

**Ottawa-Carleton District School Board****FORMAL BOARD MEMBER CODE OF CONDUCT COMPLAINT REPORT**

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**RESPONDENT Trustee Donna Blackburn****I. INTRODUCTION****A.THE ACCOUNTABILITY FRAMEWORK****i. Office of the Integrity Commissioner**

The Ottawa-Carleton District School Board (the “District” or “OCDSB”) has established a Board Member Code of Conduct (the “Code” or “Code of Conduct”), last updated on August 19, 2024. The alleged misconduct took place between August 15 to 25, around the time of this update. To ensure consistency, I have referenced the Rules from the updated August 19 Code. I have noted the old rules which were in force at the time of some of the alleged misconduct. While the rule numbering and some language has changed, in respect of the applicable rules, the substantive meaning has not changed.

As an independent officer, I am 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 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 complainant disclosing particulars other than the identity of the complainant 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. While I have included the name of a Trustee who received certain comments from the Respondent, I have not disclosed the name of the Complainant to the Respondent or in this Report.

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).

## **B. BACKGROUND**

On August 27, 2024, I received a Complaint under the Code of Conduct alleging that, between August 15, 2024 and August 25, 2024, Trustee Donna Blackburn (the "Respondent") made "repeated discriminatory comments about the Jewish community" including "[...] discriminatory comments in email communications with Trustee Kaplan-Myrth; lobbying OCDSB staff and students to join her in a rogue OCDSB float in the Capital Pride parade; [...] and] discriminatory comments about Trustee Kaplan-Myrth in communications with trustees and in communications with Jewish community [...]" (the "Complaint").

The Respondent has stated that she cares deeply about participation in Capital Pride. She identifies as a lesbian and, many years ago, was instrumental in securing OCDSB's participation in the pride parade. The importance to the Respondent to support members of the 2SLGBTQIA+ community, including staff members and students of the Board is at the forefront of her comments subject of this Complaint.

The Complaint, and the comments complained of, arose in the context of the OCDSB's operational decision to withdraw its official participation from the Capital Pride parade after Capital Pride released its Statement in Solidarity with Palestine on August 6, 2024. The Respondent expressed opposition to this decision to withdraw from the parade. She participated in and expressed her support for an unofficial group of OCDSB-affiliated staff who marched in the parade after the decision of the District not to officially participate in the event.

## **C. SUMMARY**

This report presents the findings of my investigation under the Code relating to the Complaint.

The Complaint alleged that the Respondent made inappropriate comments contrary to the Code including:

- a. discriminatory comments in communication via email and text message with Jewish community members and Jewish OCDSB staff;
- b. discriminatory comments in email communication with and about Trustee Kaplan-Myrth with Trustee Kaplan-Myrth, other Trustees and members of the Jewish community;
- c. “inappropriate lobbying” on social media, media interviews of OCDSB staff and students to join her in a “rogue” OCDSB float in the Capital Pride parade that discredit and compromise the decision made by the Director of Education and the integrity of the Board.

The Complaint raised the following issues:

1. Were the comments and conduct of Trustee Blackburn “discriminatory” and thus contrary to the Code (including the Human Rights Policy and/or the Workplace Harassment Prevention Policy)?
2. Did Trustee Blackburn discredit and/or compromise the integrity of the Board as well as the authority of Director of Education by encouraging “lobbying” OCDSB staff and students to join her in a OCDSB float in the Capital Pride parade in a manner contrary to the Code?
3. Did the Respondent violate the respectful conduct provisions under the Code?

With respect to Issue #1, I find that the Respondent did not breach Rule 3.7 of the Code (or any other Code provisions related to discrimination). Rule 3.7 of the Code contains the principle that requires Trustees to treat persons without discrimination.

