant and each of the Respondents, I decided that the circumstances of these complaints are not conducive to an informal resolution. I made the discretionary decision to proceed to Formal Resolution pursuant to s. 4.15 of the Code. It should be noted that Trustee Kaplan-Myrth had advised that she would be willing to participate in mediation if the other Respondents would also. While it is the Integrity Commissioner who ultimately determines whether a Complaint is managed through the Informal Review Process or the Formal Review Process, it is between the Complainant and the

Respondent that mediation would be conducted. Following receipt and review of a formal complaint, where the Integrity Commissioner believes that an opportunity to resolve the matter may be attempted and successfully pursued through mediation, and generally, both the Complainant and the Respondent(s) agree, efforts may be pursued to achieve and information resolution.

My determination that the Complaints were not going to be pursued through mediation reflected my review of documents and thoughtful consideration of what process to use to review Complaint 1, including consideration of the considerable pain that Trustee Kaplan-Myrth had been suffering due to recent and long-standing issues.

Trustee Kaplan-Myrth had by the point of her request for mediation made statements like, “you were out to get me from day one” and that Trustee Dickson has “repeatedly in OCDSB meetings dismissed the seriousness of ...death threats that I have received”. Similarly, both Trustee Blackburn and Dickson expressed that given the positions that Trustee Kaplan-Myrth expressly described as her “my way or you don’t care about students, children, colleagues” approach, mediation was not a preferred process. This led me to a decision that the issues raised in the Complaints could not be mediated. That is not to say that the bigger issues at play with respect to the dysfunction and breakdown in communication and trust among Board members, may not warrant mediation. In fact, in Trustee Kaplan-Myrth’s reply to the Complaint she advised that, “I am not very hopeful that any form of mediation will reduce the toxicity within the OCDSB, given how engrained it is in the history of the Board. It’s inappropriate to scapegoat me for that dysfunction. I am nevertheless willing to engage, in good faith, with my colleagues in a COMMUNAL process of mediation, if we are ALL involved – it cannot single out me –and if it is an embargoed, in-camera process. Sadly, given the pattern, there must be assurance that it is psychologically and physical safe space to engage in such a process.”

The views of Trustee Kaplan-Myrth and the other Respondents were simply far too entrenched for a successful mediation.

VI. THE INVESTIGATIVE PROCESS

A,1 NOTICE OF COMPLAINTS AND RESPONSES

As noted, I received Complaint 1 on September 19, 2023, naming Trustees Blackburn, Dickson, and Kaplan-Myrth as Respondents. I received Complaint 2 on September 22, 2023, naming Trustees Blackburn and Dickson as Respondents.

I conducted a preliminary classification and review and determined that Complaint 1 was a matter that triggered the Code and within the jurisdiction of the Integrity Commissioner to review.

On September 29, I provided Trustees Dickson and Blackburn with Notice of a Complaint Investigation in relation to Complaint 1, which included details of that complaint and requested that they provide my office with a written response on or before October 10.

On October 1, I provided Trustee Kaplan-Myrth with the same Notice of a Code Complaint Investigation in relation to Complaint 1. These notices are attached as Appendix 2A, 2B, 2C.

On September 30, October 11 and October 12, respectively, I received written responses from Trustees Blackburn, Dickson, and Kaplan-Myrth to Complaint 1. These written responses are attached as Confidential APPENDICES 3A (Blackburn), 3B (Dickson), and 3C (Kaplan-Myrth), respectfully.

On October 16, I forwarded Notice of Complaint 2 to Trustees Blackburn and Dickson.

On October 16, I also had separate telephone conversations with Trustees Blackburn and Dickson and received their oral response to Complaint 2. On October 17, I received a supplementary written response from Trustee Dickson to Complaint 2.

To date, all Respondents have been respectful of the process, have made timely submissions, and have complied with all aspects of the process.

A.2 Respondents' Comments to the Draft Reports

Trustees Dickson and Blackburn did not provide comments to the Draft Reports.

Trustee Kaplan-Myrth's comments to the Draft Reports were submitted by way of a Cover Letter and Legal Submissions (APPENDIX 4A), Part 2: Inaccuracies and Omissions (the "Inaccuracies and Omissions") (APPENDIX 4B), and Appendix to Response to September 29, 2023 Allegations (previously submitted).

The December 1st comments were quite detailed and I reviewed all thoughtfully. I concluded that there were six issues raised that required my further consideration and comment.

i. The Integrity Commissioner's Decision to Reformulate the Complaint

In the December 1st comments, Trustee Kaplan-Myrth raised concerns in both the Legal Arguments and the Inaccuracies and Omissions with respect to the Complaint as reformulated by the Integrity Commissioner. This Respondent stated that,

"the complaint as reformulated by the integrity Commissioner is not the complaint as responded to by Trustee Dr. Kaplan-Myrth. There is no suggestion of impropriety involved in this fact, but the result is that the Report considers specific facts and incidents that were not raised with Trustee Dr. Kaplan-Myrth either in writing or orally and so she had no chance to respond up to the present. This is important because all the findings regarding items 4 and 5 in the complaint against Trustee Dr. Kaplan-Myrth fall into this category".

The Legal Arguments go on to set out that,

A key element of Natural Justice is the principle of "audi alteram partem": both sides must be given a chance to be heard. That means that where someone faces charges or a complaint, they are entitled to know what they are charged with and what they will be judged on.

That principle has not been followed in this case up to now. Trustee Dr. Kaplan-Myrth was given a Complaint and asked to respond to it. On September [November] 23, she was provided with draft Reports in which the Complaint was substantially reformulated. The matters dealt with the draft Global Report and the draft Report specific to Trustee Dr. Kaplan-Myrth go even further afield and deal extensively with perceptions of Trustee Dr.

Kaplan-Myrth's personality and interactions with others, matters not raised even in the reformulated complaints.

[...]

Aside from Natural Justice, administrative law proceedings ((such as Code of Conduct investigations and hearings) are subject to the principle of Fairness. Fairness requires that the proceedings deal with the matters properly under consideration and not with irrelevancies or with appeals to improper considerations.

In a 2016 Divisional Court Decision⁹, the Court reviewed the powers of a municipal integrity commissioner to interpret and reformulate complaints. While the original Integrity Commissioner report that the Court reviewed had the reformulated complaint sent for response to the Respondent, the Court's comments provide guidance. I set out the Court's comments in part below.

Part V.2 of the Municipal Act authorizes municipal councils to establish Codes of Conduct for members of Council and to appoint Integrity Commissioners. ...

The Complaint Protocol is a by-law passed by the [municipality's Council] which sets out the procedure for investigating complaints about a [City Councillor]...

In exercising the powers conferred upon her, the Integrity Commissioner must be able to interpret and reformulate complaints submitted by members of the public who may lack specific knowledge of the Code of Conduct and the Complaints Protocol and who may, therefore, not be familiar with how to identify and formulate alleged breaches.

By interpreting and applying the Code of Conduct and the Complaint Protocol when reformulating a complaint, the Integrity Commissioner essentially applies what can be considered her "home statute"[...]. Such decisions are reviewed on the standard of reasonableness, unless they involved a broad question of the decision maker's authority [...]

With the development of a similar accountability regime for school boards as that of municipal councils in Ontario, since 2018, section 218.2 of the *Education Act*, requires school boards to adopt a code of conduct for trustees. In 2023, the Ministry of Education tabled legislative changes proposed through *The Better Schools and Student Outcomes Act*. With a view to strengthening trustee codes of conduct and reducing disruption so trustees can focus their attention on student achievement, the Ministry proposed changes, if passed, would establish a new impartial Integrity Commissioner-led process for resolving code of conduct complaints modeled on the municipal integrity schedule set out in Part V.1 of the *Municipal Act*. Some school boards have adopted a governance model that includes the appointment of an independent Integrity Commissioner to impartially apply the rules of the code of conduct. The OCDSB took a significant step towards a stronger accountability and governance regime by appointing the first Integrity Commissioner to the Board in April 2023.

It is helpful to note that in the previous Code dated June 1999 revised on April 26, 2016, section 4.25 contained a provision wherein once the formal review was complete, the investigator was to

⁹ Michael Di Biase v City of Vaughan, 2016 ONSC 5620 (CanLII)

provide a confidential draft copy of their report containing their finding of fact to the trustee who was alleged to have breached the Code and the Complainant. The stated purpose of this provisions was to “[provide] the draft report to the parties to ensure no errors of fact were contained in it”.¹⁰

The OCDSB Code does not contemplate participation by the Respondent to a complaint, after responding to the complaint. It does not require that the subject of the investigation receive preliminary findings or get the opportunity to respond to those findings. However, after having reviewed Trustee Kaplan-Myrth’s submissions, I exercised my discretion as an independent accountability officer for the Board, and granted the Respondent an opportunity to respond. I have thoughtfully reviewed and consider the supplementary reply provided by Trustee Kaplan-Myrth in the drafting of my Final Reports.

The Reformulated Complaint set out on page 12 of this Report, did not introduce any new allegations for which the Respondents did not receive notice when first advised of the Complaints. The reformulated complaint was a way to take all of the allegations and organize the analysis in such a way that as the fact-finder, I could present the fact-finding Global Report to the Board in a way that they could consider the vast amount of information and pivot to the Findings Reports for each individual Respondent. Reformulating the Complaint is simply a re-stating of the already stated allegations organized in a way that lends itself to application of the rules set out in the original Complaints to the numerous alleged incidences of breach.

ii. Inclusion of Excerpts from Witness Statements

In the December 1st comments, Trustee Kaplan-Myrth set out that the:

“draft Report’s concentration on Trustee Kaplan-Myrth’s personality and its citation of some Trustees’ statements about having difficulties in relating to it are examples of ‘evidence’ that these [inclusions have] no probative value since it doesn’t prove any fact in issue, but is highly prejudicial.[...] While the Integrity Commissioner is not bound by the rules of evidence and can admit material that would be inadmissible in court, she is bound by the principles of Fairness, and Fairness does not allow the use of prejudicial material that has no probative value”.

Further, the comments state with reference to the inclusion of witness comments on the Respondents:

This is also extremely unfair. The Board is quite divided politically. Not knowing who said what makes it impossible to understand the nature of these comments and their bona fides. Even beyond that, however, this also seems irrelevant to the complaints process. A complaint is not an occasion for psychotherapy or character analysis. The original complaint pointed to specific things that I was said to have done. The Report is taking me to task for who I am and how I react to things.

In response to the concerns raised that I have included evidence that is only included to prejudice the reader, most of the facts that I reviewed were in print or in video recordings. There is probative value in reviewing how the Respondent reacts with others. Certainly, subject to the Code rules and procedural rules, the Respondents and all Trustees have a right to express their opinions and

¹⁰ Policy P.073.GOV, Board Member Code of Conduct, June 1999, Revised 26, April 2016

disagree one with the other. However, comments such as “the code of conduct is a way to try to silence progressives. What a bloody waste of money, time, and energy. This happens across #Ontario, is going on now at @UCDSB. The toxicity is a pattern at @OCDSB” do not inspire confidence in the Code which is an approved policy of the Board. The OCDSB has a Code of Conduct in place that was duly deliberated to determine its contents and approved by vote of the Board. Publicly attacking the approved policy referring to it as a “waste of money, time and energy” is a form of using one’s trustee voice, which is much louder than an ordinary citizen, to deride a document and policy approved by trustees to enhance good governance and public trust.

The Integrity Commissioner is not the decision-maker. Her Reports have no binding effect on the Respondents. Following the receipt of the Integrity Commissioner fact-finding report and findings reports, the Board of Trustees considers her reports, along with the response(s) of the Respondents and the Board of Trustees accepts or rejects the findings and decides whether the Respondents have contravened the Code and whether to impose sanctions.

The Code does not require the Integrity Commissioner to identify the witnesses she interviewed. The Integrity Commissioner is required to make findings based on a balance of probabilities and there is an expectation that she will review the information received in writing, audio and video recordings and witness statements objectively and fairly. In creating a Code of Conduct and including the Process for investigating trustees, the Board has codified its procedure for investigations into policy. In the creation of this policy the current Board made a commitment and externalized their position that it is appropriate to include a provision which states that the Complaint, any response to the Complaint, and the investigation of the Complaint shall be confidential until it is before the Board for a decision as to whether or not the respondent has breached this policy (s.4.22) and that the formal review will be conducted in private and, to the extent possible, protecting the confidentiality of the parties involved (section 4.24). The Respondents were provided with sufficient information to respond to the allegations and the Integrity Commissioner balanced the right to meaningfully respond to the allegations in the complaint and the need to protect those with whom the Integrity Commissioner spoke and who cooperated in her investigation.

In addition, the excerpts of the witness statements do not only refer to Trustee Kaplan-Myrth.

As set out in the 2016 Divisional Court¹¹ decision above,

An administrative body that investigates and makes recommendations must disclose the substance of the allegations. The Supreme Court of Canada in two cases affirmed the following statement by Lord Denning in *Selvarajan v. Race Relations Board*, [1976] All E.R. 12 (C.A.), p.19;

The fundamental rule is that, if a person may be subjected to pains or penalties, or be exposed to prosecution or proceedings, or deprived of remedies or redress, or in some such way adversely affected by the investigation and report then he should be told the case made against him and be afforded a fair opportunity of answering it. The investigating body is, however, the master of its own procedure. It need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the broad

¹¹ Ibid. 8

grounds are given. It need not name its informants. It can give the substance only.

The Court in the 2016 Divisional Court Decision stated at paragraph 148:

When I consider the Baker factors, the case law to which I have referred, and the disclosure provided in this case; namely the original complaint, the preliminary findings, the Draft Report, anonymized portions of witness statements [...] I am satisfied that the Integrity Commissioner exercised her discretion in a manner that properly balanced the applicant's right to meaningfully respond to allegations in the complaint and the need to protect City Staff who had cooperated in her investigation.

As in the 2016 report, I have provided the information necessary to respond to the complaint while balancing the need to protect the individuals who cooperated in my investigation.

iii. Relevant Board Meeting Procedural Rules

In the December 1st comments Trustee Kaplan-Myrth stated that the Draft Report incorrectly "states that Trustee Dr. Kaplan-Myrth had no right to interrupt the proceedings twice on September 11, pursuant to the Rules governing Code of Conduct Complaint against her". The comments go on to say that the Respondent not having used the "proper 'magic words' to accompany her objection is irrelevant" In summary, the Respondent's posits that the rules governing Board procedure are not in place "to strip the Trustee of her rights and privileges as a Board member...". I agree with this last statement.

Under the previous Code (the Code that was in force with respect to the complaint at Board on September 11th), section 4.33 and section 4.35 state that:

4.33 The trustee who is alleged to have breached the Code of Conduct:

- a) may be present during the deliberations;
- b) shall not participate in the deliberations;
- c) shall not be required to answer any questions at that meeting; and
- d) shall not vote on a resolution to determine whether or not there is a breach or the imposition of a sanction.

And

4.35 The trustee who is alleged to have breached the Code shall not, in any way, after the final report is completed, influence the vote on the decision of breach or sanction, except to appeal after the decisions have been made.

While it has been the past practice of previous Boards to interpret these provisions of the previous Code to mean that the Respondent subject of a complaint cannot engage at the Board meeting at which the investigator's report on the allegations against them are being deliberated by the Board, it is reasonable to believe that section 4.33 (b) was intended to prevent a Respondent to a Code complaint from participating in any substantive way in deliberations on the findings of the investigator to avoid the risk that they would influence the vote on the decision of the breach or sanction relating to themselves.

The OCDSB practice with respect to Board meeting procedure is based on the OCDSB By-laws and Standing Rules which are rooted in *Procedures for Meetings and Organizations* by M.K. Kerr and H.W. King. Relevant to the current discussion are the rules regarding Point of Order - Section 12.10 (h) pg. 26 and Point of Privilege - Section 12.10 (h) pg. 26.

Generally speaking, if a Board member wishes to raise a question under a point of order, privilege or question,

"A Board member may make an appeal to the Chair on a point of order or privilege, or the admissibility or inadmissibility of motions, or the conduct of a member or members, without debate, having first stated the applicable rule or rules. The Chair shall provide a rationale and rule immediately on an appeal.

The member who raised the point of order has the right to appeal the ruling of the Chair. The Chair shall ask the members "is the ruling of the Chair upheld?" and shall call the vote immediately and without debate. The Chair does not vote on the appeal. The decision of the Chair is upheld on a tie or majority of votes cast."

Point of Order

"A member who notices that the proceedings of the meeting are at variance with the by-laws or with a previous decision on the specific procedure would immediately make an appeal through the Chair using a point of order to describe the perceived breach and request action taken."

Point of Privilege (Personal)

A member who seeks redress with respect to personal remarks made in a speech may appeal to the Chair. It can only be raised for remarks made at the time.

It is my understanding that 2022 -2023 has been a very busy time for this Board. Currently, I am told, trustees have not had any parliamentary procedure training although some time was briefly given to procedural rules in the Learning Sessions delivered by myself and Professor Sliwa.

I have carefully considered Trustee Kaplan-Myrth's concerns. While trustees have not had specific training on procedural rules, trustees have been in office since November 2022 and are sufficiently proficient in the rules that they understand what a trustee is supposed to do to raise a point of personal privilege. There is a process. The Chair at the September 11th meeting had indicated the rules and the Respondent failed to adhere to an approved procedure. Even if the Respondent had a right to raise a point of personal privilege (and I make no determination on the Board's procedural rules or how they should be applied), it was not the appropriate way to proceed. In adherence with any procedural rules or policies, a Trustee has a right to challenge the contents of an investigator's report into allegations of a breach of the Code. Regarding the Point of Order and the Respondent's comment that she wanted to challenge the contents of the investigator's report, it appears that the point of order was intended to bring to the attention of the Board that the Code complaint was time barred and there should be no further discussion of it. Mention was made that the Respondent had spoken with the Integrity Commissioner (referring to me insofar as the author the report at the September 11^h meeting was not the OCDSB Integrity Commissioner). In the December 1st comments, the Respondent stated that:

I did not interrupt Trustee Dickson. I asked for consideration of a "point of order" to ask for clarification about the timeline for the complaint. The point of order was granted. The reason that I was confused at that moment was that the Integrity Commissioner

herself had written to me to say that complaints must be submitted within three months. The Code of Conduct process changed as of August 2023. To my understanding there was a six-month statute of limitation for complaints. The complaint, however, was based on text message correspondence with Donna Dickson on one evening in November 2022, more than nine months earlier. I was seeking clarity and had no other opportunity to ask questions, as I understood I was prohibited from speaking about the case with anyone.

In my September 8th correspondence to Trustee Kaplan-Myrth, I advised that:

Section 4.11 of the Code states that: Any allegation of a breach of the Code of Conduct must be filed with the Integrity Commissioner no later than four weeks after the alleged breach comes to the knowledge of the complainant. Notwithstanding the foregoing, in no circumstance shall a review of a Complaint be initiated after the expiration of three months from the time the contravention is alleged to have occurred.

...the Board Member Code of Conduct, Policy P.073.GOV dated June 1999 and revised April 26, 2016 has been [...] superseded by the Board Member Code of Conduct, Policy P.073.GOV reviewed and revised by the Board of Trustees on May 9, 2023.

In the Report of the Investigator discussed at the September 11, 2023 Special Board Meeting, the Investigator stated that:

On or around February 22, 2023, ADR Chambers Inc. was contacted by staff at the Ottawa-Carleton District School Board (“OCDSB” or the “Board”) requesting services for the conduct of a formal review (“Review” or “Investigation”) of a complaint (“Complaint”) made under Board policy P.073.GOV – the Board Member Code of Conduct (“Code of Conduct” or “Code”). (page 1)

The Complainant submitted her formal Complaint on or around **February 13, 2023**, but advised that she raised her concerns with the Chair several times previously, including shortly after the text messages in question. After several discussions over a period of months, and with the understanding, communicated by the Chair, that the Respondent did not feel an apology was warranted, the Complainant filed this formal complaint.(page 8).

The Respondent’s Counsel argued that the Complaint was frivolous and vexatious – a position previously rejected by the Board’s Chair. (page 18).

Based on the above and having taken into consideration the Respondent’s detailed December 1st comments, on a balance of probabilities, it was unlikely that the Respondent had no other opportunity but while Trustee Dickson was speaking on September 11th to seek clarification on the timelines of the Complaint and whether the entire matter should be dismissed on the basis of the expiry of the Code limitation period.

iv. Obligation to Give Third-Party Notice Prior to Release of Documents under a Municipal Freedom of Information and Protection of Privacy Request (“MFIPPA”)

In the December 1st comments, Trustee Kaplan-Myrth, with respect to her email to OCDSB staff following the release of information in response to an access to information request, states that “I do not accept that I am in the wrong here”. The Respondent goes on to say:

While there are obligations to release documents, the relevant OCDSB individuals should have contacted me to inform me of the request since there are exemptions where disclosure would cause harm to third parties. In this case the disclosure caused precisely the harm that could have easily been foreseen and I dispute the correctness of reproaching me for protesting the fact that those who were involved in trying to put together a safety plan for me didn't involve me in dealing with the threat to my safety.

The position that the Respondent takes and sets out in the December 1st comments is that she disagrees that the Board was legally required to provide information where there is an issue of safety. The Respondent contends that it is a defensible position that if disclosure of information would put someone at risk, the Board should have taken that position or should have gone to the Respondent to receive her submissions as a third party.

With respect to public institutions, an exemption to the obligation to disclosure applies if the record satisfies all three parts of an established test regarding an organization or entity: 1. the record contains certain types of business information; 2. the information was supplied in confidence, either implicitly or explicitly; and 3. disclosure could cause harm to the third party organization. If the information being requested is personal information about an identifiable individual, if the disclosure of the personal information may be an unjustified invasion of privacy of the individual, third party notice may be required. In both the case of third -party notice to an organization under section 10 and third party notice to an individual section 14 of MFIPPA, there are tests to determine if the requested information is personal information for the purposes of MFIPPA and if the release of that information would be an unjustified invasion of privacy.

At the OCDSB, the management of the access to information procedures under MFIPPA lies with the administration. The Executive Officer, who has over 30 years of experience in supporting local government, is the District's privacy head, overseeing corporate records, the Municipal Freedom of Information and Protection of Privacy Act, and privacy impact assessments. It is reasonable to believe that there is an expectation of expertise in the area of access to information and privacy with the Executive Officer and her staff. Trustees have a right to ask questions and seek clarification, in particular with matters involving their safety, and an email or discussion with those directly responsible for access to information processes, the Executive Officer, would be the most appropriate course of action.

In a September 8, 2023 email, in response to the Respondent having sent an email to 25 individuals, 21 of whom were within the OCDSB, Executive Officer Giroux explains that:

Given the number of people on this distribution list who are unfamiliar with this issue, I wanted to share some information that gives context to what documents were shared and why. In June, the OCDSB received a request for information under the Municipal Freedom of Information and Protection of Privacy Act. The request was to: [...]

[...]

As with all MFOIPPA requests, the District collected the responsive records, reviewed the records against the allowable exemptions under the Act, redacted or withheld any records for which it was legally authorized to do so. The eligible responsive records were released to the requester. The documents that were released DID NOT include a safety plan, but they did include references to the existence of a safety plan. Subsequently, a story appeared in Rebel News which was based on the information contained in the records. Presumably, the requester shared the documents

obtained with Rebel News. In addition to the story, Rebel News included a link to all of the records that were released.

Trustee Kaplan-Myrth states in the December 1st comments that “I do not believe that it is accurate to characterize this email as hostile (referring to the email that she sent to 25 individuals). It is also not accurate to say that I was accusing anyone. I was seeking explanation and help. That message prompted further discussion and it led to me refusing to sign a safety plan that required the staff to be put in harm’s way. Certainly, the Respondent has a right to raise concerns with respect to her own safety and by extension that of staff. However, how the matter is raised and to whom, is relevant to standards of behaviour set out in the Code. The outcome of sending the email to 25 individuals prompted the Executive Officer to send an email of clarification to all on the distribution list and according to the Respondent, “prompted further discussion” that was beneficial to address the overall situation. However, on a balance of probabilities, this was likely not the most advantageous means to achieve the utility sought.

v. Freedom of Expression

In the December 1st comments, Trustee Kaplan-Myrth sets out that where there is valuable speech, like “speaking out about antisemitism, racism, advocating for trans rights, BIPOC rights, special education disability rights”, and when the Board is not addressing these issues in the Respondent’s opinion, then the investigator (in this case the Integrity Commissioner) must always use a balancing exercise to determine if the Code can limit freedom of expression. The Respondent states in the legal arguments that the draft Report cited *Del Grande*, however she asserts that it is distinguishable because the *Del Grande* case, “the speech in question offends against Charter values and could not outweigh the beneficial effects of a Code of Conduct that demanded respect for minorities.”

Trustee Kaplan-Myrth made a large number of statements, including the following:

The code of conduct as a way to try to silence progressives. What a bloody waste of money, time, and energy...(September 11, 2023 - @nilikm)

I am shaking with fury. I never imagined this. @OCDSB is letting a vexatious trial occur...

Rights guaranteed under the Charter are not absolute. The Code is prescribed by law and the provisions invoked in this Complaint have a pressing and substantial objective to have trustees carry out their statutory duties with professionalism and integrity. Trustee conduct that is in part regulated by such rules to further the goal of reaching the objectives of better governance with complex organizations such as the OCDSB, have trustees follow accepted procedures to dissent so that the Board does not descend into chaos that undermines professionalism, would arguably on balance limit the individual trustee’s constitutional right to freedom of expression.

Trustees have the right to make statements and express their opinion regarding the substance of Board business, as long as this is done in a professional manner that maintains public confidence, and maintains a respectful work environment. In some instances, the Code provisions go further. They do not simply regulate the *manner* of impact of communication, but they directly control what can, and must, and cannot be said. For example:

-Section 3.8 requires comments to be “issue based and not personal, demeaning or disparaging” with respect to board staff or fellow board members. This prohibits board members from making comments that are *not* issues based, thereby limiting what they can say;

- Section 3.27 requires board members to “uphold and not undermine the implementation of the decisions of the Board”. This will naturally limit what board members can say about decisions that the Board has made; and

- Section 3.30 prohibits board members from speaking on behalf of the board without express authorization for the Chair, and mandates that in communication their own opinions, they make clear that they are only speaking for themselves and not for the Board as a whole.

Taken together, the Code provisions subject of this Complaint, at least indirectly, limit speech, either by regulating the content or what is said, the manner in which it is said, and in the case of section 3.30, mandating that certain things be said.

At the September 11th closed meeting, the Chair directed board members to refrain from speaking to the media on the board’s behalf, without authorization. This was a recital of section 3.30 of the Code, which states that:

-the Chair is the board’s ”official spokesperson to the public”;

- that “no other Board member shall speak on behalf of the Board to represent themselves as the spokesperson of the Board unless expressly authorized by the Chair; and

- that “when individual Board members express their opinions in the media, they must make it clear that they are not speaking on behalf of the Board.”

Violating section 3.30 of the Code is a Code violation, irrespective of what the Chair direct at the close meeting of September 11th. If, however, the Chair told board members not to speak to the media *at all*, or not to speak at all about a particular issue, this likely went further than the Code and the Integrity Commissioner would not have jurisdiction to make a finding of a violation for failing to follow these instructions.

An expanded prohibition on speaking to the media would likely be an unjustified limitation on free expression, contrary to the *Charter*.

In support of the above position, I am informed by a Federal Court case that considered disciplinary actions taken against 2 Health Canada employees, including a “directive to refrain from further unauthorized speaking to the media”. The employees were whistleblowers regarding questionable Health Canada approvals, and they spoke to the media about it, prompting the discipline. The case is factually and legally different in some respects from the matter before me, but the Court concluded that the direction to stop speaking to the media without authorization from management amounted to an “absolute prohibition” on freedom of expression.¹² That same essential reasoning would apply in the situation subject of this Complaint, in particular since there is already a framework in the Code for when and how board members speak to the media.

The *Charter* protects “freedom of the press and other media of communication” and it is engaged in situations where board members are sanction or limited by the board itself.

¹² [2001] 2. F.C. 82

This was recently confirmed by the Divisional Court in *Del Grande v. Toronto Catholic District School Board*¹³, which noted that the Charter and its associated values are engaged alongside the Education Act and applicable Codes of Conduct when board members are subject to discipline and limitations on expression.

To assist the OCDSB (which is the decision-making) in understanding the reference to this case, at a very high level:

- *Del Grande* involved a Catholic school board trustee who was the subject of multiple complaints as a result of statements he made after a board meeting.
- The board hired an independent investigator, and based on the investigator's report, decided that the trustee had breached the code of conduct and sanction him accordingly.
- The trustee challenged the sanctions on judicial review, but the Divisional Court found that the finding of breach and the sanctions were reasonable.
- In reaching these conclusions, the Court noted that the investigator had been "alert" to the Charter values at stake and that the board (the ultimate decision maker) had appropriately weighed the *Charter* (and other) considerations when deciding on the sanctions.

In Trustee Kaplan-Myrth's reply to the Complaint she purports that the statements of the trustee Del Grande and Trustee Kaplan-Myrth's statements are quite different because the latter's statements are of particular value, whereas the trustee in *Del Grande* were inflammatory and had "crossed the line", thus the Court found the sanctions under the Code of Conduct were reasonable because the trustee engaged in language was disrespectful and demeaning. While Trustee Kaplan-Myrth correctly identifies this case as relevant, it does not support the position that Trustee Kaplan-Myrth's right to free expression is absolute and insulates her from any Code violation. In her reply, Trustee Kaplan-Myrth appears to miss the fact that *Del Grande* does not say that the Code of Conduct provisions that restrict trustee expression necessarily isolate the *Charter*, or even that the investigators (or Integrity Commissioners) must consider constitutional principles in reaching factual conclusions and providing recommendations. Rather, Del Grande confirms that Charter values must be considered by ultimate decision makers (the school board) when they consider an investigator's recommendations and decide: (i) whether there has been a code breach; and (ii) what, if any sanctions are appropriate.

The Integrity Commissioner at the OCDSB is not the decision maker, the Board is. Thus a full balancing exercise and analysis as set out in *Doré v. Barreau du Québec* may be performed by the Board in its role of decision maker.

Freedom of expression is a fundamental right but not without limits. The *Education Act* requires all school board members to maintain focus on student achievement and well-being and comply with the board's Code of Conduct. Statements that are disrespectful or demeaning – beyond what is required to engage in robust and productive debate about the issues at hand (and they may actually run counter to that objective, or more generally undermine the objects and the

¹³ 2023 ONSC 349

duties under the *Education Act*) - can fall outside of the bounds of the *Charter* protect expression.

I have set out the relevant Charter values and weighed them against the objectives of the Education Act and Code in deciding whether to recommend that the Board find a Code violation.

vi. Reference to the Minister of Education

In the December 1st comments, the Respondent states that:

A further example of unfair prejudicial material is the “in terrorem” argument near the end of the draft Report, where the Minister of Education is invoked. An in terrorem argument is an argument that says that certain terrible things will happen unless a certain result is obtained. It is an unfair and impermissible argument, because decisions must be made on the facts, not for fear of displeasing some higher power. It is also inaccurate to contend that the Minister’s expressed desire to have school boards focus on the basics of education will be satisfied by increasing disciplinary proceedings against Trustees under Codes of Conduct, let alone that finds of violations of such Codes will increase anyone’s confidence in anything.

In the Respondent’s October 10, 2023 original reply to the Complaint, she stated that:

The Director of Education and the Chair of the Board have asserted to trustees that there is a real risk of our Board being shut down by the Minister of Education. This complaint against me will exacerbate that danger. Another hearing of complaint against me – even if the charges are dismissed, as was the case on September 11, 2023 – will draw further harmful attention from the far-right, people who are organized to disrupt and cause as much harm as possible to me and to progressive members of our Board. It will disrupt and cause as much harm as possible to me and to progressive members of our Board. It will increase the antisemitic death threats I receive, creating serious risks to my safety and the safety of my family. It will put all of us on the Board at increased risk of harm. It would be prudent to proceed with caution.

Trustee Kaplan-Myrth has raised the concern that there is the risk of the Ministry of Education placing the Board under a Ministerial Supervisor, both in her October 10, 2023 original reply to the Complaint sent to me and a reply correspondence dated September 30, 2023 (on which her legal counsel, the Director of Education, the former Chair of the Board and the former Vice-Chair of the Board were copied). In raising this issue, I was addressing her previous comments. In any event, I agree that it is not strictly relevant to the analysis and I have removed it from the findings report.

vii. Mediation versus Adjudication

In the December 1, 2023 comments, Trustee Kaplan-Myrth has raised concerns with large passages of the draft Reports which “read a lot like mediation briefs”:

However, this is not a mediation. It is an adjudication, which has its own language and its own tools. Trustee Dr. Kaplan-Myrth offer to have this dispute mediated. She was refused. As a result she is now potentially open to discipline and punitive sanctions including having her constituents lose her voice on the Board for a long or a short time.

Those consequences demand that stricter rules be applied and that fairness, Natural Justice and a correct application of the law govern the outcome of the Complaint.

It appears that the “stricter rules” that the Respondent believes should be applied in this adjudicative process are those more akin to the courts than to an administrative body. I have set out in this report the reasons why I decided that the circumstances did not lend themselves to pursuing mediation with the parties.

B. OTHER INVESTIGATIVE STEPS

Throughout this investigation, between September 19 and October 31, I met in-person and virtually with a total of 19 witnesses, including the Complainants and the Respondents. All Trustees and all witnesses to whom I requested information or to meet responded promptly to my request for information or meetings.

I reviewed public and confidential Board documents, video and audio recordings of Board meetings, and minutes of in-camera Board meetings.

I reviewed copies of emails, social media posts and media interviews.

On November 22 and 23, 2023, I forwarded my draft report to each of the Respondents.

On November 24, 2023, I received correspondence from Trustee Kaplan-Myrth’s legal counsel inquiring about any other steps in the process, in particular, whether his client would be provided with “any opportunity to respond regarding concerns about the accuracy of the facts or the fairness of the process”, as well as “what opportunity Trustee Dr. Kaplan-Myrth will have either before or after the reports are presented to make representations”.

I wrote back to all three Respondents advising that :

The Board Member Code of Conduct, which is a District policy and therefore part of the statutory scheme of the Integrity Commissioner, does not contemplate participation by the Respondent, after responding to the complaint. It does not require that the subject of the investigation receive preliminary findings or get the opportunity to respond to those findings. Section 4.24 of the Code sets out that the formal review process will be conducted in private and governed by procedural fairness and the rules of natural justice. I have decided to alter my previous decision to submit my Global Report and Findings Report to the Board for placement on the November 28, 2023 Board Meeting Agenda. Please find attached, the version that I intended to provide to the Board. I am providing you until December 1, 2023 to provide any comments you have, which I may consider in my final reports.

On December 1, 2023, I received comments on the Draft Reports from Trustee Kaplan-Myrth’s legal counsel.

I did not receive comments on the Draft Reports from Trustees Blackburn and Dickson.

After having reviewed Trustee Kaplan-Myrth’s December 1st comments to the Draft Reports, I drafted the final Global Reports and Findings Reports.

On December 12, 2023, I submitted the Final Global Report and 3 Findings Reports to the Board, with a request that the reports be placed on the next available regular Board meeting.

The Board will receive and deliberate on these Reports in accordance with section 4.32 of the Code on December 19, 2023.

C. INVESTIGATIVE DECISIONS RE: CONFIDENTIALITY

As referred to above, section 4.22 of the Code contains a provision outlining the Integrity Commissioner's duty of confidentiality:

4.22 The Complaint, any response to the Complaint, and the investigation of the Complaint shall be confidential until it is before the Board for a decision as to whether or not the respondent has breached this policy.

I discussed with each of the Respondents certain particulars of the Complaints. Because one Complainant raised with me concerns about reprisals for bringing forward the Complaint, I have exercised my discretion to disclose to the Respondents, and in this report, only those particulars that I have determined were necessary for the Respondents and the Board to understand the substance of the allegations and the reasons for my findings and recommendations. In particular, I did not disclose the names of the Complainants to the Respondents. Nor did I disclose the name of the other witnesses I interviewed to the Complainants or the Respondents.

The complaints at issue relate to trustee closed meetings, public meetings, and public social media and media interactions. Disclosing the identity of the trustees who filed the complaints serves no purpose. All of the Respondents were able to respond to the complaints without knowing the name of the complainant trustees.

In coming to this decision, I have considered the need for the Board and the public to understand the factual basis for my findings and my recommendations. I have concluded that any details that I have chosen not to disclose in this report are not necessary to understand my findings and recommendations.

As well, the individuals discussed in witness interviews have a privacy interest that should be protected.

On December 6, 2023, I was advised that Trustee Kaplan-Myrth disclosed documents relating to this investigation, including her legal counsel's legal reply to the Complaint, her factual reply to the Complaint, the appendix to the September 29th allegations and my confidential draft findings and recommendation report relating to Trustee Kaplan-Myrth.

Section 4.22 and 4.24 of the Code state that:

4.22 The Complaint, any response to the Complaint, and the investigation of the Complaint shall be confidential until it is before the Board for a decision as to whether or not the respondent has breached this policy.

4.24 [...] The formal review will be conducted in private and, to the extent possible, protecting the confidentiality of the parties involved.

This disclosure is contrary to the cited Code rules. In the current circumstances, I have decided not to add a supplementary finding of breach of confidentiality with respect to this circumstance in my Findings Report. However, I am not condoning this action and in the future, this type of action may be met with sanctions.

I attached a confidential attachment to this Report as APPENDIX 4C

D. COMMENTS ON THE INVESTIGATIVE PROCESS

This Complaint investigation process was conducted thoroughly but expeditiously. These Complaints came on the heels of a challenging time at the Board and addressed multiple respondents; as a result, the investigation took longer than expected. Trustees had experienced distraction in focus and perspective long before this Complaint investigation began. As I began the investigation and spoke with witnesses, it appeared that the witnesses were tired of the Code of Conduct investigation process and concerned about facing another event which would result in driving trustees further apart. They also expressed concerns about the possibility of provincial supervision of the Board. This complaint fatigue had already set in and made it difficult to focus witnesses on the conduct at issue and required me to reassure individuals about the complaint investigation process.

Generally, investigations of municipal integrity commissioners in Ontario are expected to be completed within 90 days after the receipt of the Complaint. In fact, section 4.27 of the OCDSB Code states that the formal review will be conducted within 90 calendar days of the receipt of the written complaint. If a longer period of time is required to complete the inquiry, the reason for the extension will be explained in the final report to the Board. If the investigation process takes more than 90 days, which it often does, code rules often require the integrity commissioner to provide an interim report and advise the parties of the date the report will be available. In this complex investigation, While I had originally anticipated that I would complete this investigation earlier, I am pleased to have completed this investigation and will have reported to the Board in 90 days.

VII. FACTUAL FINDINGS

I am required to evaluate the evidence and facts on a balance of probabilities and make factual findings. I am then required to make recommendations as to whether a Respondent has violated Code rules.

A. CREDIBILITY FINDINGS

In the course of making my factual findings, I considered issues of credibility and reliability of witnesses.

There is as much or more disagreement than there is agreement between the Respondents about how to interpret their conduct. However, the witnesses provided me with contextual information and material to the events subject of the Complaint. The standard used to evaluate evidence is “a balance of probabilities”. In making findings of fact, Integrity Commissioners in Ontario adhere to the standard of proof for fact-finders in civil cases known as the ‘Balance of Probabilities’. That standard is clearly explained in *F.H. v. McDougall*, 2008 SCC 53 (CanLII), [2008] 3 SCR 41, 61; 2008 SCC 53 (SCC),

“In civil cases in which there is conflicting testimony, the judge must decide whether a fact occurred on a balance of probabilities, and provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result on an important issue because that evidence is inconsistent with that of the other party. In such cases, believing one party will

mean explicitly or implicitly that the other party was not believed on an important issue. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant...”

The balance of probabilities standard of proof requires a finding that it is more likely than not that an alleged event has occurred and requires that this finding is based on evidence that is clear, convincing and cogent.¹⁴

The majority of Code of Conduct complaint investigations include receiving information from various sources that are contradictory, which raise the application of believability. A [witness statement that] is not credible is not reliable, but testimony that is credible may nevertheless not be reliable. In one decision, the court sets out that:

[...] demeanour is not a dependable indicator of either. Although the demeanour and apparent willingness and ability of a witness to resist any influence of self-interest remains a legitimate consideration, appearance in the witness chair can be a poor indicator of either credibility or reliability. Unless one knows an individual well enough to be able to identify his or her “tells”, witness chair demeanour rarely offers a reliable clue to credibility and no clue at all to reliability. The objective plausibility of testimony in the context of the evidence as a whole, particularly incontrovertible forensic or documentary evidence, is a far more important consideration than demeanour when credibility or reliability is in issue. And although witness credibility is important, what really matters is evidentiary reliability.¹⁵

I accept that those with whom I spoke had an honest “recollection” of something that did or didn’t actually happen or how it happened. Credibility and reliability are different. Credibility has to do with a witness’s veracity, reliability with the accuracy of the witness’s testimony. Accuracy engages consideration of the witness’s ability to accurately: (i) observe; (ii) recall; and (iii) recount events in issue. Any witness whose evidence on an issue is not credible cannot give reliable evidence on the same point. Credibility, on the other hand, is not a proxy for reliability: a credible witness may give unreliable evidence.¹⁶ In order for me to fairly assess the information that I received during this investigation, I had to examine factors such as the ability and opportunity to observe events, the firmness of the recollection of the events, the ability to resist the influence of interest to modify their recollection, whether the witness’ evidence harmonizes with independent evidence that has been accepted, whether the witness changes their testimony after I asked follow up questions, whether the information being provided to me seemed unlikely.

To all with whom I spoke, I deemed them to be speaking honestly with sincere attempts to describe what occurred. I found that after having spoken with the witnesses and measured their comments against my review of audio and video recordings or transcripts, it appeared that the perception and personal history of some witnesses caused them to have a perception of the

¹⁴ [1] *F.H. v. McDougall*, [2008 SCC 53](#) at paragraphs [49 and 46](#).

¹⁵ (*R. v. Morrissey* (1995), 1995 CanLII 3498 (ON CA), 22 O.R. (3d) 514 (C.A.) per Doherty J.A.). British Columbia Court of Appeal's decision in *Faryna v. Chorny* 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354

¹⁶ *v. Morrissey* (1995), 22 O.R. (3d) 514, at 526 (C.A.).]

actions and conduct of Trustee Blackburn and Trustee Dickson that was not borne out in the information I received from witnesses and in interviews with those two Trustees and others.

B. GENERAL COMMENTS ON FACTUAL FINDINGS

As Integrity Commissioner, I am not required to include everything that I received and upon which I relied to make a finding, in my report. As the Divisional Court noted in *Bart v. McMaster University*:¹⁷

A tribunal's reasons do not have to include all the evidence that the tribunal heard; they merely have to allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of possible and acceptable outcomes.

During this investigation, I received the Respondents opinions, beliefs, and "feelings" about what was allegedly said or done by others in the course of the events subject this Complaint. However, while I listened to all witnesses to obtain context and get insight into possible motivation for conduct, I relied on factual evidence as distinguished from feelings or beliefs about why someone acted the way they did and the facts for the purposes of my findings of fact and determination of whether there have been violations of the Code.

To be clear, I have not included in this report all information that I have received; however, unless otherwise stated, all submissions and evidence received were considered. As the Integrity Commissioner for the OCDSB and investigator of this Complaint, it is my decision to consider whether information provided to me is necessarily for Code purposes.

For the most part, the oral statements, emails, media and social media communications were not in dispute and were available to review online or otherwise available to me. The key dispute related to the characterization of what was said and whether it amounts to a breach of the Code. I have addressed these issues in the individual analysis reports.

C. FINDINGS

i. Witnesses' Comments on the Respondents

Witnesses provided me with context with reference to how the Respondents' statements, actions, behaviour, social media and media interviews affect them within the Board, participating in different capacities at the Board. Mindful that the excerpt of statement could identify the witness, I have chosen to set out only a limited number of statements:

- "She [Trustee Kaplan-Myrth] intimidates me"
- "[Trustee Blackburn] Donna says what everyone else wants to say. She is just trying to get everyone to follow the rules"
- "Some people want to blame [Trustee Dickson] Donna for filing the complaint but she had to do it. She told me that [Trustee Kaplan-Myrth] Nili kept hounding her and texting her and then got aggressive"

¹⁷ *Bart v. McMaster University*¹⁷, 2016 ONSC 5747 Div. Ct., 2016 ONSC 5747 (CanLII), an instructive university sector case involving a dispute between Professors, at paragraph 176

- “I don’t like her” and “I think she is after me” (referring to Trustee Blackburn – this was not Trustee Kaplan-Myrth)
- “We’re suppose to keep everyone safe, but she [Trustee Kaplan -Myth] always does her own thing”
- “I would be offended if someone told me to vote a certain way or I’m supporting white supremacists. That’s not lobbying, that’s bullying”
- “Its hard to do your job when you are being accused of leaking information all across the twittersphere”
- “First we say we don’t want the police, then we say we need protection. We need protection and [Trustee Blackburn] is just trying to figure out how we can have a discussion”
- “She [Trustee Dickson] should have said it different. Nili [Trustee Kaplan] doesn’t need to get off X, she needs to stop alienating everyone. She isn’t a bad person, she just starts shouting and pointing when she doesn’t get her way”.

