

Appeal of Trustee Dr. Nili Kaplan-Myrth from the Decision of the Ottawa Carleton District School Board dated December 19, 2023

Trustee Dr. Nili Kaplan-Myrth appeals the decision of the OCDSB dated December 19, 2023 that found her to have contravened various sections of the Board's Code of Conduct.

Overview

The Board's decision dated December 19, 2023 (the "Decision") states that it is based on the facts as presented in the Report of the Integrity Commissioner (the "Report"). The Report found that Trustee Dr. Kaplan-Myrth breached various provisions of the OCBSB Code of Conduct (the "Code") by statements before, during and after the meeting of September 11, 2023 that considered a separate Code complaint brought against her by Trustee Dickson. The Report also found that Trustees Dickson and Blackburn did not breach the Code by their statements before, during and after that same meeting.

Trustee Dr. Kaplan-Myrth's appeal is based on her contention that the Report's findings against her are based on faulty or incomplete findings of fact as well as fundamental errors in its statements about the relevant applicable legal principles. The findings about Trustee Dr. Kaplan-Myrth's statements and conduct cannot be reconciled with its findings about Trustees Blackburn and Dickson's statements and conduct, except by an inappropriate invocation of the controversial theory of "Intersectionality" which appears to be condoning a different standard based on the identity of the speaker. Taken as a whole, the Report can be seen to illustrate Trustee Dr. Kaplan-Myrth's central complaint that the Board has not taken seriously her concerns about antisemitism or its impact on her own safety so that instead of assuming any responsibility for these matters or of acknowledging any obligations of "allyship," it has instead sought to blame her for causing the problems and/or for making the Board look bad by raising these issues in public.

The Specifics

1. Preliminary issue: Natural Justice and Fairness

Both the Code of Conduct and the general law require that the process for dealing with a complaint under a Code of Conduct must be carried out in accordance with the principles of Natural Justice and Fairness.

(a) Natural Justice

Natural Justice requires that the person being complained against has to be given an opportunity to tell their side of the story, literally for their voice to be heard.

The process followed in this case did not allow this to happen. Trustee Dr. Kaplan-Myrth was given a chance to respond to the original complaint and to the draft Report, but the original complaint was reformulated and the draft Report was amended so the responses no longer line up with anything. More importantly, the Report itself does not deal with these responses in any systematic way that allows the reader to understand Trustee Dr. Kaplan-Myrth's position in response to the findings of fact or of law. Some responses are cited in the Report; some, particularly the response about the law are not. Natural Justice would have required the Report to cite Trustee Kaplan-Myrth's response to each individual allegation both on the facts and on the law and then the reason why the Report either accepted or rejected the position. Instead the reader (in this case the Board member) only hears a bit of what she had to say and often not in the context it was directed at.

(b) Fairness

In this context "Fairness" means even-handedness: applying the same principles in the same way to similar situations.

As described in more detail below, this principle was also not followed in all cases. Trustees Blackburn and Dickson were afforded the benefit of having their statements and behaviour assessed on the basis of a sympathetic assessment of their subjective intentions, while Trustee Dr. Kaplan-Myrth's intentions were not considered relevant or were treated as less important than the feelings of others.

2. **Specific findings of Code violations: September 11 meeting**

The Report finds that Trustee Dr. Kaplan-Myrth "violated the Code by virtue of her statements and conduct" at the September 11 Board meeting (Report, p.176). No section of the Code is cited. This finding is wrong on the facts and on the law and is especially troubling because of its citation of the principle of "intersectionality," presumably to counter Trustee Dr. Kaplan-Myrth's claim about the racist meaning of the words that Trustee Dr. Kaplan-Myrth interrupted.

- (a) Trustee Dr. Kaplan-Myrth had a right to voice her objections at the time she did so.

In the draft Report there was a finding that Trustee Dr. Kaplan-Myrth had no right to speak at the September 11 meeting since she was the subject of the complaint being heard. This is incorrect. The subject of a complaint may not “participate in the deliberations” at a meeting to consider the complaint, but can otherwise attend and does not forfeit her other rights as a Board member. The final Report grudgingly does not deny this fact.

It follows that Trustee Dr. Kaplan-Myrth has a right to raise a “Point of Order” about the new Limitations period in the revised Code potentially applying to the complaint against her. The proper time to raise it was when the matter was raised on the agenda. She did that.