I find that the comments leading up to and the action of participating in the Parade, while received as offensive and hurtful, do not rise to the level of being discriminatory within the meaning of the *Human Rights Code*. As in all complaints alleging conducting that runs afoul of the Code rules, I must identify the rule or rules triggered, and apply the rules to the alleged conduct of the Respondent. Of particular importance in this review is the fact that the OCDSB Human Rights Policy does not provide a definition of antisemitism upon which I can rely. As set out below, this creates difficulties as antisemitism is not consistently defined. The Code does refer to the Human Rights Code. As a result, I have, with the assistance of legal counsel, relied on the analysis undertaken in a human rights code complaint. It is incumbent upon the Board to adopt a definition which individuals can understand in considering their obligations under the Code. I have confirmed that the Board is currently working, through these discussions at the Advisory Committee on Equity (“ACE”).

On Issue #2, I find that the actions of the Respondent did not contravene Rules 3.6, 3.25 and 3.26 of the Code.

On Issue #3, I find that the Respondent did not violate Rule 3.9. I find that two comments did violate Rule 3.18 of the Code; however, I determined that the violations were a result of an error of judgment made in good faith.

In the balance of this report, I discuss my findings on the allegations in the complaint, my reasons for those findings, and my recommendations with respect to sanctions.

#### **D. THE COMPLAINT**

On August 27, 2024, I received a Complaint under the Code alleging that, between August 15, 2024 and August 25, 2024, the Respondent:

1. made “repeated discriminatory comments about the Jewish community” including “[...] discriminatory comments in email communications with Trustee Kaplan-Myrth;
2. lobbied OCDSB staff and students to join her in a rogue OCDSB float in the Capital Pride parade; ... and
3. made discriminatory comments about Trustee Kaplan-Myrth in communications with trustees and in communications with Jewish community [...].”

Section 3.3 of the Code of Conduct (Policy P.073.GOV) requires Board Members to discharge their duties in accordance with the *Education Act* as well as with a number of enumerated statutes including the *Human Rights Code*. Section 3.7 of the Code explicitly prescribes that the prohibition against discriminatory conduct by Trustees applies to all forms of written and oral communication. It states:

At all times Trustees shall treat persons equally without discrimination based on a person’s race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability and/or socioeconomic disadvantage. This provision applies to all forms of written and oral communications, including via media interviews and correspondence and via social media.

This complaint, and the comments complained of, arose in the context of the OCDSB’s discussions and consideration of its participation in the Capital Pride parade (the “**Parade**”) after Capital Pride released its Statement in Solidarity with Palestine on August 6, 2024. The Respondent made it clear that she supported OCDSB’s participation in the Parade and disagreed with the OCDSB’s operational decision to withdraw from the Parade. The Respondent marched at the Parade after the Director noted that individuals were left to decide whether they wished to participate in an unofficial capacity.

The Complainant set out specific statements made by the Respondent which she asserted were contrary to the Code. I have underlined those allegedly inappropriate comments and set them in their context below:

- a) “[...] Your cries of antisemitism are getting really tired and I know who I am and what I stand for. While I don’t always agree with my colleagues on various matters, I don’t believe for one second any of them are antisemitic.”<sup>1</sup>
- b) “Trustee Kaplan-Myrth, Thank you for sharing your opinion on this matter. I have every right to express myself just as you do. I have always been very, very clear I will never be bullied into silence, not by you, not by any one of your lawyers, not by anyone.”
- c) A text message with an unnamed community member in which Trustee Blackburn wrote, “I have no desire to connect.... it is clear to me that my struggles matter not....the fact I live in daily fear matters not....what matters is the power of the Jewish community.... as it always does...I look forward to the day u understand that!!!!”
- d) A response to a Jewish community member in which she writes, “Thank you for your email. I will be marching in the Pride Parade. I have done so every year since 2011. I will not abandon our LGBTQ students and staff. I also find the Islamophobia generated by the situation despicable. I will be joined by many prominent members of the Jewish community. My commitment and equity and inclusion is second to none.”
- e) “I am not clear what comment I am supposed to retract. Furthermore, there will be many prominent members of the Jewish community marching. I will not be bullied or silenced by anyone.”
- f) “Thank you for sharing your thoughts with me. The OCDSB is participating in the Pride Parade in support of students, staff and school communities. Unlike some other Trustees, I have always been a bridge builder and I will continue to do so. Many prominent members of the Jewish Community have committed to being at the March. I will be proud to join them.”