Based on the information that I received, it is clearly evident that individuals (some staff and some Trustees) feel uncomfortable around Trustee Kaplan-Myrth. There was an overwhelming sentiment of sorrow for her circumstance caused by the unconscionable hate messages she has received and continues to receive. However, witnesses with whom I spoke expressed their reticence to “engage with her” due in part to what has been described as Trustee Kaplan-Myrth’s volatile personality. “She’s like a wounded bird but then she snaps at you” explained one witness. “I want to wrap my arms around her and protect her but then she turns on me”, shared another witness. Typically my mandate during a Code complaint investigation is to determine on a balance of probabilities if the alleged statements were said and the alleged actions occurred. Looking at the allegations set out in Complaint 1, there is little or no dispute that the alleged statements set out in Complaint 1 were made by the Respondents or the actions occurred. The questions that require responses are **whether** what the Respondents said and in terms of Trustee Blackburn and Trustee Kaplan-Myrth how their statements were made (shouting, raising their voices) are in violation of the Code. When evaluating the integrity and ethical conduct of a Trustee, my role is to apply the rules of the Code to the facts gathered throughout the investigation to make recommendations to the Board. When making decisions on whether there has been acceptable conduct and whether to adopt my findings and recommendations, Trustees are to follow the rules of the Code which *provide* them with a *reference guide and a supplement to the legislative parameters within which they must operate*.

When asked to confirm whether Trustee Blackburn said “I don’t care I don’t need a wordsmith”, or “I wasn’t afforded the same opportunity to speak as Trustee Kaplan-Myrth was”, witnesses agreed these statements were made. However, the commentary from the witnesses around the statements of Trustees Blackburn and Dickson was “she/they seem frustrated” and “she [Trustee Blackburn] has been holding it together pretty well”. Whereas the commentary around Trustee Kaplan-Myrth was generally “she/this has to stop”. To be clear, there was nobody with whom I spoke that said that Trustee Kaplan-Myrth is to blame for the vitriol that she is receiving. When I pressed for further clarification on their comments, I was told, “its like she baits them”. “Saying things like ‘...playing in the sandbox with the far-right’ is more like she [Trustee Kaplan-Myrth] is taunting them instead of condemning dangerous wrongdoing”.

ii. The September 7 In-Camera Professional Development Session

On September 7th 2023, the OCDSB conducted a Professional Development session for Board Trustees. This meeting was held in-camera, having three topics: Self-Reflection, Board Efficacy and Relationship with the Director. During a facilitated, closed meeting, the discussion turned to the proper use of social media for students and trustees. One of the trustees raised issues about the antisemitic death threats that she was receiving. In the past, numerous trustees had suggested that one solution might be to take a break from social media. This was a suggestion made previously during open meetings. As the conversation continued, Trustee Dickson bluntly stated words to the effect of “if you don’t want to continue to get death threats stop -please stay off social media”. She further used words to the effect that “if someone came to [harm] you, I would be the first to [be harmed]”. This was explained by Trustee Dickson as a gut reaction and a comment made during a lengthy discussion. Trustee Dickson further stated: “It’s like walking on eggshells. You can’t say anything” and “The Chair needs to control her [referring to Trustee Kaplan-Myrth]”. Trustee Dickson further expressed her belief that the Session was intended to allow Trustees to “speak freely”

Trustee Blackburn commented to me that she was not afforded the same opportunity to speak as Trustee Kaplan-Myrth. Trustee Kaplan-Myrth was pointing at everyone in the room and said very few Trustees reached out to her because of the threats she received. Trustee Blackburn admitted that she did raise her voice because Trustee Kaplan-Myrth was pointing and shouting at her and pointing to everyone in the room.

I received evidence that Trustee Kaplan-Myrth also raised her voice and was shouting at Trustee Blackburn.

I find on a balance of probabilities that both Trustee Kaplan-Myrth and Trustee Blackburn raised their voices during this professional development session.

iii. Comments on Social Media and Memos after the September 7 Session

After the September 7 session, Trustee Kaplan-Myrth posted on X about a meeting:

Imagine turning to a room of colleagues to say their silence as I receive antisemitic death threats isn’t OK. The only person to respond says *they* are uncomfortable with the risk I bring to them[...] so can I please stay off social media...”

...

“Some of them have declared themselves repeatedly behind closed doors. They did so publicly when they released documents to Rebel News to say I “bait” the white supremacists who stalk me. They will declare their values again when they go after me for call out antisemitism.”

In her December 1st comments to the Draft Reports, Trustee Kaplan-Myrth said “...I do not identify where the meeting I discuss took place. I did NOT say that it was an OCDSB meeting. I did not disparage any trustee colleagues. I sit on committees and interact with many organizations outside of OCDSB”.

On September 8th, despite the OCDSB instituting an “embargo” on communications about the Code of Conduct investigation report that would be tabled at the September 11th Special Board Meeting, information was received by the media that the Board would be discussing and voting on a Code of Conduct complaint investigation matter.

On Friday September 8, 2023 Trustee Kaplan-Myrth posted on X:

“On Monday Sept 11th the OCDSB will hold a “special board meeting” in which the conservative trustees are putting me on trial (code of conduct, kangaroo court). They have called me a “racist” and disrespected me for privately saying to a fellow trustee that there is a link between anti-maskers and white supremacy, and for privately saying to another trustee that the trustees who vote against masks don’t care about vulnerable populations. They aren’t allowing me to speak about it. I’m not even allowed to defend myself at the trial. But once it is public, I can and will speak. I need allies to speak out on my behalf. As in, write a letter to the Ottawa Citizen. Write a letter to the Globe and Mail. Toronto Star. Phone CBC. Please don’t let the OCDSB get away with this.

Trustee Kaplan-Myrth alleged that someone within OCDSB leaked to Rebel News via Rowan Czech-Maurice that the special board meeting would be taking place on September 11 to address the complaint against her. Trustee Kaplan-Myrth posted on X:

The person who has leaked this from OCDSB has given it to a man named Rowan Czech-Maurice. He goes by the Twitter handle @canamericanized and has stalked me for 3.5 years. He is from Toronto, possibly residing in Florida, seems to generate news for Rebel News/True North.

So, someone at OCDSB is feeding Rebel News information. If the ban on my speaking about the upcoming kangaroo court was even constitutional before, which is in dispute, surely I can respond publicly on Monday when that information is public. This is an organized attack on me, and my ”, whether OCDSB intended it or not

In addition, on September 8th, Trustee Kaplan-Myrth accused OCDSB staff of disclosing to a media outlet, information about the safety plan instituted for her protection. In response to Trustee Kaplan-Myrth’s email, OCDSB staff explained by email to all Trustees and others copied on the original email, that the OCDSB had received an access to information request and was required under law to respond within 30 days. Staff confirm, however, that no details of the safety plan were released, although the response did refer to the existence of a safety plan.

On September 8, 2023, Trustee Kaplan-Myrth stated in a Memo to all Trustees, Senior staff and others external to the OCDSB:

It took courage for me to tell senior staff and colleagues last night that what is happening is traumatic. I am shocked by the response.

I will not resign, nor will I be knocked down by the toxicity within the board or outside of it.

OCDSB released email documents about my OCDSB safety plan to Rebel News in which staff say I “bait” the white supremacists who stalk me. No apology from OCDSB for putting me at further harm by saying that and then releasing it to a far right organization with a goal to cause harm to me. Think about that.

I have copied my human rights lawyer, Bernie Farber (whose session on antisemitism some of you skipped), and I will speak with media.

I refused to agree to another personal safety plan, after OCDSB shared the email with Rebel News. 1) The plan should not be a safety plan for me, alone, as others would be injured if someone decided to try to attack. 2) It should not be that staff are my chaperone

(as lovely as it is for [named staff persons] to offer to walk with me, that's inappropriate).
 3) There is an uptick in disruptions across Ontario, across Canada and North America, and this is not about me. 4) We should have security at all times in our parking lot and limit the public to the gallery if they wish to observe meetings.

[...]

Thank you to the few trustees who have shown support. I'm imploring the rest of you to see that silence is complicity.

AND

OCDSB staff inappropriately made comments about my "baiting" Rebel News and then OCDSB shared that with Rebel News. Rather than writing to apologize to me, your response is to say that you had no choice.

I have attached the letter from my lawyer, as further context. OCDSB has a duty of care to protect me on OCDSB property (including in the parking lot), and a statutory obligation to protect my privacy. You made a decision, in bad faith, to share information with Rebel News. They are a far-right, white supremacist organization with an agenda to cause harm.

Anyone being threatened on the basis of race, ethnicity, religion, gender identity, or sexuality - for any reason at all - should similarly be protected by OCDSB.

I sincerely trusted that staff and colleagues would be supportive and proactive.

In response to the email, a Senior Staff of the OCDSB wrote:

Given the number of people on this distribution list who are unfamiliar with this issue, I wanted to share some information that gives context to what documents were shared and why. In June, the OCDSB received a request for information under the Municipal Freedom of Information and Protection of Privacy Act. The request was to:

Provide copies of all documents, including e-mails, texts or Instant messages, memos, briefing notes, slack messages, WhatsApp messages, memos, briefing notes, reports, etc. regarding the visit by Rebel News to deliver a petition and the interaction with Dr. Nili Kaplan-Myrth, Ottawa-Carleton District School Board Trustee and other staff in June 2023 (see here: https://www.rebelnews.com/fire_nili_update_we_caught_the_mask-obsessed_school_board_trustee_to_deliver_your_petition)

The school district is legally obligated to respond to MFOIPPA requests within 30 days of receipt.

As with all MFOIPPA requests, the District collected the responsive records, reviewed the records against the allowable exemptions under the Act, redacted or withheld any records for which it was legally authorized to do so. The eligible responsive records were released

to the requester. The documents that were released DID NOT include a safety plan, but they did include references to the existence of a safety plan. Subsequently, a story appeared in Rebel News which was based on the information contained in the records. Presumably, the requester shared the documents obtained with Rebel News. In addition to the story, Rebel News included a link to all of the records that were released.

It is very unfortunate that Trustee Kaplan-Myrth continues to be the victim of such horrible threats and vitriol. There was no interest or effort on the part of staff to add to the incessant public scrutiny that is being experienced. Unfortunately, there was no legal authority on which to deny the release of the requested records.

I understand that the Trustee has filed a complaint with the IPC and staff will cooperate fully in that process and welcome any learning that may come from that.

I received no evidence about who “leaked” the information to Rebel News and the media. I find on a balance of probabilities that neither Trustee Blackburn nor Trustee Dickson were involved in providing any information to Rebel News.

On September 10, 2023, Trustee Dickson put out a media release, inviting media to speak with her after the Special Board Meeting of September 11th:

September 10th, 2023

For Immediate Release

Ottawa-Carleton District School Board Trustee Donna Dickson to Speak on Potential Code of Conduct Breach

Background:

Shortly after the Special Board Meeting of the Board of Trustees of the Ottawa-Carleton District School Board, Trustee Donna Dickson will host a media availability accompanied by fellow trustees to speak on a potential breach of the Board's code of conduct and the ongoing issues facing the Board itself.

Where:

Foyer to the board room in the administration building located at 133 Greenbank Road. The board room has limited space available. Therefore, it is advised that interested members of the media that wish to attend the full out-of-camera portion of the Special Board Meeting be in attendance a sufficient time prior to the start of the meeting in order to ensure a seat. A live stream of the Special Board Meeting can be viewed by [clicking here](#).

When:

After the conclusion of the Special Board Meeting beginning at 7:30 PM local time on Monday, September 11th. Time of conclusion of the Special Board Meeting is uncertain given the nature of the meeting's agenda which can be viewed by [clicking here](#).

Trustee Dickson responded to that she had kept the confidentiality of the Code complaint process and after the Board put in place a confidentiality “embargo” and Trustee Kaplan-Myrth commented on social media that “On Monday Sept 11th the OCDSB will hold a “special board meeting” in which the conservative trustees are putting me on trial (code of conduct, kangaroo court). They have call me a “racist” and disrespect for privately saying to a fellow trustee that there is a link between anti-maskers and white supremacy, and for privately saying to another trustee that the trustees who vote against masks don’t care about vulnerable populations”, Trustee Dickson said that she was “fed up” that not only had Trustee Kaplan-Myrth decided on her own to break the

confidentiality request of the Board, but she disclosed the substance of what would be deliberated on September 11th and she referred to the Board's Code procedure as a "kangaroo court".

iv. September 11 Closed Meeting

On September 11th, the Board met in camera to consider the legal opinions and reports that would be before the Board at the Special Board Meeting on September 11th.

Trustee Kaplan-Myrth was not invited to and did not attend the in-camera portion of the meeting.

In that meeting, Chair Evans stated that the Special Meeting would be contentious and reminded trustees and staff that the Chair is the official spokesperson for the Board and that comments and questions from the media regarding the matter before the Board, should be direct to the Chair.

After Chair Evans reminded Trustees that the Chair is the spokesperson for the Board and all Trustees were encouraged not to take media requests for interview, Trustee Blackburn asked if this guidance would be given to all Trustees including those not currently in attendance – the Chair of the meeting (Trustee Lynn Scott) ruled the question out of order.

v. September 11 Special Meeting (public) and events after the meeting

At the meeting, Trustee Blackburn put forward the motion to vote on whether to find Trustee Kaplan-Myrth in violation of the Code and to apply sanctions. Trustee Blackburn also spoke last at the end of the deliberation because procedurally the mover of a motion concludes comments.

Trustee Dickson spoke in relation to the motion. She read from her prepared statement. She did not interrupt any speakers.

In her statements, Trustee Blackburn said that Trustee Kaplan-Myrth is a "white woman attacking a Black woman".

- "For me, to have been personally attacked about my commitment to equity was disturbing, as an out lesbian, as a woman who proudly raised a Black daughter",.
- "Trustee Scott is an incredible woman and Trustee Matthew Lee, who I don't know yet that well, he's a good man who is committed to the betterment of our kids and their families." I find that she made this comment referring to Trustee Kaplan-Myrth having – in the context of the Code report Board was discussing – said that these Trustees didn't care about racialized or immunocompromised children or children in poverty.

In accordance with the rules of the former and current Code, Trustee Kaplan-Myrth was permitted to attend the meeting but could not make comments. Trustee Kaplan-Myrth interrupted both Trustee Dickson and Trustee Blackburn while they had the floor. Trustee Kaplan-Myrth interrupted Trustee Dickson while she had the floor and stated that the Code complaint limitation period had expired and to Trustee Blackburn – "You have been out to get me from day one". The Chair had to call a recess. In her December 1st comments to the Draft Reports, Trustee Kaplan-Myrth clarified that the rule in place under the previous Code was not "to strip [her] of her rights and

privileges as a Board member, nor is it to presume guilt or otherwise mark her with special status” I have already addressed these comments above.

Many witnesses commented on how they received Trustee Dickson giving her statement at the Special Board Meeting and being interrupted by Trustee Kaplan-Myrth. One comment that captured the sentiment expressed by some witnesses and that I can report without identifiers is “Trustee Dickson’s voice was shaking with emotion while she was speaking and Trustee Kaplan-Myrth did interrupted her. It was just like she doesn’t care”. It was an “emotional ordeal for her...it was for all of us, but I felt bad for Donna [Dickson]”.

vi. Comments to the Media after September 11 Meeting

After the Board Meeting, Trustee Kaplan-Myrth went directly to where the media was waiting. Trustee Kaplan-Myrth aggressively pointed at two individuals, as well as Trustee Blackburn and shouted “out! out! out! out!”, motioning them to leave a space that had not been reserved for her individual use. Trustee Blackburn went in the room and Trustee Kaplan-Myrth raised her voice, pointed aggressively and demanded that Trustee Blackburn leave the room. Staff later advised that an individual later confirmed to be one of Trustee Kaplan-Myrth’s lawyers was allowed into the room. I received some evidence that there was a physical altercation between Trustee Kaplan-Myrth and an individual; however, other witnesses have denied that any physical altercation occurred. I was unable to determine, on a balance of probabilities, that such a physical altercation took place.

Each of the Respondents made comments to the media after the September 11 meeting. Trustees Blackburn and Dickson advised that *the quotes* included in the articles were not wrongly attributed to them. One September 13th article sentence reads “Dickson says Kaplan-Myrth should resign”, however Trustee Dickson is not quoted as having made that statement and in her response to the complaint advised that “[...] it is ultimately not my responsibility as an interviewee to ensure they do so..” She is quoted as having said to True North: “Her behaviour towards the board, towards the public, towards the speakers that we’ve had, when she does not agree with what they have to say, her disrespect, is beyond what it is to be a politician”. I accept that Trustee Dickson said only what was quoted. As a result, I accept that the Respondents made the comments quoted in the articles. Each of the Respondents also made comments on social media.

Trustee Blackburn was quoted as follows:

- "I don't think this board will ever heal, to be quite honest," "I'd like to be optimistic that we can heal, but I don't think it's possible." (CTV News article – September 12th)
- “Those seven people believe that trustee Kaplan-Myrth violated the code of conduct. That’s seven people. That’s more than half.” “It’s not the threshold, but it’s a significant number.” (CTB News article – September 12th)

Trustee Dickson was quoted as follows:

- “We have four trustees who know the truth and choose to turn a blind eye,” she said “We suspend students for bullying, and yet, they’re okay with a trustee bullying. Wat message

are we really sending to our students?...that you can get bullied and you have no right, even though you might be right.” (True North article – September 13th)

- “Her behaviour towards the board, towards the public, towards the speakers that we’ve had, when she does not agree with what they have to say, her disrespect is beyond what it is to be a politician...You cant’s do business, right? She needs to do check her own words. If she’s doing that to a minority trustee...as a doctor, what is she doing to her own patients?” (True North article – September 13th)
- “It is clear that a strong majority of the Board is in agreement that Trustee Kaplan-Myrth’s actions were unbecoming of a school board trustee”...”Along with my colleagues on the Board, I will continue to old Trustee Kaplan-Myrth and all Board administrators accountable as we continue into the new school year.” (True North article – September 13th)
- The administration, the director, and Lyra chose not to follow through,” “I had to hound and hound...We need a chair that will sit there and to the job, so we don’t have the Nilis
-
- within the board trying to push other agendas all the time.” (True North article – September 13th)
- “Its very unfortunate” “The board has made a decision. I respect that decision. I disagree with that decision.”(CTV New article – September 12th)
- “It’s very unfortunate,”...”The board has made a decision. I respect that decision. I disagree with that decision” (CBC News article – September 12^h)
- “While the motion did not pass, I accept the outcome of the vote. It is clear that a strong majority of the board is in agreement that Trustee Kaplan-Myrth’s actions were unbecoming of a school board trustee. Along with my colleagues on the board, I will continue to hold trustee Kaplan-Myrth and all Board administrators accountable as we continue into the new school year.” (City News article – September 12th)

Trustee Kaplan-Myrth was quoted as follows:

- “Ironic to see her play in a sandbox with the far-right. Whatever, call me a “bully” for saying we should protect students and staff from #COVID19 in #Ottawa. [...]”
- “This has been a character assassination from the beginning”
- “This has been part of an organized attack on me right from the very beginning of my tenure here. There have been people who have gone out of their way to try to attack me.” (CTV News article September 12th)
- “I am relieved that the board found that I am not guilty of a violation. I’m also deeply disappointed that the OCDSB allowed us to even proceed” (CTV News article – September 12th)

Trustee Kaplan-Myrth made the following posts on social media on September 11:

- OCDSB has “a toxic pattern of conservative trustees abusing its ‘code of conduct’ process to try to silence progressives.” WHAT A BLOODY WASTE OF MONEY, TIME, AND ENERGY. THIS HAPPENS ACROSS #ONTARIO, IS GOING ON NOW AT @UCDSB. THE TOXICITY IS A PATTERN AT @OCDSB.
- IRONIC THAT CONSERVATIVES SAY DON'T FOCUS ON “DIVISIVE” ISSUES”.
- “I am relieved that the board found that I am not guilty of a violation. I’m also deeply disappointed that the OCDSB allowed us to even proceed”. (X- September 11th)
- “I was not found guilty at @OCDSB tonight. But it isn’t a victory. We live in a dangerous time. I have a Charter right to point out that we are bombarded by white supremacists, to express political opinion, and to lobby colleagues. [...]”
- The #Ottawa public school unfortunately has a toxic pattern of conservative trustees abusing its “code of conduct” process to try to silence progressives. I was warned ahead of time. I’m the 2023 target. I refuse to be silent.
- As you know, I’ve received antisemitic, anti-vax/mask threats as an @OCDSB trustee since Nov 2022 when I proposed a temporary mask requirement in schools to mitigate COVID19, RSV, flu. Many people who sent us disinformation about masks were part of an organized campaign.
- The link between white supremacy and antivaxx/mask rhetoric is well established. It is also confirmed that many of the people who shut down our @OCDSB board meeting in Nov 2022 weren’t our constituents. They were convoy-adjacent organized groups of antivaxx/maskers .
- As has occurred elsewhere in #Ontario @OCDSB was disrupted by well-organized groups who espouse hate, ppl who sent us +500 letters full of anti-mask disinformation in November 2022 while also phoning and emailing me to say they’d gas me and my family. And those same ppl
- Boasted that they would do everything they could to disrupt “woke” boards and to destroy me. Meanwhile, some colleagues at @OCDSB overtly dismissed the antisemitic death threats, saying it’s my fault for speaking. I continued to lobby for vulnerable populations.
- It isn’t my fault @OCDSB is disrupted. Nor will I stop speaking out about antisemitism and advocacy for trans rights, BIPOC rights, special education, disability rights. Look at what is happening across #Ontario and across Canada. It is an ugly import from the USA.
- Accusing me of racism for calling out white supremacy is a violation of my constitutional right to speak the truth and advocate for my constituents @OCDSB has a commitment to social responsibility. Instead, it is cause me harm. I was warned that certain trustees use.

- The code of conduct as a way to try to silence progressives. What a bloody waste of money, time and energy. This happens across #Ontario, is going on now at @OCDSB. The toxicity is a pattern at @OCDSB

On September 16, 2023, Trustee Kaplan-Myrth reposted on X a post from Amir Attaran with her comments:

- “Amir Attaran(Exec Officer advised Trustee Blackburn that Amir Attaran was allowed in to “safe space” after September 11th meeting because he was Trustee Kaplan-Myrth’s legal counsel) – “Blab all you like, but the Board’s attempt to punish this “pariah” failed.” Plus the idiot who moved the failed motion to punish her is herself guilty of racism and harassing a Black child, says the Board”

The jurisdiction of the Integrity Commissioner overlaps with that Chair in respect to conduct at meetings. During my investigation, witnesses commented that the Chair afforded latitude to Trustee Kaplan-Myrth, allowing actions and conduct to go unchecked that triggered the Code rules, and that were otherwise not condoned for others. Contrarily, the Chair strongly advised other Trustees to strictly abide by acting professionally and in a manner that will inspire public confidence in the abilities of the Board. The conduct of the Chair is not subject of my investigation, however I recognize that being faced with the incredibly challenging and contentious issues of November 2022 was a challenge and former Chair Lyra Evans who sought guidance from staff and general counsel and did the best she could, given the circumstances to uphold the rules of decorum. Despite her best efforts, the conduct of some Trustees triggered Code rules.

VIII. LEGAL PRINCIPLES

A. FREEDOM OF EXPRESSION

In accordance with the *Education Act* and the Board Governance Policy, the Board shall focus decision-making on the educational outcomes of student achievement and wellbeing, and support programs and services that seek to provide equity of access and successful outcomes for all students. The Code requires Trustees to discharge their duties:

"[loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board" (rule 3.5) and "ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to Board staff or fellow Board members" (rule 3.8).

Trustees must be impartial in handling the business of the board and in professional relationships with all trustees (page 8 Module 4 OPSBA). In short, Trustees are called to be and appear to be, consistent, objective, impartial and independent, and seek to avoid all conflicts of interest pecuniary or bias, that might undermine their independence of that of the Board.

As set out in Module – Good Governance for School Boards, Trustee Professional Development Program 1: Effective governance for student achievement

Becoming a cohesive team as a board of trustees

To govern effectively, trustees must work as a collective body to develop the board's vision, strategic directions and goals in service of all the students and families in its jurisdiction. Individual trustees will come to this work with their own values and beliefs and with the issues that are pressing in their own constituency. The job of the collective board of trustees is to work together, accommodating diverse viewpoints, and to come to agreement on the strategic directions which will guide board decision-making. While strong and diverging views will always be part of debate in the democratic forum of a board meeting, the board of trustee's established strategic directions provide the framework for arriving at decisions and the decisions must be consistent with the goals the board has set for itself.

Freedom of expression is a Charter-protected right in Canada. However, the Code is an important limit for trustees who choose to run for elected office. Elected officials understand that once elected, they will voluntarily forfeit some of their freedom to speak and the goalposts of those limits are represented by the Code rules. The Board has implemented a Code of Conduct to enhance the likelihood that, among other things, individuals are treated fairly and with respect. The Code does not interfere with the Trustee's ability to meaningfully work as part of a whole to carry out the duties under the *Education Act*; rather, it ensures a common understanding as to acceptable behaviour for trustees.

In 2007, the Nova Scotia court found that the Minister's decision to impose a provincial supervisor did not violate the Trustees' right to free speech for comments made outside of the Board meetings. The board members had violated their own code of by conduct by not demonstrating respect for Trustee colleagues in their words and conduct. And the Minister acted out of concern for the integrity of the education system, not to punish the board members. The Minister's decision was found reasonable as the court found Code rules applied to Trustee's conduct in and out of the Boardroom.¹⁸ The court ruled that it didn't matter where the breach of the code rules took place and this application of the code rules was not found to be a violation of the Trustees rights to free speech guaranteed under the Charter.¹⁹ There was no violation of the members' rights to free speech: *Charter* guarantees did not apply when underlying values in a code of ethics were clear and unambiguous.

“Elected representatives can form views and opinions and declare themselves on issues of public interest. However, by voting on a motion before the board to sue him, the deposed member had a non-pecuniary personal interest in continuing in his office which would have influenced his vote, irrespective of whether it was consistent with his public duty. The court went so far as to say that the obstreperous member had a shared public duty to advance the work of the Board, which included deliberating on and passing a yearly budget. Yet he tried to halt the Board's budget work, thus putting his private interest in conflict with his shared public duty to carry out the responsibilities and work of the Board”.

In conducting my analysis and considering whether to recommend a Code breach, I am alert to the *Charter* values at issue. Freedom of expression is a fundamental right, but not without limits. The *Education Act* requires all school board members to maintain focus on student achievement

¹⁸*Nova Scotia v. Nova Scotia (Minister of Education)* above, note 24; *O'Hara v. Nova Scotia (Minister of Education)*, 2008 NSCA 62, 2008 CarswellNS 354.

¹⁹ *Ibid.*, at para. 61-63

and well-being, and comply with the board's Code of Conduct.²⁰ Statements that are disrespectful or demeaning — beyond what is required to engage in robust and productive debate about the issues at hand (and may actually run counter to that objective, or more generally undermine the objectives of and duties under the *Education Act*) — can fall outside the bounds of *Charter* protected expression.

In 2023 in *Del Grande v. Toronto Catholic District School Board*, the Divisional Court recently considered the decision of the Toronto Catholic District School Board in respect of statements made by a trustee. The Respondent raised his *Charter* rights and the alleged failure of the Board to address his Charter rights. The Court wrote:

[81] As noted above, the Board has a statutory obligation to promote student well-being and a positive and inclusive school climate. The Board also has an obligation to enforce a minimum standard of conduct expected of its Trustees. All Trustees have an obligation to comply with the Code of Conduct and to assist the Board in fulfilling its duties. Sanctioning the Applicant for making disrespectful comments was not contrary to the *Education Act*, but consistent with the *Act's* statutory objectives.

[82] Before making the Decisions, the Board had ample opportunity to consider the findings of the investigation report, the submissions from delegations who attended the meeting, and the Applicant's lengthy written submissions as well as his counsel's oral submissions. The Applicant's submissions detailed his rationale for proposing the amendment and the legal arguments against reconsidering the First Decision. Those submissions included the *Charter* grounds upon which the Applicant relies. The Board was thus alert to the need to balance the statutory objectives, including its own obligations, against the Applicant's Charter-protected interests.

[83] The investigation report was also alert to the *Charter* values at stake. The investigator accepted the Applicant's submission that he was using rhetorical hyperbole to advance an argument. She found, however, that the Applicant's inflammatory language crossed the line because it was disrespectful, not inclusive and lacking in compassion. The investigator specifically noted that the Applicant made his remarks knowing that members of the LGBTQ+ community were present at the meeting and that others who were not present would be able to access his remarks. In that context, the investigator found that by his remarks, the Applicant suggested that including criminal activity such as cannibalism and rape in the TCDSB Code of Conduct was somehow similar to including the Additional Grounds. In choosing the words that he did, the Applicant created an unwelcoming and harmful environment for certain members of the Catholic school board community. The investigator found that there was ample room for the Applicant to hold and act on his religious beliefs without using language that was distressing and demeaning to others, including students and the community he was entrusted with serving.

The constitutional right to freedom of expression under s. 2(b) of the *Charter* is not absolute or unlimited. Some limitations apply broadly such as hate speech and perjury provisions in the *Criminal Code* and defamation laws. Other limitations apply only to select individuals, such as those subject to contractual or statutory confidentiality obligations. The expression of

²⁰ *Del Grande v. Toronto Catholic District School Board*, 2023 ONSC 349 at paras. 79-91

professionals is often limited by rules of professional conduct.²¹ Similarly, the expression of school board trustees is limited by the rules that the board has imposed upon trustees in the Code.

For example, a trustee is bound to keep confidential information learned during an *in camera* board meeting. A trustee cannot rely on freedom of expression provisions of the *Charter* to skirt his confidentiality obligations.

In this regard, elected school board trustees are no different than their elected provincial and federal counterparts. At each level of government, the elected officials is subject to rules governing their members' conduct. A breach of the conduct rules can lead to disciplinary measures.

B. CLOSED MEETINGS AND MEETING RULES

Training to new Trustees emphasized the requirement for co-operation and good communications among Trustees and that the Board must act together and speak as one body. In addition, Trustees learned in their learning sessions that Trustees must take direction from the Chair during meetings. Only one designated person should speak to the media on ***behalf of the Board*** and if a member disagrees with a decision, they must not denigrate the Board or their colleagues.

On November 8, 2022, December 13, 2022 and March 21, 2022, I delivered 3 Trustee learning sessions with an esteemed Educator and former Director of the Board Stephen Sliwa.

At the Trustee orientation sessions, we covered many areas of governance that were included in the OPSBA orientation modules. Only in our March session did we cover the section dealing with the Code of Conduct, which emphasized the requirement to act in accordance with the letter and spirit of the Code of Conduct and to inspire public confidence in the OCDSB. The final session touched very briefly on the role of the Chair and decorum at Board meetings. Trustees are required under the Code, to conduct themselves at meetings with decorum, following the procedural meeting rules set out in the [OCDSB Bylaws Standing Rules.pdf](#). Respect for the public, fellow Trustees and staff requires that all Trustees show respect and not distract from the business of the Board during presentations and when other Trustees have the floor.

The substance of deliberations in closed sessions are to be kept confidential until decisions are made public. Decisions arising from closed meetings are typically reported in public meetings. Individual trustees are not permitted to provide reports about what comments were made by other trustees in a closed meeting.

Respectfully submitted,



Suzanne Craig
Integrity Commissioner

²¹ Belak report

APPENDIX 1

IX. THE CODE OF CONDUCT

The Code of Conduct recognizes that trustee conduct “is integral to the quality of work, the reputation, and the integrity of the Board”.²²

The rules raised by these complaints fall into three categories of Rules set out in the Code: (1) Integrity and Dignity of Office; (2) Civil Behaviour and (3) Upholding Decisions. The Rules engaged in the complaints include s. 3.2, 3.5, 3.7, 3.8, 3.15, 3.17, 3.18, 3.19, 3.20, 3.27, 3.28, 3.29, and 3.30.

Code Rules

1. Integrity and Dignity of Office

3.5 Board Members shall discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board.

...

3.7 Board Members must uphold the dignity of the office and conduct themselves in a professional manner, especially when representing the Board, attending Board events, or while on Board property.

3.8 Board Members shall ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to Board staff or fellow Board Members.

The rules contained under the Integrity and Dignity of Office provisions consider the need for Board Members to ensure that their behaviour meets the expectations of elected officials who choose to accept public life. The Board is a public institution created under the *Education Act* which fosters a strong public education system. The Divisional Court recently wrote that “The Board’s role in enhancing student well-being and maintaining public confidence under s. 0.1(3) of the *Act* is best served by ensuring good governance and adherence to the Code of Conduct.”²³

Rule 3.5 requires Board Members to act loyally, impartially, faithfully, and in a manner that inspires public confidence in the abilities and integrity of the Board. A failure to act in a way that inspires public confidence would violate this particular rule. The other rules in this section do not relate to ensuring “public confidence”.

Rather Rule 3.7 requires that Board Members conduct themselves in a professional manner *especially* when representing the Board, attending Board events or while on Board property. Board Members must also uphold the dignity of the office. The purpose of this provision is to ensure trustee are obliged to act professionally and in a manner that would not harm the esteem or seriousness of the office. Acting unprofessionally as a trustee will often discredit the Board due to falling short of the dignity of the office.

²² Rule 3.1

²³ *Del Grande* at para. 56

Rule 3.8 encourages respectful debate and disagreement. There is a difference between expressing one's disagreement with the position of colleague Trustees, staff or other subject matter experts and making statements that demean and disparage the individual. Comments directed at an individual instead of the position of a person are more likely to be demeaning or disparaging. This rule focuses on the substance of the comments but does not require a course of conduct; a demeaning or disparaging comment may be a single comment.

2. Civil Behaviour

3.15 Board Members shall not engage in conduct that would discredit or compromise the integrity of the Board during meetings of the Board or at any other time.

...

3.17 All Board Members have a duty to treat members of the public, one another, students, and staff members respectfully and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment. This provision applies to all forms of written and oral communication, including via media interviews and correspondence and via social media.

3.18 All Board Members shall have regard for, and model, the behavioral expectations referenced in Policy P.012.GOV: Board Governance, Policy P.125.SCO: School District Code of Conduct, and Policy P.009.HR: Respectful Workplace (Harassment Prevention), and Policy P.147.GOV: Human Rights.

3.19 All Board Members shall understand their responsibility for contributing to a respectful workplace, and make every reasonable effort to resolve issues arising as a result of friction, conflict or disagreement in a respectful and professional manner that contributes to a healthy and productive workplace.

3.20 Should conflict arise with another Board Member, all Board Members shall make every effort to resolve the conflict by raising their concerns directly with the other Board Member.

Rule 3.15 prohibits uncivil conduct which discredit or compromise the integrity of the Board. While that concept is important in evaluating conduct against this rule, this language in Rule 3.15 cannot be imported into the other rules in the Civil Behaviour section of the Code.

Rules 3.17 and 3.18 prohibit abuse, bullying, intimidation, discrimination and harassment and require compliance with the relevant Board policies. Within the context of behaviour that constitutes harassment under the Policy P.009: Respectful Workplace (Harassment Prevention), one would speak about a "poisoned" workplace or environment, the Board as a whole, from November 2022 to September 11, 2023, had moved towards what many with whom I spoke called a "toxic" environment. What witnesses described as "toxic" was clarified to mean, a place or any behavior that causes happiness and discomfort. When I asked to what they attribute this discomfort, witnesses answered that it relates to a Trustee "pushing her agenda no matter what".

Rules 3.19 and 3.20 require Board Members to understand their responsibility to contribute to a respectful workplace at the OCDSB and to engage professionally to resolve conflict. The Board

Members must attempt to resolve issues arising as a result of conflict or disagreement in a professional manner to contribute to a healthy workplace. Rule 3.20 requires a Board Member to make efforts to resolve conflicts by raising their concerns directly with the other Board Member. I interpret this rule to engage the idea of private discussions with other board members, not engaging in uncivil, public behaviours which serve to entrench the Board Members' positions.

3. Upholding Decisions

3.27 Each Board Member shall uphold and not undermine the implementation of the decisions of the Board. A proper motion for reconsideration or rescission, if permitted by the Board's By-Laws and Standing Rules, can be brought by a Board Member.

3.28 A Board Member should be able to explain the rationale for a resolution passed by the Board. A Trustee may respectfully state their position on a resolution provided it does not in any way undermine the implementation of the resolution.

3.29 Each Board Member shall comply with Board policies, procedures, and the By-Laws and Standing Rules.

3.30 The Chair of the Board is the official spokesperson of the Board to the public. No other Board Member shall speak on behalf of the Board or represent themselves as the spokesperson for the Board unless expressly authorized by the Chair of the Board. When individual Board Members express their opinions in the media, they must make it clear that they are not speaking on behalf of the Board.

Rules 3.27-3.30 require Board Members to uphold decisions of the Board. Board Members cannot denigrate the decisions of the Board but may respectfully state that their position of disagreement. Board Members may seek reconsideration if permitted by the Board's bylaws. Board Members should be carefully in speaking to media about decisions of the Board which with they disagree. This is required for the Board to move forward after rendering decisions on issues of importance and which were subject to trustee debate.

Rule 3.30 acknowledges that the Chair is the official spokesperson of the Board and responsible for communicating decisions to the public. Other members of the Board are obligated to make it clear that they are not speaking as a representative of the Board.

3.2 All Board Members shall be governed equally by this Code of Conduct and are expected to uphold the letter and spirit of this Code of Conduct in their interactions with other members of the Board, with the employees of the Board, and with students, families, and members of the public, including but not limited to: a) oral communications; b) written communications; c) social media; d) interviews; e) parent council updates; and f) trustee communications.

Integrity and Dignity of Office

3.5 Board Members shall discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board.

...

3.7 Board Members must uphold the dignity of the office and conduct themselves in a professional manner, especially when representing the Board, attending Board events, or while on Board property.

3.8 Board Members shall ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to Board staff or fellow Board Members.

Civil Behaviour

3.15 Board Members shall not engage in conduct that would discredit or compromise the integrity of the Board during meetings of the Board or at any other time.

...

3.17 All Board Members have a duty to treat members of the public, one another, students, and staff members respectfully and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment. This provision applies to all forms of written and oral communication, including via media interviews and correspondence and via social media.

3.18 All Board Members shall have regard for, and model, the behavioral expectations referenced in Policy P.012.GOV: Board Governance, Policy P.125.SCO: School District Code of Conduct, and Policy P.009.HR: Respectful Workplace (Harassment Prevention), and Policy P.147.GOV: Human Rights.

3.19 All Board Members shall understand their responsibility for contributing to a respectful workplace, and make every reasonable effort to resolve issues arising as a result of friction, conflict or disagreement in a respectful and professional manner that contributes to a healthy and productive workplace.

3.20 Should conflict arise with another Board Member, all Board Members shall make every effort to resolve the conflict by raising their concerns directly with the other Board Member.

Upholding Decisions

...

3.27 Each Board Member shall uphold and not undermine the implementation of the decisions of the Board. A proper motion for reconsideration or rescission, if permitted by the Board's By-Laws and Standing Rules, can be brought by a Board Member.

3.28 A Board Member should be able to explain the rationale for a resolution passed by the Board. A Trustee may respectfully state their position on a resolution provided it does not in any way undermine the implementation of the resolution.

3.29 Each Board Member shall comply with Board policies, procedures, and the By-Laws and Standing Rules.

3.30 The Chair of the Board is the official spokesperson of the Board to the public. No other Board Member shall speak on behalf of the Board or represent themselves as the spokesperson for the Board unless expressly authorized by the Chair of the Board. When individual Board Members express their opinions in the media, they must make it clear that they are not speaking on behalf of the Board.

APPENDIX 2A

SUZANNE CRAIG
 Interim Integrity Commissioner
 Ottawa-Carleton District School Board
suzannecraigintegrity@gmail.com

**OFFICE OF THE INTEGRITY
 COMMISSIONER**

September 29, 2023

sent by email transmission to: donna.blackburn@ocdsb.ca

Trustee Donna Blackburn
 Ottawa-Carleton District School Board
 Zone 3

Trustee Blackburn:

I am writing to you to advise that I am in receipt of a complaint dated September 19, 2023 (the "Complaint"), brought under the Board Member Code of Conduct – Policy P.073.GOV (the "Code"), in which you are named as a Respondent to alleged Code contraventions. The Code also names other Respondents. In my correspondence to you, I will only address your alleged conduct that is set out in the Complaint.

The Complaint alleges that your conduct has triggered sections 3.2, 3.5, 3.7, 3.8, 3.15, 3.17, 3.18, 3.27, 3.28, 3.30 of the Code.

Section 4.11 of the Code states that:

Any allegation of a breach of the Code of Conduct must be filed with the Integrity Commissioner no later than four weeks after the alleged breach comes to the knowledge of the complainant. Notwithstanding the foregoing, in no circumstance shall a review of a Complaint be initiated after the expiration of three months from the time the contravention is alleged to have occurred.

I have determined that the Complaint sets out conduct that is alleged to have occurred within the limitation period.

Pursuant to section 4.13 of the Code, when the Integrity Commissioner receives a formal complaint, she will conduct a preliminary classification review to determine if the Complaint is out of time; trivial, frivolous, vexatious, not made in good faith, or there are no grounds or insufficient grounds for a review. In addition, the Integrity Commissioner will determine if the matter subject of the Complaint is, on its face, a matter with respect to non-compliance of the Code or a matter that is more appropriately processed under another procedure. I have commenced my preliminary classification review and have determined that the matters are not trivial, frivolous, vexatious or not made in good faith and there are sufficient grounds to pursue the matter through the Formal Review Process set out in sections 4.20 to 4.29.

As part of the independent decision-making authority of an accountability officer, the Integrity Commissioner has the discretion to reformulate a complaint and investigate the reformulated complaint. In exercising the powers conferred upon her, the Integrity Commissioner must be able to interpret and reformulate complaints from individuals who may lack specific knowledge of the Code of Conduct and the Complaints Protocol and who may, therefore, not be familiar with how to identify and formulate alleged breaches.

With this Notice of Complaint, I am requesting that you provide me with a written response to the allegations of the Complaint within 10 days on or before October 11, 2023. Pursuant to section 4.26 of the Code, you may also choose to meet with me to discuss your written response, however a meeting with me is not required.

Please be advised that the Integrity Commissioner and every person acting under her jurisdiction shall preserve confidentiality throughout the Code complaint investigation process. Section 4.22 of the Code states that “the Complaint, any response to the Complaint, and the investigation of the Complaint shall be confidential until it is before the Board for a decision as to whether or not the respondent has breached this policy”. Therefore, I respectfully require that you refrain from sharing with others by any means (if you choose to seek independent legal advice, you may of course share with your legal counsel) any information about this complaint, including this and any future correspondence to and from this Office, for the duration of the process.

The details of the allegations in the Complaint are set out below on pages 3-6.

Sincerely,



Suzanne Craig

Integrity Commissioner

Details of the Allegations of the Complaint

The Complaint states:

While these unfortunate behaviours are not new, repeated attempts to convince these trustees to act in a more appropriate way have been unsuccessful. To the best of my knowledge and understanding, these attempts of reconciliation by various members of staff and the Board have not presented a change in behaviour(s) from the aforementioned trustees.

The date of these most recent breaches occurred between September 7th-11th 2023. Most notably, September 7th 2023 during a Board Professional Development Session, September 11 2023 during an in-camera session, public board meeting, and immediately following the conclusion of that same meeting.

3.2

“All Board Members shall be governed equally by this Code of Conduct and are expected to uphold the letter and spirit of this Code of Conduct in their interactions with other members of the Board, with the employees of the Board, and with students, families, and members of the public, including but not limited to: a) oral communications; b) written communications; c) social media; d) interviews; e) parent council updates; and f) trustee communications.

During our in-camera session dated September 11 2023, Chair Evans explicitly stated that the meeting we were about to enter would be contentious and reminded trustees and staff that the Chair was the official spokesperson for the board. Comments and questions from the media regarding this matter should be directed to the Chair. However, immediately following the meeting, Trustee Blackburn, [another named Trustee] and [another named Trustee] all approached and willingly shared their opinion on the matters before the Board that evening.

3.5

Board Members shall discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board.

On the date of September 11th 2023, Trustee Blackburn, [another named Trustee], and [another named Trustee] did not inspire public confidence, and acted in a manner that brought into question the already precarious perception and trust in the Board. Trustee Blackburn, [another named Trustee] and [another named Trustee] all gave emotionally charged interviews and shared their personal thoughts on the decision that went against the decision of the Board on social media platforms and verbally fought with members of the public after the board meeting. (supporting media articles attached)

3.7

Board Members must uphold the dignity of the office and conduct themselves in a professional manner, especially when representing the Board, attending Board events, or while on Board property.

During the September 11th 2023 public meeting both Trustee Blackburn and [another named Trustee] spoke out of turn, raised objections that were not in order, and verbally assaulted each

other (not shown in the live streamed meeting). Proceeding the meeting, 3 trustees did not inspire public confidence, and in my opinion, actively participated in the dismantling of the already precarious perception and trust in the Board.

Trustee Blackburn used her closing remarks for the motion brought forward for the Code of Conduct on September 11th to personally attack Trustee Kaplan-Myrth.

3.8

Board Members shall ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to Board staff or fellow Board Members.