- (b) The second time Trustee Dr. Kaplan-Myrth spoke up was to attempt to interrupt Trustee Blackburn as Trustee Blackburn was making what Trustee Dr. Kaplan-Myrth considered to be a highly offensive and racist allegation about Trustee Dr. Kaplan-Myrth. That qualifies as a “Point of Personal Privilege” which a member is entitled to raise in order to protect her dignity and reputation from being besmirched in a meeting.
- (c) It follows that neither “interruption” violated the rules of procedure of the Board.
- (d) In the course of explaining her Point of Personal Privilege, Trustee Dr. Kaplan-Myrth stated that Trustee Blackburn “had it in for her since day one.” The Report found that there was no evidence of that fact. (Report p.175) Eight pages later, in a different context, the Report says that in support of her belief that Trustee Blackburn “had it out for her since day one,” Trustee Dr. Kaplan-Myrth cites the Report of the Investigator into Trustee Dickson’s complaint which referred to the evidence of two Trustees about Trustee Blackburn’s hostility toward Trustee Dr. Kaplan-Myrth, whose truth the Report does not (and indeed cannot) dispute (p.183).
- (e) This disparity raises concerns which are amplified by the Report’s allusion to “intersectionality” as an apparent counter to Trustee Dr. Kaplan-Myrth’s assertion that in context Trustee Blackburn calling Trustee Dr. Kaplan-Myrth “a white woman speaking to a black woman” was an objectionable appeal to a racist canard about “white privilege” cancelling out a Jewish woman’s entitlement to identify as a member of an equality-seeking group or to be entitled to comment on racism.

- (f) This theme will be discussed further below, but it is notable that the Report does not even think to consider whether Trustee Blackburn's words should be analyzed as potentially problematic, but instead considers it relevant to mention her status as an out lesbian.
- (g) What is significant is that for both "interruptions," the Report challenges the bona fides to Trustee Dr. Kaplan-Myrth's objections, something that is not done with any other witness or subject of a complaint.

3. Specific findings of Code violations: Conduct immediately following the September 11 Board meeting including interactions with media present

- (a) The Report finds that Trustee Dr. Kaplan-Myrth violated the Code by her conduct and interactions with the media present following the September 11 Board meeting, but does not specify what sections of the Code were violated.
- (b) The facts relied on do not support the finding.
- (c) In the draft Report it was stated that Trustee Kaplan-Myrth attempted to exclude two individuals "thought to be journalists" from the meeting and the draft Report concluded that there was no excuse for attempting to limit those present only to media that Trustee Dr. Kaplan-Myrth wanted to have present. Trustee Dr. Kaplan-Myrth corrected this misimpression in her response by clarifying that the two individuals in question were not journalists, but rather persons who had previously harassed her and it was only these whom she wanted to be protected from. There were no journalists who were excluded.
- (d) The final Report deletes the reference the individuals being "thought to be journalists" but nevertheless still finds, contrary to the evidence that Trustee Dr. Kaplan-Myrth ordered all media except Trustee Dr. Kaplan-Myrth's those she wanted to speak to, to leave the room and was aggressively and without justification trying to control what media would be allowed in the room.
- (e) Without referring to a section of the Code, the Report condemns Trustee Dr. Kaplan-Myrth's attempt to protect herself from known harassers (one of whom was subsequently issued a "no trespass" notice by the Board and was later arrested for breach of release conditions) while simultaneously absolving Trustee Blackburn for falsely claiming that the other, a known

extreme anti-trans militant, was her “media consultant” in order to try to keep her in the media room.

- (f) There is no reasonable basis in fact or in law for the Report’s finding of a violation in this regard.

4. **Specific findings of Code violations: Trustee Dr. Kaplan-Myrth’s statements to the media or via social media**