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<sup>1</sup> The following day (August 16, 2024), the Respondent circulated an apology in which she clarified this statement. She wrote: “Dear Colleagues. My comments in my email response yesterday were intended to say that I do not think any of my colleagues on the Board are antisemitic and I believe that the Director and the Ottawa Police take the safety of each trustee, our staff and our community seriously. I respect that Trustee Kaplan-Myrth has raised safety concerns. If my comments were taken as disrespectful I did not intend this. I apologize to Trustee Kaplan-Myrth and to my colleagues on the Board for my comments in my response email.”

- g) In response to an email by Trustee Kaplan-Myrth in which she wrote “This is who you were talking with today [...]” and shared a picture of an unidentified person at Capital Pride holding a sign referring to Trustee Kaplan-Myrth with the words “Unmask Zionism”, Trustee Blackburn responded: “Thank you for sharing your opinion. We had a wonderful time and proved to this city we will never let down our kids. When you talk about being attacked, a little saying about glass and a house comes to mind.”

The Complainant alleges that the Respondent’s statements are discriminatory, insofar as they (i) dismiss concerns expressed by Trustee Kaplan-Myrth or members of the Jewish community, (ii) “insinuate that [...] concerns about the safety of Jewish community [are] Islamophobic,” and (iii) “perpetuate the pernicious assertion that Trustee Kaplan-Myrth (or Jewish community members) speaking about antisemitism is a form of bullying.” Further, the Complainant states that the Respondent’s actions undermine the operational decision of Board staff to withdraw from the Capital Pride parade.

After having conducted a preliminary review, I determined that the allegations of the Complaint also engaged Rules 3.9 and 3.18. It is not uncommon for complainants to cite some, but not all, relevant provisions of the Code of Conduct. In the course of the interviews with the Respondent, I asked for her response to allegations about those rules to ensure that she had an opportunity to respond.

## **E. Sections of the Code Engaged by the Complaint**

The Complaints engage the following rules of the Code:

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.

3.6 When acting or holding themselves out as a Board Member, attending Board events, or while on Board property, Trustees shall conduct themselves in a manner that would not discredit or compromise the integrity of the Board.<sup>2</sup>

3.7 At all times Trustees shall treat persons equally without discrimination based on a person’s race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital

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<sup>2</sup> Prior to August 19, 2024, Rule 3.7 and 3.15 stated: 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. AND 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.

status, family status, disability and/or socioeconomic disadvantage. This provision applies to all forms of written and oral communication, including via media interviews and correspondence and via social media.<sup>3</sup>

...

3.9 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.

...

3.18 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

...

3.25 All Board Members shall accept that authority rests with the Board, and that a Board Member has no individual authority other than that delegated by the Board.

3.26 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.

## **F. PRELIMINARY JURISDICTIONAL REVIEW**

### **Initial Review of the Complaint**

The Respondent submitted in her reply that there are no grounds to proceed with the Complaint.

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

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<sup>3</sup> Prior to August 19, 2024, this concept was contained in Rule 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.

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 conducted if the Integrity Commissioner determines that the Complaint is:

- 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.<sup>4</sup>

The Code allows 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, 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.

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<sup>4</sup> For example, in the context of the *Ontario Human Rights Code*, the Human Rights Tribunal has determined:<sup>4</sup>

... [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



So long as a complaint is properly addressed to matters within the Code, merely believing that the complainant is acting out of animus because of a perceived past wrong or otherwise having a collateral 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 found to have been made in bad faith, in the absence of actual or constructive fraud, design to mislead or deceive, or a dishonest purpose.