On our September 8th 2023 Professional Development session, there was a yelling match between Trustee Blackburn and Trustee Kaplan-Myrth.

During the in camera session on September 11th 2023, Trustee Blackburn raised several personal comments that were not issue based, including that she felt she was not afforded the same opportunity to 'defend herself', as was afforded to Trustee Kaplan Myrth, in a rude and unprofessional manner

Statements given to the media immediately after the September 11th 2023 meeting(s) were highly inappropriate, suggested that trustees should resign, and further undermined the decision of the Board, all were personal comments that demeaned or disparaged their fellow Board Members.

Civil Behaviour

3.15

Board Members shall not engage in conduct that would discredit or compromise the integrity of the Board during meetings of the Board or at any other time.

During the public meeting, Trustee Kaplan Myrth accused Trustee Blackburn of 'having it out for her since day one', engaging in a conduct that discredits the integrity of the Board. Trustee Donna Blackburn, while providing comments in the discussion, continuously addressed the attending members of the public as opposed to fellow board members, which demonstrated a lack of common respect, courtesy and willingness to work together as a board when making decisions. Trustee Blackburn used her time during the Board meeting before the vote to disparage other members of the Board, which led to a recess given her behaviour.

Statements given to the media immediately after the September 11th 2023 meeting(s) were highly inappropriate, suggested that trustees should resign, and further undermined the decision of the Board, all were personal comments that demeaned or disparaged their fellow Board Members.

3.17

All Board Members have a duty to treat members of the public, one another, students, and staff members respectfully and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment. This provision applies to all forms of written and oral communication, including via media interviews and correspondence and via social media.

Immediately following the meeting, Trustee Kaplan Myrth went to take an interview, and Trustee Blackburn followed Trustee Kaplan Myrth into a separate room, and refused to leave, even after Trustee Kaplan Myrth repeatedly asked Trustee Blackburn to leave, and stated that Trustee Blackburn would have ample opportunity to speak to media once Trustee Kaplan Myrth had finished giving her statement. This has been recorded on video and shared widely on various social media platforms

3.18

All Board Members shall have regard for, and model, the behavioural expectations referenced in Policy [P.012.GOV](#): Board Governance, Policy P.125.SCO: School District Code of Conduct, and Policy [P.009.HR](#): Respectful Workplace (Harassment Prevention), and Policy [P.147.GOV](#): Human Rights.

Upholding Decisions**3.27**

Each Board Member shall uphold and not undermine the implementation of the decisions of the Board. A proper motion for reconsideration or rescission, if permitted by the Board's By-Laws and Standing Rules, can be brought by a Board Member.

3.28

A Board Member should be able to explain the rationale for a resolution passed by the Board. A Trustee may respectfully state their position on a resolution provided it does not in any way undermine the implementation of the resolution.

3.30

The Chair of the Board is the official spokesperson of the Board to the public. No other Board Member shall speak on behalf of the Board or represent themselves as the spokesperson for the Board unless expressly authorised by the Chair of the Board. When individual Board Members express their opinions in the media, they must make it clear that they are not speaking on behalf of the Board.

During our in-camera session dated September 11th 2023, Chair Evans explicitly stated that the public meeting we were about to enter would be contentious and reminded trustees and staff that the Chair was the official spokesperson for the Board. Chair Evans also clearly stated that any comments and questions from the media regarding this matter should be directed to the Chair.

Immediately after the public meeting, statements were given by Trustee Blackburn, [another named Trustee] and [another named Trustee]. I believe this section of the code was breached, as to my understanding, it is not clearly noted in any media reporting that the statements provided were personal opinions, and not official statements coming from the board/chair of the board. The statements given were not respectfully presented, and undermined the implementation of the resolution.

The Complainant has met with me and includes in the Complaint that the conduct and actions of September 8th – 11th, 2023 are part of an ongoing pattern of conduct that the other Respondents knew or ought to have known were unwelcome and disrespectful to Board members and staff.

Supporting Evidence:

<https://www.cbc.ca/news/canada/ottawa/nili-kaplan-myrrh-trustee-ocdsb-code-rules-1.6963718>

<https://www.youtube.com/watch?v=IPDhltqG8mQ>

<https://ottawa.ctvnews.ca/get-back-to-basics-ontario-education-minister-urges-ottawa-school-board-1.6558045>

CONFIDENTIAL

SUZANNE CRAIG
 Interim Integrity Commissioner
 Ottawa-Carleton District School Board
suzannecraigintegrity@gmail.com

APPENDIX 2B

**OFFICE OF THE INTEGRITY
 COMMISSIONER**

September 29, 2023 sent by email transmission to: donna.dickson@ocdsb.ca

Trustee Donna Dickson
 Ottawa-Carleton District School Board
 Zone 8

Trustee Dickson:

I am writing to you to advise that I am in receipt of complaint dated September 19, 2023 (the "Complaint"), brought under the Board Member Code of Conduct – Policy P.073.GOV (the "Code"), in which you are named as a Respondent to alleged Code contraventions. The Code also names other Respondents. In my correspondence to you, I will only address your alleged conduct that is set out in the Complaint.

The Complaint alleges that your conduct has triggered sections 3.2, 3.5, 3.8, 3.15, 3.17, 3.27, 3.28, 3.30 of the Code.

Section 4.11 of the Code states that:

Any allegation of a breach of the Code of Conduct must be filed with the Integrity Commissioner no later than four weeks after the alleged breach comes to the knowledge of the complainant. Notwithstanding the foregoing, in no circumstance shall a review of a Complaint be initiated after the expiration of three months from the time the contravention is alleged to have occurred.

I have determined that the Complaint sets out conduct that is alleged to have occurred within the limitation period.

Pursuant to section 4.13 of the Code, when the Integrity Commissioner receives a formal complaint, she will conduct a preliminary classification review to determine if the Complaint is out of time; trivial, frivolous, vexatious, not made in good faith, or there are no grounds or insufficient grounds for a review. In addition, the Integrity Commissioner will determine if the matter subject of the Complaint is, on its face, a matter with respect to non-compliance of the Code or a matter that is more appropriately processed under another procedure. I have commenced my preliminary classification review and have determined that the matters are not trivial, frivolous, vexatious or not made in good faith and there are sufficient grounds to pursue the matter through the Formal Review Process set out in sections 4.20 to 4.29.

As part of the independent decision-making authority of an accountability officer, the Integrity Commissioner has the discretion to reformulate a complaint and investigate the reformulated complaint. In exercising the powers conferred upon her, the Integrity Commissioner must be able to interpret and reformulate complaints from individuals who may lack specific knowledge of the Code of Conduct and the Complaints Protocol and who may, therefore, not be familiar with how to identify and formulate alleged breaches.

With this Notice of Complaint, I am requesting that you provide me with a written response to the allegations of the Complaint within 10 days on or before October 11, 2023. Pursuant to section 4.26 of the Code, you may also choose to meet with me to discuss your written response, however a meeting with me is not required.

Please be advised that the Integrity Commissioner and every person acting under her jurisdiction shall preserve confidentiality throughout the Code complaint investigation process. Section 4.22 of the Code states that “the Complaint, any response to the Complaint, and the investigation of the Complaint shall be confidential until it is before the Board for a decision as to whether or not the respondent has breached this policy”. Therefore, I respectfully require that you refrain from sharing with others by any means (if you choose to seek independent legal advice, you may of course share with your legal counsel) any information about this complaint, including this and any future correspondence to and from this Office, for the duration of the process.

The details of the allegations in the Complaint are set out below on pages 3-5.

Sincerely,



Suzanne Craig
Integrity Commissioner

Details of the Allegations of the Complaint

While these unfortunate behaviours are not new, repeated attempts to convince these trustees to act in a more appropriate way have been unsuccessful. To the best of my knowledge and understanding, these attempts of reconciliation by various members of staff and the Board have not presented a change in behaviour(s) from the aforementioned trustees.

The date of these breaches occurred between September 7th-11th 2023. Most notably, September 7th 2023 during a Board Professional Development Session, September 11 2023 during an in-camera session, public board meeting, and immediately following the conclusion of that same meeting.

3.2

“All Board Members shall be governed equally by this Code of Conduct and are expected to uphold the letter and spirit of this Code of Conduct in their interactions with other members of the Board, with the employees of the Board, and with students, families, and members of the public, including but not limited to: a) oral communications; b) written communications; c) social media; d) interviews; e) parent council updates; and f) trustee communications.

During our in-camera session dated September 11 2023, Chair Evans explicitly stated that the meeting we were about to enter would be contentious and reminded trustees and staff that the Chair was the official spokesperson for the board. Comments and questions from the media regarding this matter should be directed to the Chair. However, immediately following the meeting, [another named Trustee], Trustee Dickson and [another named Trustee] all approached and willingly shared their opinion on the matters before the Board that evening.

3.5

Board Members shall discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board.

On the date of September 11th 2023, [another named Trustee], Trustee Dickson, and [another named Trustee] did not inspire public confidence, and acted in a manner that brought into question the already precarious perception and trust in the Board. [Another named Trustee], [another named Trustee] and Trustee Donna Dickson all gave emotionally charged interviews and shared their personal thoughts on the decision that went against the decision of the Board.

3.8

Board Members shall ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to Board staff or fellow Board Members.

On our September 8th 2023 Professional Development session, there was a yelling match between 2 Trustees. Trustee Dickson also made unsavoury comments regarding who would be shot first should an active shooter attend our meetings, which was not an issue based comment, and also was demeaning and disparaging of coworkers.

Statements given to the media immediately after the September 11th 2023 meeting(s) were highly inappropriate, suggested that trustees should resign, and further undermined the decision

of the Board, all were personal comments that demeaned or disparaged their fellow Board Members

Civil Behaviour

3.15

Board Members shall not engage in conduct that would discredit or compromise the integrity of the Board during meetings of the Board or at any other time.

Statements given to the media immediately after the September 11th 2023 meeting(s) were highly inappropriate, suggested that trustees should resign, and further undermined the decision of the Board, all were personal comments that demeaned or disparaged their fellow Board Members

3.17

All Board Members have a duty to treat members of the public, one another, students, and staff members respectfully and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment. This provision applies to all forms of written and oral communication, including via media interviews and correspondence and via social media

Upholding Decisions

3.27

Each Board Member shall uphold and not undermine the implementation of the decisions of the Board. A proper motion for reconsideration or rescission, if permitted by the Board's By-Laws and Standing Rules, can be brought by a Board Member.

3.28

A Board Member should be able to explain the rationale for a resolution passed by the Board. A Trustee may respectfully state their position on a resolution provided it does not in any way undermine the implementation of the resolution.

3.30

The Chair of the Board is the official spokesperson of the Board to the public. No other Board Member shall speak on behalf of the Board or represent themselves as the spokesperson for the Board unless expressly authorised by the Chair of the Board. When individual Board Members express their opinions in the media, they must make it clear that they are not speaking on behalf of the Board.

During our in-camera session dated September 11th 2023, Chair Evans explicitly stated that the public meeting we were about to enter would be contentious and reminded trustees and staff that the Chair was the official spokesperson for the Board. Chair Evans also clearly stated that any comments and questions from the media regarding this matter should be directed to the Chair.

Immediately after the public meeting, statements were given by [another named Trustee], [another named Trustee] and Trustee Dickson. I believe this section of the code was breached, as to my understanding, it is not clearly noted in any media reporting that the statements provided were personal opinions, and not official statements coming from the board/chair of the board. The statements given were not respectfully presented, and undermined the implementation of the resolution.

The Complainant has met with me and includes in the Complaint that the conduct and actions of September 8th – 11th, 2023 are part of an ongoing pattern of conduct that the Respondents named in this Complaint knew or ought to have known were unwelcome and disrespectful to Board members and staff.

Supporting Evidence:

<https://tnc.news/2023/09/13/ottawa-school-trustee-dickson-kaplanmyrth/>

<https://tnc.news/2023/09/12/levy-kaplan-myrth-vote/>

<https://www.cbc.ca/news/canada/ottawa/nili-kaplan-myrth-trustee-ocdsb-code-rules-1.6963718>

<https://www.youtube.com/watch?v=IPDhltgG8mQ>

<https://ottawa.ctvnews.ca/get-back-to-basics-ontario-education-minister-urges-ottawa-school-board-1.6558045>

CONFIDENTIAL

SUZANNE CRAIG
Interim Integrity Commissioner
Ottawa-Carleton District School Board
suzannecraigintegrity@gmail.com

**OFFICE OF THE INTEGRITY
COMMISSIONER**

September 29, 2023

sent by email transmission to: nili.kaplan-myrth@ocdsb.ca

Trustee Nili Kaplan-Myrth
Ottawa-Carleton District School Board
Zone 9

Trustee Kaplan-Myrth:

I am writing to you to advise that I am in receipt of a complaint dated September 19, 2023 (the "Complaint"), brought under the Board Member Code of Conduct – Policy P.073.GOV (the "Code"), in which you are named as a Respondent to alleged Code contraventions. The Code also names other Respondents. In my correspondence to you, I will only address your alleged conduct that is set out in the Complaint.

The Complaint alleges that your conduct has triggered sections 3.2, 3.5, 3.7, 3.8, 3.15, 3.17, 3.18, 3.27, 3.28, 3.30 of the Code.

Section 4.11 of the Code states that:

Any allegation of a breach of the Code of Conduct must be filed with the Integrity Commissioner no later than four weeks after the alleged breach comes to the knowledge of the complainant. Notwithstanding the foregoing, in no circumstance shall a review of a Complaint be initiated after the expiration of three months from the time the contravention is alleged to have occurred.

I have determined that the Complaint sets out conduct that is alleged to have occurred within the limitation period.

Pursuant to section 4.13 of the Code, when the Integrity Commissioner receives a formal complaint, she will conduct a preliminary classification review to determine if the Complaint is out of time; trivial, frivolous, vexatious, not made in good faith, or there are no grounds or insufficient grounds for a review. In addition, the Integrity Commissioner will determine if the matter subject of the Complaint is, on its face, a matter with respect to non-compliance of the Code or a matter that is more appropriately processed under another procedure. I have commenced my preliminary classification review and have determined that the matters are not trivial, frivolous, vexatious or not made in good faith

and there are sufficient grounds to pursue the matter through the Formal Review Process set out in sections 4.20 to 4.29.

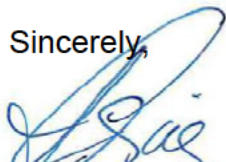
As part of the independent decision-making authority of an accountability officer, the Integrity Commissioner has the discretion to reformulate a complaint and investigate the reformulated complaint. In exercising the powers conferred upon her, the Integrity Commissioner must be able to interpret and reformulate complaints from individuals who may lack specific knowledge of the Code of Conduct and the Complaints Protocol and who may, therefore, not be familiar with how to identify and formulate alleged breaches.

With this Notice of Complaint, I am requesting that you provide me with a written response to the allegations of the Complaint within 10 days on or before October 11, 2023. Pursuant to section 4.26 of the Code, you may also choose to meet with me to discuss your written response, however a meeting with me is not required.

Please be advised that the Integrity Commissioner and every person acting under her jurisdiction shall preserve confidentiality throughout the Code complaint investigation process. Section 4.22 of the Code states that “the Complaint, any response to the Complaint, and the investigation of the Complaint shall be confidential until it is before the Board for a decision as to whether or not the respondent has breached this policy”. Therefore, I respectfully require that you refrain from sharing with others by any means (if you choose to seek independent legal advice, you may of course share with your legal counsel) any information about this complaint, including this and any future correspondence to and from this Office, for the duration of the process.

The details of the allegations in the Complaint are set out below on pages 3-6.

Sincerely,



Suzanne Craig
Integrity Commissioner

Details of the Allegations of the Complaint

The Complaint states:

While these unfortunate behaviours are not new, repeated attempts to convince these trustees to act in a more appropriate way have been unsuccessful. To the best of my knowledge and understanding, these attempts of reconciliation by various members of staff and the Board have not presented a change in behaviour(s) from the aforementioned trustees.

The date of these most recent breaches occurred between September 7th-11th 2023. Most notably, September 7th 2023 during a Board Professional Development Session, September 11 2023 during an in-camera session, public board meeting, and immediately following the conclusion of that same meeting.

3.2

“All Board Members shall be governed equally by this Code of Conduct and are expected to uphold the letter and spirit of this Code of Conduct in their interactions with other members of the Board, with the employees of the Board, and with students, families, and members of the public, including but not limited to: a) oral communications; b) written communications; c) social media; d) interviews; e) parent council updates; and f) trustee communications.

During our in-camera session dated September 11 2023, Chair Evans explicitly stated that the meeting we were about to enter would be contentious and reminded trustees and staff that the Chair was the official spokesperson for the board. Comments and questions from the media regarding this matter should be directed to the Chair. However, immediately following the meeting, [Trustee Kaplan-Myrth], [another named Trustee] and [another named Trustee] all approached and willingly shared their opinion on the matters before the Board that evening.

3.5

Board Members shall discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board.

On the date of September 11th 2023, Trustee Kaplan-Myrth, [another named Trustee], and [another named Trustee] did not inspire public confidence, and acted in a manner that brought into question the already precarious perception and trust in the Board. Trustee Kaplan-Myrth, [another named Trustee] and [another named Trustee] all gave emotionally charged interviews and shared their personal thoughts on the decision that went against the decision of the Board on social media platforms and verbally fought with members of the public after the board meeting. (supporting media articles attached)

3.7

Board Members must uphold the dignity of the office and conduct themselves in a professional manner, especially when representing the Board, attending Board events, or while on Board property.

During the September 11th 2023 public meeting both [another named Trustee] and Trustee Kaplan-Myrth spoke out of turn, raised objections that were not in order, and verbally assaulted each other (not shown in the live streamed meeting). Proceeding the meeting, 3 trustees did not inspire public confidence, and in my opinion, actively participated in the dismantling of the already precarious perception and trust in the Board.

3.8

Board Members shall ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to Board staff or fellow Board Members.

On our September 8th 2023 Professional Development session, there was a yelling match between Trustee Blackburn and Trustee Kaplan-Myrth.

Trustee Kaplan-Myrth used her social media platform and accused members of OCDSB staff of 'leaking confidential in-camera items' to members of the media, which I believe to be quite disparaging and demeaning, and further damaged public confidence of the Board, and our school district.

Statements given to the media immediately after the September 11th 2023 meeting(s) were highly inappropriate, suggested that trustees should resign, and further undermined the decision of the Board, all were personal comments that demeaned or disparaged their fellow Board Members.

Civil Behaviour

3.15

Board Members shall not engage in conduct that would discredit or compromise the integrity of the Board during meetings of the Board or at any other time.

During the public meeting, Trustee Kaplan-Myrth accused Trustee Blackburn of 'having it out for her since day one', engaging in a conduct that discredits the integrity of the Board. Trustee Kaplan-Myrth spoke out of turn many times and did not conduct herself with the decorum expected of a board member.

Trustee Kaplan Myrth used her social media platform during these dates and accused members of OCDSB staff of 'leaking confidential in-camera items' to members of the media, which I believe to be quite disparaging and demeaning, and further damaged public confidence of the Board, and our school district.

Statements given to the media immediately after the September 11th 2023 meeting(s) were highly inappropriate, suggested that trustees should resign, and further undermined the decision of the Board, all were personal comments that demeaned or disparaged their fellow Board Members.

3.17

All Board Members have a duty to treat members of the public, one another, students, and staff members respectfully and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment. This provision applies to all forms of written and oral communication, including via media interviews and correspondence and via social media.

3.18

All Board Members shall have regard for, and model, the behavioural expectations referenced in Policy [P.012.GOV](#): Board Governance, Policy P.125.SCO: School District Code of Conduct, and Policy [P.009.HR](#): Respectful Workplace (Harassment Prevention), and Policy [P.147.GOV](#): Human Rights.

During the September 11th 2023 public meeting, Trustee Kaplan-Myrth spoke out of turn and accused Trustee Blackburn of 'having it out for her since day one', eroding public perception of confidence and ability of the board.

Upholding Decisions**3.27**

Each Board Member shall uphold and not undermine the implementation of the decisions of the Board. A proper motion for reconsideration or rescission, if permitted by the Board's By-Laws and Standing Rules, can be brought by a Board Member.

3.28

A Board Member should be able to explain the rationale for a resolution passed by the Board. A Trustee may respectfully state their position on a resolution provided it does not in any way undermine the implementation of the resolution.

3.30

The Chair of the Board is the official spokesperson of the Board to the public. No other Board Member shall speak on behalf of the Board or represent themselves as the spokesperson for the Board unless expressly authorised by the Chair of the Board. When individual Board Members express their opinions in the media, they must make it clear that they are not speaking on behalf of the Board.

During our in-camera session dated September 11th 2023, Chair Evans explicitly stated that the public meeting we were about to enter would be contentious and reminded trustees and staff that the Chair was the official spokesperson for the Board. Chair Evans also clearly stated that any comments and questions from the media regarding this matter should be directed to the Chair.

Immediately after the public meeting, statements were given by Trustee Kaplan-Myrth, [another named Trustee] and [another named Trustee]. I believe this section of the code was breached, as to my understanding, it is not clearly noted in any media reporting that the statements

provided were personal opinions, and not official statements coming from the board/chair of the board. The statements given were not respectfully presented, and undermined the implementation of the resolution.

The Complainant has met with me and includes in the Complaint that the conduct and actions of September 8th – 11th, 2023 are part of an ongoing pattern of conduct that Trustee Kaplan-Myrth and the other Respondents knew or ought to have known were unwelcome and disrespectful to Board members and staff.

Supporting Evidence:

<https://tnc.news/2023/09/12/levy-kaplan-myrth-vote/>

<https://www.cbc.ca/news/canada/ottawa/nili-kaplan-myrth-trustee-ocdsb-code-rules-1.6963718>

<https://www.youtube.com/watch?v=IPDhltqG8mQ>

<https://ottawa.ctvnews.ca/get-back-to-basics-ontario-education-minister-urges-ottawa-school-board-1.6558045>

<https://twitter.com/nilikm/status/1701400910302237128>

<https://twitter.com/nilikm/status/1701330829169872929>

<https://twitter.com/nilikm/status/1701294399530082821>

<https://twitter.com/nilikm/status/1699962533694615886>

<https://twitter.com/nilikm/status/1702627554119557601>

<https://twitter.com/nilikm/status/1702074333974151549>

<https://twitter.com/nilikm/status/1701294368739430770>

<https://twitter.com/ChanLPfa/status/1701434296160989404>

Dear Madam Integrity Commissioner Craig

I acknowledge your email to me of September 29th in which you outline several complaints that have been lodged against me.

I will share with you my perspective on the events in question. In addition, I would like to take you up on your offer to meet and discuss this response.

Firstly, no member of staff has indicated to me that my behaviour is problematic as of late. In fact, many staff members expressed to me how well I managed the budget meetings and have received many accolades for how I have matured as a Trustee over the years. Like most roles, the longer one does it, you hopefully learn from your mistakes and improve. Do I get frustrated from time to time? I sure do. But I do not point and yell at people. Obviously, I am not privy to who launched this complaint but based on the contents I have a good guess.

I actually asked Executive Officer Giroux what I could change. She indicated I should consider not prefacing my comments with "as somebody who has been sitting here for thirteen years." But in my defence, I do that intentionally because we have to listen to "as a family physician" constantly. As Board members we all come to the table with different lived experiences and educational backgrounds. But at the end of the day we rely on staff to advise us on the best course of action as they are the education and operational experts. We come to the table as equals.

While it is true that Chair Evans explicitly stated that comments and questions from the media should be directed to her, that does not mean that my right to speak to the media is curtailed. This has been a longstanding issue at the OCDSB. In fact, Trustee Evans had no problem talking to the media during her first term, when she was not the Chair.

I will admit that I did not preface my comments to the media indicating that I was expressing my personal opinions and not speaking on behalf of the Board, as is my usual practice. In fact on June 14, 2023 I did an interview with Bill Carroll on local radio station CFRA and was very clear to state that I was not speaking on behalf of the Board and was going to express my personal opinion. I have consistently done the same on the Sam Laprade show on Citynews 1310 radio.

I do apologize for not being more careful, however it was a pretty chaotic night in which I was falsely accused by Trustee Kaplan-Myrth and I quote "you have been out to get me from day one." I would like to note here that this was the second time Trustee Kaplan-Myrth interjected in the meeting when she had no right to do so. The first time was when Trustee Dickson was speaking and she interrupted her and made an obviously frivolous point of order suggesting the meeting should not even have taken place. At no time did Chair Evans indicate my comments were inappropriate.

At no time did I personally attack Trustee Kaplan-Myrth. As the mover of the motion, I was simply making my case. In fact it was not up to Trustee Kaplan-Myrth to interject, yelling and pointing at me. (she consistently points at people)

In addition, at the end of the meeting, I requested that Trustee Kaplan-Myrth apologize to me for her completely unprovable accusation against me mentioned above. She refused. I indicated that if she apologized, I would drop the matter.

Since I did not receive an apology, I respectfully request that you use your authority to reformulate the complaint to include this matter. If Trustee Kaplan-Myrth was willing to issue a fulsome public apology, in a meeting that would satisfy me.

In fact, I could easily argue and prove it is actually the opposite. During our organizational meeting in November 2022, the only responsibility I received was Chair of Budget and only because nobody ran against me. I unsuccessfully ran for Student Trustee Mentor, despite being the second most senior Trustee and having done the role for two years. Rather the Board chose a rookie Trustee. It was very obvious to me and others that a plan was in place to make sure I did not get any committee assignments. I did get on the Ottawa-Carleton Education Network, but this is a very minor role of about three meetings a year.

Additionally, I think if you review the tape of the meeting where my motion regarding police in schools was ruled out of order, you would see that Trustees colluded against me to ensure that the motion was not debated.

I believe and have stated publicly that Trustees should vote on the matter at hand, not based on who puts forward a motion.

The meeting was recessed because Trustee Kaplan-Myrth started yelling at me. At no time did Chair Evans indicate my comments were inappropriate. In addition, I was not afforded the opportunity to conclude my wrap-up.

At no time did I "verbally fight with members of the public." In fact I spoke to two members of the public. Both who I knew. One of them was [REDACTED] I had worked with him on a previous file, which was solved to his and his community's satisfaction. In fact, I was not even his Trustee at the time, but I successfully argued a motion of reconsideration for him and his community as they were not satisfied with their own Trustee's actions.

He approached me and said, "do you remember who I am." I responded in the affirmative. He then proceeded to lecture me on how to conduct myself. I respectfully walked away. I noticed he was with Trustee Kaplan-Myrth and her husband in the entrance to the Board Committee room afterwards. During a telephone conversation with Executive Officer Giroux I asked her why [REDACTED] [REDACTED] was being given preferential treatment. She indicated that he was present as Trustee Kaplan-Myrth's legal counsel.

I find it disrespectful that he would approach me after the meeting was concluded. His tone was condescending. As I always say, they have their reputation and I have mine.

When we left the boardroom at the conclusion of the meeting. I saw where the reporters were sitting, three in all, two of whom I know well and I went to them. It is true Trustee Kaplan-Myrth

was ahead of me, but I did not "follow" her. When we got into that room she was yelling at me to "get out" pointing at me and yelled "out' This video is available on X.

I fail to understand why Trustee Kaplan-Myrth felt her interviews should take precedence over mine. I also fail to understand why I could not simply stay in the room. She ordered staff to get me out and I calmly walked out.

When she was done, I entered the room to do my interviews. Executive Officer Giroux then came in and told us all to leave as staff wanted to go home. Again, why was Trustee Kaplan-Myrth's security more important than mine? If according to Trustee Kaplan-Myrth the room was full of "white supremists" then was I not at risk? I had just told the crowd I was a lesbian who proudly raised a black daughter.

So Trustee Dickson and I had to do our interviews outside in the dark.

As for the September 7th 2023 Professional Development session, I do believe I was not afforded the same opportunity to speak as Trustee Kaplan-Myrth. As is too often the case she gets the last word. She literally pointed at everyone in the room and made demands. I addressed my comments to the Chair who was Trustee Scott. I even called her afterwards to indicate I was not happy with the unfairness of the situation.

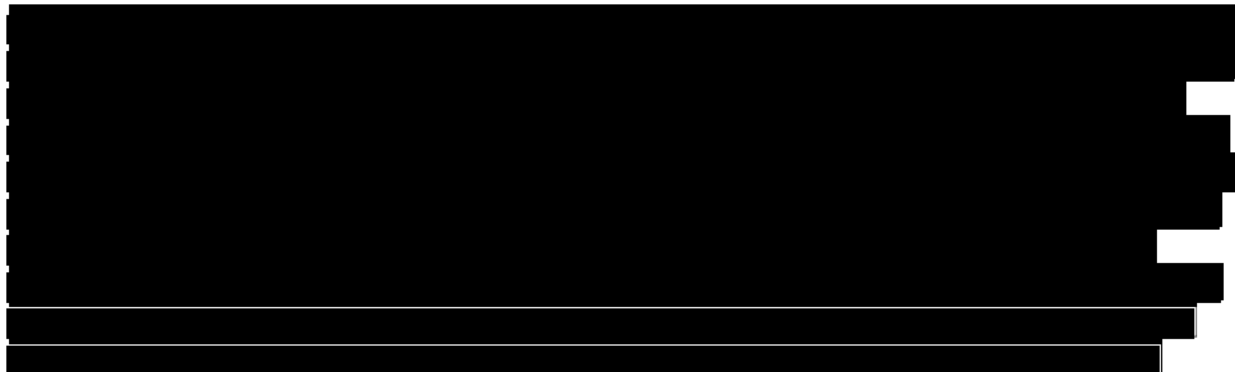
I have never suggested a Trustee should resign. I believe in a democracy the people should decide who their Trustee is. In fact, the previous Board did call for my resignation, I respectfully declined to do so and got re-elected.

One of the most odd complaints I find is "Trustee Donna Blackburn, while providing comments in the discussion, continuously addressed the attending members of the public as opposed to fellow board members, which demonstrated a lack of common respect, courtesy and willingness to work together as a board when making decisions"

I have reviewed the utube video of the meeting. When I moved the motion I rarely looked up to the audience. In my wrap up I did a bit more. Is the person who lodged this complaint really suggesting we need to now monitor who a Trustee makes eye contact with while they are speaking? This I believe is in fact not only frivolous, but very frivolous and I would like you to consider the motivation of the person who lodged the complaint. It seems to me, they are throwing everything at me but the kitchen sink.

Lastly, I can tell you from multiple experiences, this process is very stressful for me and impacts my mental health in a very real way. During my second term I had a complaint hang over my head for eight months, and in the end it was simply dropped, no investigation at all. I suspect you have many clients and are very busy but I would ask that you attempt to have this matter brought forward as quickly as possible and that "foot dragging" not be permitted. To that end, I will fully co-operate and will not be retaining legal counsel. The last formal complaint against me, myself and my legal counsel co-operated fully and in a very timely fashion. In fact, it was the other side

that was slow and my reputation was further damaged because the community assumed it was I who was holding things up. You would be aware I could not comment on the situation.



Chair Evans has been ineffective in getting Trustee Kaplan-Mryth to understand that posting inflammatory things on X is not helpful and further polarizes people. I believe and have publicly stated that I believe as community leaders our job is to turn the temperature down not up. I firmly believe that by turning the temperature up we are actually putting kids at further risk for harm.

I have literally talked to her twice. The first time was at the parent conference and I told her I looked forward to working on adopting the IHRA definition of anti-semitism for our Board as the TDSB has done. It was most clear to me that she had predetermined who I am and from her perspective it was not good. The only other time I have spoken to her directly was during a budget meeting. She felt I had put a Trustee ahead of her in the speaking order. I could tell by the facial expression she gave me. So when there was a recess I went over and explained to her that someone had put a sub-amendment, so I went to the first speaker on that and then back to her when we were back to the main motion. I did not let any personal feelings get in the way of performing my duties in a professional manner. I am well aware that new Trustees struggle with procedure, I was simply trying to be helpful.

Trustee Kaplan-Mryth continues to claim she will defend herself. Well so will I. Thus the rub. I was very very very clear with both the Interim Director Giroux and Dr. Buffone, I will never back down from a bully, never have. Bullies thrive when people are scared of them.

I am most pleased that the "politics" has been taken out of this process and gone to an Integrity Commissioner model. I feel moving forward complaints will be looked at in a very objective manner. Perhaps this will bring some level of functionality to this Board, though there is much work to do.

I will forward you a separate email exchange that occurred around the "Chair is the spokesperson for the Board."

Sincerely Yours
Trustee Donna Blackburn
Barrhaven West/Barrhaven East

October 10th, 2023

Ms. Suzanne Craig
Interim Integrity Commissioner, Ottawa-Carleton District School Board
133 Greenbank Road
Ottawa, ON K2H 6L3

RE: Response to Code of Conduct Complaint

Dear Ms. Craig,

I write this letter to you as my formal response to the Code of Conduct Complaint (hereinafter the “Complaint”) that I had received on September 29th. Upon receipt of the Complaint, you requested that I “provide a written response to the allegations of the Complaint within 10 days on or before October 11th, 2023”. I hope that my response suffices and provides reasonable answers to these allegations.

Before proceeding, it should be noted that in your initial letter addressed to me containing the Complaint, you stated that it was of your professional opinion that the Complaint was valid having met the criteria of not being “...out of time; trivial, frivolous, vexatious, not made in good faith, or there are no grounds or insufficient grounds for a review”. While I don’t dispute the timing of the Complaint given the allegations deal with recent media interactions, I dispute your opinion that this Complaint is not vexatious in nature. When I brought my complaint against Trustee Kaplan-Myrth earlier this year, it took several months for that complaint to be addressed by the Board of Trustees in a special meeting called for that purpose. Now, in a short period of time following that meeting, this new Complaint has been brought forward against myself with my interactions involving the media being part of the basis for the allegations made in the Complaint as is outlined.

The timing of this Complaint speaks to its vexatious nature. Prior to September 11th, I’ve issued a personal media release in response to Chairperson Evans’ public position on the Ottawa Police Service and their role as a community partner. The Complaint does not reference these interactions, yet instead references my interactions with the media after the complaint I brought forward against Trustee Kaplan-Myrth was heard by the Board of Trustees. This leads me to conclude that the Complaint was brought forward in response to the complainant’s disagreement with the content of the media’s reporting rather than the fact that the complainant had a genuine problem with me engaging with the media in general.

Further, on September 12th of this year, Chairperson Evans stated that going forward, any trustee speaking to the media as an individual would not be reprimanded as it is not a violation of the Board Member Code of Conduct (P.073.GOV) to speak to members of the media as an individual. The complainant seemingly disagrees that the views I expressed to members of the media regarding my complaint against Trustee Kaplan-Myrth were of my own accord and not on behalf of the Board of Trustees. On all occasions when I have in the past spoke to members of the media whether it be via press scrum or a one-on-one interview, I have always made it clear that I am speaking on behalf of myself as a publicly elected official and not as a spokesperson of or on behalf of the Board of Trustees. Whether members of the media choose to include this fact in their reporting is not in my control and it is ultimately not my responsibility as an interviewee to ensure they do so.

Allegation of Violation of Section 3.2 of the Board Member Code of Conduct

“During our in-camera session dated September 11 2023, Chair Evans explicitly stated that the meeting we were about to enter would be contentious and reminded trustees and staff that the Chair was the official spokesperson for the board. Comments and questions from the media regarding this matter should be directed to the Chair. However, immediately following the meeting, [another named Trustee], Trustee Dickson and [another named Trustee] all approached and willingly shared their opinion on the matters before the Board that evening.”

The complainant alleges that on the evening of September 11th, I as a trustee, approached and willingly shared my opinion on the matters before the Board of Trustees that evening. This is factually incorrect. On that evening, members of the media were present and attempted to interview myself and fellow trustees after the meeting had concluded. After Trustee Kaplan-Myrth gave an interview in the designated media seating area, Executive Officer of Corporate Services Michèle Giroux told members of the media and remaining trustees to leave and conduct any further interviews outside of the boardroom and the boardroom’s foyer. As I was preparing to leave, Trustee Blackburn asked myself to stay and speak to members of the media. Given the nature of the meeting that evening and the gravity of the situation, I believed it was important to share my thoughts. Again, I made it clear to members of the media present that I would be speaking on behalf of myself as a publicly elected official and not as a spokesperson of or on behalf of the Board of Trustees.

Allegation of Violation of Section 3.5 of the Board Member Code of Conduct

“On the date of September 11th 2023, [another named Trustee], Trustee Dickson, and [another named Trustee] did not inspire public confidence, and acted in a manner that brought into question the already precarious perception and trust in the Board. [Another named Trustee], [another named Trustee] and Trustee Donna Dickson all gave emotionally charged interviews and shared their personal thoughts on the decision that went against the decision of the Board.”

The Board of Trustees has an existing reputation in the school community for being dysfunctional and does not inspire public confidence. Simply reiterating the public's existing perception of the Board of Trustees does not undermine trust in the Board of Trustees. What can undermine trust in the Board of Trustees is the actions of trustees and more specifically – failure to act when necessary. While the complainant may find my personal thoughts to be controversial, they did not go against the decision of the Board of Trustees itself. I made it clear to members of the media that I will uphold the Board of Trustees' decision despite my disappointment with it and that I consider my complaint against Trustee Kaplan-Myrth to be a closed matter as far as it relates to the work of the Board of Trustees. Whether or not the media chose to report this fact is irrelevant.

Allegation of Violation of Section 3.8 of the Board Member Code of Conduct

“On our September 8th 2023 Professional Development session, there was a yelling match between 2 Trustees. Trustee Dickson also made unsavoury comments regarding who would be shot first should an active shooter attend our meetings, which was not an issue based comment, and also was demeaning and disparaging of coworkers. Statements given to the media immediately after the September 11th 2023 meeting(s) were highly inappropriate, suggested that trustees should resign, and further undermined the decision of the Board, all were personal comments that demeaned or disparaged their fellow Board Members.”

Regarding my interactions with members of the media on the evening of September 11th, I stand by my response as outlined above. On September 8th, I acknowledge that the room's environment got tense and that I did make a comment about an active shooter during a professional development session. The context of this comment is important.

The intention behind this comment was to convey my thoughts that the Ottawa-Carleton District School Board and its administration has much to do in terms of making our school environment a safe, accepting place where all students can learn and thrive. In referencing an active shooter, I was attempting to portray the systemic discrimination and violence that many black Canadians like myself still experience in our daily lives and make a comparison that I as a black Canadian and publicly elected official, am also a target by many of the same white supremacist individuals that have harassed Trustee Kaplan-Myrth over the past year. While I stand by my comments, I understand how my words may have been taken out of context and seen as off-colour by fellow trustees and staff.

Allegation of Violation of Section 3.15 and 3.17 of the Board Member Code of Conduct

“Statements given to the media immediately after the September 11th 2023 meeting(s) were highly inappropriate, suggested that trustees should resign, and further undermined the decision of the Board, all were personal comments that demeaned or disparaged their fellow Board Members.”

Regarding my interactions with members of the media on the evening of September 11th, I stand by my response as outlined above. The allegations made by the complainant in this instance acknowledges that my thoughts expressed to members of the media were of a personal nature. This essentially detracts the complainant’s own argument that I have violated Section 3.30 of the Board Member Code of Conduct (P.073.GOV) by not making it clear to members of the media that my words were personal opinions. Further, the complainant argues that I have violated Section 3.17 of the Board Member Code of Conduct (P.073.GOV) which states that *“All Board Members have a duty to treat members of the public, one another, students, and staff members respectfully and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment”*. Based on the complainant’s own argument that I suggested certain trustees should resign, I fail to see how I have violated Section 3.17. My comments did not attack any trustee based on the content of their character or on any protected personal attributes. Simply criticizing a trustee based on their performance and in their capacity as a publicly elected official does not constitute a lack of respect, abuse, bullying, intimidation, discrimination or harassment. In fact, I stated that it was Trustee Kaplan-Myrth who was the one responsible for creating a toxic work environment by her pattern of behaviour and bullying towards both myself and fellow trustees.

Allegation of Violation of Section 3.27, 3.28 and 3.30 of the Board Member Code of Conduct

“During our in-camera session dated September 11th 2023, Chair Evans explicitly stated that the public meeting we were about to enter would be contentious and reminded trustees and staff that the Chair was the official spokesperson for the Board. Chair Evans also clearly stated that any comments and questions from the media regarding this matter should be directed to the Chair. Immediately after the public meeting, statements were given by [another named Trustee], [another named Trustee] and Trustee Dickson. I believe this section of the code was breached, as to my understanding, it is not clearly noted in any media reporting that the statements provided were personal opinions, and not official statements coming from the board/chair of the board. The statements given were not respectfully presented, and undermined the implementation of the resolution.”

Again, I reiterate that when I have spoke to members of the media whether it be via press scrum or a one-on-one interview, I have made it clear that I am speaking on behalf of myself as a publicly elected official and not as a spokesperson of or on behalf of the Board of Trustees. Whether members of the media choose to include this fact in their reporting is not in my control and it is ultimately not my responsibility as an interviewee to ensure they do so. I have made it clear that I accept the outcome of the decision of the Board of Trustees in respect to my complaint. It is also important to note that it was the majority opinion of the Board of Trustees that Trustee Kaplan-Myrth should be sanctioned, however, no sanctions were imposed on Trustee Kaplan-Myrth given the high threshold of trustees required to vote in favour. My position was expressed to members of the media in a professional manner that still respected the outcome of the Board of Trustees’ decision. On September 12th, I issued a media release which stated *“While the motion [to sanction] did not pass, I accept the outcome of the vote.”* which supports my position that I did not violate Section 3.27 which states *“Each Board Member shall uphold and not undermine the implementation of the decisions of the Board”*.

In closing, I am deeply disappointed that this Complaint has been brought forward. It is my position that this Complaint is unfounded and vexatious in nature. The fact that the complainant brought this forward knowing their Complaint had the potential to further disrupt the regular work of the Board of Trustees by the need to potentially hold yet...

Zone 8 – Orléans East-Cumberland / Orléans South-Navan

...another special meeting to address the Complaint's allegations supports my personal views that the Board of Trustees is dysfunctional and has a misalignment of priorities. As Trustee Presley stated on September 11th, my code of conduct complaint cost the Board of Trustees over \$20,000 and while I view that expense as necessary to maintain the integrity of the Board of Trustees, a point was made that further issues between trustees should be resolved prior to having to involve the administration's integrity commissioner. Instead of dealing with the many issues facing our public school system such as the increase in violence on and around school premises, student drug use and a failing student transportation authority, the complainant has levied this Complaint against myself and fellow trustees.

When it comes to speaking with members of the media, it is my responsibility and duty as a publicly elected official to be able to communicate about the work of the Board of Trustees to my constituents as is outlined in the *Education Act*. Accountability and transparency are hallmarks of a successful democratic system that the Board of Trustees should strive to uphold. I make no apologies for my interactions with members of the media and stand by comments unequivocally. While the complainant may be focused on stifling my ability to do the work that I was elected to carry out, I will continue to represent students and all public ratepayers across Zone 8.

Thank you for bringing this Complaint to my attention. I intend to comply with the complaint process and I look forward to a swift resolution so both myself and the rest of the Board of Trustees can get back to important matters at hand. Should you have any further questions or comments about my response to the Complaint, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to be the name 'Donna Dickson', written in a cursive style.

Donna Dickson
Zone 8 Trustee, Ottawa-Carleton District School Board

Response on Behalf of Trustee Dr. Kaplan-Myrth to Code of Conduct Complaint Part 2: Legal Submissions

Part 1 of Trustee Dr. Kaplan-Myrth's response to the Code of Conduct complaint (the "Complaint") consisted of her personal factual response, laying out the background and relevant facts that provide a context for the matters raised in the Complaint and refuting specific allegations made against her.

Part 2 sets out the legal argument as to how the Code of Conduct is to be interpreted in its specificity; how the facts set out in Part 1 are to be evaluated as a consequence; and crucially, the impact of this analysis on the Integrity Commissioner suite of powers under the Code to craft a more appropriate procedure to address some of the issues raised in the Complaint.

Overview

As will be discussed in detail below, it is submitted on behalf of Trustee Dr. Kaplan-Myrth that on the basis of both the facts and the law there is no basis to find that Trustee Dr. Kaplan-Myrth breached any of the provisions of the Code of Conduct cited in the Complaint. On the other hand, it will be asserted that the formal complaints process, with its associated hearing, will itself be a near certain trigger for yet more of the very sorts of harm to the reputation and image of the Board cited in the Complaint, without in any way solving the underlying issues that the Complaint itself recognizes gave rise to the events cited.

My Credentials

I hold a PhD. From Stanford University and an LLB. From the University of Toronto. I served as law clerk to Chief Justice Brian Dickson in the Supreme Court of Canada for some twenty years I practiced law with the firm of McCarthy Tetrault, ultimately as partner and head of its Public Law practice Group. I served for a time in government, first as Senior Policy Advisor to Attorney General Ian Scott, later a Assistant Deputy Attorney General for Legal Services, where I was responsible for the Civil Law Division and the Constitutional Law Branch and then, for the best part of a decade as Deputy Attorney General for Ontario where I was responsible for all legal and constitutional advice to the government. In that role I advised four Attorneys General representing two parties. In my career I have provided confidential legal and constitutional advice to six Premiers representing three parties as well as three Lieutenant Governors. I have served as lead Commission Counsel for the air India Inquiry and the Military Police Complaints Commission and senior advisor to the recent Public Order Emergency Commission. In 2019 I was awarded the Order of Ontario, which I am told is Ontario's highest civilian award.