- (a) The Report maintains that Trustee Dr. Kaplan-Myrth violated the Code by creating an “intimidating environment” through her statements to the media and through “numerous” social media posts. There is no basis in fact or in law for this allegation.
- (b) “Creating an intimidating environment” is a nebulous allegation and requires further investigation based in specific facts. The incidents referred to do not support the charge.
- (c) Making Board members uncomfortable by saying uncomfortable things is not a violation of the Code. The Charter guarantees that.
- (d) The first incident cited under this subheading is not a statement to the media or in social media, but rather a letter to a number of individuals at the Board involved in Trustee Dr. Kaplan-Myrth’s safety plan. In that letter, Trustee Dr. Kaplan-Myrth complains about disclosure about information about the safety plan to Rebel News, a media source with known bad intentions toward her, that did in fact use the disclosed information to harm Trustee Dr, Kaplan-Myrth. The Report upbraids Trustee Dr. Kaplan-Myrth for sending the letter and for criticizing release of the information.
- (e) In fact, contrary to the position taken in the Report, the disclosure was improper and Trustee Dr. Kaplan-Myrth should have been given notice of the Board’s intention to disclose so that she could object. This position on behalf of Trustee Dr. Kaplan-Myrth was conveyed to the author of the Report and should have been incorporated into the Report under the principles of Natural Justice. It was not.
- (f) In the result, the Report dwells on the hurt feelings of the recipients of the letter (some or all of whom were responsible for improper disclosure and failure to notify) but does not for a minute consider Trustee Dr. Kaplan-Myrth’s justified feelings of betrayal by the improper disclosure or upset by the harm caused to her by it.

- (g) A second example of an alleged breach of the Code is Trustee Dr. Kaplan-Myrth's social media post wherein she expresses disappointment at the fact that in a meeting in which she informed her colleagues of the nature and extent of the misogynistic, antisemitic hate mail and death threats she had been receiving and the impact that this had been having on her and her family, only to have them respond by suggesting that she be less vocal and get off social media. The Report found that this was unjustifiable criticizing of her colleagues and therefore a breach of the Code.
- (h) In fact, Trustee Dr. Kaplan-Myrth had every right to call out her colleagues for their failure of allyship and for blaming the victim. Had the issue been anything other than antisemitism this would have been clear.
- (i) As a matter of law, the Code cannot be interpreted as protecting the Board and its members from criticism or justifying sanctions against Trustees who express criticism of other Trustees or of the Board itself. The Report calls this an "esoteric" position. It is not. It is a basic position in a democracy.
- (j) The Report alleges that there are "numerous" other instances of Trustee Dr. Kaplan-Myrth criticizing the Board or her colleagues in social media or the press, but does not cite them. The only other instances that might apply are Trustee Dr. Kaplan-Myrth's statements that the complaint by Trustee Dickson against her was frivolous and ought not to have proceeded because it put her in a position of danger. While it may be true, as the Report contends, that there was nothing under the Rules as they then were, that could have stopped the complaint from proceeding to a hearing, it is also true that the Investigator did note that it would have been preferable to find a means to resolve the matter short of a public hearing and it is also true that Trustee Dr. Kaplan-Myrth was correct in predicting that the public hearing would lead to further trouble.
- (k) Regardless, the Report gets the law wrong as it applies to such statements. (See discussion below). There is no basis in law or in fact for finding a violation of the Code in anything that Trustee Dr. Kaplan-Myrth said in the media or on social media.

5. **Wrong Law: General**

- (a) The legal argument submitted on behalf of Dr. Kaplan-Myrth explicitly asks that the Board members have the benefit of legal counsel's advice on the

legal argument being made. In the previous complaint against Dr. Kaplan-Myrth, Board members had the benefit of precisely such legal advice from the Board's litigation counsel. For whatever reason, the Board chose not to make such legal advice available this time even though neither the Integrity Commissioner nor Board members can be expected to be experts in the law.

- (b) The Report's position about the law on these issues is incorrect, leading the Report to draw unreasonable and insensitive conclusions that Trustee Dr. Kaplan-Myrth violated the Code.

6. Wrong Law: Privacy and disclosure of information

- (a) The Report castigates Trustee Kaplan-Myrth for an internal email suggesting someone at OCDSB had "leaked" her safety plan to Rebel News, an "attack media" publication that had been leading an aggressive campaign to harass her editorially and through various social media initiatives.
- (b) As an aspect of its reliance on incomplete facts, discussed above, the Report omits this important context. It also omits the fact that at the time she wrote the letter, addressed to the various individuals at the Board who had previously been involved with the safety plan, she did not know that the information had been disclosed in response to an Access to Information request.
- (c) Equally importantly, the Report accepts at face value the Board's argument that it had no choice but to disclose the documents in question to Rebel News and that it had no legal obligation to give Trustee Dr. Kaplan-Myrth any prior warning of the Access request and planned disclosure. In doing so, the Report does not mention Trustee Dr. Kaplan-Myrth's legal argument that she did have a right to notice and that the Board was wrong to disclose without giving her a chance to object.
- (d) As a matter of law, the Board's position was wrong and Trustee Dr. Kaplan-Myrth's position was correct, as has been or shortly will be confirmed by the Ontario Privacy Commissioner.
- (e) In the result, Trustee Dr. Kaplan-Myrth had every right to complain about being exposed to harm and potential danger by an improper disclosure and a failure to warn on the part of OCDSB.