While the Complainant is not required to provide a rationale for advancing a complaint, the Complainant stated that their purpose for bringing forward the Complaint includes that:

On August 25, after the Capital Pride parade, Trustee Kaplan-Myrth wrote to trustees to express concern that the Respondent and other trustees gave the impression to the public that OCDSB had an official float, in a parade that specifically focused [sic] on Israel. One man in the Capital Pride parade was holding a sign that read, "#NotAboutNili Unmask Zionism." The use of Zionism as a discriminatory slur, and the specific targeting of Trustee Kaplan-Myrth, were grossly inappropriate for a parade that was supposed to celebrate diversity and inclusivity. Trustee Kaplan-Myrth wrote in an email to the Board,

"This is who you were walking with today. Any of you who walked with a yellow school bus and waved at crowds. You disrespected Jewish and Israeli students and staff by participating in an event that targets us."

In response to Trustee Kaplan-Myrth, the Respondent responded, "We had a wonderful time and proved to this city we will never let down our kids. [...]"

By dismissing anti-Israel, anti-Zionist discrimination, by responding so disrespectfully to Trustee Kaplan-Myrth, and by challenging the authority of the Director and the Board, the Respondent violated section 3.7 of our Code of Conduct as well as section 3.5, 3.6, and 3.25 of our Code of Conduct.

I find that the complaint was not made in bad faith or vexatious. I do not find that the complaints were filed as a reprisal against the Respondent. I determined that the primary reason for bringing the current Complaint is not to harass or punish the Respondent for not having been found in contravention of the Code in a previous complaint.

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

## **G. THE INVESTIGATIVE PROCESS**

Throughout this investigation, I have applied the rules of the Code and the principles of procedural fairness and natural justice.

I received the Complaint on August 27, 2024.

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

On September 6, I provided the Complainant with Notice of a Complaint Investigation. I also provided the Respondent with Notice of a Complaint Investigation which included details of that complaint and requested that they provide my office with a written response on or before September 16.

On September 9, I met with the Respondent virtually to provide clarification that she requested on the Complaint. On September 16, the Respondent requested a time extension to provide her reply to the Complaint. After having granted the time extension, the Respondent provided her response to the Complaint on September 19.

I interviewed 3 witnesses, including 2 Trustees (one was the Respondent).

In addition to the interviews, I reviewed emails, screenshots, social media posts, and District information and policies. In this report, I do not refer to every communication, email and document that I received. However, I have thoroughly reviewed all documentary and witness evidence.

### **Respondent's Reply to the Complaint**

I set out the Respondent's written reply to the Complaint in its entirety. I also received additional responses from the Respondent during a virtual interview :

With reference to the allegations on August 15th when Trustee Kaplan-Myrth reached out to the Board to withdraw from the Capital Pride Parade, I replied "Your cries of antisemitism are getting really tired " I subsequently sent an email of apology to her. She accepted my apology and I have provided you with proof of this.

I deny that I discriminated against Trustee Kaplan-Myrth based on her Judaism and status as an Israeli citizen, and that I violated section 3.7 of our Code of Conduct.

I stated, "The OCDSB is participating in the Pride Parade in support of students, staff and school communities. Unlike some other Trustees I have always been a bridge builder and I will continue to do so. Many prominent members of the Jewish community have committed to being at the march. I will be proud to join them."

By stating I am a bridge builder, I was not making a statement about anybody else. I deny that my statement was suggesting that other Trustees not participating in the parade was destructive.

On August 19th, 2024 Director Buffone made the operational decision on behalf of the District that the OCDSB would not participate in the Parade.

On August 14th, the Director assured me the OCDSB would be participating in the Pride Parade despite any political statements that were made. I have provided you with proof of this communication.

I further communicated with the Director that there was a move on the part of other Trustees to bring forward a motion to participate in the Pride Parade.

On August 19th at 4:36pm, I did in fact communicate with [ a named individual] who is a psychologist with the OCDSB, a woman I have known for a long time who is a friend on Facebook. [A named individual] contacted me via Facebook messenger. The quote in the complaint is accurate except for the end. I did not communicate to her I was referring to Trustees when I said "U gonna let 12 people steal ur joy, go for it."