Although these submissions are made on behalf of Trustee Dr. Kaplan-Myrth, I have a professional and ethical obligation not knowingly to misstate the law. Responsibility for the argument of how the law should be applied to the facts at hand rests with me alone.

Preliminary Matter: Severance of Complaint

The Complaint is ostensibly made against Trustee Dr. Kaplan-Myrth in conjunction with two other Trustees. The actual Complaint must be considered against each Trustee separately. This response is directed at the allegations against Trustee Dr. Kaplan-Myrth exclusively. Nothing said with regard to those allegations should be taken as necessarily applying to specific allegations against other Trustees. One of the central tenets of the submissions being made is that every complaint under the Code of Conduct must be assessed in its specific context. Although the interpretive principles set out below should apply to all cases and all complaints, specific facts matter and that specificity may (or may not) dictate different outcomes based on different facts.

1. Interpretive Principles

A) Interpretive Principle. How to Read Policy Documents: “The Constitution is Not to be Read as a Suicide Pact”

High level policy documents including constitutions, codes of conduct and the like, set out specific rules and standards designed to achieve a higher goal or set of goals. Those rules and standards are sometimes written in general terms. When coming to interpret those rules and standards it is important to keep in mind the nature of the document being interpreted and its purposes. In the US this concept is sometimes expressed in the dramatic phrase “The Constitution is not to be read as a suicide pact” meaning that it is important to remember the purpose of the constitutional provision when interpreting its meaning so as to prevent an interpretation (often a literal one) that ends up subverting the very rights the constitution is meant to protect.

In Canada this doctrine has been articulated in less dramatic and far more practical terms by the Supreme Court of Canada as the requirement to take a **purposive approach** to this sort of interpretation (*Hunter et al. v. Southam Inc.*, [1984] 2 SCR 145, at pp. 155-6). The meaning of the specific section or provision of such an enactment must always be understood in terms of advancing the purpose or goal of the overall document and certainly never as contradicting those goals. The broadest literal reading of the words of a provision is therefore not always the one that makes the most sense in the context of what the enactment is actually trying to achieve. In every case one must keep front and centre the purpose of the overall enactment and how the specific provision in question furthers that purpose.

B) Interpretive Principle. Reconciling Restrictions on Speech with the Charter guarantee of Expressive Freedom

Codes of conduct inevitably involve some restrictions on what those covered by the code made say. Where the code is established by a private employer or by government

pursuant to a collective agreement, there is no issue. In the first case there is no government action, so the Charter does not apply. In the second the restriction is voluntary pursuant to the collective agreement. A Code of Conduct such as that of the OCDSB is established pursuant to the *Education Act* so the Charter applies. In the case of *Del Grande v. Toronto Catholic District School Board*, [2023 ONSC 349](#). The Divisional Court held that restrictions of expressive freedom in codes of conduct applicable to school board trustees were governed by the principles set out in *Doré v. Barreau du Québec*, [2012] 1 SCR 395. In that case the Supreme Court of Canada held that the decision maker needed to balance the salutary benefits of the reasons of the policy restricting the expression in question against the damage to Charter values from the specific curtailment. If the damage outweighed the benefit, then the curtailment could not be justified.

C) Interpretive Principle. Where the complaint is the result rather than a specific blameworthy action leading to the result

A feature of the criminal code of most authoritarian regimes is a crime of sullyng the reputation of the regime or its leader. The means by which this is accomplished is not a relevant consideration; it is the very fact of the regime or the leader losing face that constitutes the offence. This way of understanding accountability is entirely alien to our traditional understanding of accountability for our actions. The generally accepted principle is that except in the rarest of instances one is not held accountable for consequences without an independent blameworthy action. Were that not so then truth would not be a defence against a claim for damages in defamation, no whistleblower could safely come forward and no one could ever admit a mistake made by her company.

This means that *when the result of one's actions is to lower the reputation of an organization, that result itself is not blameworthy unless the action leading to that result is itself independently blameworthy.*

D) Interpretive Principle/Special Consideration. When the Process Itself is an Aspect of the Problem

Physicians speak of an *iatrogenic illness*, which is an illness that is caused by the very treatment of an illness or disease. A rough analog is a legal or quasi-judicial process that causes the very problem that it is ostensibly aimed at responding to or preventing. The clearest example of this phenomenon is so-called SLAPP (Strategic Litigation Against Public Participation) litigation where entities that are the objects of public interest initiatives launch lawsuits against the leaders of such campaigns alleging tortious damage with the aim of intimidating their opponents and making it too expensive and financially risky for them to continue their campaign. A striking example of the use of such tactics with regard to a code of conduct occurred in the State of Montana last year where the Republican majority in the State legislature used a provision in its legislative code of conduct calling for respectful and decorous conduct by members of the legislature to

expel a member of the legislature who said her colleagues had “blood on their hands” for denying access to medical support for people undergoing gender transition.

This issue is discussed more fully below in the discussion of “weaponizing” the Code of Conduct.

2. Applying the Principles to the specific sections of the Code alleged in the Complaint to have been breached by Trustee Dr. Kaplan-Myrth

A) S 3.2

All Board Members shall be governed equally by this Code of Conduct and are expected to uphold the letter and spirit of this Code of Conduct in their interactions with other members of the Board, with the employees of the Board, and with students, families, and members of the public, including but not limited to: a) oral communications; b) written communication; c) social media; d) interviews; e) parent council updates; and f) trustee communications.

This complaint is based on disregard of instructions given by the Chair of the Board at an in camera meeting which Trustee Dr. Kaplan-Myrth was (arguably wrongly) not invited to attend. On the facts therefore there can be no breach on her part.

B) S. 3.5

Board Members shall discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board.

The complaint lumps together all three Trustees complained against as though each is to be judged by the actions of all the others. That is entirely improper. Each can only be accountable for her own actions in their individual context.

This particular section refers to the manner in which Trustees “discharge their duties.” Insofar as the Complaint refers to interviews, social media posts etc. under this heading, they are not relevant. The only potentially relevant matters related to “duties” that might be referred to are what transpired at the meeting itself. Here there are several relevant interpretive principles.

First, the basis for this aspect of the Complaint is that it allegedly resulted in a reduction of public confidence by members of the public in the reputation of the Board. As noted above, in our legal and constitutional system it is not enough to allege such a result unless it is brought about by some wrongdoing. Trustee Dr. Kaplan-Myrth’s factual response makes clear that her specific participation in the meeting amounted to two interventions, one to request a clarification regarding the procedure being followed and the second a spontaneous objection to what she honestly perceived was a highly inappropriate stereotyping attack by a Board member. There was nothing inappropriate substantively or procedurally about the first intervention. As for the second, it is by no means clear that

the public would view a Trustee's refusal to accept being labelled in someone else's stereotype as lowering the Board's reputation. (Note that this says nothing about the public's potential view of the fellow Trustee's labelling attempt.) In any event, objecting to being stereotyped is not an independent act of wrongdoing as would be required to sustain a complaint. That leaves speaking out of turn. Taking a purposive approach to interpretation, a single intervention, even out of turn, to protest being labelled in an inappropriately demeaning stereotype is not capable of constituting the type of wrongdoing required to sustain a violation of s. 3.5, nor would it lower the public reputation of the Board. Were it otherwise, it would constitute precisely the sort of weaponization of the Code of Conduct process that itself would bring the reputation of the Board into disrepute.

Additionally, we are dealing with speech and a proposed imposition of a sanction on speech. For that reason, a balancing as set out in *Doré v. Barreau du Québec (supra)* is necessary. In doing that balancing it is important to remember, as stated above, that what is being alleged is that the *result* is a lessening of public confidence. As set out in Trustee Dr. Kaplan-Myrth's recitation of the facts, her interjection was a heartfelt protest against an allegation that was clearly against public policy. It would be impossible to justify restricting a Charter value of expressive freedom in order to allow the smearing of a private reputation in order to protect an institutional reputation, especially absent any independent wrongdoing by the person complained against.

Each reason is sufficient to find there has been no breach of s. 3.5. The additional considerations simply reinforce each other.

C) 3.7

Board Members must uphold the dignity of the office and conduct themselves in a professional manner, especially when representing the Board, attending Board events, or while on Board property

This is essentially a repetition of the complaint under s. 3.5. The complainant states that the nub of the complaint is that the matters complained of amounted to participation "in the dismantling of the already precarious perception and trust in the Board." However, as the Complaint itself notes, the specific words complained of were not shown on the live stream. That being the case, on a purposive approach, they cannot be said to lower the reputation of the Board among members of the public who didn't hear them. Furthermore, the Complaint once again lumps all three Trustees complained against together, so there is no way to assess who was doing what and with what justification if any.

Trustee Dr. Kaplan-Myrth's factual response provides considerable added insight into her limited interventions at the meetings and the reasons for them, but in addition all the reasons cited above for finding there was no breach on her part of s. 3.5 apply with equal force with respect to s. 3.7.

D) 3.8

Board Members shall ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to Board staff or fellow Board Members.

This is an especially egregious allegation since in three paragraphs it takes a kitchen sink approach to mix together allegations spanning several different occasions and involving different Trustees doing different things (sometimes not involving Trustee Kaplan-Myrth at all) to paint a confused and confusing picture that on examination turns out to be wildly distorted.

Trustee Dr. Kaplan-Myrth's factual response should be read carefully to disentangle the factual jumble.

With respect to the events at the September 8 Professional Development session, it is important to remember that this session was held in camera. There can therefore be no question of the public gaining or losing confidence in circumstances where it is not privy to what was said or how it was said.

Furthermore, Trustee Dr. Kaplan-Myrth's statements were at all times responsive to the subject matter under discussion and represented her honest beliefs based on true facts. There can be no justification for censoring or censoring such comments under a plain reading of s. 3.8, let alone given the case law on expressive freedom.

Trustee Dr. Kaplan-Myrth's comments regarding public disclosure of certain information was similarly well within the ambit of protected speech. On the level of fact, the disclosure was made by a notorious far right publication. Trustee Dr. Kaplan-Myrth's comments were directed at this leak and the personal consequences to her safety and well being that resulted.

Provisions in the Code regarding demeaning or disparaging others must be read in context and based on an understanding of general rights and freedoms. It cannot be that this section or 3.17 provide for immunity for all Board members, staff (or in the case of s. 3.17, also teachers, students and members of the public) from all criticism or negative observations regardless of whether there is merit to the remarks. S. 3.8 must be read as providing protection for Trustees and staff from bullying and unmerited disparagement, not as a ban on honest criticism. The Code literally could not work otherwise.

The final paragraph of the allegation under this section is totally inapplicable to Trustee Kaplan-Myrth and insofar as she is by implication swept into the allegation, it is borderline deceptive. Trustee Dr. Kaplan-Myrth never called for anyone to resign. She was the target of others' calls to resign and as such is the *victim* of incivil behaviour and not, as the wording of the Complaint, one of its perpetrators.

E) Civil Behaviour

S. 3.15

Board Members shall not engage in conduct that would discredit or compromise the integrity of the Board during meetings of the Board or at any other time

S. 3.17

All Board Members have a duty to treat members of the public, one another, students, and staff members respectfully and without abuse, bullying or intimidation, and to ensure that the work environment is free from discrimination and harassment. This provision applies to all forms of written and oral communication, including via media interviews and correspondence and via social media.

S. 3.18

All Board Members shall have regard for, and model, the behavioural expectations referenced in Policy P.012.GOV: Board Governance, Policy P.125.SCO: School District Code of Conduct, and Policy P.009.HR: Respectful Workplace (Harassment Prevention), and Policy P.147.GOV: Human Rights

The allegations under these three sections essentially are the same. In fact there are no separate particulars offered with respect to s. 3.17 and the only specific allegation with respect to s. 3.18 repeats the allegation with respect to s. 3.15 that Trustee Dr. Kaplan-Myrth stated at the September 11 meeting that Trustee Blackburn “had it in for her from day one.”

With respect to that allegation, as set out in Trustee Dr. Kaplan-Myrth’s factual response, the words are well supported by the facts and there can be no issue that she believed them to be true. The mere fact that the public might have lost some confidence in a member of the Board cannot be a justification for prohibiting a true statement from being made. This would be exactly the situation where the result becomes the basis for the offence rather than any wrongdoing on the part of the speaker. Our institutions are resilient enough to be able to stand up to fact-based criticism by one member of the Board of the conduct of another. If truth and “fair comment” (a statement of honest opinion based on true facts) are defences to a charge of defamation it is difficult to see how a Code of Conduct could attach a penalty to such speech, simply because it showed a member in an unflattering light.

The words in question would therefore also be protected under the test in *Doré v. Barreau du Québec*.

The second allegation under the “civil behaviour” section again concerns Trustee Dr. Kaplan-Myrth’s statements regarding the disclosure of certain confidential information. Once again, as set out above and as discussed by Trustee Dr. Kaplan-Myrth in her factual response, these statements were based on true facts, expressed her honest opinions and were relevant to the integrity of the Board’s proceedings as well as to her own justified concerns for her personal safety. In that context, there is no issue of bullying or harassment by Trustee Dr. Kaplan-Myrth and any concerns raised were eminently

justified. Once again, if there might have been any effect on public perception of the Board (which is questionable at best) that cannot be the basis of sanctions absent any independent wrongdoing by Trustee Kaplan-Myrth, which the facts and context demonstrate did not occur. Once again, the test in *Doré v. Barreau du Québec* would unquestionably vindicate her expressive freedom.

The final allegation under this heading once again deals with comments to the media following the September 11 meeting. Here again, the complaint lumps together all the Trustees complained against and appears to allege that Trustee Dr. Kaplan-Myrth was one of those calling for resignations, when in fact she was the one being called on to resign, and in circumstances where her own comments were unobjectionable. This allegation has no basis in fact and is, as previously stated, borderline misleading.

F) Upholding Decisions

3.27

Each Board Member shall uphold and not undermine the implementation of the decisions of the Board. A proper motion for reconsideration or rescission, if permitted by the Board's By-Laws and Standing Rules, can be brought by a Board Member.

3.28

A Board Member should be able to explain the rationale for a resolution passed by the Board. A Trustee may respectfully state their position on a resolution provided it does not in any way undermine the implementation of the resolution.

3.30

The Chair of the Board is the official spokesperson of the Board to the public. No other Board Member shall speak on behalf of the Board or represent themselves as the spokesperson for the Board unless expressly authorised by the Chair of the Board. When individual Board Members express their opinions in the media, they must make it clear that they are not speaking on behalf of the Board.

The allegations under this section are entirely without merit. They are based in part on instructions given by the Chair at an in camera meeting of Trustees to which Trustee Dr. Kaplan-Myrth was not invited. The rest of the allegations are based on a failure to accept the decision of the Board and here too there can be no application to Trustee Dr. Kaplan-Myrth since the complaint against her failed at the Board meeting.

It is puzzling why these sections and the allegations under them were added to the complaint against Trustee Dr. Kaplan-Myrth.

G) Conclusions Regarding the Formal Complaint Under Specified Sections of the Code of Conduct

Applying the facts to the allegations under the specific sections of the Code under which the Complaint was made, and with the assistance of the interpretive principles set out in section A above, it is clear that there is no reasonable basis to conclude that Trustee Dr. Kaplan-Myrth breached any of the sections of the Code of Conduct as alleged.

3. The Real Issues Underlying the Complaint

In an addendum following the official written complaint, there appears the following paragraph by the Integrity Comm

The Complainant has met with me and includes in the Complaint that the conduct and actions of September 8th – 11th, 2023 are part of an ongoing pattern of conduct of Trustee Kaplan-Myrth and the other Respondents all of whom knew or ought to have known that their conduct, statements and behaviour were unwelcome, intimidating and disrespectful to Board members and staff. Examples of ongoing actions, statements and behaviour that the Respondents knew or ought to have known to be unwelcome and disrespectful to Board members and staff include but are not limited to:

- **“An email to members of the Board, staff, and public besmirching the district, refusing to accept or support a safety plan around the upcoming meeting, related to the threats”;**
- **“Yelling at one another at the interview of then candidate Pino Buffone”;**
- **“Disclosing the substance of the Code of Conduct complaint that would be discussed at the September 11th Board meeting even though staff advised that this was covered by a complete embargo and complete confidentiality”**
- **“continuous social media posting that undermined the decisions of the Board and the District”**

These allegations are not made pursuant to any specific section of the Code.

It is respectfully submitted that **they are in fact the subtext for the entire Complaint itself and constitute its unstated real issue, namely a breakdown in communication and trust among Board members that permeates the activities and functioning of the Board.**

The specific allegations once again lump together the Trustees complained against. The only new specific allegation against Trustee Dr, Kaplan-Myrth concerns her negative reaction to a proposed safety plan put forward by staff to attempt to deal with threats of death and bodily harm to Trustee Dr. Kaplan-Myrth. The answer to that specific allegation is that surely Trustee Dr. Kaplan-Myrth is entitled to a voice with respect to the adequacy of proposed safety plans since it is her safety that is in issue.

That, however, may be beside the point. What appears evident from the Integrity Commissioner’s summary is that though the complainant has identified the fact that there

are wider issues, there are still major limits to the insights about those issues. From Trustee Dr. Kaplan-Myrth's perspective it is alarming that the reflexive response appears to be to try to attach blame for the dysfunction, and even more alarmingly, from the summary it seems as though, despite all the evidence, the focus still seems to be on Trustee Dr. Kaplan-Myrth who may be being scapegoated as bearing primary responsibility, mainly it would seem, because she refuses to be bullied and insists on standing up for herself.

Be that as it may, the dysfunction and lack of trust at the Board level cannot be resolved by scapegoating an individual and certainly not Trustee Dr. Kaplan-Myrth. As the review of the Complaint above demonstrates, a formal complaint against her cannot succeed on the merits. Indeed, it is better to see the complaints process and its attendant hearing and Board decision, not as a panacea, but rather as a manifestation of the very problem described in the addendum. In other words, the Code of Conduct complaint and hearing can't solve the problem; it illustrates and would exacerbate it.

4. The Better Way: Rejecting "Code of Conduct" as a Transitive Verb

A) The Problem

It is respectfully submitted that in the current context the complaints process under the Code of Conduct has become precisely the sort of "*iatrogenic*" process described in section 1.D. above, where the "remedial" process itself becomes a cause of harm. A tell-tale indicator is the migration of the use of "Code of Conduct" from a proper noun to a transitive verb as in "to Code of Conduct someone," meaning to use the Code of Conduct process as a *weapon* against someone. This *weaponization* of the Code of Conduct focuses on the penalties, sanctions and stigma associated with a successful complaint rather than any remedial or protective purpose set out in the Code itself. As such, it is the exact opposite of a *purposive approach* to the Code.

Proof of this notion is evident by considering the matter from a remedial perspective.

In the complaint considered by the Board on September 11, the complainant rejected mediation, rejected Trustee Dr. Kaplan-Myrth's apology and insisted on a Board hearing in pursuit of a remedy (a public apology) that is not within the available remedies under the Code and then, after her complaint failed at the Board level went on to call in the media for a remedy of Trustee Dr. Kaplan-Myrth's resignation. Clearly, the aim was not to uphold any of the purposes listed in the Code in terms of upholding the reputation of the Board nor was it to use the process to obtain any of its available remedies. The goal was the process itself, with any attendant negative publicity, stigma or pressure that might attach to Trustee Dr. Kaplan-Myrth. In other words, to use the process as a weapon, as a sword, not as a shield. As Trustee Dr. Kaplan-Myrth's factual response tellingly demonstrates the personal consequences of this weaponization can be, and in

this case were, devastating, leading to intolerable threats to personal safety and psychological well being.

Without necessarily impugning the motives of the current complainant, a consideration of the remedial perspective is also enlightening. As stated above, on the substantive level, the Complaint cannot succeed on the merits in any case. If, however, it is correct, as also suggested above, that the essence of the Complaint is to be found not in the written allegations under the numbered sections of the Code, but in what underlies the matters raised in the issues discussed in the Integrity Commissioner's summary in her addendum, namely the dysfunction and distrust that permeates the Board's operations, then it is abundantly clear that resort to the formal complaints process offers no remedy at all. To the contrary it only serves to pour gasoline on the fire. Given the dynamics of the Board, its political divisions, the media interest, the history of leaks and the various expressive freedom issues, it is entirely foreseeable that despite anything that Trustee Dr. Kaplan-Myrth may do to prevent a recurrence, precisely the same deplorable negative publicity and media frenzy will surround this Complaint as engulfed its September predecessor.

In other words, the Complaint, ostensibly aimed at correction of damage caused by actions that led to negative publicity and hence damage to the Board's reputation, will foreseeably end up leading to negative publicity and hence damage to the Board's reputation.

B) The Solution

The previous complaint was dealt with under the former Code of Conduct which provided little if any discretion with respect to the process. The current Complaint is being dealt with under the 2023 revision to the Code, which gives the Integrity Commissioner new tools to deal with complaints so as to ensure that they are dealt with appropriately, fairly, on their merits and in their essence. As stated in the Integrity Commissioner's covering letter transmitting the Complaint:

"...if at any time during the course of the formal review, I determine that some of the issues raised by the Complaint are more appropriately addressed under another procedure, I will advise the parties."

It is respectfully submitted that the issues raised by the complainant, meaning the real underlying issues of Board dysfunction and distrust, cannot be appropriately dealt with through the formal hearing process which will only exacerbate the problems rather than solve them. The issues are systemic and will not be cured by an attempt at scapegoating, certainly not where Trustee Dr. Kaplan-Myrth is the intended scapegoat. The Code's remedial toolkit is ill suited for that task in any event.

A better procedure should be found.

Ideally that procedure would resemble mediation in that it would not be a zero-sum process aimed at identifying winners and losers, those in the right and those in the wrong, but rather at identifying the obstacles to the Board's ability to conduct its business

appropriately and possibilities for overcoming those obstacles, including consequences for a failure to find such solutions. Ideally, as well, rather than dividing the Board into complainant and respondents on the one hand and “adjudicators” on the other, the procedure would involve all Board members equally as equally invested in finding ways to overcome a situation that compromises them all in their roles as Trustees.

5. Conclusion

It is respectfully submitted that this matter should be diverted from a process that would lead to a formal hearing and instead the issues raised should be dealt with in a non- adjudicative, non-adversarial procedure involving all Board members in a common effort to overcome the issues of dysfunction and distrust that underlie the Complaint.

In the alternative, if this matter does continue in the formal process, the Integrity Commissioner should recommend that each complaint against Trustee Dr. Kaplan-Myrth be dismissed.

All of which is respectfully submitted,



Mark J. Freiman PhD. LLB. OOnt.

Mark Freiman Law

October 10 2023

Suzanne Craig
Integrity Commissioner
OCDSB

APPENDIX 3C.2

cc:
Mark Freiman, respondent's legal counsel

October 10, 2023

Dear Commissioner Craig,

Re: response to allegation dated September 29, 2023

I am writing this in response to the allegations, dated September 29, 2023, that I violated OCDSB's Code of Conduct. I do not, at this time, know who submitted the complaint.

Please also see the letter from my legal counsel, Mark Freiman.

I question the validity of a complaint that groups me together with Donna Dickson and Donna Blackburn. The complainant must distinguish between us. If the submission is not divided into three separate complaints, it is meaningless.

That said, I am NOT guilty of any of the alleged violations outlined in this complaint. This complaint is an attempt to cause me further harm. It is vexatious and it is designed to silence me. Finally, it violates my Charter rights to speak, to defend myself from racism, and to advocate for my constituents.

I ask that you dismiss the complaints against me, and I implore you as the Integrity Commissioner to encourage the OCDSB to put an end to the abuse of the Code of Conduct process. The Director of Education and the Chair of the Board have asserted to trustees that there is a real risk of our Board being shut down by the Minister of Education. This complaint—if it is aired publicly—will exacerbate that instability. My inclusion in this complaint, furthermore, is an attempt to scapegoat me for dysfunction that existed long before I joined the Board. The toxic pattern of weaponizing the Code of Conduct process, the refusal of trustees to seek mediation, must change. It is inexcusable that the complainant is attempting to demonize me. It is heartbreaking, exhausting, and demoralizing that I must expend any more energy, after coming out of six months of stress from the previous complaint which was defeated by the Board on September 11, 2023.

In the following pages, I will address the specific issues that are raised, separating myself from the conduct of the other two trustees.

3.2: September 11, in-camera meeting

The complainant asserts that during an in-camera session, on September 11, Chair Lyra “*explicitly stated that the meeting we were about to enter would be contentious and reminded trustees and staff that the Chair was the official spokesperson for the board. Comments and questions from the media regarding this matter should be directed to the Chair. However, immediately following the meeting, [Trustee*

Kaplan-Myrth, [another named Trustee] and [another named Trustee] all approached and willingly shared their opinion on the matters before the Board that evening.”

I was not privy to the in-camera session on September 11. I was excluded from that meeting—because it was a session to discuss the Code of Conduct on the agenda that day—and CANNOT be accused of violating instructions. I was sitting in the Chair’s office, with my family at the time. I absolutely did NOT know that the Chair asked trustees not to speak immediately following the meeting.

Trustees Donna Dickson and Donna Blackburn, on the other hand, were in that in-camera session. They knew of the Chair’s warning and chose to speak with media, regardless. As you will see from the next item, their media engagement was problematic for many reasons, not least because they contacted media before the meeting was public knowledge, and they used public platforms, including True North Canada (far-right media), to attempt to specifically cause me, the Chair, and other trustees on the Board further harm.

3.5: Sept 11, media

The complainant states that on September 11th, 2023, ***“Trustee Kaplan-Myrth, [another named Trustee], and [another named Trustee] did not inspire public confidence and acted in a manner that brought into question the already precarious perception and trust in the Board. Trustee Kaplan-Myrth, [another named Trustee] and [another named Trustee] all gave emotionally charged interviews and shared their personal thoughts on the decision that went against the decision of the Board on social media platforms and verbally fought with members of the public after the board meeting.”***

Not only did trustees Donna Dickson and Donna Blackburn knowingly disregard the Chair’s instructions not to speak with media, but it was also brought to my attention on September 8 that Rebel News knew that the topic of the Special Meeting was a Code of Conduct against me. There is no way that the far-right could know that, ahead of time, unless it was leaked by one of the other members of our Board.

It was also brought to my attention on September 10, by a journalist at the Ottawa Citizen who reached out to me, that an invitation to a media release was sent out by trustee Donna Dickson inviting all media to speak with her after the Special Meeting. I have attached a copy of that media release. She violated the embargo on speaking about the Special Meeting ahead of time, and she—and Donna Blackburn—not only expressed their opinions on the outcome of the proceedings but also explicitly defamed and insulted me in their conversations with CBC, CTV, Ottawa Citizen, CFRE radio. Bizarrely, Donna Dickson also reached out to give an exclusive interview to True North (which can ONLY have the purpose of causing me harm).

I did not speak publicly until the OCDSB had shared the details of the Code publicly. At that point, it was my Charter right to respond to the public. I asserted, *“I am shaking with fury that OCDSB is letter a vexatious trial to occur (I called out white supremacy and advocated for mass in #Ottawa schools!) while anti-maskers and antisemites threaten to shoot me,”* and I shared one of the recent death threats. I asserted, *“Going after me is entirely politically motivated. So what’s next? I’ll continue to work as an @OCDSB trustee. And I won’t abide toxicity inside or outside of the school board. I was elected in #Ottawa because I speak, I advocate. Onward.”* It is my Charter right to say what I said on my personal Twitter/X account and elsewhere. I did NOT besmirch the reputation of any colleague. I did not question the outcome of the hearing. I commented on the pattern of abuses of the Code of Conduct process.

I also wrote, *“NOT OK. In the face of antisemitism, disinformation, and a campaign by the far-right to see my head roll, today I’m on trial with @OCDSB, accused of a code of conduct violation for calling out white supremacy and saying #Ottawa trustees should all care about health & safety.”* Given that OCDSB

had decided—despite our pleas to keep the issue out of the public eye—to post the details of the Code and to proceed with the process in front of a camera, I had a Charter right to respond, as an elected official and as a Jewish woman under attack. Again, I was commenting on the abuse of the Code of Conduct process, the harms caused by the process to myself and my family.

When I exited the meeting on September 11, 2023, I gave interviews to CBC and CTV and Ottawa Citizen, to say that there is a pattern of toxicity that must stop. It is well within my right to say that. I acknowledged that I should not have questioned how much other trustees care, reiterated that I apologized for that text message in November 2022, and I asserted that—as a woman subject to daily antisemitic death threats who stands up against all forms of discrimination—I am mortified to be characterized as a white woman attacking a Black woman.

I posted on social media that it was NOT a victory. I focussed on the harassment of me, as a Jewish woman, as a physician, and as ally for 2SLGBTQ youth. My assertion was, *“I was not found guilty at @OCDSB tonight. But it isn’t a victory. We live in a dangerous time. I have a Charter right to point out that we were bombarded by white supremacists, to express political opinion, and to lobby colleagues. It isn’t safe to be a Jew in politics in #Ottawa.”*

The media frenzy after the hearing was not, as I have stated, orchestrated by me. Trustees Donna Dickson and Donna Blackburn invited the press to speak with them. Furthermore, they did so with the purpose of further defaming me and Chair Lyra and the colleagues who abstained from voting that night.

The complainant’s assertion that I “verbally fought” with the public after the board meeting is an outrageous mischaracterization. I did NOT fight with the public. When I exited the OCDSB boardroom on September 11, I was confronted by Donald Francis Smith, a man (not a journalist) well known by Ottawa Police who records video to distribute to far-right parties. Mr Smith was breaking his probation for criminal harassment. I asked him to back off, as I tried to enter the media room to speak with CBC, CTV, Ottawa Citizen. He would not step away from me. I asked security and staff to help me. Finally, my husband and my legal support, Amir Attaran, intervened and asked OCDSB to clear the atrium. I also asked Donna Blackburn to give me space to speak with media without her hovering over me.

Later that evening, OCDSB issued a “no trespass” to Mr Smith. The following day, I received a death threat from Mr Smith, asserting that he will kill me if he encounters me in the streets of Ottawa. That was reported the same day to Ottawa Police, file 23-299-303.

The following day, September 12, I was contacted by Ezra Levant at True North Canada, informing me that my colleague had given an exclusive interview to them, and asking if I wanted to comment. I did NOT comment. However, trustee Donna Dickson spoke with Levant. She explicitly went out of her way to cause me harm. The article in True North Canada was a hit piece on me and on the Board. I responded to that article when it was brought to my attention. Thousand of people began to troll me, on social media and via email, because of that article. On my personal Twitter account I asserted, *“Ironic to see her play in a sandbox with the far-right. Whatever, call me a “bully” for saying we should protect students and staff from #COVID19 in #Ottawa. I’ll continue to stand up for health and safety, call out disinformation, and condemn antisemitism, anti-2SLGBTQ hate.”* It is my Charter right to defend myself when attacked by the far-right and, indeed, to comment when attacked publicly by a fellow trustee.

In response to ongoing public accusation that I committed a heinous crime by sending one text message to my trustee colleague, I wrote, *“If a man were to say publicly (let alone a private text during a debate, once) that a politician doesn’t care about XYZ, it would be politics, not news. Also, calling out white supremacy isn’t racism. Anti-2SLGBTQ hate & antisemitism are the real story. IMO.”* It is my Charter right to speak as a politician and to defend myself from defamatory accusations.

While I was focussing on the issue of systemic discrimination and the need to advocate for marginalized populations, Donna Dickson was defaming me on True North Canada and Donna Blackburn was posting personal attacks on me on social media (Instagram). Mark Bourrie, an Ottawa lawyer, sent letters to Donna Dickson and to Donna Blackburn to ask them to stop personally attacking me. There was no response from Donna Dickson and from Donna Blackburn there was an angry, rude response to Mr Bourrie. (See attached)

3.7 dismantling trust in the Board

The complainant asserts that “*Proceeding [sic] the meeting, 3 trustees did not inspire public confidence, and in my opinion, actively participated in the dismantling of the already precarious perception and trust in the Board.*”

The harassment and death threats that resurge each time that I put forward a motion to our school board, or speak up on behalf of constituents, or advocate as a physician on behalf of my patients and community are NOT a violation of a Code of Conduct. I CANNOT be accused of wrongdoing for literally doing my work as an elected official. The vitriol that ensues is NOT my fault. It is NOT my voice that is bringing shame to the OCDSB. Those who have chosen to target me, and the organized hate that we are seeing in other Districts—the disruptions are not unique to OCDSB—are the problem.

Note, also, that I requested mediation. My legal team requested mediation. We implored OCDSB NOT to make the hearing a public spectacle, as it would further endanger me and embarrass the Board. Donna Dickson refused, asserting that she wanted me to have to apologize publicly. Donna Dickson reached out to media and gave True North an interview.

3.7 conduct during Special Meeting

The complainant asserts that on September 11 during the Special Meeting, “*Trustee Kaplan-Myrth accused Trustee Blackburn of ‘having it out for her since day one’, engaging in a conduct that discredits the integrity of the Board. Trustee Kaplan-Myrth spoke out of turn many times and did not conduct herself with the decorum expected of a board member.*”

I spoke twice on September 11 at the Special Meeting. First, when Donna Dickson began to speak, I asked – as a formal point of order – for clarification about why this Code of Conduct was submitted in February for a single interaction that took place in November. I asked for clarification of the timeline because Suzanne Craig, Integrity Commissioner, had just advised me that complaints cannot be submitted if they occurred more than 3 months prior. There was a change in Code of Conduct policy that occurred in June 2023, and I was seeking clarification. Michele Giroux, as Executive Officer, answered my question about the old policy.

The second time that I spoke at the September 11 meeting was to object to Donna Blackburn’s summation, in which she shockingly referred to me as a “white woman attacking a Black woman.” I said, “*I object, you will NOT characterize me as a white woman. I am a Jewish woman who has received daily antisemitic death threats for standing up for health and safety. You have been out to get me from day one, as my colleagues can validate.*”

I forgot to say, “point of personal privilege.” That is true. However, I considered this to be a racist, antisemitic attack. As the person under attack, I spontaneously but justifiably challenged her hateful words.

The current complaint against me must be seen as part of a pattern of hostility against me. I implored Chair Lyra not to proceed publicly with Trustee Dickson’s allegation. I apologized immediately and sincerely to the Chair and to the Integrity Commissioner in November 2022. When I was notified of the complaint in February 2023, I wrote a heartfelt apology to my colleagues. I asked for mediation. It was denied. I changed my behaviour, had no further contact with Donna Dickson, never spoke another word of criticism—privately or publicly—against any individual. I have kept to myself avoiding all interactions with fellow trustees other than to let them know that I continue to be the subject of antisemitic and anti-trans death threats. I was warned in January, 2023, by more than one progressive colleague that Donna Blackburn was recruiting others to write a Code of Conduct complaint against me. That was validated by the Investigator, Michael Maynard, who interviewed the trustees who approached me (he kept their names anonymous in the report). The toxicity within the Board existed long before I joined the Board. That toxicity will sadly out-live my tenure on the Board. I have already suffered the trauma of the barrage of threats from the far-right and the weight of the previous Code hanging over my head for six months. My legal counsel implored the OCDSB to consider my safety prior to the September 11, 2023 public hearing, and that consideration was not given heed. At the time, we were told that we had to allow the process to play itself out, that our only remedy was judicial review. My family and I suffered the consequences of that harmful process.

3.8: Sept 7, Professional Development session

The complainant asserts that a “*breach occurred on September 7, 2023, during a Board Professional Development Session.*” That was a session in which the trustees and the Director of Education, Pino Buffone, Michele Giroux, and Nicole Guthrie were in camera to discuss our personal experiences and reflections on our first 9 months of work with the OCDSB. We had completed a “self evaluation” survey and were encouraged to speak honestly and freely about what we felt works well and needs improvement as individuals and as a group.

I politely, silently listened to others speak.

I then raised my hand and spoke from the heart, to describe how the toxicity within the Board surprised me, when I arrived as a trustee, and to explain the trauma of the daily antisemitic harassment and death threats that I have been subject to since joining the OCDSB as a trustee. I asked for the board of trustees to validate my concerns, rather than responding with silence, I supported the idea of formal group mediation, and I asked that we do something substantive to improve safety for all of us. I also noted that serious psychological toll of the harassment on me, and my family, cannot interfere with my ability to do my job as a physician.

Donna Dickson responded (out of turn) with a dismissive comment that if I don’t want death threats I shouldn’t speak publicly. Donna Dickson has repeatedly in OCDB meetings dismissed the seriousness of the antisemitic death threats that I have received. I politely and calmly asked Donna Dickson to please refrain from commenting on my personal statement.

Donna Blackburn then raised her hand. She began her comments by launching into an objection to mediation and then –I cannot recall what it was precisely that she said—started to say something about me or about the Board as a whole. My memory is that Chair Lyra then asked Trustee Blackburn not to continue, at which point she angrily stood up and left the room, saying, “Only some people get to speak.”

All trustees as well as Director Pino Buffone and Chief Executive Officer Michele Giroux were witness to that exchange.

After that meeting, I posted in my personal Twitter account: *“Imagine turning to a room of colleagues to say their silence as I receive antisemitic death threats isn’t OK. The only person to respond says *they* are uncomfortable with the risk I bring to them (dismissing that I’m the target as a Jew), so can I please stay off social media...”* It is my Charter right to express my experience of antisemitism. I did NOT say it was a meeting at the OCDSB, I did NOT name names or defame a colleague. I was letting the public know that silence in the face of antisemitism is complicity.

3.8: calling for resignations and undermining the decision of the Board

The complainant also asserts that *“statements given to the media immediately after the September 11th meeting(s) suggested that trustees should resign, and further undermined the decision of the Board.”*

Again, I did NOT make any such comments, at any time. I did NOT suggest that trustees should resign, nor did I undermine the decision of the Board on September 11. I acknowledged the outcome, acknowledged that I should never have sent a text message to question the degree to which fellow trustees “care” in November, and that I had already formally apologized in writing.

On September 11 and September 12, 2023, following the outcome of the code of conduct process that she insisted upon -- despite pleas from my legal counsel that it would cause me undue harm and put me in significant danger -- Donna Dickson arranged to speak with CBC and CFRE radio in Ottawa and told the Ottawa community that I am "a bully." On September 14, 2023, she was quoted in True North - a far-right tabloid - in an interview with Elie Cantin-Nantel. I have attached the full text of the interview as an appendix. The following is an excerpt:

Ottawa-Carleton District School Board (OCDSB) trustee Donna Dickson is slamming her board for not holding fellow trustee Nili Kaplan-Myrth accountable for what Dickson sees as bullying.

Dickson says Kaplan-Myrth should resign.... In an exclusive interview with True North, Dickson shared her disappointment with the board - noting that the decision sends a bad message. "We have four trustees who know the truth and choose to turn a blind eye," she said. "We suspend students for bullying, and yet, they're okay with a trustee bullying. What message are we really sending to our students?... that you can get bullied and you have no right, even though you might be right."

Dickson believes it would be best if Kaplan-Myrth resigned from her position. "Her behaviour towards the board, towards the public, towards the speakers that we've had, when she does not agree with what they have to say, her disrespect, is beyond what it is to be a politician... You can't do business, right? She needs to do check her own words. If she's doing that to a minority trustee... as a doctor, what is she doing to her own patients?"

Dickson also criticized the board's chair, Lyra Evans, for her handling of the process. "The administration, the director, and Lyra chose not to follow through," she alleged after she made the complaint. "I had to hound and hound... We need a chair that will sit there and do the job, so we don't have the Nilis within the board trying to push other agendas all the time."

I have not had any personal interaction - communication via text or in person - with Donna Dickson or Donna Blackburn since November 2022, other than asking her in our in-camera meetings not to dismiss antisemitism each time that I ask OCDSB to respond to the seriousness of the threats I face. Trustee Donna Dickson asserted in her interview with True North Canada and in other interviews that I am a "bully" and called for my resignation. Her assertion that I should be forced to resign echoes the Rebel

News petition which OCDSB General Counsel, Richard Sinclair, had taken down on March 23, 2023. At that time, he asserted: *"We are concerned with the content of the petition and the nature of the comments that it is generating and believe that you have the legal obligation to remove it. Specifically, we are of the view that the petition and the resulting comments are abusive and defamatory toward our trustee, negatively impacts the reputation of the OCDSB, and undermines public confidence in public education. As well, many of the comments could be considered unlawful hate speech within the meaning of Canada's Criminal Code. This petition was prompted by an incident at a recent meeting of our trustees related to the rights of trans and gender diverse students. This has galvanized those in and outside of the community that oppose trans rights, and the petition has a growing number of supporters who appear to be from outside of our community, and is contributing to an unsafe environment for our trustees, staff and, most importantly, for our students. In fact, just today our trustee received an email titled ""Tranny lovers will be slaughtered" and which includes overt death threats against the trustee and anyone who stands with our trans students. This is therefore not an issue of freedom of expression, but one of hate speech and threats of violence."*

3.8 social media use

The complainant asserts that ***"Trustee Kaplan Myrth used her social media platform during these dates and accused members of OCDSB staff of 'leaking confidential in-camera items' to members of the media, which I believe to be quite disparaging and demeaning, and further damaged public confidence of the Board, and our school district."***

From November 2022 until January 2023, sometimes multiple times in a day, I received antisemitic death threats. I received emails during Chanukah that threatened to "gas" me, to kill me and use my skin as a "lampshade" (Holocaust references). My husband and children were threatened. My clinic staff had to wade through vitriol, swearing, people calling me a f-ing k-, words that would make my grandparents (Holocaust survivors) roll over in the graves. Each threat was reported to the Hate Crimes Unit of the Ottawa Police. An arrest warrant was issued for one of the offenders, a man in Windsor, Ontario, but despite reassurances from the Sergeant that he was going to "turn himself in," he was never apprehended. Most of the email messages were anonymous, untraceable.

An anonymous email on March 23rd threatened, "You will be slain, Nili. You are a disgusting, tranny loving k-. You are a child-abusing groomer. The petition will end your public life, and a butcher's knife will end your actual life. You are not safe anywhere. We know your routine and where you live." That email, if you can imagine, has been followed by dozens of similarly egregious threats. September 3, 2023, while Canadians were getting ready to send their children back to school, I received an email to my OCDSB account threatening me, "Nili, U should wear bulletproof vest at the next OCDSB meeting. We have all your addresses and know ur movements and so much more about you than you can imagine. We have had enough of your jewish, tranni-loving behaviour. This is not a threat but rather a promise. The world will finally be rid of you, and the children of Canada will be safe. Be on the lookout but know that we will see you before u see us."

I brought some of the most egregious threats—there were many others, by phone and email, that were reported to Ottawa Police but not shared on social media—to the attention of trustees and senior staff.

I shared some of the threats on social media because they are not isolated, they are a pattern, they are part of organized hate in Ontario and across Canada and North America.

I did NOT comment on the September 11 Special meeting until the meeting agenda and report were made public. Even until the day of the meeting, my legal counsel (Mark Freiman) was imploring the OCDSB not to release the documents publicly.

Once those documents were made public by the OCDSB, I had a Charter right to speak publicly. I spoke about the pattern of abuses of the Code of Conduct process in boards of education. I am NOT prevented from defending myself when Rebel News or True North write hit pieces on me. I am NOT prevented from speaking freely about the death threats and harassment I experience. I am NOT prevented from discussing the lack of safety measures and the disappointment that OCDSB failed to warn me about the access to information request (about my safety plan). My physical and psychological wellbeing are at stake.

I did NOT disparage any specific person, did NOT engage in character assassination or defamation of my colleagues, CANNOT be blamed for any shame brought to OCDSB as a result of what has transpired in the last nine months.

OCDSB staff might have made different decisions, such as to hire a proper security firm to evaluate threats and create a proper safety plan, to inform me of the ATIP request before sharing information with Rebel News, to clear the boardroom of disrupters, to prevent known harassers from entering the building.

If anyone has attempted to defame or cause harm, to the OCDSB and to me and my family, it is trustee Donna Dickson, through her interview with True North Canada, and trustee Donna Blackburn, through her Instagram posts and campaign to turn others against me. For context, see the True North Canada article and the Instagram post, attached.

3.8: leak of information

The complainant asserts that, *“Trustee Kaplan Myrth used her social media platform during these dates and accused members of OCDSB staff of ‘leaking confidential in-camera items’ to members of the media, which I believe to be quite disparaging and demeaning, and further damaged public confidence of the Board, and our school district.”*

In June, 2023, I stepped outside of the OCDSB building to take a call from my son before a board meeting. Unbeknownst to me, someone working for Rebel News – a far-right rage-farming blog – was in the parking lot, waiting to give me a petition to demand that I resign as trustee. They accosted me, trying to shove the petition into my hands while videotaping my reaction. I told them to back off, as I backed myself through the OCDSB doors. Then in July, 2023, Rebel News published an online hit piece (see attached) in which they included email documents commenting on my safety plan from OCDSB senior staff – under an access to information request, which the OCDSB provided without warning me – in which one senior staff says to another that I “baited” Rebel News. (See attached).

I did NOT share any information with anyone. Rebel News requested the information from OCDSB, and OCDSB staff did not protect me. I have already submitted a formal complaint to the Privacy Commissioner about that issue.

I did not bring shame to OCDSB. It is absolutely my right to respond to the Rebel News piece, and to comment on the lack of attention to my safety (and victim-blaming) demonstrated in the handling of the Access to Information request.