- (f) Finding that this complaint amounted to a breach of the Code is a clear example of blaming the victim for complaining about having been wronged.
- (g) **The Report expresses sympathy for the feelings of the recipients of the complaint letter, but spares no thought for the feelings of the person who was in fact the wronged party by this incident.** (See below for further discussion of this general lack of sympathy throughout the Report).

7. Wrong Law: Interaction of the Charter and the Code

- (a) **The common thread underlying all of the matters complained about against Trustee Dr. Kaplan-Myrth is that they relate to *statements that she made*.** For this reason and since the Board is a governmental entity, the Canadian Charter of Rights and Freedoms and its guarantee of expressive becomes relevant.
- (b) The Report takes the position that Expressive Freedom gives way to the rules prescribed by a Code of Conduct and cites the case of *Del Grande v. Toronto Catholic District School Board*, [2023 ONSC 349](#) in support. Once again, the Report does not cite Trustee Dr. Kaplan-Myrth's position that the *Del Grande* Case does not stand for the proposition claimed, but rather is merely an application of the correct law as set out in *Doré v. Barreau du Québec*, [2012] 1 SCR 395, which *Del Grande* explicitly says it is applying.
- (c) *Doré* stands for the principle that where a set of rules like the Code of Conduct is applied so as to attempt to restrict the content of speech the test is a balancing exercise, with the beneficial purposes of the rule being balanced against the Charter values involved in the expressive activity.
- (d) *Del Grande* in fact is an example of the kind of speech appropriately subject to censorship on the basis of content. In that case a Council member tried to amend a motion supportive of LGBTQ+ rights by adding references to acts and practices like bestiality and cannibalism, thereby intending to discredit the motion, cause distress to minority communities in attendance at the meeting and fly in the face of established Public Policy recognized by the Legislature in favour of equality on the basis of sexual preference and gender identity.
- (e) In this regard, *Del Grande* is consistent with the Supreme Court of Canada jurisprudence in cases such as *Groia v. Law Society of Upper Canada*, [2018] 1 SCR 772, cited in Trustee Dr. Kaplan-Myrth's materials in the

previous complaint against her, which held that when applied to expressive acts, a **Code of Conduct that required advocates to practise “civility” should be understood as prohibiting speech that was defamatory, illegal or otherwise against established public policy, but otherwise should not curtail expressive freedom.**

- (f) **The Report by contrast, interprets the Code as allowing the imposition of sanctions on speech that criticizes the Board or its members, even where the criticism is justified.** It reads the Code as making it an offence to make the Board look bad in the eyes of the public.
- (g) Without referring to the legal basis of the argument, the Report dismisses as “esoteric” Trustee Dr. Kaplan-Myrth’s observation that “discrediting the administration” is the type of offence one expects in an authoritarian regime, not a democratic one. This is not an “esoteric” (did the report mean “exaggerated”?) argument, but one based on the *Doré* balancing test. On the one hand are the beneficial goals of restricting speech under the Code, which amount to preserving collegiality among Board members and preserving a good reputation for the Board. On the other hand are the Charter values underlying the proposed speech, namely speaking truth to power and providing information that is neither false, nor illegal, nor against established public policy to the public. There is no question where the balance must lie in a democracy governed by a Charter that protects rights and freedoms.
- (h) **In the result, all the conclusions about Trustee Dr. Kaplan-Myrth’s statements constituting breaches of the Code capable of carrying sanctions cannot be supported under the law in light of the Charter.** All the statements are well within the boundaries of protected speech.