On September 8, someone—presumably within the OCDS—leaked news that I was subject of a code of conduct special meeting on September 11. The person who leaked this from the OCDSB to the far-right gave it to a man named Rowan Czech-Maurice, who goes by the Twitter/X handle, @canamericanized. He seems to generate news for Rebel News/True North. (See attached) These are true facts.

Conclusion

I am NOT guilty of any of the alleged violations in this submission. I ask that you recommend dismissing the entire complaint in relation to me. This Code complaint is an attempt to cause me further harm. It is vexatious and it is designed to silence me. Furthermore, it violates my Charter rights to speak, to defend myself from racism, and to advocate for my constituents.

The Director of Education and the Chair of the Board have asserted to trustees that there is a real risk of our Board being shut down by the Minister of Education. This complaint against me will exacerbate that danger. Another hearing of complaint against me—even if the charges are dismissed, as was the case on Sept 11, 2023—will draw further harmful attention from the far-right, people who are organized to disrupt and cause as much harm as possible to me and to progressive members of our Board. It will increase the antisemitic death threats I receive, creating serious risks to my safety and the safety of my family. It will put all of us on the Board at increased risk of harm. It would be prudent to proceed with caution.

As you aware, I am not very hopeful that any form of mediation will reduce the toxicity within the OCDSB, given how engrained it is in the history of the Board. It is inappropriate to scapegoat me for that dysfunction. I am nevertheless willing to engage, in good faith, with my colleagues in a COMMUNAL process of mediation, if we are ALL involved—it cannot single out me—and if it is an embargoed, in-camera process. Sadly, given the pattern, there must be assurance that it is a psychologically and physical safe space to engage in such a process.

Sincerely,

A handwritten signature in black ink, appearing to be 'N. Kaplan-Myrth', written in a cursive style.

Dr Nili Kaplan-Myrth

MARK BOURRIE PhD JD
Barrister and Solicitor

11-190 Booth St.
Ottawa, ON
K1R 7J4
613-255-2158

Donna Blackburn, Trustee, OCDSB
donna.blackburn@ocdsb.ca

September 13, 2023

Dear Ms. Blackburn,

Re: Nili Kaplan-Myrth

While you have the right to your opinions, you don't have the right to attack my client. Dr. Kaplan-Myrth has been the subject of abuse, anti-Semitic attacks and death threats since being elected to the OCDSB. You may not agree with her views on issues, but you should realize that the people who engage in this kind of behaviour are encouraged by the strong and sometimes defamatory language that you have used against Dr. Kaplan-Myrth.

The only way for this cycle of abuse to end is for those who encourage or tolerate it to take stock of their actions and consider the need of Dr. Kaplan-Myrth for safety. Like you, Dr. Kaplan-Myrth has a mandate from her voters and she has the right to share her opinions without being attacked. You have seen the dysfunctional people who engage in the abuse of your fellow trustee. Do you really want to make common cause with them?

I ask you to give serious thought to the impact of what you say before you speak about my client. Are you engaged in defamation? Are you feeding the rage that this small group of people has for my client? Are you compromising her safety?

Please give serious thought to consequences before speaking to the media. Trustees who attack my client leave themselves open to legal consequences but, even more importantly, stoke the kind of abuse that too many women in public life suffer.

Yours truly,



Mark Bourrie PhD JD
Counsel to Dr. Kaplan-Myrth



Fwd: Media Advisory

Laucius, Joanne <jlaucius@postmedia.com>
To: Nili Kaplan-Myrth <drkaplanmyrth@gmail.com>

Mon, Sep 11, 2023 at 3:43 PM

Sent from my iPhone

Begin forwarded message:

From: Cameron Bonesso <cameron@constituent.ca>
Date: September 10, 2023 at 4:40:01 PM EDT
To: Cameron Bonesso <cameron@constituent.ca>
Subject: Media Advisory

MEDIA ADVISORY

September 10th, 2023***For Immediate Release***

Ottawa-Carleton District School Board Trustee Donna Dickson to Speak on Potential Code of Conduct Breach

Background:

Shortly after the Special Board Meeting of the Board of Trustees of the Ottawa-Carleton District School Board, Trustee Donna Dickson will host a media availability accompanied by fellow trustees to speak on a potential breach of the Board's code of conduct and the ongoing issues facing the Board itself.

Where:

Foyer to the board room in the administration building located at 133 Greenbank Road. The board room has limited space available. Therefore, it is advised that interested members of the media that wish to attend the full out-of-camera portion of the Special Board Meeting be in attendance a sufficient time prior to the start of the meeting in order to ensure a seat. A live stream of the Special Board Meeting can be viewed by [clicking here](#).

When:

After the conclusion of the Special Board Meeting beginning at 7:30 PM local time on Monday, September 11th. Time of conclusion of the Special Board Meeting is uncertain given the nature of the meeting's agenda which can be viewed by [clicking here](#).

Media Contact and Information:

Cameron Bonesso
Constituent Manager Solutions
cameron@constituent.ca
905-410-2207



Donna Blackburn



1h · [Public icon]

So to update you.

I received a letter from my colleague, Trustee Kaplan-Myrth 's lawyer Mark Bourrie telling me to be careful when I speak to the media or I could be sued....LOL..Thank you for your kind advice, but I have this Trustee thing figured out now after 13 years.

It is also interesting to note that Mark Bourrie also represented Maxime Bernier in a high profile case and lost.

When I asked staff why Amir Attaran was being given preferential treatment at the meeting, i was informed that he was there as Trustee Kaplan-Myrth's legal counsel.

Mr Attaran and I were once on very good terms as I once helped his community fix something, something his own Trustee had messed up.

I find the use of the term "witch hunt " interesting on many levels, but mostly because an ex-president uses it a lot....LOL



tnc.news

Ottawa school trustee slams board for not reprimanding Nili Kaplan-...
Ottawa-Carleton District School Board trustee Donna Dickson is slammng her board for not holding fellow trustee Nili Kaplan-Myrth ...



Fire Nili!



(/unhinged_trustee_narrowly_evades_ethical_code_violation)

Unhinged trustee narrowly evades ethical code violation

(/unhinged_trustee_narrowly_evades_ethical_code_violation)

By Tamara Ugolini (/journalist_tamara_ugolini)



(/internal_ocdsb_documents_trustee_nili_kaplan_myrth_refused_safety_plan)

Exclusive: Internal OCDSB docs show trustee Nili Kaplan-Myrth refused to follow her safety plan

(/internal_ocdsb_documents_trustee_nili_kaplan_myrth_refused_safety_plan)

By Sheila Gunn Reid (/journalist_sheila_gunn_reid)



(/fire_nili_update_we_caught_the_mask-obsessed_school_board_trustee_to_deliver_your_petition)

FIRE NILI Update: We caught the mask-obsessed school board trustee to deliver your petition!

(/fire_nili_update_we_caught_the_mask-obsessed_school_board_trustee_to_deliver_your_petition)

By Sheila Gunn Reid (/journalist_sheila_gunn_reid)



(/fire_nili_mask_obsessed_tv_doc_turned_school_board_trustee_tweets_weird_anti_christmas_criticism)

Fire Nili: mask-obsessed TV doc turned school board trustee tweets weird anti-Christmas criticism

(/fire_nili_mask_obsessed_tv_doc_turned_school_board_trustee_tweets_weird_anti_christmas_criticism)

By Sheila Gunn Reid (/journalist_sheila_gunn_reid)



(/protest_at_the_ottawa-carleton_district_school_board)

Protest at the Ottawa-Carleton District School Board

(/protest_at_the_ottawa-carleton_district_school_board)

By Alexandra Lavoie (/journalist_alexandra_lavoie)



(/fire_nili)

PETITION: Fire Nili Kaplan-Myrth from the Ottawa-Carleton District School Board!

(/fire_nili)

By Sheila Gunn Reid (/journalist_sheila_gunn_reid)



(/ottawa_dad_removed_from_school_board_delegation_in_radical_display_of_democratic_oppression)

Ottawa dad removed from school board delegation in radical display of democratic oppression

(/ottawa_dad_removed_from_school_board_delegation_in_radical_display_of_democratic_oppression)

By Tamara Ugolini (/journalist_tamara_ugolini)



(/ontario_education_minister_stephen_lecce_plans_to_incorporate_how_to_identify_legitimate_versus_misinformation_in_ontario_school_curriculum)

Ontario Education Minister Stephen Lecce plans to incorporate how to identify legitimate versus misinformation in Ontario school curriculum

(/ontario_education_minister_stephen_lecce_plans_to_incorporate_how_to_identify_legitimate_versus_misinformation_in_ontario_school_curriculum)

By Tamara Ugolini (/journalist_tamara_ugolini)



(/reactions_a_medical_doctor_in_need_of_some_medical_assistance)

REACTIONS: A medical doctor in need of some mental assistance

(/reactions_a_medical_doctor_in_need_of_some_medical_assistance)

By Rebel News



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Exclusive: Internal OCDSB docs show trustee Nili Kaplan-Myrth refused to follow her safety plan

Bureaucrats accused the mask-obsessed hypochondriac TV doctor-turned-school board trustee of "baiting" Rebel News journalists into a confrontation at a petition drop-off.

By Sheila Gunn Reid (/journalist_sheila_gunn_reid) | July 31, 2023 | News Analysis



"Rebel News tried to serve a petition to Nili. She started screaming at them."

"Oh no."

In recently obtained communications records, bureaucrats accuse the mask-obsessed hypochondriac TV doctor-turned-school board trustee of "baiting" *Rebel News* journalists into a confrontation at a petition drop-off.

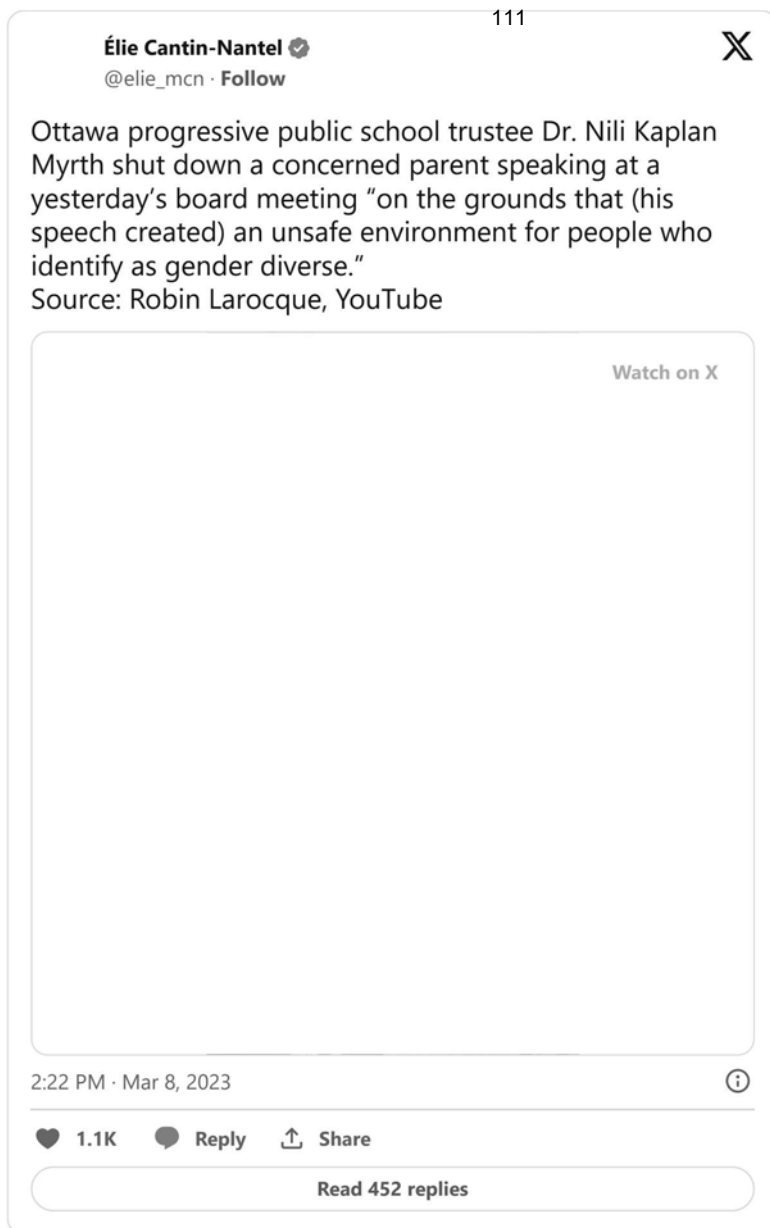
Emails provided to *Rebel News* through access to information filings show staff concerned with Kaplan-Myrth's disregard for the safety protocols she requested:

"I spoke with Michele a little about my concerns regarding Nili's safety plan and her disregard for our efforts. After further conversation with Darren, who witnessed Nili bate [sic] the Rebel News reporter by circling the path near the parking lot, I feel that something needs to be said or incorporated more firmly in the Safety Plan."

Another email indicates that Kaplan-Myrth insisted on finishing a news interview with a friendly outlet before reporting what she claimed was another example of a dangerous transgression against her safety.

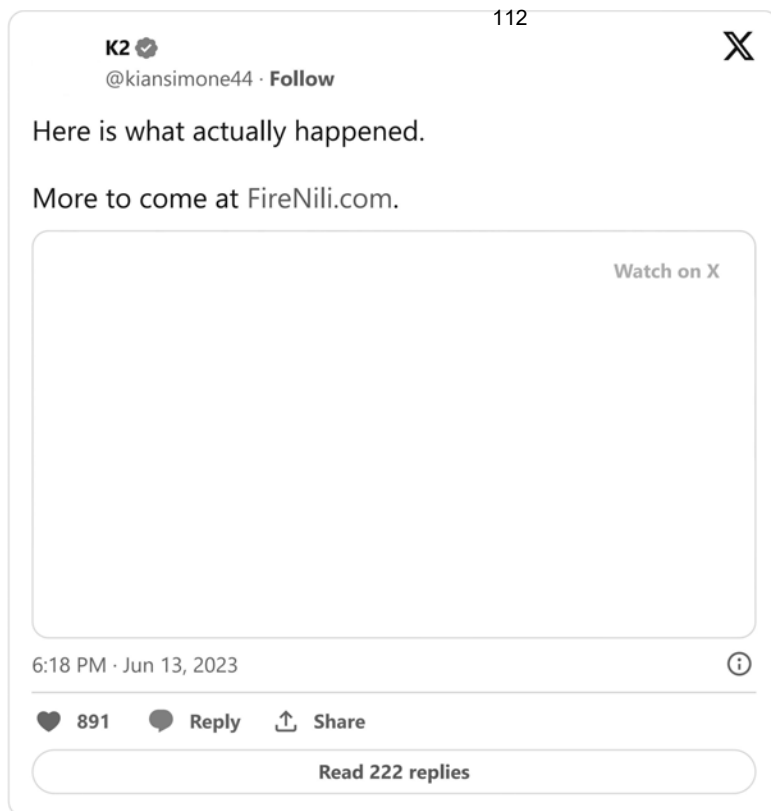
"Nili, in an agitated and angry tone, ordered Heather and Chantelle to get the CTV reporter inside so she could finish her interview with him. Chantelle encouraged Nili a second time to seek me out to report the incident. Nili flatly refused until she was done with the interview. Chantelle and Heather offered help and assistance to Nili, but this was met with defiance and anger."

Parents were censored in person at Ottawa Carleton District School Board meetings in the spring by Kaplan-Myrth for questioning the board's policies of allowing biological male students identifying as transgender to access female-only washrooms and change rooms.



Two separate petitions launched on Change.org by parents calling for the termination of Kaplan-Myrth were pulled down after she complained to the online petition site. *Rebel News* offered an "uncancellable" petition to give parents a voice.

During an attempt by *Rebel News* to drop off the *Rebel News* petition, which garnered 8,000 signatures, Kaplan Myrth screamed, slammed the door, and hid inside the OCDSB building after shuffling a *CTV News* reporter in for an interview with her.



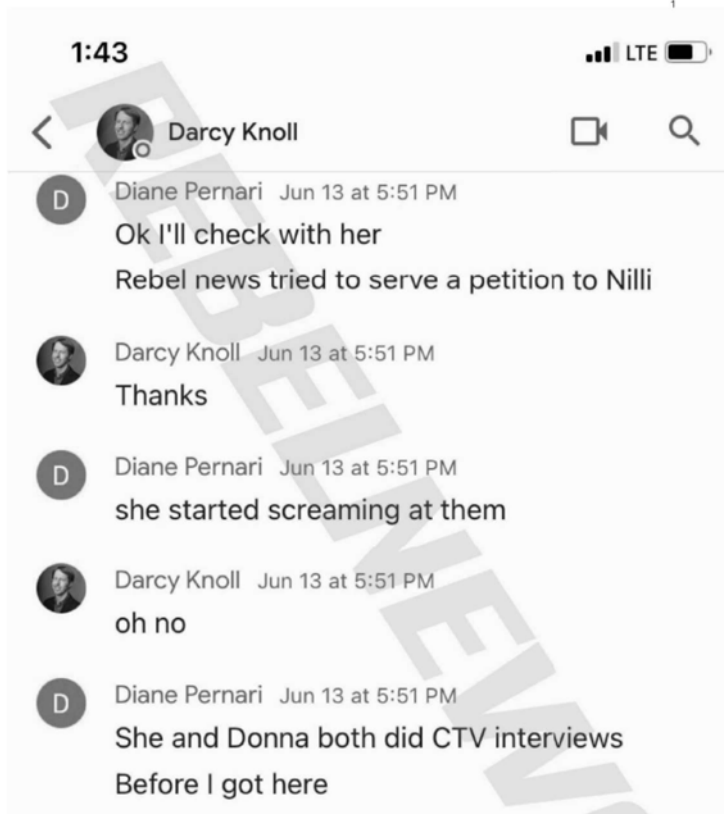
To sign the petition calling on Kaplan-Myrth to be fired or resign, visit [www.FireNili.com](http://www.firenili.com) (<http://www.firenili.com/>).

READ THE DOCUMENTS:

(https://assets.nationbuilder.com/therebel/pages/69946/attachments/original/1690830086/23-0027_Responsive_Documents_%282%29.pdf?1690830086)

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[NEWS ANALYSIS \(/TAGS/NEWS_ANALYSIS\)](#)
[FIRE NILI \(/TAGS/FIRE_NILI\)](#)

Ottawa school trustee slams board for not reprimanding Nili Kaplan-Myrth

By **Elie Cantin-Nantel** - September 13, 2023



Ottawa-Carleton District School Board (OCDSB) trustee Donna Dickson is slamming her board for not holding fellow trustee Nili Kaplan-Myrth accountable for what Dickson sees as bullying.

Dickson says Kaplan-Myrth should resign.

Earlier this week, the board held a special meeting to discuss a code of conduct complaint Dickson filed against Kaplan-Myrth over a series of texts she sent to convince Dickson to support her mask mandate motion last year.

In the texts, Kaplan-Myrth tells Dickson, who is black, that she would be siding with white supremacists were she to vote against mandating masks.

After a tense meeting during which Kaplan-Myrth angrily interrupted others, seven voted in favour of declaring a code of conduct breach, zero voted against and four abstained. However, eight votes (a two-thirds majority) were needed to declare a breach.

In an exclusive interview with True North, Dickson shared her disappointment with the board – noting that the decision sends a bad message.

“We have four trustees that know the truth and choose to turn a blind eye,” she said.

“We suspend students for bullying, and yet, they’re okay with a trustee bullying. What message are we really sending to our students?... that you can get bullied and you have no right, even though you might be right.”

Amid facing accusations of wrongdoing, Kaplan-Myrth said the latter was politically motivated and came amid her receiving antisemitic hate.



"In the face of antisemitism, disinformation, and a campaign by the far-right to see my head roll... I'm on trial with OCDSB," wrote Kaplan Myrth on X. "The Ottawa public school (board) unfortunately has a toxic pattern of conservative trustees abusing its 'code of conduct' process to try to silence progressives. I was warned ahead of time. I'm the 2023 target."

Dickson said she condemns any hate received by Kaplan-Myrth, but noted that the latter does not justify her intimidating behaviour.

"If you're the victim on social media, who gives you the right to come and victimize another person, right? If anything, you should have more empathy and understanding."

"(Nili says) 'I'm a Jewish woman that's being prosecuted, I'm getting hate mail. You know, I get it, but does that give you the right to talk to people the way you want and use that as the reason for talking like that? Can any of us actually go in public and start yelling and then use that?'"

"We call them the Karens of the world."

Dickson believes it would be best if Kaplan-Myrth resigned from her position.

"Her behavior towards the board, towards the public, towards the speakers that we've had, when she does not agree with what they have to say, her disrespect, is beyond what it is to be a politician."

"You can't do board business, right?"

"She needs to check her own words. If she's doing that to a minority trustee... as a doctor, what is she doing to her own patients?"

Dickson also criticized the board's chair, Lyra Evans, for her handling of the process.

"The administration, the director, and Lyra chose not to follow through," she alleged after she made the complaint. "I had to hound and hound."

"We need a chair... that will sit there and do their job, so we don't have the Nilis within the board trying to push other agendas all the time."

"And all those people that want to support (Nili), power to you. But let's be real, that means you condone racism, you condone bullying."

In response to the ordeal, Ontario Education Minister Stephen Lecce told CTV News "we share the concerns of many parents troubled by the behaviour at, and leading up to, last night's board meeting."

"Our government urges the board to focus on the academic achievement of students and get back to basics of what matters most: reading, writing and math."

"In one of Ontario's largest school boards, time and resources should be focused on student achievement and wellbeing, not on debates stemming from actions that undermine public confidence."

Local PC MPPs also criticized the move, including Nepean MPP Lisa MacLeod, who accused some of the trustees of being “so woke that they’re asleep at the switch when it comes to doing the basics of their job.”



Dickson told True North “I’m not here to fight with Nili. I’m here for the students, to give them a better space.” However, she is not optimistic that things will get better for the board anytime soon.

Kaplan-Myrth and Evans did not respond to a request for comment from True North.

Author

Elie Cantin-Nantel
Ottawa based journalist.

Legal Arguments

1) Introduction

The purpose of this short document is to briefly outline in simple terms the legal position of Trustee Dr. Kaplan Myrth in light of the current Code of Conduct complaint against her and especially the process that is being followed. It is intended to allow Trustees to have the benefit of advice from their own counsel as they consider the Reports of the Integrity Commissioner as well as the observations, submissions and objections contained in this document.

The arguments have been simplified in an attempt to make them easier to grasp. OCDSB counsel can comment on their legal validity

2) Fairness and Natural Justice

The Code says that the investigation of a complaint must be conducted in accordance with the principles of Natural Justice'

A key element of Natural Justice is the principle of "audi alteram partem": both sides must be given a chance to be heard. That means that where someone faces charges or a complaint, they are entitled to know what they are charged with and what they will be judged on.

That principle has not been followed in this case up to now. Trustee Dr. Kaplan-Myrth was given a Complaint and asked to respond to it. On September 23, she was provided with draft Reports in which the Complaint was substantially reformulated. The matters dealt with in the draft Global Report and the draft Report specific to Trustee Dr. Kaplan-Myrth go even further afield and deal extensively with perceptions of Trustee Dr. Kaplan-Myrth's personality and interactions with others, matters not raised even in the reformulated complaints.

This document is in part designed to place Trustee Dr. Kaplan-Myrth's answers in a legal framework and to allow her position on these matters to be heard by the Board.

Aside from Natural Justice, administrative law proceedings (such as Code of Conduct investigations and hearings) are subject to the principle of Fairness. Fairness requires that the proceedings deal with the matters properly under consideration and not with irrelevancies or with appeals to improper considerations.

That principle has not been followed in the Reports. The Code of Conduct is not designed to regulate or discipline Trustees' personalities. Citing observations by unnamed Trustees about Trustee Dr. Kaplan-Myrth's personality (without tying those observations to any

incidents or actions) has the effect of unfairly prejudicing the reader against Trustee Kaplan-Myrth based on matters that cannot be challenged or contextualized by Trustee Dr. Kaplan-Myrth and whose relevance cannot be demonstrated. In effect, the reader is being invited to condemn Trustee Dr. Kaplan-Myrth for her personality.

This is important because of the disproportionate space devoted to observations about Trustee Dr. Kaplan-Myrth's personality and in light of the fact that the actual facts of the incidents that are discussed do not really stand up to scrutiny.

Attached as Part 2 of this document is a detailed review of the reformulated Complaint with Trustee Dr. Kaplan-Myrth's response to the facts as alleged in the Report. It is part of the attempt to restore Natural Justice and Fairness to the proceedings

3) **Legal errors**

The draft Report contains several legal errors that compromise a number of its conclusions.

- a) Did Trustee Kaplan -Myrth violate the Code by speaking on two occasions during the meeting of September 11?

The Report states that Trustee Dr. Kaplan-Myrth had no right to interrupt the proceedings twice on September 11, because pursuant to the Rules governing the process, she was forbidden to speak while the Board considered the motion regarding the Code of Conduct Complaint against her.

This is wrong.

The rule regarding participation of a Trustee in the proceedings regarding a complaint against her is standard in all such Codes. Its purpose is to prevent an obvious conflict of interest if a Trustee were to participate in a debate about her own interests. Regardless of how the wording is phrased, its purpose is to prevent participation in the deliberations. It is not to strip the Trustee of her rights and privileges as a Board member, nor is it to presume guilt or otherwise mark her with special status. As such she has the right and duty to protect the regularity of the Board's procedure (by raising a "Point of Order) and the right to protect her or any other member's rights and privileges (by raising a "Right of Personal Privilege"). That is what happened here. In the first case as a new agenda item was announced (the Code of Conduct complaint) Trustee Dr. Kaplan-Myrth raised a point of order to ensure that the item was procedurally properly on the agenda, in light of the new limitation period in the new legislation. The point was heard by the Chair and denied. The fact that the objection was not correct at law does not render it illegal or improper.

The Report goes on to criticize Trustee Dr. Kaplan-Myrth for raising the point as showing “disrespect” for the Report of the Investigator. This is also a legal error. If a Trustee is not entitled to challenge the contents of a Report, it is hard to know what the role of the Board may be in this process other than that of a rubber stamp. This comment is very troubling.

The second interruption was for Trustee Dr. Kaplan-Myrth to stop Trustee Blackburn in the middle of what Trustee Dr. Kaplan-Myrth considered to be a deeply offensive labelling exercise involving the relationship between Trustee Dr. Kaplan/Myrth and Trustee Dickson. A point of personal privilege is available to a member to protect her reputation from being unfairly denigrated or besmirched in proceedings. One of Trustee Dr. Kaplan-Myrth’s continuing messages has been that OCDSB has been unwilling to take seriously the issue of antisemitism and the stereotypes associated with it. In her view the equating of Jewish people and especially Jewish women with “white privilege” is one of the most pernicious canards of antisemitism and she interrupted to prevent its repetition in the same way that a member of another minority group would interrupt to repetition on the record of pernicious racist stereotypes. That she didn’t say the proper “magic words” to accompany her objection is irrelevant.

The draft Report’s findings on these matters, including the finding of a breach of the Code are wrong on the facts and the law.

- b) Did Trustee Dr. Kaplan-Myrth violate the Code by writing a letter to several OCDSB Trustees and officials about OCDSB documents related to her safety plan being provided to Rebel News?

On September 7, 2023 Trustee Dr. Kaplan-Myrth wrote a letter about Rebel News having gotten OCDSB documents concerning her safety plan. The text of the letter is in Part 2, where it is discussed in more detail.

Remember that Trustee Dr. Kaplan-Myrth had not been notified that there was an ATIP request despite the predictable impact on her safety so she had no idea of why the documents were disclosed to a publication that had harmed her in the past.

The recipients of the letter were those involved in her safety plan.

Because of the impact on her safety, it is submitted on behalf of Trustee Dr. Kaplan-Myrth that there was in fact a potential exemption under ATIP which allows documents to be withheld if release would endanger the safety of a third party. The argument that OCDSB had “no choice” but to release the documents is arguably wrong at law. The argument that they had no obligation to inform Dr. Kaplan-Myrth of the request, the identity of the requester and the intention to release is doubly wrong at law. It is wrong because the potential harm of release should have been obvious so Dr. Kaplan-Myrth should have been given a chance to

make submissions as to why the documents shouldn't be released. It is also wrong because OCDSB has a duty to protect its Board members which includes a duty to warn them of potential harm caused by its actions.

OCDSB failed on all counts.

Dr. Kaplan-Myrth sent a reasonable letter asking why documents about her safety plan were given to a hostile media source. Because she was not informed about the ATIP request she had no way of knowing this was not a leak.

It is wrong for the Report to chastise her about "not considering the consequences" on morale for asking pertinent questions to the right people about a decision that was arguably wrong at law and that was clearly made without at all considering the far more serious consequences to her physical and emotional safety.

This illustrates what Trustee Dr. Kaplan-Myrth says is one of the recurring themes in the Report. Trustee Dr. Kaplan-Myrth's consistent message has been that OCDSB has ignored or trivialized her stated concerns about antisemitism and her own safety and OCDSB has tried to deal with these matters by getting her to stop talking about them. The draft Reports simply take this pattern one step further by locating these efforts into the context of a "difficult" personality that does not take into consideration the discomfort she causes to others. Putting the shoe on the other foot, might it not be said that this discomfort is a symptom of precisely the unwillingness to take the issues seriously and therefore the tendency to see them as unwelcome distractions?

c) Is freedom of expression subordinate to the provisions of the Code of Conduct

In previous submissions to this Board regarding the last complaint against Trustee Kaplan-Myrth, I reviewed the jurisprudence on expressive freedom and its relationship to Codes of Conduct. I will not repeat the discussion here. The governing case is *Doré v. Barreau du Québec*, 2012 SCC 12 (CanLII), [2012] 1 SCR 395, which states that in such cases the court or tribunal must balance the beneficial effects of the limiting regulation (here the Code of Conduct) against the impact on Charter values of limiting a particular expressive act. The draft Report is simply wrong to state that expressive freedom gives way to whatever limits are defined in a Code of Conduct. It is always a balancing exercise and the result is not predetermined in advance. In the *Del Grande* case cited in the draft Report the expression being limited was a Trustee's offensive attempt to link acts of cannibalism, bestiality and other matters criminalized in the Criminal Code or against public policy with the recognition of LGBGTQ+ rights in official Board policy. The speech in question offended against Charter values and could not outweigh the beneficial effects of a Code of Conduct that demanded respect for minorities.

In the current case the speech sought to be made subject to sanction by the application of the Code includes Trustee Dr. Kaplan-Myrth's criticism of the Board for failure to take antisemitism seriously and failure to protect her from the consequences of antisemitism. It is submitted that this criticism is in the public interest and part of the mandate of a conscientious Trustee. The beneficial effects of the Code sections are that they promote harmony on the Board and protect the reputation of the Board. However those goals cannot be used to protect the Board from criticism or to prevent the public from being informed of matters of importance.

It is only authoritarian regimes that create offences of "discrediting the authorities."

d) Probative value versus prejudicial effect

There is an important principle in the law of evidence that says that evidence is only admissible if its probative (i.e. relevance to establishing a matter in issue) is not outweighed by its prejudicial effect (i.e. tendency to paint one of the parties in a negative light unrelated to proving any fact in issue).

The draft Report's concentration on Trustee Kaplan-Myrth's personality and its citation of some Trustees' statements about having difficulties in relating to it are examples of "evidence" that has no probative value since it doesn't prove any fact in issue, but is highly prejudicial. It appears to suggest that these statements are evidence of the Trustee having done something contrary to the Code or being the type of person who would do that. While the Integrity Commissioner is not bound by the rules of evidence and can admit material that would be inadmissible in court, she is bound by the principles of Fairness, and Fairness does not allow the use of prejudicial material that has no probative value.

A further example of unfair prejudicial material is the "*in terrorem*" argument near the end of the draft Report, where the Minister of Education is invoked. An *in terrorem* argument is an argument that says that certain terrible things will happen unless a certain result is obtained. It is an unfair and impermissible argument, because decisions must be made on the facts, not for fear of displeasing some higher power. It is also inaccurate to contend that the Minister's expressed desire to have school boards focus on the basics of education will be satisfied by increasing disciplinary proceedings against Trustees under Codes of Conduct, let alone that findings of violations of such Codes will increase anyone's confidence in anything.

e) Mediation versus adjudication

There is no dispute that the creation of harmony is a worthwhile goal. It is also not disputed that an examination of how people communicate and interact with each other and how they

treat each other in general is a valuable tool in creating better collegiality. That is the function of mediation. Indeed large passages of the draft Reports read a lot like mediation briefs. However, this is not a mediation. It is an adjudication, which has its own language and its own tools. Trustee Dr. Kaplan-Myrth offered to have this dispute mediated. She was refused. As a result she is now potentially open to discipline and punitive sanctions including having her constituents lose her voice on the Board for a long or a short time. Those consequences demand that stricter rules be applied and that fairness, Natural Justice and a correct application of the law govern the outcome of the Complaint.

4) **Conclusion**

Based on the foregoing and on the factual submissions that are contained in the document that follows, the complaint against Trustee Dr. Kaplan Myth should be dismissed.

Mark J. Freiman PhD LLB OOnt
Mark Freiman Law

PART 2: Inaccuracies and Omissions

[Trustee Dr. Kaplan-Myrth Response Regarding Errors and Omissions in Draft Integrity Commissioner Report and Findings](#)

OVERVIEW CONTEXT AND CONCERNS

The purpose of this document is to outline specific facts and interpretations in the draft materials provided by Integrity Commissioner Suzanne Craig on November 22 with which Trustee Dr. Nili Kaplan-Myrth takes issue or which have been omitted which she believes should have been included.

In order to do so in a meaningful way, however, it is first necessary to set out a number of contextualizing concerns that inform these proposed corrections and observations.

The first important observation is that the complaint as reformulated by the Integrity Commissioner is not the complaint as responded to by Trustee Dr. Kaplan-Myrth. There is no suggestion of impropriety involved in this fact, but the result is that the Report considers specific facts and incidents that were not raised with Trustee Dr. Kaplan-Myrth either in writing or orally and so she has had no chance to respond up to the present. This is important because all the findings regarding items 4 and 5 in the complaint against Trustee Dr. Kaplan-Myrth fall into this category.

A second observation, possibly arising from the first and leading to an important concern, is that based on the Global Report, it seems clear that the Integrity Commissioner has conceptualized the parameters of the complaints before her and ultimately has located the source of the dysfunction on the Board as primarily originating in matters to do with Trustee Dr. Kaplan-Myrth personally. This is a surprising reimagining of the original complaints that is striking for a number of reasons. Almost the first item in the background as discussed in the Global Report is an account of Trustee Dickson's subjective interpretation of one of the statements in the email sent to her by Trustee Dr. Kaplan-Myrth in November 2022 that formed the subject matter of the Code of Conduct complaint considered at the April 11 Board meeting. There is no similar account of Trustee Dr. Kaplan-Myrth's subjective interpretation of that statement or, indeed of the wider context at all. Instead the remark comes as part of a discussion of how other Trustees (who? How many?) think of Trustee Kaplan-Myrth's personality with an implication that this is an example of "bullying" (or, perhaps a subtle suggestion of condescending or unconscious racism?). There is no similar discussion of what other Trustees think of Trustee Dickson's personality or of Trustee Blackburn's personality in circumstances where the original complaints were directed at dysfunction allegedly attributable to all three Trustees and where at least one of the other Trustees has a well-known reputation that could have been explored (A point elaborated on below).

This leads to a third concern, namely the failure to see Trustee Kaplan-Myrth's repeated attempts to raise issues of antisemitism as central to the matters raised by these complaints. It is one thing to deplore online invective and threats of bodily harm. It is something else to understand antisemitism as a phenomenon as real and as dangerous as any other manifestation of racism or xenophobia. The reality is that Trustee Dr. Kaplan-Myrth has been the target of an organized campaign of intimidation based on her championing of a number of social causes and equality-seeking groups, that extends back to her election as Trustee and that has focused on her Jewish identity as a vector of attack. She was indeed the focus of the November Board meeting (the first meeting of the new Board) but not as bully. It was she

who was being bullied by a loud, aggressive, and rude crowd of known protesters featuring known racists and others for whom the label “far right” was a totally accurate description. Further incidents where antisemitism is in issue are discussed for the tone of the interactions rather than the content. A suggestion to stop complaining about antisemitic behaviour in order to stop being attacked and threatened is an insult that in the past used to be launched against those who spoke up too loudly and impolitely for racial justice.

A related concern deals with stereotypes. Trustee Dr. Kaplan-Myrth is said to be regarded by some Trustees as a “bully”. No specific incidents are cited, so it is unclear whether she is being sanctioned for her personality rather than for anything specific that can be addressed, contextualized, or refuted. It is a trite observation that men are “bold” but women are “shrill.” Statements that describe someone as “toxic” for pushing for their agenda without providing an example are as unhelpful as calling them “fearless” when they think justice is on their side.

And that brings one back to the first point. The original complaints have been modified along the way and all attention has been focused on Trustee Dr. Kaplan-Myrth as a source of the dysfunction. That is both procedurally unfair because it leads to a one-sided investigation and a true failure of natural justice by not giving a real opportunity for Dr. Kaplan-Myrth to respond to the actual complaint until the Report is already complete and it is factually simply not true.

One final comment about the law, before turning to specific inaccuracies and omissions. It is not agreed that the law with regard to expressive freedom and Codes of Conduct is as categorical as set out in the Report. The Report correctly cites the case of *Del Grande v. Toronto Catholic District School Board, 2023 ONSC 349* as to the constitutionality of municipal Codes of Conduct. In that case, however the Divisional Court held that the test for whether a particular provision in a municipal Code unduly infringed a particular exercise of expression was the one articulated by the Supreme Court of Canada in *Doré v. Barreau du Québec, 2012 SCC 12*, namely that the Court is to balance the salutary benefits of the Code provision against the effect on Charter values in the specific case in question. Just because a Trustee’s comments may show the Board in a less than flattering light does not necessarily mean that those comments merit being sanctioned if they uphold an important public purpose.

PART 2: SPECIFIC COMMENTS REGARDING INACCURACIES AND OMISSIONS

The following comments are made in the first person.

I already addressed in detail the inaccuracies in the complaint, in my response dated September 30, 2023 (see attached). I also included an appendix with evidence to support my response (see attached). In preparing the “Global Report” and the “Findings” about me, the Integrity Commissioner has overlooked or ignored the inaccuracies and the evidence that I provided. I will address them again, below, as they are now items that the Integrity Commissioner has presented as “fact” when they are wholly inaccurate. Please include my initial response as part of the documentation that is shared with the Board.

Global Report

a) November 22 Board Meeting

“Trustee Dickson believed that there was a desire to be sensitive to how Trustee Kaplan-Myrth may react to a Code review of her conduct, but the same sensitivity was not afforded to Trustee Dickson. Trustee Dickson felt disrespected and intimidated when she received Trustee Kaplan-Myrth’s text messages and saw them as a suggestion that she was incapable of distinguishing who authored the emails she received from members of the public. It was against that backdrop of a perceived unfairness and “cover up” that Trustee Blackburn communicated her disagreement with the Board’s decision not to find Trustee Kaplan-Myrth in violation of the Code in respect of the matter under review in this investigation.”

This is an incomprehensible “background” summary of the November meeting. It amounts to a relitigation of the September Board meeting, telling only one side of the story and an implausible one at that.

I have no idea why this account of the reasoning behind Trustees Dickson and Blackburn’s attacks on me, the Chair, and the outcome of the vote is the first thing set out in the chain of events being described. Nor do I understand why my side of the story of the November meeting, my email to Trustee Dickson, and my reasoning for what I said after the September 11 hearing are nowhere to be seen. Why was I not asked about any of this?

Here is my description of what was going on, its link to antisemitism and my attempts to explain all this to my colleagues, including my attempt to explain the difference between my personal statements and my statements as Trustee:

From the time that I decided to run as trustee in the summer of 2022, I was subject to antisemitism. It began with a man in Ottawa, Ari Kulidjian, yelling at me at candidate debates and defacing my campaign signs with anti-vaccine, antisemitic messages and delivering antisemitic pamphlets (with white supremacist references) to homes with my signs. He was caught on video.

The night before I put forward my first motion as a trustee in November 2022, I was informed that an anti-mask protest was being planned to disrupt our Board meeting. I wrote to Director Camille Williams-Taylor, Chair Lyra Evans, Vice Chair Justine Bell, and Manager Nicole Guthrie, to let them know that there was a safety concern and that one of the participants in that disruption was Ari Kulidjian, who specifically presented a safety risk to me. Nothing was done to address this, and the following day Ari Kulidjian, Chanel Pthal, Shannon Boschy (a candidate who ran for trustee on a platform of anti-trans hate), Bethan Nodwell, and others stood at the back of the room and jeered, yelled my name (they posted this on Bethan Nodwell’s social media).

The jeering and hollering from those who came with the intent of disrupting our meeting drowned out the voice of the Chief of Staff of the Children’s Hospital of Eastern Ontario, Dr Lindy Samson, who was attempting to speak as an expert about Covid-19, influenza, and RSV. Associate Director Brett Reynolds attempted to settle the crowd but was unable to do so. I phoned the police and the OCDSB phoned the police. We went into recess. As we stepped out,

Trustee Donna Blackburn was heard by my husband commenting to the people disrupting the meeting that they were “her people.”

The conclusion to that Board meeting was held virtually on November 24, 2022, and the motion failed on a tie.

Immediately after that meeting, I began to receive vile, repeated antisemitic death threats and harassment in the form of emails to my OCDSB account, emails to my personal account, and phone calls to my OCDSB as well as my clinic phone numbers.

On November 26, I sent an email to all trustees and let them know that the anti-mask emails were filled with antisemitic hate. I wrote, *“Some of the people who were chanting my name at the meeting on Tuesday are part of a movement that is white supremacist, not just anti-vaxx/mask. People in attendance at that meeting were identified. Dr Lindy Samson and I are both Jewish. The courage it took to sit there while they heckled her and then yelled out my name and tried to intimidate me is something that you will only understand if you’ve been subject to racism. In the coming days and weeks, I will continue to receive this level of hatred. I’m not going to stop speaking out about antisemitism to an international audience. I will ensure that anything I say publicly is clearly only my own opinion and not an opinion of the OCDSB. I absolutely respect and uphold the decision of the Board. This isn’t about my motion to temporarily require masks. It is about hate. The people who are going after me with the letters saying I should be removed from the OCDSB are fuelled by that hate. Please understand that this is the context in which I live and work.”*

b) Rejection of mediation (p.19)

Trustee Kaplan-Myrth had by the point of her request for mediation made statements like, “you were out to get me from day one” and that Trustee Dickson has “repeatedly in OCDSB meetings dismissed the seriousness of ...death threats that I have received”. Similarly, both Trustee Blackburn and Dickson expressed that given the positions that Trustee Kaplan-Myrth expressly described as her “my way or you don’t care about students, children, colleagues” approach, mediation was not a preferred process.

This is entirely unfair and seems like a case of blaming the victim. As soon as I was informed of Trustee Dickson’s complaint, I wrote a sincere letter of apology. I apologized for my remarks made in the heat of the moment about my Trustee colleagues’ not caring about the children and I explained that as a Jewish woman speaking to a racialized woman I had no intention whatsoever of implying that Trustee Dickson was being racist. I was saddened that she rejected my apology.

As noted in the Global Report, Trustee Blackburn’s attitude was to tell me not to communicate with her (further evidence of her “being out to get me from day one”). They are the ones who seem to be displaying the “my way or the highway approach” and are now using that refusal to talk or to accept an apology or to accept that my concerns about antisemitism should be dealt

with in any way other than to stop raising the issue, as a reason not even to try to compromise or to mediate or to talk.

I note that this was Trustee Dickson's position with regard to the November complaint as well. Investigator Maynard noted that that was a complaint that cried out for a different type of resolution but under the former rules he was powerless to do anything about it.

In the current situation I note that every time a matter involving me comes before the Board the volume of antisemitic emails and death threats spike regardless of whether I am active on social media or whether, as I did for a time earlier this year, I take a pause from posting. I note also that while the Global Report rules against mediation of the complaints against the three of us, the Report of findings with respect to the complaint against me, in addition to unspecified sanctions, recommends mediation between me and the Board.

c) **"findings"**

i) **Witness comments on the Respondents**

This is also extremely unfair. The Board is quite divided politically. Not knowing who said what makes it impossible to understand the nature of these comments and their bona fides. Even beyond that, however, this also seems irrelevant to the complaints process. A complaint is not an occasion for psychotherapy or character analysis. The original complaint pointed to specific things that I was said to have done. The Report is taking me to task for who I am and how I react to things. Again, if I were a man rather than a woman, I wonder whether this extended discussion of my supposed emotional reactions to situations would be considered relevant let alone proper. If such an inquiry is somehow germane, I am at a loss to understand why there is no discussion of the shouting matches that Trustee Blackburn has engaged in with other Trustees such as Trustee Milburn or why there is no discussion of the fact that she has a lengthy track record of intimidating fellow Trustees by lodging Code of Conduct complaints against them. For the record, I certainly was not asked what my views were of Trustee Blackburn or Trustee Dickson (or other trustees) or their personalities, as they appear to have been interviewed about mine.

"Some people want to blame Donna [Trustee Dickson] for filing the complaint but she had to do it. She told me that Nili [Trustee Kaplan-Myrth] kept hounding her and texting her and then got aggressive" - "I would be offended if someone told me to vote a certain way or I'm supporting white supremacists. That's not lobbying, that's bullying"

Taking these two comments about me for example, they are not based on facts but rather on hearsay accounts from Trustee Dickson. The speaker or speakers would not have seen the actual email exchange but rather rely on Trustee Dickson's account. In fact, as the documents show, the actual exchange between her and myself consisted of only three or so comments back and forth each. There was no hounding and it ended when Trustee Dickson indicated she had made up her mind.

The second comment is even more baffling. What is lobbying if not trying to solicit someone's vote by giving them reasons why they should vote a certain way?

Be all that as it may, these comments and the others like them illustrate the irrelevance of such judgments of character to the issues at hand. They are about the first Code of Conduct complaint or about safety plans or about people's resentments about positions I take on certain issues. They have absolutely no place in a Report on the Code of Conduct complaint.

ii) "I received no evidence about who "leaked" the information to Rebel News and the media. I find on a balance of probabilities that neither Trustee Blackburn nor Trustee Dickson were involved in providing any information to Rebel News." (p27)

With respect, there was a media release sent to journalists the night prior to the September 11, 2023, meeting, from Trustee Donna Dickson. A copy of that media release was provided to the Integrity Commissioner as evidence (see attached).

On September 10, 2023, I sent an email to trustees to indicate that someone had leaked information about our upcoming Sept 11 Board meeting to Rowan Czech Maurice, a Canadian man from Toronto who lives in Florida and has stalked me on social media for four years, threatens me, and who seems to have ties to Rebel News or True North Canada. The Twitter social media post from Rowan Czech Maurice said, *"Breaking: The Ottawa Carleton District School Board will hold a special meeting on Monday with Code of Conduct Breaches by activist trustee, Nili Kaplan-Myrth on the agenda. Do you agree there should be accountability for @nilikm's actions?"*

I also shared an anonymous email that was sent to my personal email address that day with the following antisemitic death threat: *"Your career is finished. We are going to end your career, you filthy kike. This starts tomorrow. The special meeting has been called, and the wheels are in motion. We hate you because you are an ally to the 2SLGBTQIA+ community. We will end your position as trustee, then we will get your medical license revoked. After this, hopefully you will die a miserable death from the severe burden of the stress and guilt due to the damage you have done to our community and our children."*

There is no question that someone within the OCDSB leaked information about the meeting on September 11, 2023, and they did so expressly to cause me harm. I did not say who leaked the information. However, there was a media release sent by Trustee Dickson to journalists on September 10, 2023 (see attached).

I cannot overemphasize how traumatizing it is to receive such hate and to know that someone within the OCDSB—a fellow trustee or staff—is providing the information that enables these attacks on me. Evidence of this exchange was also provided to the Integrity Commissioner (see attached).

iii) **September 11 Special Meeting (public) and events after the meeting**

The Report quotes one witness reacting to my attempt to make a point of order as Trustee Dickson began to read her remarks: **“Trustee Dickson’s voice was shaking with emotion while she was speaking and Trustee Kaplan-Myrth did interrupted her. It was just like she doesn’t care”. It was an “emotional ordeal for her...it was for all of us, but I felt bad for Donna [Dickson]”**

Compare this with the description of the September 7 in camera session. I am described as “one trustee.” Apparently no one was asked about my demeanour (I was in tears) as I described what it was like to be receiving emails like the following (Sept 5):

Nili,

Who are you to tell us what to do?

You are just a woman Jew.

Call yourself anything you like.

Everyone knows you’re just a ke.**

While your ancestors were gassed,

your life will end with a beautiful blast.

Good luck at the next OCDSB meeting!

As for reactions to my retelling of what it’s like to have my life and the life of my husband and children threatened, the memory of my grandparents’ families murdered in the Holocaust mocked, my identity as a woman and as a Jew ridiculed and derided, the full answer is that there were no sympathetic voices raised.

As the Report sets out (p. 24) , Trustee Dickson said “bluntly” that if I don’t want to be threatened, I should stay off social media and then, (making it about herself) added “if someone came to [harm] you, I would be the first to [be harmed].” The Report rushes to exculpate Trustee Dickson by interjecting, **“This was a gut reaction and a comment made during a lengthy discussion.”** The only other comment noted is Trustee Blackburn’s, who complains about not getting as much time to talk as I was getting.

The subject of racism is a sensitive one and so is the subject of antisemitism, which in some respects is analogous. I will respond below to the finding that I did not have a right to object at the September 11 meeting. I simply point out here, that reactions to perceptions of either are bound to be fraught and there is a seeming dismissal of the relevance of the one issue in the Report, while the relevance of the other is accepted at face value.

iv) **Comments to the Media after September 11 Meeting**

“After the Board Meeting, Trustee Kaplan-Myrth went directly to where the media was waiting. Trustee Kaplan-Myrth aggressively pointed at two individuals who appeared to be journalists....”

The two individuals were not journalists. One was Donald Francis Smith, who was on probation for criminal harassment, against whom the OCDSB subsequently issued a “no trespass” order and who, the next day threatened online to kill me (see attached). The other was Chanel Pfahl, a well-known anti-trans inciter, whom Trustee Blackburn untruthfully described as her “media consultant” in order to justify her presence and she was allowed to stay.’

FINDINGS AND RECOMMENDATION REPORT REGARDING TRUSTEE NILI KAPLAN-MYRTH

- a) Issue #3: Did Trustee Kaplan-Myrth violate the Code by virtue of her conduct or statements at the September 11th public Special Board meeting?**

Yes.

- (i) I find that the rules of the Code triggered by this allegation have been undermined by the actions of Trustee Kaplan-Myrth. By interrupting Trustee Blackburn and shouting out to her “you have had it out for me since day one”, Trustee Kaplan-Myrth made a statement which was personal, demeaning and disparaging regarding to Trustee Blackburn in violation of sections 3.7 and 3.8 of the Code.**

In the original report by Michael Maynard, the Investigator assigned with the original case, Mr. Maynard reports that he spoke with two witnesses who “corroborated the claim that that some other individuals were essentially plotting against the Respondent” (see page 19).

Those two witnesses were Trustee Alysha Aziz and Trustee Amanda Presley. They approached me to warn me that Trustee Donna Blackburn was recruiting trustees to cause me harm. Trustee Presley told me that Trustee Blackburn stands outside with her during cigarette breaks and disparages me, literally calls me names. Trustee Presley and Trustee Aziz both advised me that I should steer clear of Trustee Blackburn because of this behaviour, and Trustee Presley informed me that she was keeping a record of that inappropriate behaviour. Trustee Cathryn Milburn concurred, warned me to stay away from Trustee Blackburn for my own safety. Note that Trustee Milburn eventually engaged in a yelling match with Trustee Blackburn (that was following the meeting at which I acted as Chair and we had to go into recess because of concerns about anti-trans hate). I was not present at that yelling match but understand that it was because of something inappropriate that Trustee Blackburn said (I was in the Chair’s office at the time, keeping to myself).

Furthermore, evidence of Trustee Blackburn’s animus against me is clear from her email to me telling me that I was not to communicate with her by email, which as set out at page 5 of the Global Report, occurred back in January 2023.

The statement was true and was made in the context of a valid objection on a point of personal privilege. While the Rules may forbid the subject of a Code of Conduct complaint from participating in the deliberations on the motion, they do not remove a Board members procedural rights and protections, which are personal to the member and do not go to the substance of the complaint or to the motion.

- (ii) **“As the Respondent to the Code Complaint that was being considered by the Board at the September 11th public Special Board meeting, under the previous Code, Trustee Kaplan-Myrth was not entitled to speak. However, she chose to disobey that rule. She interrupted Trustee Dickson while she was reading her prepared statement and also interrupted Trustee Blackburn while she had the floor as the mover of the Motion. I find that Trustee Kaplan-Myrth’s comments raising issues of a limitation period during the September 11th Special Board meeting, acted to undermine the integrity of the Code process that concluded in the report before the Board on that evening. It was a difficult evening for all concerned, all Board Trustees and in particular Trustees Dickson and Kaplan-Myrth. The Code investigation lasted nearly a year. It was carefully conducted, and the complaint filed in February was found to be timely by the third party investigator after submissions on behalf of Trustee Kaplan-Myrth. To interrupt a speaker to raise the already carefully considered limitation analysis demonstrated either that Trustee Kaplan-Myrth was disingenuous or that she had a disrespect for the Code investigation process and the Complainant Trustee Dickson.”**

I did not interrupt Trustee Dickson. I asked for consideration of a “point of order” to ask for clarification about the timeline for the complaint. The point of order was granted. The reason that I was confused at that moment was that the Integrity Commissioner herself had written to me to say that complaints must be submitted within three months. The Code of Conduct process changed as of August 2023. To my understanding there was a six-month statute of limitation for complaints. The complaint, however, was based on a text message correspondence with Donna Dickson on one evening in November 2022, more than nine months earlier. I was seeking clarity and had no other opportunity to ask questions, as I understood I was prohibited from speaking about the case with anyone. I find comments in the Report about this issue confusing, as one of the first comments that the Integrity Commissioner made to me was that it was inappropriate for the first case to have dragged on for more than nine months. I do not agree that the Investigation lasted nearly a year. I continue to believe that there was needless delay that caused me needless anxiety. I thought that perhaps the new limitation period would recognize that to my benefit.

I sat in a room of people saying hurtful and untrue things about me without the right to defend myself or speak to the accusations, as is the custom in these cases. I was respectful and professional, and in the considerable stress of the moment I forgot to say, “Point of order,” (or as I now understand would have been more correct “Point of personal privilege!”) and instead said, “I object, you will not characterize me as a white woman. I am a Jewish woman who has received daily antisemitic death threats for standing up for health and safety. You have been out to get me from day one.”

This may not have been a perfect way to express the point, but the prohibition against derogatory and demeaning language applied to the proceedings dealing with the

motion against me just as it would have to any other proceeding, and I had the same right to object and demand a retraction as I would have had if a Trustee had implicitly called me a racist in any other context. That was the gist of Trustee Dickson’s complaint, and I had the same right to make my complaint. My words, which I continue to say were not racist, were made in private to Trustee Dickson alone. Trustee Blackburn was simultaneously trying to call me a racist and deny me status as a member of an equity-seeking group in a public forum where she thought I could not fight back.

And then she publicly called me a “bully.”

I cannot articulate the extreme duress for a traumatized victim of continuous antisemitism and death threats to sit in a room, knowing that Trustee Blackburn—who repeatedly, overtly dismissed the antisemitism and exhibited disrespectful conduct in her interactions with me and with other trustees—was allowed to make concluding remarks in which she antisemitically referred to me as a “white woman” and characterized me as “attacking a Black woman,” NEITHER of which were fair or accurate.

I would far rather have had the Chair or another Trustee stop the proceedings and demand Trustee Blackburn apologize and retract her remarks, but it is not accurate that my procedural intervention to protest a breach of the Code and the Rules of Civility in any way undermined the integrity of the Code itself or the process for its enforcement. The rule against participation in the deliberations about a complaint is designed to protect against an obvious conflict of interest. It is not designed to strip a member of their right to be treated civilly and to object when they are not.

b) Issue #4: Did Trustee Kaplan-Myrth violate the Code by virtue of her conduct or statements immediately following the September 11th meeting, including in her interactions with media present following the meeting?

Yes.

- (i) Immediately following the September 11th public meeting, Trustee Kaplan-Myrth ignored the security plan put in place by District staff to safeguard her before, during and after the Special Meeting. In so doing, Trustee Kaplan-Myrth undermined the work of staff who had diligently worked to create a safe location for her. In addition, Trustee Kaplan-Myrth was disrespectful and intimidating in her comments and behaviour towards Trustee Blackburn and to some private individuals in the media room after the September 11th Special Meeting. Trustee Kaplan-Myrth acted with disrespect and intimidation in her comments and behaviour after the September 11th Special Meeting, thereby violating rules 3.5, 3.7, and 3.8 of the Code. Immediately following the September 11th public meeting, Trustee Kaplan-Myrth went to a room that was not the dedicated “safe space” in the security plan developed by staff.**

This is factually inaccurate: As I explained in my original response (see attached), I was NOT aware of the security plan put in place before the meeting, as I was not PRIVY to that conversation in which trustees were told that we were not to speak with media. NOTHING was communicated to me about what was expected of me before or after the meeting. I was excluded from the in-camera meeting prior to the public meeting, when

that discussion took place. I cannot be found guilty of failing to follow instructions that were NOT SHARED WITH ME.

Furthermore, On September 11 and September 12, 2023, following the outcome of the Code of Conduct process that she insisted upon—despite having attended the in-camera session in which she was told not to speak with media—Trustee Donna Dickson arranged to speak with CBC and CFRE radio in Ottawa in order to tell the Ottawa community that I am "a bully."

On September 13, 2023, I received an email from Elie Cantin-Nantel, from True North Canada, saying, *"Hello Dr. Kaplan-Myrth I spoke to an OCDSB trustee yesterday who, despite the vote, maintains that you've engaged in bullying and have created a toxic environment at the board. They also said you were not supposed to speak during the meeting on Monday, and that the board would be better off if you resigned from your position. I was wondering if you would like to provide a comment in response to this for my story on the matter. My deadline is 5pm ET"*

I did not respond. Nor have I ever defamed or degraded a fellow trustee on social media or in print media or radio.

On September 14, 2023, Trustee Dickson was quoted in True North Canada, in an interview with Elie Cantin-Nantel:

Ottawa-Carleton District School Board (OCDSB) trustee Donna Dickson is slamming her board for not holding fellow trustee Nili Kaplan-Myrth accountable for what Dickson sees as bullying. Dickson says Kaplan-Myrth should resign.... In an exclusive interview with True North, Dickson shared her disappointment with the board - noting that the decision sends a bad message. "We have four trustees who know the truth and choose to turn a blind eye," she said. "We suspend students for bullying, and yet, they're okay with a trustee bullying. What message are we really sending to our students?... that you can get bullied and you have no right, even though you might be right." Dickson believes it would be best if Kaplan-Myrth resigned from her position. "Her behaviour towards the board, towards the public, towards the speakers that we've had, when she does not agree with what they have to say, her disrespect, is beyond what it is to be a politician... You can't do business, right? She needs to do check her own words. If she's doing that to a minority trustee... as a doctor, what is she doing to her own patients?" Dickson also criticized the board's chair, Lyra Evans, for her handling of the process. "The administration, the director, and Lyra chose not to follow through," she alleged after she made the complaint. "I had to hound and hound... We need a chair that will sit there and do the job, so we don't have the Nilis within the board trying to push other agendas all the time."

- (ii) **The media was waiting in the room that Board staff had designated for the media and where any trustee could gather to give interviews. Trustee Kaplan-Myrth aggressively pointed at 2 individuals who were waiting outside of the media room and to Trustee Blackburn who had also walked from the boardroom, and shouted ""out!" "out!" "out out!", motioning them to leave a space that had not be reserved for her individual use. When Trustee Blackburn, notwithstanding Trustee Kaplan-Myrth's angry demands did not leave, Trustee Kaplan-Myrth blocked the door and with a raised voice demanded that Trustee Blackburn and all members of the media leave the room, except those journalists with which she wished to speak. It was unclear why Trustee Kaplan-Myrth felt her media interviews should take precedence over those of other Trustees. If her concern was for her safety, she had been provided a dedicated safe space.**

Amir Attaran, a lawyer, and my husband, also a lawyer, were present and at my side and can attest to precisely what happened after the Sept 11 meeting. They witnessed Chanel Pfahl and Donald Francis Smith attempt to approach me after the meeting. My husband told staff that they should escort Chanel Pfahl out of the building along with others from the gallery. She was only allowed to stay—though she is NOT a journalist—because Donna Blackburn then commented that Pfahl was her “media advisor.”

Chanel Pfahl is known to the OCDSB for inciting anti-trans hate and for specifically targeting me on social media. Donald Francis Smith is known to the Ottawa Police for criminally harassing others, was on probation for his threat to a judge in Alberta, and after the meeting wrote on social media that he would “kill me.” (See attached)

All I wanted was to be able to speak with the media without being harassed or threatened by individuals who had in the past done exactly that. There is no contradiction between wanting to make sure my side of the story was conveyed to the media and wanting to be safe from known threats. It is inaccurate to suggest that I interfered with anyone else being interviewed.

- (iii) **While she had not attended the in-camera meeting prior to the Special Meeting at which Chair Lyra had encouraged trustees to not accept media interview about the Code complaint, Trustee Kaplan-Myrth has expressed that she seeks resolution and to contribute to a respectful workplace, thus her conduct after the Special Board meeting seemed at odds with her expressed goals of working together with all her trustee colleagues.**

I did not disparage any trustee after the September 11 meeting. I was the SUBJECT of further disparaging comments by Trustee Dickson, who invited True North to interview her, and by Trustee Blackburn, both of whom were aware that they were not supposed to speak with media. The implied allegation of insincerity is troubling in circumstances where speaking to the media is not prohibited per se, I was not aware of the Chair's advice on the topic, and I did not criticize or disparage any fellow trustee.

Calling out antisemitism in the context of being antisemitically degraded publicly is not “disparagement,” it is self-defence in the face of overt discrimination.

- c) **Issue #5: Did Trustee Kaplan-Myrth violate the Code by virtue of her statements made September 8-16, either to the media representatives or via their own personal social media accounts?**

Yes.

- (i) **I find that Trustee Kaplan-Myrth chose a path of conduct that she knew or ought to reasonably have known would create an "intimidating environment", which did not contribute to a respectful workplace and that she did not make every reasonable effort to resolve issues arising from friction, conflict or disagreement in a respectful and professional manner.**

The allegation that I “created an intimidating environment” does not appear in the original complaint and I was not asked to respond to it. I am not sure that it is within the scope of the Code of Conduct process for the Integrity Commissioner to fashion a new complaint out of observations by some witnesses about their views about my personality. This first sweeping statement, when reduced to the actual details of actual “conflicts” that are provided comes down to discomfort by some trustees and some staff with my raising issues of the inadequacy of the institutional recognition of antisemitism and support for me in its face.

It is classic antisemitism to characterize Jews as “too powerful,” and this is such an example. As the subject of discrimination, harassment, threats, anyone who asserts that I created an “intimidating” environment is literally blaming the victim for speaking up about racism. I had no interactions with other trustees outside of meetings. I avoided the trustee lounge. I kept entirely to myself, as it did not feel safe to interact with others in an environment that was so unsympathetic and at times explicitly hostile to me as a Jewish woman.

I have not had any personal interaction, in communication via text or in person, with Trustee Donna Dickson or Trustee Donna Blackburn since November 2022, other than asking her in our in-camera meetings not to dismiss antisemitism each time that I ask OCDSB to respond to the seriousness of the threats I face. I do not feel safe in the Trustee lounge, because of their antisemitic behaviour, and therefore keep entirely to myself.

Trustee Donna Dickson asserted in her interview with True North Canada and in other interviews that I am a “bully” and called for my resignation. Her assertion that I should be forced to resign echoes the Rebel News petition which OCDSB General Counsel, Richard Sinclair, had taken down on March 23, 2023. My legal counsel, Mark Bourrie, sent a letter to Trustees Donna Blackburn and Donna Dickson, advising them that while they have the right to their opinions, they do not have the right to defame me or to perpetuate antisemitic cycles of attacks by saying harmful things

about me to the media (see attached). The intimidating environment has been created by and perpetuated by those who continue to seek to cause me harm.

- (ii) ***After the September 7 closed meeting, Trustee Kaplan-Myrth posted on her personal X account:***

“Imagine turning to a room of colleagues to say their silence as I receive antisemitic death threats isn’t OK. The only person to respond says *they* are uncomfortable with the risk I bring to them [...] so can I please stay off social media...”

By her statements as I have set out in the Global Report, Trustee Kaplan-Myrth has engaged in conduct through social media posts that discredits and compromises the integrity of the Board and has contributed to conflict rather than resolution of issues with her trustee colleagues. Trustee Kaplan-Myrth’s continued use of social media to criticize her fellow Trustees and this conduct does not encourage resolution of conflict and disagreement in a respectful and professional manner.

This is factually inaccurate in a number of ways. First, this is the only example cited where I am said to criticize fellow trustees through social media, so it is wrong to use the words “continued use.” Secondly, I do not identify where the meeting I discuss took place. I did NOT say that it was an OCDSB meeting. I did not disparage any trustee colleagues. I sit on committees and interact with many organizations outside of OCDSB.

Furthermore, the suggestion that I should not publicly discuss antisemitism, or the effects of other peoples’ silence about antisemitism, is simply wrong. I have set out earlier the test in the *Dore* case. This is an instance where it would be unreasonable for any Code of Conduct to prohibit or sanction a discussion of a failure of empathy where antisemitism is involved. This is especially the case in the current post-October 7 environment.

- (iii) **Disagreeing with Trustee Kaplan-Myrth is not tantamount to causing her harm or encouraging others to do so. Trustee Kaplan-Myrth’s September 8 memo to Trustees, senior staff, and others external to the OCDSB demonstrates that her action has continued the conflict between trustees rather than attempting to resolve it... The manner in which she conveyed her concerns to staff was accusatory, and this is problematic.... it was inappropriate for her to send out a memorandum broadly in which she accused staff of unlawfully disclosing her information to media outlets.**

The September 8 memo is not an example of my reacting to a situation where someone is disagreeing with me. It is me asking why emails about me were released to Rebel News, an organization which to the knowledge of senior OCSDSB administrators had caused me great harm and distress (see, attached, the Rebel News petition and General Counsel Richard Sinclair’s letter to Change.Org which described Rebel News as motivated by hate).

I did initially reach out ONLY to the senior team. I wrote on August 4, 2023, to the people who had been involved in my safety plan: Janice McCoy, Nicole Guthrie, Michele

Giroux, Pino Buffone, and Chair Lyra and Vice Chair Justine Bell. In my email to them I said:

Good afternoon.

I hope you are all doing well.

In light of the documents that were recently released to Rebel News about my “safety plan,” email drafts that were written back and forth among senior staff (but never sent to me), I’m wondering if there have been any other requests that relate to me and if I have the right to ask to be advised of any such requests. Those emails are now embedded in the Rebel News article. Here is a link, to those who are not aware of what was shared:

https://assets.nationbuilder.com/therebel/pages/69946/attachments/original/1690830086/23-0027_Responsive_Documents_%282%29.pdf?1690830086

For the record, when accosted by Rebel News I had stepped outside to take a call from my son. I was pacing while speaking to him, while I was waiting to speak with a CTV reporter. My husband, Andy, was in the parking lot at the time.

When Rebel News approached me, I did not “scream” at anyone, I told them unequivocally and forcefully to back off, while I backed myself into the building.

It is misogynist for Diane and Darren to say that a woman telling a harasser to back off is “screaming” and it is unprofessional and inappropriate (and disheartening) for them to imply that it was my fault for attracting the harassment, that I “baited” Rebel News. I had no idea Rebel News people were there until they appeared and tried to serve me with their garbage.

Is OCDSB literally blaming me for a white supremacist group coming after me while showing up to my job? Was I under lockdown on the premises? If people are lurking on OCDSB property to go after me with bogus petitions, surely *that* is the problem, not whether I’m inside or outside of the building.

Did I also “bait” them, following the same logic, to create their transphobic petition? Did I bait them to send me death threats and phone my office with antivaxx, antisemitic slurs? I hope you appreciate the seriousness of the comments made by OCDSB staff. I want to believe that these comments were not made to be disrespectful, but they certainly aren’t respectful and they play directly into the narrative created by Rebel News.

Furthermore, nobody within OCDSB approached me to talk to me about what happened, to ask if I was alright, let alone to discuss whether my leaving the building was a “breach” of the safety plan. So while those emails were being exchanged, it was further disrespect of me as a colleague and a victim of ongoing harassment. Nor did I ever receive the email that Janice and Nicole were drafting (which appears to be more about whether OCDSB was responsible, rather than about whether I was alright).

Yes, I speak out on health issues and on human rights issues. That is my job, as a physician and as a trustee. I will continue to do so. I will also come and go from the premises as needed.

We know that these disruptions are a pattern across Ontario and the coming year will likely be challenging. We need a plan that pertains to everyone’s safety, and that does not include telling me to stay home, to stay inside, or to stay off of social media.

If anyone has given thought to “safety” plans for August 24 and beyond, suffice to say, they aren’t safety plans if they are seen or can be requested by the very characters whose aim is to cause me harm. Presumably, all future communication about my safety should be offline. If you continue to discuss me via email there will, inevitably, be more Rebel News garbage that follows.

Most of you have my personal phone number. I’m happy to speak prior to Aug 24.

Sincerely,
Dr Nili Kaplan-Myrth

I do not believe that it is accurate to characterize this email as hostile. It is also not accurate to say that I was accusing anyone. I was seeking explanation and help. That message prompted further discussion and it led to me refusing to sign a safety plan that required the staff to be put in harm's way.

As for the legal aspect, I do not accept that I am in the wrong here. While there are obligations to release documents, the relevant OCDSB individuals should have contacted me to inform me of the request since there are exemptions where disclosure would cause harm to third parties. In this case the disclosure caused precisely the harm that could have easily been foreseen and I dispute the correctness of reproaching me for protesting the fact that those who were involved in trying to put together a safety plan for me didn't involve me in dealing with this threat to my safety.

I believe that this characterization of the incident may indicate that the issue of my concerns for safety are not being taken seriously as an issue requiring OCDSB active collaboration and trustee collegial and empathic support, but rather as an instance of my being "disagreeable" when those supports are not forthcoming.

On September 3, 2023, while we were getting ready to send our children back to school, I received an email to my OCDSB account threatening me, *"Nili, U should wear bulletproof vest at the next OCDSB meeting. We have all your addresses and know ur movements and so much more about you than you can imagine. We have had enough of your jewish, tranni-loving behaviour. This is not a threat but rather a promise. The world will finally be rid of you, and the children of Canada will be safe. Be on the lookout but know that we will see you before u see us."*

On September 5, I received the following antisemitic email, eerily similar to previous threats:

Nili,

Who are you to tell us what to do?

You are just a woman Jew.

Call yourself anything you like.

Everyone knows you're just a kike.

*While your ancestors were gassed,
your life will end with a beautiful blast.*

Good luck at the next OCDSB meeting!

Ah. Moh.

On September 6, I received an email to my OCDSB account that said, *“Dear Groomer Pedophile Nili, For your own safety, don’t go to the OCDSB meeting. I’m talking to YOU, you hook-nosed hypochondriac! Everyone knows that your jewpidity knows no bounds, but if you show up in person to the OCDSB meeting you’re more retarded than a Negro with brain damage. It would be the height of narcissism to put others in danger. Oh, and DO NOT post this on Twitter.*

Ahmed M.”

On September 7, I received an email to my OCDSB account that said, *“I am someone who knows you personally, so I feel I can speak with authority on this. You are a neurotic, narcissistic cunt. You have put your ambition above the physical safety of your colleagues on the school board. By being a divisive bitch you have made everyone hate you. You have been instructed to stop posting emails to X/Twitter, so STOP POSTING THEM YOU FUCKING DESPICABLE TYRANT. Fuck you for being a woman. Fuck you for being a Jew. Fuck you for being a tranny ally. Fuck you for being an abuse victim. Fuck you for being Nili Kaplan-Myrth!!!!*

On September 7, a professional development session was held in which the trustees and the Director of Education, Pino Buffone, Michele Giroux, and Nicole Guthrie met in camera to discuss our personal experiences and reflections on our first 9 months of work with the OCDSB. We had completed a “self evaluation” survey and were encouraged to speak honestly and freely about what we felt works well and needs improvement as individuals and as a group. I politely, silently listened to others speak. I then raised my hand and spoke from the heart, to describe how the toxicity within the Board surprised me, when I arrived as a trustee, and to explain the trauma of the daily antisemitic harassment and death threats that I have been subject to since joining the OCDSB as a trustee. I asked for the board of trustees to validate my concerns, rather than responding with silence, I supported the idea of formal group mediation, and I asked that we do something substantive to improve safety for all of us. I also noted that serious psychological toll of the harassment on me, and my family, cannot interfere with my ability to do my job as a physician. A fellow trustee responded (out of turn) with a dismissive comment that if I don’t want death threats I shouldn’t speak publicly.

On the morning of September 8, 2023, I realized that perhaps the trustees did not understand the severity of the ongoing harassment. I therefore sent an email to trustees as well as to Robin Browne, an equity advocate in the community, to share some of the vile threats that I had received and to let them know that the OCDSB had disclosed emails about my safety plan to Rebel News—knowing that it would cause me harm, and without providing me with warning—a violation on the part of the OCDSB that I learned about when an article appeared by Rebel News on social media boasting about their “internal” knowledge of my safety plan. Robin Browne replied, *“I admire your courage for sharing this and for continuing to do the work that is drawing this hate. I am shocked to hear someone in the OCDSB released information on your personal safety plan to anyone - let alone Rebel Media. Please share details on that leak and let us know how the Hub can support you.*

- (iv) **A witness testified that Trustee Kaplan-Myrth’s behavior often “escalated into rudeness and insulting comments each time she didn’t get what she wanted and when she was called on it she denied having done anything wrong”. Witnesses provided this type of comment frequently. Some trustee and staff described a sense of increasing discomfort with Trustee Kaplan-Myrth’s conduct. Many Trustees expressed being unsure how to navigate Trustee Kaplan-Myrth’s unpredictable behaviour and escalating criticism of fellow Trustees on social media.**

There is nothing in the complaint to correspond to this allegation by “a witness” and I protest strenuously about the inclusion of this comment and the “Many trustees” comment that follows. It is impossible to respond to allegations that have no reference point to time, place and context.

What I can do, however, is to challenge the claim about “escalating criticism” of fellow Trustees on social media. It is simply untrue that I have ever criticized fellow Trustees on social media, let alone escalated any criticism.

If Trustees Dickson and Blackburn are to be exonerated for their September 11 media comments (as seems likely from the snippets of description in the Global Report and the comparison offered in this portion of the Report between what I said and what they said) on the basis that there is a difference between what people think they said and what they actually did say, then I contend that the witnesses who complained about my social media criticism may well have equally faulty memories.

- (v) **In responding to Complaint 1, Trustee Kaplan-Myrth unwaveringly defended her action by stating that she has done “nothing wrong” and by asserting that her conduct was a justified response to Trustee Blackburn and Trustee Dickson’s “pattern here that is far more serious than a mere breach of the code of conduct, as [their] behaviour endangers my wellbeing and the safety of my family”. Trustee Kaplan-Myrth has been the recipient of unacceptable vitriol and hate-filled messages and threats, and there is never any place for hate of any kind. However, this Code investigation can only review actions and behaviour of Trustees with respect to the rules of the Code. Trustee Kaplan-Myrth’s position is that she has done nothing wrong and that her actions that are raised in the allegations of the Complaint, are appropriate and her right in defense of “public slander” by Trustee Blackburn and Trustee Dickson.**

This is both inaccurate and very disturbing. It seems as though my responses to the complaint are being used as evidence against me with respect to an allegation that doesn’t appear anywhere in the actual complaint. My counsel tells me that if this were a court proceeding he would ask that the passage and the one preceding be struck as irrelevant and of no probative value but highly prejudicial.

I do know that it looks like the paragraph seems to be linking my belief in my innocence with criticism of my attitude that was cited as coming from an unnamed Trustee a few paragraphs earlier. I also know that this paragraph misinterprets what I meant when I referred to the comparative harm caused to me by Trustees Dickson and Blackburn and any harm I may have caused them.

My email exchange with Trustee Dickson was a private one, which she misunderstood and for which I apologized. Any publicity its contents got was solely the result of her decision not to accept my apology, not to accept mediation and to publicize the fact that she would be holding a press conference following the September 11 Board meeting. I have not criticized either of these Trustees on social media or in my interactions with the press.

My one piece of “public” criticism has been my *cri de coeur* on September 11, when in frustration I accurately stated that Trustee Blackburn had “had it in for me since day one.” By contrast, the interviews given by Trustees Blackburn and especially Dickson contain personal attacks on me and my fitness to serve as a Trustee as well as on my character. They were given with the knowledge and intent that they would be widely circulated, including by Rebel News, a publication that has specialized in goading its readers to view me in the most dehumanized terms possible. Reciting the magic words “I respect the Board’s decision” before going on to attempt to publicly humiliate me does nothing to mitigate the harm.

- d) I am deeply saddened by Trustee Kaplan-Myrth’s expression of concern with her situation and fear for herself and her family (which is unequivocally serious and I denounce wholeheartedly) However, her circumstances dire and unconscionable as they are, do not justify Trustee Kaplan-Myrth’s statements and conduct at the September 11th public Special Board Meeting, directly after that meeting and from September 8-18, 2023.**

I am deeply saddened that the Integrity Commissioner is only saddened by my expression of concern with my situation and not with the relationship between that situation and the moral, ethical and arguably legal duties of the OCDSB and its Trustees in connection with that situation.

As the structure of the paragraph reveals, my “situation and fears” are raised, seemingly only to be dismissed as relevant to the matters being complained about. As I have tried to explain, in each case, the matters being complained about not only are factually inaccurate or at least incompletely described, but each and every one of them is directly connected to the broader issue of antisemitism and the narrower issue of its impact on me and my safety.

It is not that these factors “justify” what I said. They are its subject matter. The Board on the other hand, has treated these matters as though they were irrelevant to its business, as though I were either exaggerating them, or as matters for which I was myself responsible to the extent of their impact on me. There is not one example in the entire Report of any issue other than these two that I have raised, about which anyone has complained and not one example of any attack on another Trustee either in the media or on the internet.

Although it is strictly speaking irrelevant, my statements about the impact of the September 11 proceedings on my safety could confidently be repeated about the inevitable impact of the current Code of Conduct proceedings on my personal safety, regardless of the outcome.

- e) Trustee Kaplan-Myrth walked from the boardroom to the media room where journalist were assembled. While one individual who was in or near the media room was an individual**

from whom Trustee Kaplan-Myrth had received threats, the other media personnel, were from various media outlets. One individual was an individual to whom Trustee Blackburn referred to as her “media advisor”. In her response to the Complaint and in the Global Report, I determined that this individual is not Trustee Blackburn’s “media advisor”, but rather Trustee Blackburn made this statement as Trustee Kaplan-Myrth was shouting “out”, “out!” “OUT OUT!!” demanding that all journalist and others, including Trustee Blackburn, leave the media room until after Trustee Kaplan-Myrth completed her interviews with the CBC, CTV and the Ottawa Citizen. I find that Trustee Kaplan-Myrth’s personal style can sometimes be one of aggressive attribution to any actions she perceives as being contrary to her views or that she perceives as contributing to “far-right” narratives.

This description attributes motives to me that are inaccurate. I have described the actual events and witnesses to the events above. My only concern was for my safety and to be allowed to conduct media interviews without being harassed. The conclusion about my “aggressive attribution of any actions [I perceive] as being contrary to [my] views or that [I perceive] as contributing to “far right” narratives” is difficult to understand grammatically, but more importantly it is not clear what the basis is for that finding or what its connection may be to the Code of Conduct. An impression is being created that my character is being criticized rather than Code of Conduct complaints.

My counsel once again advises me to object to this sort of finding as having no probative value while being extremely prejudicial.

- f) **I certainly have not encountered a Complaint investigation in my years as an integrity commissioner, where there has been such a disconnect between how the Respondent (in this case Trustee Kaplan-Myrth) perceives her conduct and how she is perceived by others on the Board and in the District. I find that Trustee Kaplan-Myrth failed to take responsibility for her behavior and failed to make any effort to de-escalate the conflict with her colleagues. To the contrary, she escalated the conflict with her behaviour played out on social media posts. When reviewing Trustee Kaplan-Myrth’s conduct, the real issue seems to be that the behaviour was allowed to continue as part of a political power struggle.**

This is another passage about which my counsel advises me to object in the strongest possible terms. It is his advice that this constitutes the Integrity Commissioner giving her own evidence, “pledging her own credit”, asking the Board to make findings not on the basis of evidence but on the basis of things the Integrity Commissioner knows, and most seriously in effect making a profession of innocence either proof of guilt or an offence in and of itself.

Once again, I feel as though I am being found liable for who I am rather than for what I may have done. There is mention of a “conflict with [my] colleagues” but there is no identification of what that conflict is. If the conflict were identified, I might be able to say something about it. Some conflicts can be de-escalated by one side; some take two. I made every possible effort to de-escalate the conflict with Trustee Dickson, but apologies and offers of mediation and even suggestions to mediate by the Investigator, were turned away. What are the other conflicts? It is not good enough to say that witnesses (who? how many?) say there is conflict. What have others done to de-escalate it? There is a hint that the conflict is about a political power struggle. Between

whom? About what? These are not disingenuous questions. I have no idea what is being referred to unless it's about antisemitism and if that's seen as a political power struggle, that only demonstrates the scope of the problem.

- g) The Provincial Government has made it very clear that the Ministry of Education would not hesitate to step in to supervise school boards that do not adhere to the obligations under the Education Act. In fact, in April 2023, Education Minister Stephen Lecce has said that "My aim is ... creating a culture in the ministry where they collaborate with us to lift their standards. Of course, if they don't, we will act and ensure that they implement and fulfil the clear requirements and requests of parents, which is [that] we up our game when it comes to reading, writing and math." I have concluded that the outcome of Trustee Kaplan-Myrth's frustration with what she sees as ineffective strides to ensure her safety from bodily threats is to verbally lash out on social media: "The #Ottawa public school unfortunately has a toxic pattern of conservative trustees abusing it "code of conduct" process to try to silence progressives. I was warned ahead of time. I'm the 2023 target."**

Once again my counsel advise me to object as strenuously as possible to this paragraph which he calls an "in terrorem" argument, meaning that it urges for a result not based on the merits but because of some terrible consequences that are said will occur if that result isn't forthcoming. He says that the underlying threat in this argument is that if the Board does not "make an example" of me to show that it's got its act together, the Province will not hesitate to step in and take over. He says that this is not a proper argument and that an "in terrorem" argument that can be made in response is that a decision that can be linked to this sort of reasoning is the sort of decision that will attract maximum scrutiny in the event of judicial review. He also advises that the argument is logically unsustainable as well. The Minister is focused on academic achievement ("reading, writing and math"). It seems unlikely that he will be overly impressed by yet another set of Code of Conduct proceedings dealing with how Trustees express their feelings about each other or about issues that matter to them as advancing those goals. Opinions may differ as to the best way to get the Board focused on the real issues that will deal with the Minister's priorities, but to paraphrase the Report's own words, disagreements among Trustees is not tantamount to causing each other or the Board harm, so as to necessitate invoking disciplinary measures. De-escalation and mediation would yield more impressive results for the Minister to admire rather than punishments and public shamings which, as the current complaints clearly demonstrate, only lead to hunger for more of the same.

- h) Some Trustees with whom I spoke believe there to be 2 sets of rules: one set for Trustee Kaplan-Myrth and another for the rest of the Board**

This is puzzling because there are no examples given so it is difficult to discuss. I am not aware of any special treatment and in any event, it is not clear how this applies to any complaint. If it is supposed to deal with behaviour at meetings, I have never "shouted" at another trustee. The ONLY time I have raised my voice was when I objected to Trustee Blackburn antisemitically referring to me as a "white woman." Our current Vice Chair, Cathryn Milburn, has had an actual shouting match with Trustee Blackburn, and there were no repercussions, no code of conduct complaints. Trustee Blackburn REGULARLY disparages others, makes rude comments, interrupts.

- i) **It is patently obvious to me that that Trustee Kaplan-Myrth does not have confidence in the administration with respect to ensuring that she is kept safe (a matter outside of my jurisdiction). In fact, she continues to believe that in disparaging staff efforts, she has done nothing wrong. Trustee Kaplan Myrth meets out serious allegations against other Trustees and staff about leaking her personal information to “far-right” organizations and causing her harm, without apparent regard to the seriousness or potential impact of such allegations and how this impacts the cohesion of the Board as a decision-making entity.**

I have previously stated that I did not accuse anyone of anything but rather asked for information about a matter that compromised my safety. On the issue of considering the impact of things, I have mentioned my view that there were legal arguments for withholding disclosure because of the impact of releasing the information, especially to this particular requester. I should have been informed of the request because of the impact on my safety and there could have been a discussion with me and my counsel. That impact was not considered.

Appendices:

- a) Trustee Kaplan-Myrth’s Sept 30 2023 letter of response to Integrity Commissioner Suzanne Craig
- b) Supporting documents, as appended on Sept 30, 2023

Suzanne Craig
Integrity Commissioner
OCDSB

cc:

Mark Freiman, respondent's legal counsel
Pino Buffone, OCDSB Director of Education
Lyra Evans, OCDSB Chair
Richard Sinclair, OCDSB General Counsel

Sept 30, 2023

Dear Commissioner Craig,

Re: response to allegation dated September 29, 2023

I am writing this in response to the allegations, dated September 29, 2023, that I violated OCDSB's Code of Conduct. I do not, at this time, know who submitted the complaint.

I am not guilty of any of the alleged violations outlined in this complaint. Furthermore, this complaint is an attempt to cause me further harm. It is vexatious and it is designed to silence me. Finally, it violates my Charter rights to speak, to defend myself from racism, and to advocate for my constituents.

I question the validity of a complaint that groups me together with Donna Dickson and Donna Blackburn. The complainant must distinguish between us. If the submission is not divided into three separate complaints, it is meaningless.

That said, I will address the specific issues that are raised, SEPARATING myself from the conduct of the other two trustees.

3.2: September 11, in-camera meeting

The complainant asserts that during an in-camera session, on September 11, Chair Lyra “*explicitly stated that the meeting we were about to enter would be contentious and reminded trustees and staff that the Chair was the official spokesperson for the board. Comments and questions from the media regarding this matter should be directed to the Chair. However, immediately following the meeting, [Trustee Kaplan-Myrth], [another named Trustee] and [another named Trustee] all approached and willingly shared their opinion on the matters before the Board that evening.*”

I was not privy to the in-camera session on September 11. I was excluded from that meeting—because it was a session to discuss the Code of Conduct on the agenda that day—and CANNOT be accused of violating instructions. I was sitting in the Chair’s office, with my family at the time. I absolutely did NOT know that the Chair asked trustees not to speak immediately following the meeting.

Donna Dickson and Donna Blackburn, on the other hand, were in that in-camera session. They knew of the Chair’s warning and chose to speak with media, regardless. As you will see from the next item, their media engagement was problematic for many reasons, not least because they contacted media before the meeting was public knowledge, and they used media to attempt to specifically cause me, the Chair, and other trustees on the Board further harm.

3.5: Sept 11, media

The complainant states that on September 11¹, 2023, “*Trustee Kaplan-Myrth, [another named Trustee], and [another named Trustee] did not inspire public confidence, and acted in a manner that brought into question the already precarious perception and trust in the Board. Trustee Kaplan-Myrth, [another named Trustee] and [another named Trustee] all gave emotionally charged interviews and shared their personal thoughts on the decision that went against the decision of the Board on social media platforms and verbally fought with members of the public after the board meeting.*”

Not only did Donna Dickson and Donna Blackburn knowingly disregard the Chair’s instructions not to speak with media, it was brought to my attention on September 8 that Rebel News knew that the topic of the Special Meeting was a Code of Conduct against me. There is no way that the far-right could know that, ahead of time, unless it was leaked by one of the conservative members of our Board.

It was also brought to my attention on September 10, by a journalist at the Ottawa Citizen who reached out to me, that an invitation to a media release was sent out by Donna Dickson inviting all media to speak with her after the Special Meeting. I have attached a copy of that media release. She violated the embargo on speaking about the Special Meeting ahead of time, and she—and Donna Blackburn—not only expressed their opinions on the outcome of the proceedings but also explicitly defamed and insulted me in their conversations with CBC, CTV, Ottawa Citizen, CFRE radio. Bizarrely, Donna Dickson also reached out to give an exclusive interview to True North (which can ONLY have the purpose of causing me harm).

I did not speak publicly until the OCDSB had shared the details of the Code publicly. At that point, it was my Charter right to respond to the public. I asserted, “I am shaking with fury that OCDSB is letter a vexatious trial to occur (I called out white supremacy and advocated for mass in #Ottawa schools!) while anti-maskers and antisemites threaten to shoot me,” and I shared one of the recent death threats. I asserted, “Going after me is entirely politically motivated. So what’s next? I’ll continue to work as an @OCDSB trustee. And I won’t abide toxicity inside or outside of the school board. I was elected in #Ottawa because I speak, I advocate. Onward.” It is my Charter right to say what I said on my personal Twitter/X account and elsewhere. I did NOT besmirch anyone else. I did not question the outcome of the kangaroo court.

I also wrote, “NOT OK. In the face of antisemitism, disinformation, and a campaign by the far-right to see my head roll, today I’m on trial with @OCDSB, accused of a code of conduct violation for calling out white supremacy and saying #Ottawa trustees should all care about health & safety.” Given that OCDSB had decided—despite our pleas to keep the issue out of the public eye—to post the details of the Code and to proceed with the process in front of a camera, I had a Charter right to respond, as an elected official and as a Jewish woman under attack.

When I exited the meeting on September 11, I gave interviews to CBC and CTV and Ottawa Citizen, to say that there is a pattern of toxicity that must stop. It is well within my right to say that I should not have questioned how much other trustees care, but that---as a woman subject to daily antisemitic death threats and stand up against all forms of discrimination—I am mortified to be characterized as a white woman attacking a Black woman.