8. Fairness: Inconsistent findings and approaches to the complaints against the three Trustees

- (a) The Report approaches seemingly similar issues pertaining to the three Trustees in a very different manner, reaching different conclusions that are hard to reconcile based on the facts.
- (b) Trustee Dr. Kaplan-Myrth is found to have breached the Code for complaining, without naming names, about the inadequacy of the Board’s response to her personal safety, its lack of understanding about antisemitism and its lack of empathy, all of which are said to cause distress to other Trustees and to show the Board in a bad light to the public. Trustee

Dickson's remarks to the media following the September 11 meeting are excused on the basis that they do not show disrespect to the Board's process because they disagree with the result in a respectful manner. **Lost somehow in this discussion is the fact that Trustee Dickson's comments also call Trustee Kaplan-Myrth a bully and a racist and state that she is unfit to serve as a member of the Board.**

- (c) Similarly Trustee Dr. Kaplan-Myrth is found to have violated the Code by raising her objection on a point of personal privilege "in the wrong way", blurting the objection out, rather than coolly making the it at an appropriate parliamentary pause in the proceeding, even though the point of privilege was made in obvious emotional distress to attempts to stop what Trustee Dr. Kaplan-Myrth described as a hurtful racist attack by a long time antagonist. By contrast, Trustee Blackburn's false statement that a known harasser of Trustee Dr. Kaplan-Myrth was Trustee Blackburn's "media advisor" and hence eligible to remain in the media room while Trustee Dr. Kaplan-Myrth was to be interviewed, is excused as a "spur of the moment" utterance. And therefore not blameworthy.
- (d) While Trustee Blackburn and Trustee Dickson's accounts of their subjective motivation and beliefs are accepted at face value, as noted above, Trustee Dr. Kaplan-Myrth's statement about Trustee Blackburn's animus toward her is dismissed, despite corroboration by two Trustee witnesses.
- (e) Notably, although the September 11 complaint was not part of the complaints to be investigated, the Report spends considerable time discussing Trustee Dickson's subjective response to the underlying subject matter as well as that of Trustee Blackburn and other unnamed Trustees, in effect re-litigating the complaint from Trustee Dickson's perspective. By contrast, the Report does not spend any time discussing the complaint from Trustee Dr. Kaplan-Myrth's perspective, including the fact that Trustee Kaplan-Myrth believed that the complaint could and should have been resolved without a hearing and that this view was shared by the Investigator who reported on the matter, such that the refusal to settle constituted an aggressive act intending to harm her, which ended up achieving that purpose. The sympathetic treatment of Trustee Dickson's continuing determination to advance an interpretation of Trustee Kaplan-Myrth's allegedly racist intentions contrasts sharply with the unsympathetic rejection of Trustee Kaplan-Myrth's complaint that the continuation of the complaint despite her efforts to apologize and despite the Investigator's conclusions about the lack of racist motivation was a harmful and aggressive act. The

Report counters this complaint simply by stating that it was Trustee Dickson's right to make the complaint.

- (f) These inconsistencies raise questions about the fairness of the respective treatment being given to the three Trustees who were the subjects of the complaint.

9. **Fairness: The approach to the complaint**

- (a) The fairness concerns are magnified when one considers the approach taken in the "Global Report."
- (b) The original complaint was a "group complaint" in the sense that it focussed on the interactions between Trustee Dr. Kaplan-Myrth on the one hand and Trustees Blackburn and Dickson on the other. The complaint focused on the dynamic between them as illustrated in a number of specific contexts and events. The Report chose to ignore this focus and this structure and instead chose to focus on each Trustee in isolation and to group events into categories that were not the categories that were in the complaint. Not only did this choice make Trustee Dr. Kaplan-Myrth's responses to the original complaint difficult to follow, it changed the nature of the complaint in fundamental ways and turned a complaint about a *dynamic* at the Board into a complaint about individuals, and ultimately turned it into a complaint about one individual, Trustee Dr. Kaplan-Myrth.
- (c) The nature of this shift is evident from the outset of the Global Report. The section entitled "Context" begins not with any description of facts surrounding the Board or any issues, but rather with one-line quotes of how certain Trustees viewed Trustee Dr. Kaplan-Myrth's personality. The reader is signalled that the problems to be discussed in what will follow are related to issues of individual personality and that individual is Trustee Dr. Kaplan-Myrth. The groundwork is set to blame her for any dysfunction that has been complained about.
- (d) The actual incidents that were the focus of the complaint do not appear until many page later and when they do, it is often as set out above, in incomplete factual form.
- (e) How these incidents breach the Code is never analyzed. It is merely stated as a subset of the proposition that Expressive Freedom gives way to the rules in a Code of Conduct. The actual Rules are never discussed in detail. If read literally, these rules would forbid any negative

comment (“disrespect”) about anyone (“Board members, teachers, students and members of the public”) at any time through any medium anywhere (as evidenced by Trustee Dickson’s complaint about a private email Trustee Dr. Kaplan-Myrth sent only to her).