I posted on social media that it was not a victory. I focussed on the harassment of me, as a Jewish woman, as a physician, and as ally for 2SLGBTQ youth. My assertion was, “I was not found guilty at @OCDSB tonight. But it isn’t a victory. We live in a dangerous time. I have a Charter right to point out that we were bombarded by white supremacists, to express political opinion, and to lobby colleagues. It isn’t safe to be a Jew in politics in #Ottawa.”

The media frenzy after the trial was not, as I have stated, orchestrated by me. Donna Dickson and Donna Blackburn invited the press to speak with us. Furthermore, they did so with the purpose of further defaming me and Chair Lyra and the colleagues who abstained from voting that night.

The complainant's assertion that I "verbally fought" with the public after the board meeting is an outrageous mischaracterization. I did NOT fight with the public. When I exited the OCDSB boardroom on September 11, I was confronted by Donald Francis Smith, a man (not a journalist) well known by Ottawa Police who records video to distribute to far-right parties. Mr Smith was breaking his probation for criminal harassment. I asked him to back off, as I tried to enter the media room to speak with CBC, CTV, Ottawa Citizen. He would not step away from me. I asked security and staff to help me. Finally, my husband and my legal support, Amir Attaran, intervened and asked OCDSB to clear the atrium. I also asked Donna Blackburn to give me space to speak with media without her hovering next to me.

Later that evening, OCDSB issued a "no trespass" to Mr Smith. The following day, I received a death threat from Mr Smith, asserting that he will kill me if he encounters me in the streets of Ottawa. That was reported the same day to Ottawa Police, file 23-299-303.

The following day, September 12, I was contacted by Ezra Levant at True North Canada, informing me that my colleague had given an exclusive interview to them, and asking if I wanted to comment. I did NOT comment. However, Donna Dickson went out of her way to cause me harm. The article in True North that was subsequently published was a hit piece on me. I responded to when thousand of people began to troll me with the article. On my personal Twitter account I asserted, "Ironic to see her play in a sandbox with the far-right. Whatever, call me a "bully" for saying we should protect students and staff from #COVID19 in #Ottawa. I'll continue to stand up for health and safety, call out disinformation, and condemn antisemitism, anti-2SLGBTQ hate." It is my Charter right to defend myself when attacked by the far-right and, indeed, when attacked publicly by a fellow trustee.

I was the subject of a hit piece in the Canadian Jewish News, which picked up the story from True North.

In response to ongoing public accusation that I committed a heinous crime by sending one text message to my trustee colleague, I wrote, "If a man were to say publicly (let alone a private text during a debate, once) that a politician doesn't care about XYZ, it would be politics, not news. Also, calling out white supremacy isn't racism. Anti-2SLGBTQ hate & antisemitism are the real story. IMO." It is my Charter right to speak as a politician and to defend myself from defamatory accusations.

While I was focussing on the issue of systemic discrimination and the need to advocate for marginalized populations, Donna Dickson was defaming me on True North Canada and Donna Blackburn was posting personal attacks on me on social media (Instagram). Mark Bourrie, an Ottawa lawyer, sent letters to Donna Dickson and to Donna Blackburn to ask them to stop personally attacking me. There was no response from Donna Dickson and from Donna Blackburn there was an angry, rude response to Mr Bourrie. (See attached)

3.7 dismantling trust in the Board

The complainant asserts that ***“Proceeding the meeting, 3 trustees did not inspire public confidence, and in my opinion, actively participated in the dismantling of the already precarious perception and trust in the Board.”***

The harassment and death threats that resurge each time that I put forward a motion to our school board, or speak up on behalf of constituents, or advocate as a physician on behalf of my patients and community are NOT a violation of a Code of Conduct. I CANNOT be accused of wrongdoing for literally doing my work as an elected official. The vitriol that ensues is NOT my fault. It is NOT my voice that is bringing shame to the OCDSB. Those who have chosen to target me, and the organized hate that we are seeing in other Districts—the disruptions are not unique to OCDSB--are the problem.

Note, also, that I requested mediation. My legal team requested mediation. We implored OCDSB NOT to make the trial a public spectacle, as it would further endanger me and embarrass the Board. Donna Dickson refused, asserting that she wanted me to have to apologize publicly. Donna Dickson reached out to media and gave True North an interview.

3.7 conduct during Special Meeting

The complainant asserts that on September 11 during the Special Meeting, ***“Trustee Kaplan-Myrth accused Trustee Blackburn of ‘having it out for her since day one’, engaging in a conduct that discredits the integrity of the Board. Trustee Kaplan-Myrth spoke out of turn many times and did not conduct herself with the decorum expected of a board member.”***

I spoke twice on September 11 at the Special Meeting. First, when Donna Dickson began to speak, I asked – as a formal point of order – for clarification about why this Code of Conduct was submitted in February for a single interaction that took place in November. I asked for clarification of the timeline because Suzanne Craig, Integrity Commissioner, had just advised me that complaints cannot be submitted if they occurred more than 3 months prior. There was a change in Code of Conduct policy that occurred in June 2023, and I was seeking clarification. Michele Giroux, as Executive Officer, answered my question about the old policy.

The second time that I spoke at the September 11 meeting was to object to Donna Blackburn’s summation, in which she shockingly referred to me as a “white woman attacking a Black woman.” I said, “I object, you will NOT characterize me as a white woman. I am a Jewish woman who has received daily antisemitic death threats for standing up for health and safety. You have been out to get me from day one, as my colleagues can validate.”

I forgot to say, “point of order.” That is true. However, it was a racist, antisemitic attack. It was shameful that none of the other trustees called point of order to challenge Donna Blackburn’s racism. As the person under attack, I justifiably challenged her hateful words.

Donna Blackburn *should* be taken to task for abusing the Special Meeting as an opportunity to level a personal character assassination. She explicitly dismissed my status as an equity-seeking group. It is my Charter right to object.

The Code of Conduct process violated my rights, as a Jewish woman, to defend my ethnic and religious identity.

3.8: Sept 7, Professional Development session

The complainant asserts that a “*breach occurred on September 7, 2023, during a Board Professional Development Session.*” That was a session in which the trustees and the Director of Education, Pino Buffone, Michele Giroux, and Nicole Guthrie were in camera to discuss our personal experiences and reflections on our first 9 months of work with the OCDSB. We had completed a “self evaluation” survey and were encouraged to speak honestly and freely about what we felt works well and needs improvement as individuals and as a group.

I politely, silently listened to others speak.

I then raised my hand and spoke from the heart, to describe how the toxicity within the board surprised me, when I arrived as a trustee, and to explain the trauma of the daily antisemitic harassment and death threats that I have been subject to since joining the OCDSB as a trustee. I asked for the board of trustees to validate my concerns, rather than responding with silence, I supported the idea of formal group mediation, and I asked that we do something substantive to improve safety for all of us. I also noted that serious psychological toll of the harassment on me, and my family, cannot interfere with my ability to do my job as a physician.

Donna Dickson responded (out of turn, a dismissive comment) by saying that if I don’t want death threats I shouldn’t speak publicly. Donna Dickson has repeatedly in OCDB meetings dismissed the seriousness of the antisemitic death threats that I have received. I politely and calmly asked Donna Dickson to please refrain from commenting on my personal statement.

Donna Blackburn then raised her hand. She began her comments by launching into an objection to mediation and then –I cannot recall what it was precisely that she said—started to say something about me or about the Board as a whole. My memory is that Chair Lyra then asked Trustee Blackburn not to continue, at which point she angrily stood up and left the room, saying, “Only some people get to speak.”

All trustees as well as Director Pino Buffone and Chief Executive Officer Michele Giroux were witness to that exchange.

After that meeting, I posted in my personal Twitter account: “Imagine turning to a room of colleagues to say their silence as I receive antisemitic death threats isn’t OK. The only person to respond says *they* are uncomfortable with the risk I bring to them (dismissing that I’m the target as a Jew), so can I please stay off social media...” It is my Charter right to express my experience of antisemitism. I did NOT say it was a meeting at the OCDSB, I did NOT name names. I was letting the public know that silence in the face of antisemitism is complicity.

3.8: calling for resignations and undermining the decision of the Board

The complainant also asserts that “*statements given to the media immediately after the September 11th meeting(s) suggested that trustees should resign, and further undermined the decision of the Board.*”

Again, I did NOT make any such comments, at any time. I did NOT suggest that trustees should resign, nor did I undermine the decision of the Board on September 11. I acknowledged the outcome, acknowledged that I should never have sent a text message to question the degree to which fellow trustees “care” in November, and that I had already formally apologized in writing.

On September 11 and September 12, 2023, following the outcome of the code of conduct process that she insisted upon -- despite pleas from my legal counsel that it would cause me undo harm and put me in significant danger -- Donna Dickson arranged to speak with CBC and CFRE radio in Ottawa and told the Ottawa community that I am "a bully." On September 14, 2023, she was quoted in True North - a far-right tabloid - in the following interview with Elie Cantin-Nantel. I have attached the full article of the interview between Donna Dickson and True North. Here is an excerpt of the statements that are incontrovertibly in direct breach and require full investigation:

Ottawa-Carleton District School Board (OCDSB) trustee Donna Dickson is slamming her board for not holding fellow trustee Nili Kaplan-Myrth accountable for what Dickson sees as bullying.

Dickson says Kaplan-Myrth should resign.... In an exclusive interview with True North, Dickson shared her disappointment with the board - noting that the decision sends a bad message. "We have four trustees who know the truth and choose to turn a blind eye," she said. "We suspend students for bullying, and yet, they're okay with a trustee bullying. What message are we really sending to our students?... that you can get bullied and you have no right, even though you might be right."

Dickson believes it would be best if Kaplan-Myrth resigned from her position. "Her behaviour towards the board, towards the public, towards the speakers that we've had, when she does not agree with what they have to say, her disrespect, is beyond what it is to be a politician... You can't do business, right? She needs to do check her own words. If she's doing that to a minority trustee... as a doctor, what is she doing to her own patients?"

Dickson also criticized the board's chair, Lyra Evans, for her handling of the process. "The administration, the director, and Lyra chose not to follow through," she alleged after she made the complaint. "I had to hound and hound... We need a chair that will sit there and do the job, so we don't have the Nilis within the board trying to push other agendas all the time."

I have not had any personal interaction - communication via text or in person - with Donna Dickson or Donna Blackburn since November 2022, other than asking her in our in-camera meetings not to dismiss antisemitism each time that I ask OCDSB to respond to the seriousness of the threats I face. For Donna Dickson to assert that I am a "bully" and for her to deliberately stoke more targeted hate by speaking with True North and calling for my resignation is a truly unfathomable breach of conduct.

Her assertion that I should be forced to resign echoes the Rebel News petition which OCDSB General Counsel, Richard Sinclair, had taken down on March 23, 2023. At that time, he asserted: *"We are concerned with the content of the petition and the nature of the comments that it is generating, and believe that you have the legal obligation to remove it. Specifically, we are of the view that the petition and the resulting comments are abusive and defamatory toward our trustee, negatively impacts the reputation of the OCDSB, and undermines public confidence in public education. As well, many of the comments could be considered unlawful hate speech within the meaning of Canada's Criminal Code. This petition was prompted by an incident at a recent meeting of our trustees related to the rights of trans and gender diverse students. This has galvanized those in and outside of the community that oppose trans rights, and the petition has a growing number of supporters who appear to be from outside of our community, and is contributing to an unsafe environment for our trustees, staff and, most importantly, for our students. In fact, just today our trustee received an email titled ""Tranny lovers will be slaughtered" and which includes overt death threats against the trustee and anyone who stands with our trans students. This is therefore not an issue of freedom of expression, but one of hate speech and threats of violence."*

3.8 social media use

The complainant asserts that “Trustee Kaplan Myrth used her social media platform during these dates and accused members of OCDSB staff of ‘leaking confidential in-camera items’ to members of the media, which I believe to be quite disparaging and demeaning, and further damaged public confidence of the Board, and our school district.”

From November 2022 until January 2023, sometimes multiple times in a day, I received antisemitic death threats. I received emails during Chanukah that threatened to “gas” me, to kill me and use my skin as a “lampshade” (Holocaust references). My husband and children were threatened. My clinic staff had to wade through vitriol, swearing, people calling me a f-ing k-, words that would make my grandparents (Holocaust survivors) roll over in the graves. Each threat was reported to the Hate Crimes Unit of the Ottawa Police. An arrest warrant was issued for one of the offenders, a man in Windsor, Ontario, but despite reassurances from the Sergeant that he was going to “turn himself in,” he was never apprehended. Most of the email messages were anonymous, untraceable.

An anonymous email on March 23rd threatened, “You will be slain, Nili. You are a disgusting, tranny loving k-. You are a child-abusing groomer. The petition will end your public life, and a butcher’s knife will end your actual life. You are not safe anywhere. We know your routine and where you live.” That email, if you can imagine, has been followed by dozens of similarly egregious threats. September 3, 2023, while Canadians were getting ready to send their children back to school, I received an email to my OCDSB account threatening me, “Nili, U should wear bulletproof vest at the next OCDSB meeting. We have all your addresses and know ur movements and so much more about you than you can imagine. We have had enough of your jewish, tranni-loving behaviour. This is not a threat but rather a promise. The world will finally be rid of you, and the children of Canada will be safe. Be on the lookout but know that we will see you before u see us.”

I brought some of the most egregious threats—there were many others, by phone and email, that were reported to Ottawa Police but not shared on social media—to the attention of trustees and senior staff.

As has occurred repeatedly, my fears for my safety were dismissed by Donna Dickson and Donna Blackburn (who made comments to the effect of, “So stop speaking on social media.”) and the Board decided to go into the boardroom on March 23 irrespective of the threat to me (and the safety issues for all of us). Nicole Guthrie walked next to me, as though staff was meant to be my human shield.

I shared some of the threats on social media because they are not isolated, they are a pattern, they are part of organized hate in Ontario and across Canada and North America.

I did NOT comment on the September 11 Special meeting until the meeting agenda and report were made public. Even until the day of the meeting, my legal counsel (Mark Freiman) was imploring the OCDSB not to release the documents publicly.

Once those documents were made public by the OCDSB, I had a Charter right to speak publicly. I spoke about the pattern of abuses of the Code of Conduct process in boards of education. I am NOT prevented from defending myself when Rebel News or True North write hit pieces on me. I am NOT prevented from speaking freely about the death threats and harassment I experience. I am NOT prevented from discussing the lack of safety measures and the disappointment that OCDSB failed to warn me about the access to information request (about my safety plan).

I did NOT disparage any specific person, did NOT engage in character assassination or defamation of my colleagues, CANNOT be blamed for the shame brought to OCDSB as a result of what has transpired in the last nine months.

OCDSB staff might have made different decisions, such as to hire a proper security firm to evaluate threats and create a proper safety plan, to inform me of the ATIP request before sharing information with Rebel News, to clear the boardroom of disrupters, to prevent known harassers from entering the building.

It is unfathomable, after OCDSB put me through the trauma of a public trial, that this new Code violation alleges that I brought shame to OCDSB.

It is my right to speak on social media—my Twitter account is personal—and I cannot be accused of harming the reputation of OCDSB for having expressed my opinion. I can continue to advocate for masks and vaccines, I can continue to advocate for air quality surveillance, I can continue to advocate for 2SLGBTQ rights, and I can continue to talk about the trauma of being a Jewish woman in politics, I can continue to call out white supremacy and bigotry. I have a right to continue in ALL of my advocacy.

If anyone has attempted to defame or cause harm, it is Donna Dickson, through her interview with True North, and Donna Blackburn, through her Instagram posts about me. See attached.

3.8: leak of information

The complainant asserts that, *“Trustee Kaplan Myrth used her social media platform during these dates and accused members of OCDSB staff of ‘leaking confidential in-camera items’ to members of the media, which I believe to be quite disparaging and demeaning, and further damaged public confidence of the Board, and our school district.”*

In June, 2023, I stepped outside of the OCDSB building to take a call from my son before a board meeting. Unbeknownst to me, someone working for Rebel News – a far-right rage-farming blog – was in

the parking lot, waiting to give me a petition to demand that I resign as trustee. They accosted me, trying to shove the petition into my hands while videotaping my reaction. I told them to back off, as I backed myself through the OCDSB doors. Then in July, 2023, Rebel News published an online hit piece (see attached) in which they included email documents commenting on my safety plan from OCDSB senior staff – under an access to information request, which the OCDSB provided without warning me – in which one senior staff says to another that I “baited” Rebel News. (See attached).

I did NOT share any information with anyone. Rebel News requested the information from OCDSB, and OCDSB staff did not protect me. I have already submitted a formal complaint to the Privacy Commissioner about that issue.

I did not bring shame to OCDSB. It is absolutely my right to respond to the Rebel News piece, and to comment on the abhorrent lack of attention to my safety (and victim-blaming) demonstrated by OCDSB.

On September 8, someone—presumably within the OCDS—leaked news that I was subject of a code of conduct special meeting on September 11. Given that the information was leaked to Rebel News/True North, and that Donna Dickson was subsequently interviewed by True North, it is reasonable to assume that she was the source of the leak. I ask that OCDSB investigate that. The person who leaked this from the OCDSB to the far-right gave it to a man named Rowan Czech-Maurice, who goes by the Twitter/X handle, @canamericanized. He seems to generate news for Rebel News/True North. (See attached)

Conclusion

I am NOT guilty of any of the alleged violations in this submission. I ask that you throw out the complaint in relation to me. This Code complaint is an attempt to cause me further harm. It is vexatious and it is designed to silence me. Furthermore, it violates my Charter rights to speak, to defend myself from racism, and to advocate for my constituents.

The only path forward is separate the complaint into three complaints (to deal with Donna Dickson and Donna Blackburn separately). You can then assess whether their conduct and their statements on radio and in television, and in an interview with True North, violated the Code.

If it is OCDSB’s goal to avoid further negative media attention—and the fear that the Ministry of Education will shut down our Board—it would be prudent to proceed with caution.

I implored Chair Lyra not to proceed publicly with the previous allegation. I apologized immediately to her and to the Integrity Commissioner in November 2022, when it was not dropped I wrote a heartfelt apology to my colleagues in February 2023. I have had no interactions with those colleagues but have

continued to be the subject of attacks by them. The toxicity within the Board pre-existed me, and will outlive me. I have already suffered the trauma of the barrage of threats from the far-right and the weight of the previous Code hanging over my head for six months. My legal counsel implored the OCDSB to consider my safety in September and that consideration was dismissed. If this allegation proceeds, we will take every available action against the OCDSB.

As you aware, I am not very hopeful that mediation will reduce the toxicity within the OCDSB, given how engrained it is in the history of the District. I am nevertheless willing to engage in good faith with my colleagues in a communal process of mediation, if there is assurance that it is safe to do so.

Sincerely,

A handwritten signature in black ink, appearing to be 'N. Kaplan-Myrth', written in a cursive style.

Dr Nili Kaplan-Myrth

**Office of the Integrity Commissioner
OCDSB COMPLAINT - RECOMMENDATION REPORT REGARDING
TRUSTEE DONNA BLACKBURN**

Following my reformulating the Complaint, I determined that it raised 5 issues in relation to Trustee Blackburn.

I will set out my recommendations with respect to Code breaches below with respect to each reformulated allegation of the Complaint, as applicable.

- (1) Did Trustee Blackburn violate the Code by virtue of her conduct or statements at the September 7, 2023 Board Professional Development Session?

No.

I find that this allegation invokes rules 3.8, 3.17 and 3.19 of the Code.

Trustee Blackburn is a Trustee who has been in elected office for 13 years. She is conscientious and determined. During the course of my interviews, some have defined her as “abrasive” and “politely condescending”. Prefacing her statements at the Board and during interview with “based on my years of experience” or “in my opinion”, has been off-putting to some of her colleagues. As Trustee Blackburn has set out in her response to the Complaint, she asked the Executive Officer for recommendations on what she could change to work on common ground with her colleagues. The Executive Officer indicated that she could consider prefacing fewer comments with “as somebody who has been sitting here for thirteen years.” As Board members we all come to the table with different lived experiences and educational backgrounds. But at the end of the day we rely on staff to advise us on the best course of action as they are the education and operational experts. We come to the table as equals.”

At the September 7th Professional Development Session, Trustee Blackburn talked about broken trust, in particular in light of what she perceived to be a concerted effort by her colleagues to exclude her from being appointed to any committee at the beginning of the term. Trustee Kaplan-Myrth made accusatory comments with a raised voice.

Trustee Blackburn’s actions and statements were made in a raised voice, in a tone that was laced with what was perceived by the complainant as aggression and anger. However, in discussions with other witnesses and Trustee Blackburn, what her tone belied was utter frustration.

I find that the actions and statements of Trustee Blackburn at the September 7th Professional Development Session did not rise to the level of a violation of the Code.

- (2) Did Trustee Blackburn violate the Code by virtue of her conduct or statements at the September 11, 2023 in-camera meeting¹?

¹ Complaint 1 made a general allegation against all three respondents; however, as Trustee Kaplan-Myrth was not present at the closed meeting, I have removed her in the reformulated allegations.

No.

I find that this allegation invoked rules 3.8, 3.17 and 3.19 of the Code. During the in-camera meeting on September 11th, Trustee Blackburn talked about what she perceived to be a difference between how she was treated during the Code of Conduct complaint investigation about her conduct in 2020 and how Trustee Kaplan-Myrth was being treated. I underscore “perception” because her comments were based on a subjective view of the circumstances. Nonetheless, expressing that she felt there was latitude being afforded Trustee Kaplan-Myrth that Trustee Blackburn did not feel she was afforded, did not constitute statements that were disparaging or demeaning. Further, Trustee Blackburn asked if the Trustee who was not in attendance would receive the same direction from Chair Lyra Evans not take interviews about the public meeting. While the Chair of the meeting (current Chair of Board Lynn Scott) ruled the question out of order, I do not find that the question itself was disparaging nor demeaning or otherwise in violation of the Code.

Based on my review of the audio and video recordings of meetings, transcripts and witness statements, I conclude that Trustee Blackburn is by many, tolerated at best. Trustee Blackburn was duly elected to serve elected office on the Board and as such should, as all Trustees, be afforded full rights of participation at meetings and during deliberations as she represents citizens who wanted her voice at the decision-making table. Trustee Blackburn believed that she was not given the same opportunities to participate in the Code of Conduct investigation in which she was Respondent as was being given to Trustee Kaplan-Myrth at the September 11th meeting. This was an expression of her recollection and comparison. However, Trustee Blackburn has to realize that the current Board has a new Code and new processes. For rules to be fair and effective, they must be consistently applied by leaders. Where Trustee Blackburn perceives there to be discrepancies in application of the rules, she is encouraged to not refer to past practices of previous Boards.

I find the actions and statements of Trustee Blackburn at the September 11, 2023 in-camera meeting, did not violate the Code.

(3) Did Trustee Blackburn violate the Code by virtue of her conduct or statements at the September 11, 2023 public Special Board Meeting?

No.

I find that this allegation invoked rules 3.5, 3.7, 3.8, 3.15, 3.17 and 3.19. In the Global Report, in order to assist the Board in understanding the important issues raised by this Complaint, I decided that it was necessary to provide context within which the allegation of misconduct of the Respondents occurred. I determined that there has and is an underlying political aspect running throughout the context of these Complaints. There has been a tendency to view the conduct of Trustee Blackburn, taken in isolation and with reference to her past behaviour. When I interviewed witnesses during this Complaint investigation, despite that the complaints focused on the events from September 8-18, 2023, I was advised by multiple people that witnesses had views about Trustee Blackburn because, for example she had previously insisted on discussing the relationship between the community and the Ottawa Police Service. The strong positions that many have taken on this matter have resulted in Trustee Blackburn bearing the brunt of anger that many have about this topic.

While Trustee Blackburn’s politeness has been defined by some as “annoying” or “verging on sarcastic” (“thank you for sharing your opinion”), she has sought guidance on how to appropriately communicate at meetings and one suggestion has been to preface comments by stating that it is

her opinion and by thanking others for sharing their opinion. In isolation, these introductory comments will not typically amount to a Code violation. The September 11th Special Board meeting related to an incident that occurred in November 2022. The protracted investigation caused trustees' and some staffs' patience to dwindle and nerves to be frayed.

In her closing statement, Trustee Blackburn said that Trustee Kaplan-Myrth is a "white woman attacking a Black woman". The Complaint alleges that this acted to deliberately stoke more targeted hate. In addition, Trustee Kaplan-Myrth has identified in her December 1st comments to the Draft Reports that, as a Jewish woman, she received Trustee Blackburn's statement as "equating of Jewish people and especially Jewish women with "white privilege". Trustee Blackburn is a member of an equity seeking group that often faces overt discrimination. She has also shared that she has a Black daughter. I accept that Trustee Kaplan-Myrth's took offense to the statement and I accept that Trustee Blackburn stated position that she had no knowledge of how her statement could have been received by Trustee Kaplan-Myrth. There is a need for all Trustees to gain a deeper understanding of human rights rules and I make such recommendations below. Trustee Blackburn was stating her position that she believed the dynamic that undergirded the circumstances that brought forward the Complaint in November 2022 included a component of Trustee Dickson's membership in an equity seeking group. She went on to say that "For me, to have been personally attacked about my commitment to equity was disturbing, as an out lesbian and as a woman who proudly raised a Black daughter." As the mover of the motion, she explained why she believed that the recommendations of ADR Chambers and the legal opinion of Aird & Berlis should be adopted. As she spoke, Trustee Blackburn was met with "you have had it out for me since day one" and when the Chair asked for an apology to be tendered and Trustee Kaplan-Myrth responded that "she would not". The reason for declining was not given and the Chair took the declining on its face and called for a recess. Having received Trustee Kaplan-Myrth's December 1st comments, she has explained how she received Trustee Blackburn's comments.

Trustee Blackburn said in her statements that "Trustee Scott is an incredible woman and Trustee Matthew Lee, who I don't know yet that well, he's a good man who is committed to the betterment of our kids and their families." These statements were not demeaning or disparaging of others. Trustee Blackburn was referring to past statements made by Trustee Kaplan-Myrth within the context of the meeting at which the Motion of November 2022 was debated and in and around the time that Trustee Kaplan Myrth made the statement that these Trustees did not care about racialized or immunocompromised children or children in poverty or marginalized communities.

Trustee Blackburn put forward the motion to vote on whether to find Trustee Kaplan-Myrth in violation of the Code and to apply sanctions. Bringing forward a motion is a requirement under the By-laws and Standing Rules, to place a matter properly before the Board in order to vote on the matter. Trustee Blackburn also spoke last at the end of the deliberation because procedurally the mover of a motion concludes comments.

I find that the actions and statements of Trustee Blackburn at the September 11, 2023 public Special Board Meeting did not violate the Code.

- (4) Did Trustee Blackburn violate the Code by virtue of her conduct or statements immediately following the September 11th meeting, including in her interactions with media present following the meeting?

No.

This allegation triggers sections 3.5, 3.7 and 3.8 of the Code. At the conclusion of the Special Meeting, Trustee Blackburn left the meeting room and moved towards the designated location to speak to the media. While Trustee Kaplan-Myrth was walking ahead of Trustee Blackburn, Trustee Blackburn she was not “following” Trustee Kaplan-Myrth (in terms of an active “seeking out” or “seeking to menace”). They were both going to the same location to speak to the media. Trustee Blackburn talked about her disappointment with the decision of the Board and that it was going to take time for the Board to heal. Her statements made to the media did not undermine the decision of the Board, nor disparage that decision. Trustee Blackburn believed, as did all Trustees and staff in attendance on the evening of September 11th, that Trustee Kaplan-Myrth had a designated safe area and thus Trustee Blackburn did not feel that she was acting improperly in walking towards where the media professionals were located. When Trustee Blackburn arrived at the room where journalists were waiting, Trustee Kaplan-Myrth had arrived moments before and proceeded to tell Trustee Blackburn and other media representatives to “get out!” “get out” “OUT !”.

I find that there is no basis for the allegation that Trustee Blackburn engaged with the far-right to encourage harassment of Trustee Kaplan-Myrth. The information put forward in the Complaint as evidence that Trustee Blackburn has ties to the “far-right” includes Trustee Blackburn’s statement on September 11, 2023, that Chanel Pfahl is her “media advisor”. Trustee Blackburn responded to this assertion by stating that she was caught off guard by Trustee Kaplan-Myrth’s repeated shouted imperatives towards an individual to “get out!”, “get out!”, “out! “out!” While the decision to make the statement that the individual was her “media advisor” was created in the moment in an effort to come to the individual’s aide, Trustee Blackburn states that she does not have any professional or other relationship with Chanel Pfahl. I accept her statement and find as fact that she does not have any relationship with Ms. Pfahl.

Trustee Blackburn went on to say that “she is my media advisor” was “blurted out” because after the Special Board Meeting, she was distressed and believed that it was unfair of Trustee Kaplan-Myrth to tell everyone to leave a public space that she asserted she “secured as available for her use only” so that she could use the space exclusively to give her interviews. It was understood that Trustee Kalan-Myrth was provided a safe space given her significant and warranted concerns, and thus Trustee Blackburn was uncertain why she was being told to leave a shared space. It was within that context that Trustee Blackburn blurted out the comments “she is my media advisor” out of desperation to shield a person from Trustee Kaplan Myrth’s demanding everyone leave. The utterance was fictitious however, I find that the comment was made to assist the individual, made spontaneously and since Trustee Blackburn has no professional relationship or other affiliation with the individual, there were no grounds for a Code violation.

In her reply to the Complaint and in interviews with me, Trustee Blackburn has advised that she does apologize for not being more careful in her choice of words (i.e. “media advisor”) and gives as an explanation that “it was a pretty chaotic night in which I was falsely accused by Trustee Kaplan-Myrth of being ” out to get [her] from day one.” Trustee Blackburn admits that her frustration did inform her demeanour with respect to conduct after the Special Board meeting.

Trustee Blackburn and all Trustees have a right to speak with the media – her statements were personal opinion and did not demean or disparage Board members or the Board’s decision. She

stated what happened at the meeting, how she voted and her disappointment with the outcome, which is allowed under the Code.

At the conclusion of the September 11th Special Board Meeting, Trustee Blackburn describes her demeanour at the meeting as "frustrated", and that she was "a bit upset" because 7 Trustees had voted in favour of the recommendations of the Code of Conduct investigator report and 4 Trustees had abstained. Trustee Blackburn described to me how "utterly frustrated" she felt that the process that was put in place by the Board to hold Trustees to account.

The third-party investigator who had conducted the earlier Code complaint investigation made findings of fact and the law firm of Aird and Berlis had provided a legal opinion that, based on those findings of fact, Trustee Kaplan-Myrth had violated the Code. The Board has the statutory authority of decision-making and each Trustee could consider the information in the 2 reports, as well as the staff reports, to inform their decision. The Code requires that elected officials show respect for the decision-making process, fellow Trustees, staff, third-party investigators and the public. This Code requirement however, does not negate a Trustee's right to state their disagreement with a Board decision or the expert opinion or analysis of a staff member or professional advisor who possesses greater expertise. As was observed in *Sinnott v. McConkey*, 2021 ONMIC 4 (CanLII), at para. 213:

In fact, our system of government assumes that non-experts will have oversight of experts. Politicians may be experts in certain matters, but expertise is not a requirement for election to office. It is the nature of our democracy that non-expert, elected officials oversee the operations of subject-matter experts who work in municipal, provincial, and federal governments. It may or may not be wise, but it is not unethical, for the non-expert to disagree with the expert. The Code of Conduct requires that elected officials show respect for the staff; it does not compel deferring to the staff's advice in all cases.

Trustee Blackburn's disagreement with the outcome vote on September 11, 2023, was not tantamount to an act of disparaging the Board.

All three Respondents gave interviews after the Special Board Meeting of September 11th. To be clear, notwithstanding the Chair's encouraging Trustees to refrain from giving interviews after the Special Board Meeting, each Trustee has a right to speak with the media as long as they do not hold themselves out as speaking on behalf of the Board and as long as they do not undermine or disparage the decision of the Board. Disagreement is not tantamount to disparaging or demeaning.

- (5) Did Trustee Blackburn violate the Code by virtue of her conduct or statements immediately following the September 8-16, 2023 either to media representatives or via her own personal social media accounts?

No.

I find there is no basis to sustain the allegation that Trustee Blackburn "may" have leaked information about the special meeting to parties associated with Rebel News/True North. I make no further comment on how or if information was received by media outlets.

The former Chair encouraged all Trustees who were at the September 11th in-camera meeting, to refrain from taking invitations for interviews and to be reminded that the Chair is the statutory spokesperson for the Board. This allegation invoked rules 3.5, 3.7, 3.8, 3.15, 3.17 and 3.19 of the Code. Notwithstanding the Chair having encouraged all Trustees (except for Trustee Kaplan-Myrth who was not in attendance at the in-camera meeting) to avoid taking media interviews after the September 11th Special Board Meeting, Trustees have the right to speak with the media and give interviews as long as they do not hold themselves out as speaking on behalf of the Board or make statements that are demeaning or disparaging.

Trustee Blackburn was quoted in the time period subject of this allegation as saying:

- "I don't think this board will ever heal, to be quite honest," "I'd like to be optimistic that we can heal, but I don't think it's possible."
- "Those seven people believe that trustee Kaplan-Myrth violated the code of conduct. That's seven people. That's more than half." "It's not the threshold, but it's a significant number."
- Trustee Donna Blackburn posted to her Instagram account:
 So to update you.
 I received a letter from my colleague, trustee Kaplan-Myrth's lawyer, Mark Bourrie telling me to be careful when I speak to the media or I could be sued...LOL. Thank you for your kind advice, but I have this Trustee thing figured out now after 13 years...

I find that Trustee Blackburn did not violate the Code with respect to public statements made from September 8-16, either to media representations or via their own personal social media accounts.

I found that Trustee Blackburn spoke sharply and seemed irritated at the times material to this Complaint investigation.. Notwithstanding the aggression directed toward her, which she did not understand, it certainly underscores the need for training for all Board Members on words and how equity-seeking groups receive what appear to others as "innocuous". Trustee Blackburn's comments at the dates raised in this Complaint, particularly at the September 11th Special Board Meeting did not rise to the level of a Code violation.

I did not find postings on an Instagram account belonging to Trustee Blackburn. I discovered that she does not have an Instagram account. On Trustee Blackburn's Facebook account, she stated that she had "been accused of being unprofessional" through a legal letter. The letter stated that Trustee Blackburn should "give serious thought to consequences before speaking to the media. Trustees who attack my client leave themselves open to legal consequences but, even more importantly, stoke the kind of abuse that too many women in public life suffer" In her Facebook post, Trustee Blackburn stated that she believed the letter threatened her with legal action if she continued to speak to the media and that the lawyer's letter suggested that Trustee Blackburn had made defamatory remarks. Trustee Blackburn received this letter and in her opinion, it was a form of intimidation to which she posted "I won't be bullied, not by a lawyer and not by multiple Code Complaints". I caution all Trustees that social media gives the impression of casual conversations between a small number of people. However, social media platforms are designed for individuals to easily copy and share content, allowing specific messages, pictures, videos to be shared and distributed innumerable times.

Trustee Blackburn claims that the Facebook comments subject of this complaint were made on her personal Facebook page and that these comments made on a "personal" social media platform do not fall within the application of the Code of Conduct rules. I do not hold that position.

A profile is public if it is accessible to all – even those without a Facebook account. Trustee Blackburn’s post was in response to what she believed to be a Trustee’s lawyer putting her on notice to not speak to the media. I don’t find that communicating that she will not be intimidated or bullied is disparaging the Board or tarnishing its reputation.

Where the Complaint has raised the issue of Defamation, I note that this is a matter to that is pursued and enforced through the courts and not through the Code of Conduct process. I make no further comments on allegations of Defamation.

Trustee Blackburn takes a very decisive approach to Board issues, often getting involved in minute details and acting as the “defender of staff”, “defender of Trustees who do not speak up and those who hold similar views in the public but fear backlash if they openly communicate their position”. While this style is not always conducive to the cordial discussion of serious and often contentious issues that come before the Board for discussion, it does not constitute ethical misconduct and does not contravene the Code. Simply put, some people find Trustee Blackburn’s frank, sometimes unfiltered commentary, delivered in her unmistakable voice, “off putting”. Trustee Blackburn has made efforts to curtail some of the problematic behaviour of the past and would benefit, as would all Trustees, from professional development sessions on conflict resolution, de-escalating situations and communication skills. But as she has pointed out, “I can’t change my voice”, and I have been an elected official for 13+ years. Sometimes, when Trustee Blackburn raises issues that many would like to see removed from the agenda indefinitely, and speaks to why she should be afforded the same right to raise these issues of concern and importance to her constituents, to schools and to staff, as others are to raise their issues of concern, her statements are received as disrespectful to those who do not agree with her. Often her delivery, in an attempt to be respectful and courteous, comes off as condescending. In my view, there is nothing in the Code that prevents Trustees from being allowed to engage in political debate over matters that a) are within the Board’s jurisdiction and mandate under the Education Act and b) are in fulfillment of a Trustee bringing forward matters within the mandate of the District, from students, staff and the community. The exchange of differing points of view during political debate is itself a means of upholding accountability.

Using tools of political debate to respond to alleged inaccuracy is preferable to having an Integrity Commissioner police the debate. : ²

I find that Trustee Blackburn’s conduct, with respect to all allegations, did not rise to the level of a violation of the Code.

Conclusion:

This inquiry raises a number of significant and pressing issues regarding the role of school board members, the manner and extent to which they may perform their mandated oversight duties and

²*D Anderson, Pinto*, 2022 ONMIC 6 (CanLII) at para. 128; *Re Maika*, 2018 ONMIC 11 (CanLii) at paras. 138-139.

conduct themselves, express their views and make decisions in the course of carrying out their official duties.

A. RECOMMENDATIONS AS TO BREACH AND SANCTION

Recommendations:

1. On Findings:

I recommend that the Board of Trustees find that Trustee Donna Blackburn did not violate the Board Member Code of Conduct and that it dismiss Complaint #1 and Complaint #2.

2. On Sanctions

Given that I have recommended that there has not been a violation of the Code, I make no recommendation on sanctions.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Suzanne Craig".

Suzanne Craig
Integrity Commissioner

Office of the Integrity Commissioner
OCDSB COMPLAINT – FINDINGS AND RECOMMENDATION REPORT REGARDING
TRUSTEE DONNA DICKSON

Following my reformulating the Complaint, I determined that it raised 5 issues

I will set out my findings below with respect to each reformulated allegation of the Complaint, as applicable.

- (1) Did Trustee Dickson violate the Code by virtue of her conduct or statements at the September 7, 2023 Board Professional Development Session?

No.

I find that this allegation invokes rules 3.8, 3.17 and 3.19 of the Code.

At the September 7th Professional Development Session, when Trustee Kaplan-Myrth made her comments, her words and actions were accusatory. She gestured at Trustees, stating that the Board is “conflict oriented” and that the Board should have reached out to her because of the threats she received and nobody really did. The conversation turned tense, and Trustee Dickson in response to a statement by Trustee Kaplan-Myrth stated that she and all trustees could get harmed if an active threat was perpetrated in the boardroom. Trustee Dickson said that her intention behind this comment was “to convey my thoughts that the Ottawa-Carleton District School Board and its administration has much to do in terms of making our school environment a safe, accepting place where all students can learn and thrive. In referencing an [active threat], I was attempting to portray the systemic discrimination and violence that many black Canadians like myself still experience in our daily lives and make a comparison that I as a black Canadian and publicly elected official, am also a target by many of the same white supremacist individuals that have harassed Trustee Kaplan-Myrth over the past”.

Trustee Dickson’s statement “when a trustee is victimized the whole board is affected” was a statement made to the issue of school board safety and did not trivialize or delegitimize the statements made by Trustee Kaplan-Myrth with respect to having received death threats.

With respect to Trustee Dickson having said “...so please stay off social media ” in response to Trustee Kaplan-Myrth having raised her concerns about her trustee colleagues’ silence in the face of her receiving death threats, the statement was issue-based and suggesting possible options to resolve the issue of Trustee Kaplan-Myrth’s safety concerns. Though frustrated and by her statement to me, “re-living” the trauma of the tragic death of her son, Trustee Dickson is invited to recognize how her comments would have been received by Trustee Kaplan-Myrth.

I find that the actions and statements of Trustee Dickson at the September 7th Professional Development Session did not rise to the level of a violation of the Code.

- (2) Did Trustee Dickson violate the Code by virtue of her conduct or statements at the

September 11, 2023 in-camera meeting¹?

No.

I find that this allegation invoked rules 3.8, 3.17 and 3.19 of the Code. As covered in the Global Report, there is a difference between expressing one's disagreement with the position of colleague Trustees, staff or other subject matter experts and making statements that demean and disparage.

Within the context of the days leading up the September 11th Special meeting, that was scheduled to have the Board discuss and decide on a Code complaint she brought forward, Trustee Dickson stated that "nobody had reached out to [her] to ask how [she] felt" and why she had not been interviewed by the third-party investigator or given an opportunity to provide further submissions after the Board had received Trustee Kaplan-Myrth's lawyer's letter in response to the report of the third-party investigator. These questions related to questions regarding the Code investigation procedure and were issue-based.

I find the actions and statements of Trustee Dickson at the September 11, 2023 in-camera meeting, did not violate the Code.

(3) Did Trustee Dickson violate the Code by virtue of her conduct or statements at the September 11, 2023 public Special Board Meeting?

No.

I find that this allegation invoked rules 3.5, 3.7, 3.8, 3.15, 3.17 and 3.19.

At the September 11th public Special meeting, Trustee Dickson read from her prepared statement. She was composed and focused on the issue before the Board for deliberation and decision.

I find that the actions and statements of Trustee Dickson at the September 11, 2023 public Special Board Meeting did not violate the Code.

(4) Did Trustee Dickson violate the Code by virtue of her conduct or statements immediately following the September 11th meeting, including in her interactions with media present following the meeting?

No.

The former Chair encouraged all Trustees who were at the September 11th in-camera meeting, to refrain from taking invitations for interviews and to be reminded that the Chair is the statutory spokesperson for the Board. This allegation invoked rules 3.5, 3.7, 3.8, 3.15, 3.17 and 3.19 of the Code. Notwithstanding the Chair having encouraged all Trustees (save Trustee Kaplan-Myrth who was not in attendance at the in-camera meeting) to avoid taking media interviews after the September 11th Special Board Meeting, Trustees have the right to speak with the media and give interviews as long as they do not hold themselves out as speaking on behalf of the Board or make statements that are demeaning or disparaging.

¹ Complaint 1 made a general allegation against all three respondents; however, as Trustee Kaplan-Myrth was not present at the closed meeting, I have removed her in the reformulated allegations.

Trustee Dickson, along with all Trustees, were asked to wait in the building until security staff confirmed that it was safe to exit the building to their vehicles.

When Trustee Dickson and all other trustees were advised that they could exit the building, outside near the parking lot while standing next to Trustee Blackburn, a journalist asked Trustee Dickson some questions. Trustee Dickson and all Trustees have a right to speak with the media – her statements were personal opinion and did not demean or disparage Board members -stating what happened at the meeting, how she voted and that she was disappointed with the outcome, is allowed under the Code.

Trustee Dickson did not purport to speak on behalf of the Board. She expressed her opinion and disappointment with the outcome. Notwithstanding the fact that during the September 11th in-camera meeting, the former Chair encouraged Trustees to refrain from giving interviews after the Special Board Meeting, each Trustee has a right to speak with the media as long as they do not hold themselves out as speaking on behalf of the Board and as long as they do not undermine or disparage the decision of the Board. Disagreement is not tantamount to disparaging or demeaning.

The Code of Conduct requires that elected officials show respect for the decision-making process, fellow Trustees, staff, third-party investigators and the public. This Code requirement however, does not negate a Trustee's right to state their disagreement with a Board decision or the expert opinion or analysis of a staff member or professional advisor who possesses greater expertise. As was observed in *Sinnott v. McConkey*, 2021 ONMIC 4 (CanLII), at para. 213:

In fact, our system of government assumes that non-experts will have oversight of experts. Politicians may be experts in certain matters, but expertise is not a requirement for election to office. It is the nature of our democracy that non-expert, elected officials oversee the operations of subject-matter experts who work in municipal, provincial, and federal governments. It may or may not be wise, but it is not unethical, for the non-expert to disagree with the expert. The Code of Conduct requires that elected officials show respect for the staff; it does not compel deferring to the staff's advice in all cases.

Trustee Dickson's disagreement with the outcome vote on September 11, 2023, was not tantamount to an act of disparaging the Board. An important issue that was raised in my discussions with witnesses was the erroneous belief that working as a statutory decision-making body requires no statements of disagreement can ever be made. The matter subject of the September 11th Special Board Meeting, that gave rise to the allegations subject of **this** Complaint, stand on the premise that a Trustee who disagrees with another Trustee on a matter of social relevance to the community and public health, has committed an act of disrespect unbecoming of a Trustee and unprofessional.

Trustee Dickson's disagreement with the Board's decision is not the same as disparaging the Board's decision.

I find that Trustee Dickson did not violate the Code by virtue of her conduct or statements immediately following the September 11th public Special meeting.

(5) Did Trustee Dickson violate the Code by virtue of her conduct or statements during the period from September 8-16, 2023 either to media representatives or via her own personal social media accounts?

No.

At the conclusion of the September 11th Special Board Meeting, Trustee Dickson was deeply disappointed but stated publicly that she accepts and supports the decision of the Board. I find that Trustee Dickson did not say and was not quoted in media articles as having said that she called for the resignation of any school board trustee.

The Global Report sets out the statements made by Trustee Dickson.

Trustee Dickson had issued a Media Release but had not disclosed the substance of the agenda item.

Municipal politicians, including school board trustees, do not have an unfettered right to make whatever comments that they wish to make at institutional meetings or relating to those meetings, even if their intent was not to offend, or if their intent was to make, what **they believe** to be a necessary and important social or political statement. I have discussed this issue at length in the Global Report.

When Trustee Dickson said “[a]nd all those people that want to support (Nili), power to you. But let’s be real, that means you condone racism, you condone bullying”, she clarified to me that she was referring generally to individuals who indicated on social media that they wanted to support Trustee Kaplan-Myrth in her criticism of Trustee Dickson’s decision to vote in favour of what her constituents were saying they wanted to have happen at the Board and in schools. Some may say that this statement that Trustee Dickson was quoted as saying is similar to the allegation that was made by Trustee Dickson in the November 2022 Code of Conduct complaint. In the May 2023 third-party investigator’s report, discussed by the Board at the September 11th Special meeting, referring to Trustee Kaplan-Myrth’s statement, the investigator stated:

The Complainant interprets the words “Don’t vote with white supremacists” as a racist remark. These words that the Respondent used are not debatable – they are a matter of evidence. However, I find it unlikely that this interpretation reflects the Respondent’s intent, and she more likely made the remark to suggest that certain White supremacists would (in her view) welcome the result of a defeated mask mandate resolution. This notion was clearly communicated poorly, and the Respondent has since attempted to clarify her intent and expressed regret for making this remark and for the harm it caused the Complainant.

With reference to Trustee Dickson’s statement in the Complaint before me she did not direct it at a specific individual and she has clarified with me that her comment was intended to express the notion of how little value and weight is given to voices of members of racialized communities. In referencing condoning racism and bullying, Trustee Dickson clarified that she was attempting to portray her position of “systemic discrimination that many black Canadians like [herself] still experience in our daily lives and make a comparison that ...as a black Canadian and publicly elected official, my decisions are not taken seriously and are given no weight. Just like the comments of many young black students are often not given weight and people just don’t believe them, I, as a publicly elected official listened to my constituents who told me the many reasons

why they didn't agree with having a mask mandate and Trustee Kaplan-Myrth, by saying if I didn't support her motion, I was supporting white supremacists (because she said "Don't vote with white supremacists"), was suggesting my decision couldn't possibly be given weight or value because I couldn't possibly have weighed the various comments from my constituents and made an informed decision of how I wanted to vote". Trustee Dickson expressed to me her regret that she did not clarify her statement that was quoted, but clarified that she was responding to the question about how she felt knowing there were many individuals (public and otherwise) that support Trustee Kaplan-Myrth's text messages to her in November 2022.

Time and time again, a notion that is unclearly communicated by a Trustee leads a trustee to communicate their opinion poorly. To be very clear, stating one's opinion on a matter before the Board, disagreeing with colleagues or a staff position, does not trigger the Code application unless the statement disparages another trustee or staff. I have found throughout this investigation that trustees view a statement of opinion that expresses disagreement as tantamount to a disparaging comment worthy of either a censure by the board, a call for an apology or a finding of a Code breach. This is not the case.

It is my position that the comments that Trustee Dickson made (" [a]nd all those people that want to support (Nili), power to you. But let's be real, that means you condone racism, you condone racism, you condone bullying") did not mean nor was it intended to mean that the actions of her colleagues who voted a particular way meant they condoned racism.

The difference between disagreement and disparaging, in my view, is the former expresses the author having a different perspective on a matter, whereas disparaging is when the author expresses unfair and improper criticism about the person that maliciously or falsely impugns the individual to whom the comments refer, characterized by the presence of personal animosity. There is a difference between stating a different perspective or asking questions of clarification and criticism that calls into disrepute the reputation of an individual.

I find that Trustee Dickson did not violate the Code by virtue of her conduct or statements during the period from September 8-16, 2023 either to media representatives or via her own personal social media accounts.

Where the Complaint has raised the issue of Defamation, I note that this is a matter to that is pursued and enforced through the courts and not through the Code of Conduct process. I make no further comments on allegations of Defamation.

Conclusion:

This inquiry raises a number of significant and pressing issues regarding the role of school board trustees, the manner and extent to which they may perform their mandated oversight duties and conduct themselves, express their views and make decisions in the course of carrying out their official duties.

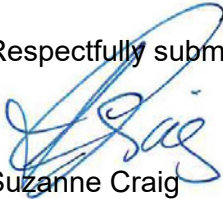
A. RECOMMENDATIONS AS TO BREACH AND SANCTION

Recommendation:

1. I recommend that the Board of Trustees receive my findings.

2. Given that I have recommended that there has not been a violation of the Code, I make no recommendation on sanctions.

Respectfully submitted,



Suzanne Craig
Integrity Commissioner

Office of the Integrity Commissioner
OCDSB COMPLAINT – FINDINGS AND RECOMMENDATION REPORT REGARDING
TRUSTEE NILI KAPLAN-MYRTH

Following my reformulating the Complaint, I determined that it raised 5 issues.

I set out my findings below with respect to each reformulated allegation of the Complaint, as applicable.

(1) **Issue #1:** Did Trustee Kaplan-Myrth violate the Code by virtue of her conduct or statements at the September 7, 2023 Board Professional Development Session?

No. However, she disclosed the substance of the September 7th in camera session on September 8th.

I find that this allegation invokes rules 3.8, 3.17, and 3.19 of the Code.

Complaint 1 alleges that a “breach occurred on September 7, 2023, during a Board Professional Development Session”.

At the September 7th Professional Development Session, Trustee Kaplan-Myrth talked about not feeling safe to express herself and that she cannot put forward a motion because it gets struck down. Trustee Kaplan-Myrth expressed that there was no middle ground on several issues and that the Board is very conflict oriented. In particular, Trustee Kaplan-Myrth spoke about how the Board did not reach out to her because of the treats she had received and how nobody had asked how she was.

This session was supposed to be a “safe space” where Trustees could feel comfortable speaking freely. Though voices were raised, Trustee Kaplan-Myrth’s statements and conduct at this meeting did not rise to the level of a violation of the Code.

The next day, in a post on X, Trustee Kaplan-Myrth said “Imagine turning to a room of colleagues to say their silence as I receive ... death threats...The only person to respond says *they* are uncomfortable with the risk I bring to them,,,so can I please stay off social media” Trustee Kaplan-Myrth states in her response that she did not disclose the names of the trustee who make this comment. In addition, in her December 1st comments to the Draft Reports, Trustee Kaplan-Myrth states the Draft Report is factually inaccurate in a number of ways, including her having posted on social media “Imagine turning to a room of colleagues to say their silence as I receive antisemitic death threats isn’t OK. The only person to respond says *they* are uncomfortable with the risk I bring to them [...] so can I please stay off social media...” Trustee Kaplan-Myrth states in her December 1st comments that:

I do not identify where the meeting I discuss took place. I did NOT say that it was an OCDSB meeting. I did not disparage any trustee colleagues. I sit on committees and interact with many organizations outside of the OCDSB.

The By-laws and Standing Rules set out that trustees must refrain from disclosing even the substance of close meeting deliberations. In addition, the Code sets out the rules regarding trustees’ confidentiality requirements in sections 3.21-3.25. Of particular relevance to the

discussion at hand is the rule contained in section 3.21.

3.21 Board Members shall maintain the confidentiality of privileged information discussed in closed sessions.

During the orientation for new board members, all trustee were advised of in camera confidentiality requirements. It is clear from her reply to the Complaint that Trustee Kaplan-Myrth believed that her only obligation with respect to closed meeting confidentiality was to refrain from disclosing the names of the colleague trustees who made comments in the in camera meeting. The December 1st comments further underscore that Trustee Kaplan-Myrth believes that if she does not identify where a meeting was held and if even her comments posted on social media were about a closed meeting deliberation, there is no breach of her confidentiality obligations. In a 2013 Municipal Integrity Commissioner of Ontario decision¹, when deciding on whether including some of the information discussed in an in-camera session in a newspaper article was disclosing the substance of the confidential deliberation, the Commissioner stated:

For a Member of Council to be fully aware that a matter is before Council *in camera*, to have participated in the unanimous vote to convene the meeting *in camera*, and then to have discussed any part of what was discussed at that meeting publicly by way of a newspaper article, is to have disclosed, at least some of the substance of what was discussed *in camera*, in public.

The allegation under this section of the Complaint is not applicable to Trustee Kaplan-Myrth. I find that she did not call for anyone to resign.

Trustee Kaplan-Myrth through her statement in a September 8th social media post has contravened the Code through an error of judgement made in good faith.

(2) **Issue #2:** Did Trustee Kaplan-Myrth violate the Code by virtue of her conduct or statements at the September 11th in-camera meeting?

No.

On September 11th, the Board met in camera to consider the legal opinions and reports that would be before the Board at the Special Board Meeting on September 11th.

Trustee Kaplan-Myrth was not invited to and did not attend the in-camera portion of the meeting. Accordingly, I recommend no finding of breach of the Code.

(3) **Issue #3:** Did Trustee Kaplan-Myrth violate the Code by virtue of her conduct or statements at the September 11th public Special Board meeting?

Yes.

I find that the rules of the Code triggered by this allegation have been undermined by the actions of Trustee Kaplan-Myrth. By interrupting Trustee Blackburn and shouting out to her “you have had it out for me since day one”, Trustee Kaplan-Myrth made a statement which was personal and demeaning regarding to Trustee Blackburn in violation of sections 3.7 and 3.8 of the Code.

¹ Di Muccio (Re), 2013 ONMIC 1 (CanLII), 2013-02-21

As the Respondent to the Code Complaint that was being considered by the Board at the September 11th public Special Board meeting, under the previous Code, Trustee Kaplan-Myrth was not entitled to “participate in the deliberations” or “answer any questions at the meeting”².

As I set out in the Global Report, I have carefully considered Trustee Kaplan-Myrth’s concerns set out in her December 1st comments. The Chair at the September 11th meeting had indicated the rules and the Respondent failed to adhere to an approved procedure. Even if the Respondent had a right to raise a point of personal privilege (and I make no determination on the Board’s procedural rules or how they should be applied), shouting at another Trustee was not the appropriate way to proceed. Assuming that a Trustee has the right to rise on a Point of Order to challenge whether a matter is timely, she must still do so at an appropriate time. Based on her December 1st comments, it seems that the point of order was intended to bring to the attention of the Board that the Code complaint was time barred and there should be no further discussion of it. Having taken into consideration the Respondent’s detailed December 1st comments, on a balance of probabilities, it was unlikely that the Respondent had no other opportunity but while Trustee Dickson was speaking on September 11^h, to seek clarification on the timelines of the Complaint and whether the entire matter should be dismissed on the basis of the expiry of the Code limitation period.

In her December 1st comments Trustee Kaplan-Myrth also states that the second time she spoke at the September 11th Special Meeting of Council was also not an action that should in any way carry a finding of a breach of the Code. She states:

My one piece of “public” criticism has been my *cri de coeur* on September 11, when in frustration I accurately stated that Trustee Blackburn had “had it in for me since day one.” By contrast, the interviews given by Trustee Blackburn and especially Dickson contain person attacks on me and my fitness to serve as a Trustee as well as my character.

[...]

The second time that I spoke at the September 11 meeting was to object to Donna Blackburn’s summation, in which she shockingly referred to me as a “white woman attacking a Black woman.” I said, “I object, you will NOT characterize me as a white woman. I am a Jewish woman who has received daily antisemitic death threats for standing up for heal and safety. You have been out to get me from day one, as my colleagues can validate.”

I forgot to say , “point of order.” That is true. However, it was a racist, antisemitic attack. It was shameful that none of the other trustees called point of order to challenge Donna Blackburn’s racism. As the person under attack, I justifiably challenged her hateful words.

[...]

The Code of Conduct process violated by rights, as a Jewish woman, to defend my ethnic and religious identity.

In a 2019 article “intersectionality,” is explained as a concept coined and developed by legal scholar Kimberlé Crenshaw, which examines how our various identities change in meaning and valence when placed in dynamic relation with one another. The article goes on to explain that “[i]nstead of exploring identity traits like “race,” “gender,” “religion,” and so on in isolation, an intersectional approach asks what these various characteristics “do” to one another in

² Policy P.073.GOV, Board Member Code of Conduct, June 1999, section 4.33

combination [and] the relationship between Jewishness and Whiteness. “The core claim is that Whiteness and Jewishness in combination function in ways that are not necessarily grasped if one atomizes the identities and holds them apart. What Whiteness “does” to Jewishness is act as an accelerant for certain forms of antisemitic marginalization even as it ratifies a racialized hierarchy within the Jewish community.”³

Intersectionality is a framework for understanding the interactions between different structures of oppression, focusing on people who hold multiple marginalized identities. Crenshaw’s insight was that the oppression experienced by black women, at the intersection of racism and patriarchy, was distinct from the oppression experienced by white women or black men. This dialogue moved from the unique experience of black women to include a wide range of overlapping identity categories. This tool assists marginalized and equity seeking communities and advocacy groups in a coordinated effort to build progressive coalitions to fight oppression.

Many Jews are also members of other marginalized communities (women, LGBTQIA+ people, disabled people, etc). The intersectionality of these groups create for many the exacerbation of experiences of oppression when they are also targeted with anti-Semitism.

Trustee Kaplan-Myrth’s December 1st comments point to the position that Trustee Blackburn’s statement was “equating...Jewish people and especially Jewish women with “white privilege”...and “she interrupted to prevent its repetition in the same way that a member of another minority group would interrupt to repetition on the record of pernicious racist stereotypes”. I take from this statement that Trustee Kaplan-Myrth believed that Trustee Blackburn’s statement was dismissing her Jewishness and attributing a “Whiteness”, and therefore privilege. “Call it out” is an accepted principle at the Board, however it remains that there is a process for raising issues at Board meetings and this is through the Chair rising on a point of personal privilege. There is not a need to use the “magic words” however, the Chair did speak on the matter and Trustee Kaplan-Myrth did not adhere to the direction of the Chair of the Board.

It was a difficult evening for all concerned, all Board Trustees and in particular Trustees Dickson and Kaplan-Myrth, both women, members of equity seeking groups that believe to be not heard by their colleagues.. The Code investigation lasted nearly a year. It was carefully conducted, and the complaint filed in February was found to be timely by the third party investigator after submissions on behalf of Trustee Kaplan-Myrth. To interrupt a speaker to raise the already carefully considered limitation analysis demonstrated either that Trustee Kaplan-Myrth was disingenuous or that she had a disrespect for the Code investigation process and the Complainant Trustee Dickson. In my Draft Report, I stated that “I am deeply saddened by Trustee Kaplan-Myrth’s expression of concern with her situation and fear for herself and her family (which is unequivocally serious and I denounce wholeheartedly.” In response, through her December 1st comments, Trustee Kaplan-Myrth states that:

I am deeply saddened that the Integrity Commissioner is only saddened by my expression of concern with my situation and not with the relationship between that situation and the moral, ethical and arguable legal duties of the OCDSB and its Trustees in connection with that situation.

Trustee Kaplan-Myrth was distressed by being the subject of a Code investigation and the long period of time that it had taken to complete the review. However, the Code is a Board approved

³ White Jews: An Intersectional Approach; Published online by Cambridge University Press: **05 August 2019**

process. Trustee Kaplan-Myrth has expressed her belief that the Code and its procedure is being used to “silence progressives”, is a “bloody waste of money, time and energy”, and “a vexatious trial”. Trustee Kaplan-Myrth was disrespectful and compromised the integrity of the Board during the meeting by blurting out allegations that Trustee Blackburn “had it out for [her] since day one”, by interrupting the Complainant to make an untimely objection that the Complaint was time barred, and by talking over the Chair who was calling the meeting to order. Her statement was personal and disparaging of a fellow Board Member. I do not take the position that where a Trustee is offended they should not call the offense out. Intolerance and bigotry has no anywhere in our society and certainly has no place in the OCDSB and is not condoned by the Code rules or by me. However, there are approved meeting procedures for a Trustee to use when they are offended, believe themselves to be victimized, belittled, intimidated, harassed or discriminated against. The way forward is not to shout, post on social or personally attack others.

In her statements at the September 11 meeting, Trustee Blackburn said that Trustee Kaplan-Myrth is a “white woman attacking a Black woman”. Trustee Kaplan-Myrth interrupted Trustee Blackburn to say “I object, you will not characterize me as a white woman. I am a Jewish woman who has received daily antisemitic death threats for standing up for health and safety. You have been out to get me from day one”. Trustee Kaplan-Myrth states in her response to the Complaint that she considered Trustee Blackburn’s statement “to be racist”. While the former Chair muted Trustee Kaplan-Myrth’s microphone, there were individuals who captured her comments and later displayed this outburst on social media. I have reviewed this matter above and in the Global Report.

The refusal to apologize when requested by the Chair of the board is also important to the evaluation of the September 11th public Special Meeting conduct.

I reviewed the evidence with respect to this and all allegations against Trustee Kaplan-Myrth with sensitivity and care. The evidence that I received during the course of this investigation was considered reliable and corroborated by the witnesses with whom I spoke.

Trustee Kaplan-Myrth sets out in her response to Complaint 1 that this Complaint: “must be seen as part of a pattern of hostility against me. I implored Chair Lyra not to proceed publicly with trustee Dickson’s allegation. I apologized immediately and sincerely to the Chair and to the Integrity Commissioner in November 2022. When I was notified of the complaint in February 2023, I wrote a heartfelt apology to my colleagues. I asked for mediation. It was denied.”

The enmity between Trustee Kaplan-Myrth and the other two Respondents has become increasingly pronounced over the course of the past year. Trustee Kaplan-Myrth’s sudden outburst during the September 11th Special Board Meeting “you have been out to get me from day one” directed at Trustee Blackburn demonstrates Trustee Kaplan-Myrth’s longstanding and deep animus towards Trustee Blackburn. However, since the events subject of the previous Code complaint is not before me for a determination, the commentary and information provided by witnesses about Trustee Kaplan-Myrth’s behaviour and comments prior to the times material to this Complaint were only considered by me for the purposes of determining if there was a pattern of hostility against Trustee Kaplan-Myrth, as asserted by her. I find that there is not.

Filing a Code complaint is not an act of hostility. Trustee Dickson had the right to pursue her concerns about Trustee Kaplan-Myrth’s conduct through the Code process. Indeed, under the Code, only other trustees can commence the complaint process. While there were and are significant health and safety concerns that plague Trustee Kaplan-Myrth and the Board, to have asked the Chair to interfere with the Code process after carriage had been given to a third-party investigator was inappropriate at best and could have led to a finding of obstruction. It is unclear

to whom Trustee Kaplan-Myrth refers when she states that she apologized to the Integrity Commissioner in November 2022 (as I was appointed as the first Board Integrity Commissioner in April 2023). Trustee Kaplan-Myrth said from the beginning of this matter that she was willing to enter into mediation with the Complainant and the other two Respondent if they were also willing to mediate, however, having made statements like, “ you were out to get me from day one” and that the other two Respondents have “repeatedly in OCDSB meetings dismissed the seriousness of ...death threats that received, lead me to a decision that the issues raised between the Complainant and the Respondents could not be mediated without a change in the entrenched position of Trustee Kaplan-Myrth.

Trustee Kaplan-Myrth has advised me that she will bring forward a Human Rights complaint against the Board. She is entitled to do so.

I find that Trustee Kaplan-Myrth violated the Code by virtue of her statements and conduct at the September 11, 2023 public Special Board Meeting.

- (4) **Issue #4:** Did Trustee Kaplan-Myrth violate the Code by virtue of her conduct or statements immediately following the September 11th meeting, including in her interactions with media present following the meeting?

Yes.

Immediately following the September 11th public meeting, Trustee Kaplan-Myrth ignored the security plan put in place by District staff to safeguard her before, during and after the Special Meeting. In so doing, Trustee Kaplan-Myrth undermined the work of staff who had diligently worked to create a safe location for her. In addition, Trustee Kaplan-Myrth was disrespectful and intimidating in her comments and behaviour towards Trustee Blackburn and to some private individuals in the media room after the September 11th Special Meeting. Trustee Kaplan-Myrth acted with disrespect and intimidation in her comments and behaviour after the September 11th Special Meeting, thereby violating rules 3.5, 3.7, and 3.8 of the Code. To be clear, I am not finding a breach on the basis of ignoring the safety plan.

Immediately following the September 11th public meeting, Trustee Kaplan-Myrth went to a room that was not the dedicated “safe space” in the security plan developed by staff. The media was waiting in the room that Board staff had designated for the media and where any trustee could gather to give interviews. Trustee Kaplan-Myrth aggressively pointed at 2 individuals who were waiting outside of the media room and to Trustee Blackburn who had also walked from the boardroom, and shouted “out!” “out!” “out out!”, motioning them to leave a space that had not been reserved for her individual use. When Trustee Blackburn, notwithstanding Trustee Kaplan-Myrth’s demands did not leave, Trustee Kaplan-Myrth blocked the door and with a raised voice demanded that Trustee Blackburn and all members of the media leave the room, except those journalists with which she wished to speak.

It was unclear why Trustee Kaplan-Myrth felt her media interviews should take precedence over those of other Trustees. If her concern was for her safety, she had been provided a dedicated safe space. While she had not attended the in-camera meeting prior to the Special Meeting at which Chair Lyra had encouraged trustees to not accept media interview about the Code complaint, Trustee Kaplan-Myrth has expressed that she seeks resolution and to contribute to a

respectful workplace, thus her conduct after the Special Board meeting seemed at odds with her expressed goals of working together with all her trustee colleagues.

Trustee Kaplan-Myrth sets out in her December 1st comments that the individuals with whom she had an altercation after the September 11th Special Board Meeting were harassing her.

Amir Attaran, a lawyer, and my husband, also a lawyer, were present and at my side and can attest to precisely what happened after the Sept 11 meeting. They witnessed Chanel Pfahl and Donald Francis Smit attempt to approach me after the meeting.

My husband told staff that they should escort Chanel Pfahl out of the building along with others from the gallery. She was only allowed to stay – though she is NOT a journalist- because Donna Blackburn then commented that Pfahl was her “media advisor.”

Throughout this investigation, I did speak with other individuals who were responsible for safety in the facilities. Trustee Kaplan-Myrth may rightly believe that her movements should not be dictated by a requirement to adhere to a safety plan and the fact that she has been constrained to operate in this environment because of third party threats is unconscionable. However, not adhering to processes put in place to safeguard herself, her family and others at the Board facilities, is tantamount to dismissing the professional expertise of those who have been tasked with ensuring the safety of the Board facilities and those within them. Trustee Kaplan-Myrth has expressed that she holds the Board responsible for not acting in a way to safeguard her safety and hold those who threaten her accountable. The situation is clearly untenable, however, personal attacks and aggressive behaviour albeit borne of frustration, is not behaviour condoned under the Code.

I find that Trustee Kaplan-Myrth violated the Code by virtue of her conduct and statements immediately following the September 11th public Special Meeting including with her interactions with individuals outside the designated media room..

- (5) **Issue #5:** Did Trustee Kaplan-Myrth violate the Code by virtue of her statements made September 8-16, either to the media representatives or via their own personal social media accounts?

Yes.

I find that Trustee Kaplan-Myrth chose a path of conduct that she knew or ought to reasonably have known would create an "intimidating environment", which did not contribute to a respectful workplace and that she did not make every reasonable effort to resolve issues arising from friction, conflict or disagreement in a respectful and professional manner.

I have reviewed some of the offending actions below.

After the September 7 closed meeting, Trustee Kaplan-Myrth posted on her personal X account: “Imagine turning to a room of colleagues to say their silence as I receive antisemitic death threats isn’t OK. The only person to respond says *they* are uncomfortable with the risk I bring to them [...] so can I please stay off social media...”

By her statements as I have set out in the Global Report, Trustee Kaplan-Myrth has engaged in conduct through social media posts that discredits and compromises the integrity of the Board and has contributed to conflict rather than resolution of issues with her trustee colleagues. Trustee

Kaplan-Myrth's continued use of social media to criticize her fellow Trustees and this conduct does not encourage resolution of conflict and disagreement in a respectful and professional manner. Undoubtedly, Trustee Kaplan-Myrth has been the recipient of hurtful, hateful, and vile communications on social media from some known and some anonymous sources. However, the fact that some Trustees may disagree with Trustee Kaplan-Myrth on matters that come before the Board, should not result in her directing anger at her Trustee colleagues. Disagreeing with Trustee Kaplan-Myrth is not tantamount to causing her harm or encouraging others to do so.

Trustee Kaplan-Myrth's September 8 memo to Trustees, senior staff, and others external to the OCDSB demonstrates that her action has continued the conflict between trustees rather than attempting to resolve it. While the Code does not act as an impediment to her right to seek advice from her own legal counsel, write to staff to seek clarification and even to file a privacy complaint or and access request under MFIPPA, Trustee Kaplan-Myrth's actions show that she is not willing, in the moment, to consider a path towards reconciliation. She demonstrates no desire to resolve issues taking offense to any comments in which someone disagrees with her comments or opinion. She engages in threats and intimidation rather than listening and attempting to understand an alternate viewpoint. In her September 8th memo to staff and Members of the Board, she assumed that staff had disclosed her safety plan to a media outlet. The manner in which she conveyed her concerns to staff was accusatory, and this is problematic. Trustee Kaplan-Myrth could have contacted the Director of Education or the Executive Officer to ask if they were aware of what was disclosed to the media and by whom; however, it was inappropriate for her to send out a memorandum broadly in which she accused staff of unlawfully disclosing her information to media outlets.

A witness testified that Trustee Kaplan-Myrth's behavior often "escalated into rudeness and insulting comments each time she didn't get what she wanted and when she was called on it she denied having done anything wrong". Witnesses provided this type of comment frequently. Some trustee and staff described a sense of increasing discomfort with Trustee Kaplan-Myrth's conduct. Many Trustees expressed being unsure how to navigate Trustee Kaplan-Myrth's unpredictable behaviour and escalating criticism of fellow Trustees on social media. Discussing matters of note, relevance and importance to the Board and its mandate on social media may be an appropriate way to communicate with the public. However, social media should not be used as a tool to disparage fellow Trustees, suggest that staff has "leaked" information, or otherwise discredit Board processes. Such behaviour compromises the integrity of the Board and strikes at the heart of public trust, turning the focus of the Board away from the key functions set out in the *Education Act* and the OCDSB strategic plan.

In responding to Complaint 1, Trustee Kaplan-Myrth unwaveringly defended her action by stating that she has done "nothing wrong" and by asserting that her conduct was a justified response to Trustee Blackburn and Trustee Dickson's "pattern here that is far more serious than a mere breach of the code of conduct, as [their] behaviour endangers my wellbeing and the safety of my family". Trustee Kaplan-Myrth has been the recipient of unacceptable vitriol and hate-filled messages and threats, and there is never any place for hate of any kind. However, this Code investigation can only review actions and behaviour of Trustees with respect to the rules of the Code. Trustee Kaplan-Myrth's position is that she has done nothing wrong and that her actions that are raised in the allegations of the Complaint, are appropriate and her right in defense of "public slander" by Trustee Blackburn and Trustee Dickson. I do not find that to be a supportable position.

I am deeply saddened by Trustee Kaplan-Myrth's expression of concern with her situation and fear for herself and her family (which is unequivocally serious and I denounce wholeheartedly) However, her circumstances dire and unconscionable as they are, do not justify Trustee Kaplan-Myrth's statements and conduct at the September 11th public Special Board Meeting, directly after that meeting and from September 8-18, 2023. Trustee Kaplan-Myrth walked from the boardroom to the media room where journalist and others were assembled. While one individual who was in or near the media room was an individual from whom Trustee Kaplan-Myrth had received threats, the other media personnel, were from various media outlets and some were not journalists but wrote about school board matters. One individual was an individual to whom Trustee Blackburn referred to as her "media advisor". In her response to the Complaint and in the Global Report I set out that I determined that this individual is not Trustee Blackburn's "media advisor."

Although the Code of Conduct regime at the municipal council and school board level is a relatively formal adversarial proceeding in which legal rules typically apply, an integrity commissioner has both the power to accept oral or written evidence as she deems appropriate, whether or not the information would be admissible in a court of law or not. I find that Trustee Kaplan-Myrth failed to take responsibility for her behavior and placed as her justification that the Board was not doing enough to protect her safety. She failed to make any effort to de-escalate the conflict with her colleagues. To the contrary, she escalated the conflict with her behaviour played out on social media posts. Trustee Kaplan-Myrth, as each Trustee, has a right to share her opinion and participate on social media, she has a right to call out and denounce racism, antisemitism and all forms of discrimination, oppression and hate. However, disparaging the Code and the Code process is not appropriate criticism. The Code rules prohibiting actions that denigrate, intimidate and undermine approved policies of the Board are important in a free and democratic society to justify some limitation on Charter rights. Courts typically have accepted legislative objects as being pressing and substantial unless they are clearly trivial or the rights infringe only for financial expediency.⁴ While elected municipal officials are free to vigorously debate and discuss matters of public interest, they must act reasonably and satisfy themselves as to the truth of any allegations.⁵

I have concluded that the outbursts and actions subject of this Complaint are the outcome of Trustee Kaplan-Myrth's frustration with what she sees as ineffective strides to ensure her safety from bodily threats is to verbally lash out on social media: "The #Ottawa public school unfortunately has a toxic pattern of conservative trustees abusing it "code of conduct" process to try to silence progressives. I was warned ahead of time. I'm the 2023 target."

I confirm that the Code is not in place to regulate manners. However, the role of this Office during the review of this Complaint was not to regulate manners. I view the role of this Office as enforcing order and approved standards of conduct when a Trustee aggressively turns to another Trustee, or staff, points at them accusingly and raises their voice in a disparaging way. While I have said in Trustee Learning Sessions and in one-on-one meetings that I am not the gesture or tone of voice regulator, if a Trustee consistently uses gestures that are regularly known to intimidate, shouts at Trustees and members of the public to "get out" of shared spaces, glaring and pointing accusingly during in-camera meetings, even if this behaviour is in response to legitimate frustration at lack of any appropriate and meaningful move to address systemic issues, this behaviour may likely be viewed not as an isolated incident of an example of poor manners, but

⁴ Hogg & Wright at para 38:13. See also *Conseil scolaire francophone de la Colombie-Britannique v British Columbia*, 2020 SCC 13 at para 153.

⁵ *Prud'homme v Prud'homme*, 2002 SCC 85 at para 43 [Prud'homme], CITING *Hill v Church of Scientology of Toronto*, 1995 CanLII 59 (SCC) at para 108.

rather as a pattern of conduct that a Trustee knows or ought to know is unwelcome and intimidating. I have not acted as a psychotherapist or conducted character analysis, I have reviewed the facts and on a balance of probabilities, made recommendations on findings.

It is obvious to me that that Trustee Kaplan-Myrth does not have confidence in the administration with respect to ensuring that she is kept safe (a matter outside of my jurisdiction). In fact, she continues to believe that in disparaging staff efforts, she has done nothing wrong. Trustee Kaplan Myrth metes out serious allegations against other Trustees and staff about leaking her personal information to “far-right” organizations and causing her harm, without apparent regard to the seriousness or potential impact of such allegations and how this impacts the cohesion of the Board as a decision-making entity. There are certainly elements of our society that act to cause harm. However, press that take a position contrary to one’s own may exist and write. Trustee Kaplan-Myrth takes the position that no one could take a different view unless they are wanting to harm her or for some other harmful reason. When someone does not agree with her, Trustee Kaplan Myrth simply makes blanket statements that they do not care about children, immunocompromised people and people with disabilities. and often on social media, claiming it is a right as a Trustee and a citizen to make such statements.

Trustee Kaplan-Myrth’s conduct and statements, in particular on social media, were intentional and deliberate and had a negative impact on those who were being criticized. These statements fuelled continuing public confusion over the credibility of management of the Board and resulted in the discrediting and compromising of the integrity of the Board and the fracturing and dysfunction of the Board.

Individual trustees are obligated by the Code to ignore considerations which are irrelevant to the matters before them. These obligations in their governing statute supersede any actual or perceived allegiance a Trustee may share with fellow members of another organization. Trustees are obliged to comply with this duty regardless of their race, religion, political motivation, professional activities, or employment interests. This principle of impartiality requires that a Trustee exercises their decision-making authority independently such that a reasonable person viewing the work of the Board will perceive individual Trustees as impartial, independent, and unbiased.

Where a code of conduct limits trustees from publicly (or privately in closed session meetings) disparaging a motion duly passed by the Board after full debate and a vote, there is a reason why holding the Trustee to compliance with the Code rules is not deemed to be a violation of the Trustee’s free speech. Trustees of a school board must act democratically and professionally, and deal with finality on issues over which it has a responsibility under the principles of good governance that are tied to its fiduciary responsibilities to its constituents. It cannot fulfil that duty if there is no finality in its collective, democratic decision making. Moreover, the confidence of the public in the institution itself requires that its decision-making process follow good governance principles. Very similar to corporate governance principles, courts have held that a Director of a Board or a Trustee member of a public school board “is not entitled to prefer their personal interests over that of the corporation or school board.”⁶ Trustee Kaplan-Myrth’s actions subject of this Complaint, is making the Board about herself and her issues rather than allowing the Board to focus on issues properly before it.

A trustee does not violate the Code if acting professionally, or if she states in the Boardroom or to the media that she did not vote in favour of a particular matter, would like to see a different

⁶ Ibid., 29 at para. 136

policy put in place, or was part of a small group of Trustees that supported a particular initiative. Trustee Kaplan-Myrth's statements went beyond these standards of acceptable conduct allowed under the Code.

It is **how**, the other two Respondents in this Complaint express their personal opinions that do not cross the line of undermining or disparaging their colleagues or the decision of the Board. Trustees have a Charter right to free expression that is limited by the rules of the Code of Conduct which requires them to refrain from certain kinds of speech because being elected to office has changed their public status. Being elected to office does not take away Charter rights or the ability to speak to the media or have a personal opinion. In fact, rule 3.30 of the Code and s. 4.20€ of the Governance Policy provides that the Chair is a spokesperson to the public **on behalf of the board**. There is nothing in this provision that prevents other Trustees from freely expressing their opinions as long as they otherwise comply with Code rules. This principle undergirds the roles of the board as a decision maker that has the best interests of the students, employees, and public in mind during its deliberations.⁷

Trustee Kaplan-Myrth's reply sets out that an individual trustee must commit an independently blameworthy action before they can be found "guilty" of sullyng the reputation of an organization, like a school board. Absent that requirement, her reply goes on to say, democratic conceptions of accountability unravel. Anyone could be found "guilty" of lowering an institution's reputation for voicing valid, truthful criticism in good faith. Trustee Kaplan-Myrth goes on to say that this is a common feature of authoritarian regimes, which make it a crime to lower the ruling party reputation, irrespective of how or why it is done.

Trustee Kaplan-Myrth's reply takes an esoteric approach to making this point by overstating its practical relevance given the Code provisions at issue and the nature of the Complaint. I agree that in considering whether the named trustees in this Complaint have violated the Code, I must consider more than simply whether they have said (or done) something that has made the Board (or a member) look bad. Throughout this investigation, I focused on the *means* (i.e. the words, forum, timing, and tone) by which the named trustees are alleged to have violated the Code.

None of the Code sections that the trustees are alleged to have violated use the word "reputation". Two sections include integrity (3.5 and 3.15) and one addresses "public confidence in the abilities...of the Board" (3.5). Integrity is not only about public perception. An institution may or may not have integrity, irrespective of whether the public is aware of it. Public confidence, although a question of public perception, is a more process-driven concept than reputation.

The rest of the engaged Code provisions more squarely focus on the *means* rather than the *ends*, and therefore do exactly what Trustee Kaplan-Myrth's reply suggests they should. For example, by requiring trustees to:

- "conduct themselves in a professional manner" to uphold the dignity of the office (3.7);
- ensure their comments are "issue-based and not personal" (3.8);
- "treat ...one.. another...respectfully and without abuse, bullying or intimidation" (3.7);
- "uphold and not undermine the implementation of the decisions of the Board" unless following the process for reconsideration or rescission (3.27); and

⁷ Ibid., 29 at para. 140

- ensuring comments to the media make clear Board members are speaking only for themselves (3.30).

An interpretation of the Code provisions “in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of [the legislature]” should not result in any recommendation that Trustee Kaplan-Myrth violated the Code simply because she spoke an unflattering truth, or voiced her honestly held belief in good faith. It is that she did so in a disparaging way (i.e. the words, forum, timing, or tone she chose) crossed the line and ultimately violated specific Code provisions. Thus, these findings serve as the “independent blameworthy action” that Trustee Kaplan-Myrth’s reply insists must be present.

There was, without a doubt, a hostile atmosphere leading up to the September 11th meeting. The Board meetings evidenced a dysfunctional Board owing, in large part to behaviors that can only be described as disrespectful and intimidating. The behaviour at the September 11th meeting can be characterized as laced with unctuous incivility and disrespect. The Code of Conduct regulates incivility. Based on my review, while Trustee Kaplan-Myrth seems to sincerely want to move on from the September 11th events, she seems to either be unable or unwilling to accept that her behaviour material to this Complaint, violates the Code.

Request for An Alternative Process:

In her reply, Trustee Kaplan-Myrth takes the position that an investigative process leading to a formal hearing will not solve the issues that underlie the Complaint. She requests that the investigation be diverted to a confidential, collaborative process akin to mediation, that involves *all* Board members and does not single her out. This request interfaces with the Code provisions related to complaints processes. The Code contemplates a Formal Review Process, and s.4.15 appears to provide the Integrity Commissioner with the sole discretion to determine which process to follow.

While the Code is not particularly clear about the structure or any requirements of the Informal Review Process, it does not appear to contemplate the sweeping, collaborative mediation process engaging *all* board members that Trustee Kaplan-Myrth’s reply requests. Indeed, at least as articulated in the Code, the Informal Review Process only engages the parties to the complaint, and *expressly excludes* the other Board members:

4.17 The Informal Review Process is conducted in private. As such, the details of the Complaint, the informal process, or the remedy are not reported to the Board.

In her reply, Trustee Kaplan-Myrth sought that I commence a process that is not contemplated by the Code, and was therefore outside of my jurisdiction to initiate. Given the nature of her request for a collaborative process that involves all board members, her request is more properly considered and decided by the Board. I make such recommendations below.

Trustee Kaplan-Myrth’s reply and Specific Code Provisions:

Section 3.5: Board Members shall discharge their duties loyally, faithfully, impartially and a manner than will inspire public confidence in the abilities and integrity of the Board.

Trustee Kaplan-Myrth’s reply submits that the “discharge of duties” is limited to things that happen at board meetings. I do not agree and has set out my reasons in the Global Report. Board member duties necessarily include communicating and consulting with their constituents and the public, which can be done through media interviews (particularly in the immediate aftermath of a

board meeting) and social meeting posts engaging with the public and constituents about board business.

This broader interpretation is supported by s. 3.2 of the Code, a general provision:

3.2 All Board Members shall uphold the letter and spirit of this Code of Conduct in their interactions with other members of the board, with the employees of the Board, and with students, families and members of the public, including but not limited to:...(c) social media; (d) interviews;...

Section 3.7: Board Members must uphold the dignity of the office and conduct themselves in a professional manner, especially when representing the Board, attending Board events or while on Board property.

In her reply, Trustee Kaplan-Myrth submits that she did not violate this provision because her impugned statements were not shown on the live stream of the Board meeting, and so could not possibly have impacted the board's reputation amongst members of the public who never heard her statements. However, this provision is not directly about public perception, public confidence, or the Board's reputation. The proper question under this provision is whether Trust Kaplan-Myrth acted in a professional manner, and whether her conduct and statements, irrespective of whether they were publicly broadcast, upheld the dignity of her public office.

The provision of the Code addresses more than statements made at Board meetings. It applies to all Board member conduct, "especially" when representing the Board, attending Board events, or while on Board property. That means it extends beyond those three circumstances. I find that it applies to her social media comments, particularly since they are often about the Board, its members, and what happened at meetings. Trustee Kaplan-Myrth was also on Board property when she spoke to the media after the September 11th Special Board meeting.

Section 3.8: Board Members shall ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to Board staff or fellow Board Members.

As I set out in the Global Report, I disagree with Trustee Kaplan-Myrth's position that what she said in private at a closed meeting of the Board (the September 7th Professional Development session) cannot violate this provision of the Code because those statements were not viewed or observed by the public and she did not name what meeting she was at and did not name any trustee. This section of the Code requires that Trustees' comments be issue-based, and not personal or disparaging of the Board, staff or the process. Nothing about the section requires those comments that the trustee disclose where the comments were made in order for there to be a violation of closed meeting confidentiality. Simply expressing criticism of another school board member should not violate this section. However, disclosing the substance of closed meeting deliberations is a violation of the Code.

Section 3.15, 3.17 and 3.18 : Civil Behaviour

In her reply, Trustee Kaplan-Myrth relies heavily on the assertion that she truly believed that Trustee Blackburn had "it out for her from day one" and that this statement (made at the Special Board Meeting) is supported by the facts (referring also the ADR Chambers Report). While that may be true, the purpose of these sections requires that the manner in which Trustee Kaplan-Myrth expressed this "truth" (or honestly-held believe) does not "discredit or compromise the integrity the board" (3.15); treating her fellow board members "respectfully and without abuse...(3.17); and complying with the behaviour expectations in the listed policies. (3.18).

Sections 3.27 -3.30: Upholding Decisions

In her reply, Trustee Kaplan-Myrth submits that she cannot be found to have violated any Code provision for failing to follow the Chair's September 11th closed meeting direction (about communicating with the media) because the direction was given at a meeting to which Trustee Kaplan-Myrth was not invited and did not attend. I agree and have set out my reasons in the Global Report.

Conclusion:

This inquiry raises several significant and pressing issues regarding the role of school board members, the manner and extent to which they may perform their mandated oversight duties and conduct themselves, express their views and make decisions in the course of carrying out their official duties.

The constitutional right to freedom of expression under s. 2(b) of the *Charter* is not absolute or unlimited. Some limitations apply broadly such as hate speech and perjury provisions in the *Criminal Code* and defamation laws. Other limitations apply only to select individuals, such as trustees, whose speech may be limited by the rules that the school board has imposed upon Trustees in the Code.

The Supreme Court held that:

Accordingly, while elected municipal officials may be quite free to discuss matters of public interest, they must act as would the reasonable person. **The reasonableness of their conduct will often be demonstrated by their good faith and the prior checking they did to satisfy themselves as to the truth of their allegations.** These are guidelines for exercising their right to comment, which has been repeatedly reaffirmed by the courts. **(emphasis added)**

Comment on the Use of the Complaint Process

I accept that some view this current Code complaint and the regime as politicized, with the effect of weaponizing the Code process. Until trustees understand their roles and responsibilities of elected office and begin to act as part of one decision-making body with duties set out in Provincial statute, the Integrity Commissioner will be required to address Code complaints which involve untangling extraneous political issues from the findings of fact and analysis of breach, so that the report to be considered by the Board is viewed as consisting of elements of an approved institutional procedure, and not either vindication for a political position or villainizing of a "really good person" who had good intentions. Some say that often municipal and school board Code regimes and Integrity Commissioner reports are often riddled with platitudes regulating manners dressed up as conflicts of interest rules. When elected school board trustees make decisions when they have a pecuniary interest in the matter before the Board, there is a consensus that it is for these egregious activities of breach of trust that the rules of the Code of Conduct were created and should be applied. I submit, that when a school board trustee's conduct undermines and takes the focus away from "creating a culture [...] where they collaborate with [the Ministry] to lift their standards" this integrity obligation should be considered as important to the good governance and fulfillment of the role of a school board trustee as refraining from favouring one's personal and private interest over the public interest of the well-being of students.

Recommendation:

1. I recommend that the Board of Trustees receive my finding that Trustee Kaplan-Myrth has violated the Code of Conduct
2. I recommend that the Board of Trustees impose the following sanctions:
 - Barring Trustee Kaplan-Myrth from attending the next Board meeting;
 - Barring Trustee Kaplan-Myrth from attending Committee of the Whole and any committees determined by the Board for a period of time deemed appropriate by the Board as set out in the Code

I recommend that the Board of Trustees also consider:

1. the engagement of a mediator to work with Trustee Kaplan-Myrth and all Board members in a common effort to overcome the issues of dysfunction and distrust that underlie the Complaint, including a Human Rights specialist to work with Trustees to understand the application of intersectionality, allyship and how to allow dissenting voices to be heard in the letter and spirit of the Board's policies and Human Rights legislation; and
2. in addition to what the Board has already put in place and implemented, identify the enhanced safeguards that will facilitate the safety of Trustee Kaplan-Myrth in the first instance and all Board trustees generally in the wake of ongoing and heightened safety risks and threats; and
3. in addition to what the Board has already put in place and implemented, that the Board identify enhanced opportunities to shield Trustee Kaplan-Myrth from hate mail and death threats through any of the servers of the District.

Respectfully submitted,



Suzanne Craig
Integrity Commissioner