As a result, it is unclear whether the reader is being encouraged to find Trustee Dr. Kaplan-Myrth has violated the Code because of what she has done or said or because of the unease other Trustees experience in dealing with what she says.

10. **Fairness: Antisemitism and “Intersectionality”**

- (a) In response to Trustee Dr. Kaplan-Myrth’s argument that Trustee Blackburn was being racist when she said that in her email correspondence with Trustee Dickson, Trustee Dr. Kaplan-Myrth was “a white woman speaking to a black woman,” the Report cites the theory of “Intersectionality,” although it is not clear from the text whether the purpose is to support or deny the claim. During the presentation and the question-and-answer session at the December 18 meeting to consider the complaints, the Integrity Commissioner made several further references to this theory in an attempt to explain the rationale for the differing conclusions for seemingly similar complaints against Trustee Dr. Kaplan-Myrth on the one hand and Trustees Blackburn and Dickson on the other.
- (b) It is clear that the Report adopts a different attitude to Trustee Dr. Kaplan-Myrth on the one hand and Trustees Blackburn and Dickson on the other. While the Report lays great emphasis on the subjective perceptions of Trustees Dickson and Blackburn in explaining their actions and their words and also carefully notes their reactions (in terms of distress) to words spoken by Trustee Dr. Kaplan-Myrth (whether the words were so intended or not), the Report regularly dismisses Trustee Kaplan-Myrth’s subjective perception, to the point of questioning her bona fides and at no point acknowledges any distress or harm caused by any actions taken by the Board or its members.
- (c) This differential treatment may, in part be attributable to the notion of Intersectionality. In its purest form, Intersectionality stands for the unobjectionable and common-sense observation that we are all made up of multiple identities as members of different subgroups with different social and historical experiences and that these identities intersect and interact. In its less benign form, Intersectionality has been distorted and/or weaponized so as to theorize that for Jewish people “white privilege” is so

ingrained as an aspect of their identity that they are disqualified from participating with equality seeking groups and individuals in joint endeavours. Thus Jews have been banished from LGBTQ+ groups, from conferences of people with disabilities, from various feminist groups etc.

- (d) Antisemitism therefore creates a difficult problem for this strain of Intersectionality. It is recognized as a prohibited category of discrimination, but it is exclusively confined to religious discrimination and is excluded as a category of racism. Antizionism is similarly never to be seen as either antisemitic or racist or discriminatory, but rather as anti-racist and liberationist. This tension can create a blind spot about antisemitism. Just as EDI theory teaches that racism is often unconscious, so also it should (but seldom does) teach that antisemitism is often unconscious.
- (e) That being the case, just as unconscious racism often blames the victims of racism for the racism and discrimination that they face, so also does antisemitism, whether conscious or unconscious, blames Jews for the hatred and discrimination they face.
- (f) An alternative way of framing the issues and conflicts that were the subjects of the complaints against Trustee Dr. Kaplan-Myrth is to see Trustee Dr. Kaplan-Myrth attempting to alert the Board and its members to the impact of antisemitism on her safety at the Board and their responsibility to help protect her from those impacts, followed by expressions of frustration at the Board's seeming failure to recognize the seriousness of the issue or accept any responsibility, either legally, or as a part of the concept of "allyship" taught under the theory of "Equity, Diversity and Inclusion" and instead blaming her for being victimized and denying the relevance of antisemitism to the issues before them.
- (g) This alternative framing is capable of explaining why the Report spends time dealing with Trustee Dickson's identity as a member of the Black community and her experience as the grieving mother of a child who was killed and with Trustee Blackburn's identity as an out lesbian who has adopted a black child. As for Trustee Dr. Kaplan-Myrth, the Report deals with the threats against her as deplorable, but as something outside the mandate of the Report (and therefore apparently outside the concerns of the Board). The Report discusses Trustee Dr. Kaplan-Myrth's claims with regard to Jewish identity (and therefore antisemitism as a manifestation of racism) by immediately invoking Intersectionality and then dropping the topic. There is no discussion of Trustee Dr. Kaplan-Myrth's complaint that the antisemitism

issue has been ignored or swept under the rug. There is no recognition that all of the complaints that “make the Board look bad” focus on the failure of the Board to recognize that its actions and inactions may have exacerbated the dangers and harms she has faced or that there has been any failure to show solidarity and allyship in the face of an organized racist assault.

- (h) In short, antisemitism is not discussed at all in the Report as an aspect of the problem under review, but rather as somebody else’s responsibility, perhaps Trustee Kaplan-Myrth’s own.
- (i) In this framing Trustee Dr. Kaplan-Myrth is being blamed for the problems and dangers she is facing both in the community at large and at the Board and for bringing them up in public.
- (j) A good test for the cogency of this framing would be to imagine the situation if she were a member of some other group facing a campaign of hateful intimidation and abuse. Would advice from fellow Board members to stop speaking out be seen as appropriate? Would complaints of lack of solidarity and support be characterized as hurtful to the recipients? Would statements that weaponizing the complaints process under the Code with dubious complaints and then encouraging the media to cover the proceedings so as to mobilize further harassment, be met with a shrug and a statement that this is the complainant’s right? Would an objection to try to cut off a racist canard made during a meeting, be condemned as not being made in the proper form? Would an attempt to exclude two known harassers from disturbing media interviews be condemned as an arrogant and self-centred affront? Would a statement that supporting her meant supporting bullying and racism be absolved so as to be interpreted as somehow not being critical of the Board’s decision while ignoring the obvious meaning that it was she who was being accused of bullying and racism and completely ignoring the added comment that she was not fit to serve as a Board member?
- (k) The Report does a disservice to the important issues Trustee Dr. Kaplan-Myrth has tried to raise and ultimately does a disservice to the Board by making it all about Trustee Dr. Kaplan-Myrth’s personality. That’s not at all what it’s about.

11. **The Penalty is grossly disproportionate**

- (a) As the Report itself acknowledges, the primary purpose of a Code of Conduct for Boards of Education is to prevent conflicts of interest. It is for

that reason that the procedure excludes the member complained against from participating in the deliberations. Any further enforcement of rules of conduct is entirely secondary and must be seen as such.

- (b) The conduct under review does not involve any conflict of interest. It also does not involve any dishonest, immoral, or otherwise discreditable act. It does not involve any false statements. It does not involve any statements against any identified individuals. It involves statements of opinion with which Board members disagree and which they feel cast them in a bad light.
- (c) There is no question that Trustee Dr. Kaplan-Myrth honestly believed the statements she made and believed them to be protected by the Charter.
- (d) Making statements about Board policies is part of the job description of a Board member, as is advocating for unpopular causes.
- (e) This is Trustee Dr. Kaplan-Myrth's first offence.
- (f) A principle of sentencing is that the sanctions available should be applied with an understanding that they represent a range of available penalties that should be applied with a consciousness of where the offence lies on a scale of seriousness and what might be available for subsequent or more serious infractions.
- (g) The original penalty suggested was the maximum possible and indicates that the goal was purely vindictive and not based on any rational principle.
- (h) The amended penalty is still well toward the highest end of available penalties and does not reflect the nature of what is being charged or the circumstances.
- (i) In the circumstances there should be no suspension of Trustee Dr. Kaplan-Myrth's right to attend meetings of the Board or of subcommittees. Such a penalty only penalizes Trustee Dr. Kaplan-Myrth's constituents by denying them representation.

12. **Conclusion**

- (a) The decision of the Board is based on the Report of the Integrity Commissioner. That Report is wrong as follows:
 - (i) It is based on wrong or incomplete facts.

- (ii) It is based on errors of law.
 - (iii) It denies Trustee Dr. Kaplan-Myrth Natural Justice by failing to cite many of the factual or legal submissions made by Trustee Dr. Kaplan-Myrth or why they were rejected.
 - (iv) It denies Trustee Dr. Kaplan-Myrth procedural and substantive fairness by restructuring the complaint in a way that alters it and by treating similar issues in the respective complaints against Trustee Dr. Kaplan-Myrth and on the one hand and Trustees Dickson and Blackburn on the other in radically different ways.
 - (v) It fails to understand the relevance of antisemitism as a form of racism and consequently wrongfully dismisses the essence of Trustee Dr. Kaplan-Myrth's position as irrelevant, while possibly applying the controversial theory of Intersectionality to her disadvantage.
 - (vi) The sanction applied by the Board is grossly disproportionate and inappropriate.
- (b) This appeal should be allowed and the complaints against Trustee Dr. Kaplan-Myrth should be dismissed.

Respectfully submitted,



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