The 12 people I was referring to was not the Board of Trustees but rather the Board of Capital Pride.

I deny my comments to [a named individual] was an antisemitic trope but rather I was referring to how the Jewish community lobbied with success and strength, to silence the voice of the LGBTQ2plus community to march for their rights.

My post on August 21st to Facebook was a post of a poster that was created by a teacher in the OCDSB.

I contacted in my personal capacity, the bus company that we have always engaged to provide the OCDSB with a bus for the Pride Parade. I was informed by the bus company that the bus would be there at no cost.

My statement to Trustee Kaplan-Myrth " Can you point to a credible threat against you" was not discriminatory. I also feel unsafe, but I would not attend an event where my daughter and I could be harmed.

On August 19th I received a telephone call from Director Buffone. I answered the call not know[ing] that there would be four other people on the call. I found this approach by the Director quite troublesome and I felt attacked and that this approach was designed to ensure " that I fall in line". This call was on the heels of an email from the Chair of the Board about the application of the Code of Conduct.

I wrote " I will never be bullied into silence, not by you, not by any one of you lawyers, not by anyone,"

I was the person responsible for ensuring that the OCDSB started participating in the Pride Parade in 2011.

My reference to being not being bullied was in reference to not allowing others to prevent me from attending the Capital Pride Parade and support LGBTQ2PLUS students and staff.

In relation to the reference of a teacher from Ridgemont HS. I do not know this teacher and they acted on their own.

As far as my response to Chair Scott, I was not challenging the authority of the Chair or our Code of Conduct. My comments came on the heels of a telephone call in which I felt attacked and abused and my statement was in response to feeling triggered and bullied following the email from Chair Scott, a woman I have a very good relationship with and have a great amount of respect for. However, I feel around this issue she made some mistakes in her approach.

Trustee Kaplan-Myrth claims that I participated in a Parade that disrespected Jewish and Israeli students by participating in an event that targets us.

I disagree with this analysis. I have no control over what people do. I have stated why I was there. I did see one individual draped in an Israeli flag carrying a toy machine gun.

There is a claim that Trustee Kaplan-Myrth was approached by other Jewish staff who were upset with me. No proof is provided. I deny I acted in an antisemitic way to anyone.

Madam Integrity Commissioner I deny all of the allegations submitted in this complaint.

In the course of the investigation, I interviewed the Respondent.

In my interview with the Respondent, she advised that she was instrumental in the District's decision to participate in the Capital Pride Parade in 2011. As an individual who identifies as a lesbian, the Respondent is particularly sensitive to the harassment, bullying and hatred levelled against students of the 2SLGBTQIA+community. The Respondent advised that after years of advocating for the District to participate in Capital Pride in recognition and support of diverse students and their rights to fully be themselves in a school environment that promotes student well-being and a positive and inclusive school climate, she believed that a decision not to participate required a conversation at the Board (i.e. among the Trustees). The Respondent submits that this did not mean that the Respondent was inviting students or teachers to disparage the Director's decision. In fact, the Director advised that the operational decision was intended to endorse a statement

of non-official participation at the Capital Pride parade but that each individual student, staff member, and administrator could make their own decision to participate and march. The District had OCDSB purple t-shirts available for pickup at the District offices and at no time did OCDSB stop distribution of the t-shirts even after the Director's operational decision.

I asked the Respondent about her Facebook post. The Respondent stated that she was contacted by a teacher who asked if she "would be marching at the parade". The Respondent advised that she neither sought out the teacher nor had a hand in the creation of the poster. However, when the poster was forwarded to her, the Respondent posted it on her Facebook page. The Respondent explained that "I needed to send a message to our LGBTQTS+ students that [Trustees] care about them and I need to stand up for my beliefs as a lesbian woman."

When the Respondent was asked about her comment about refusing to be bullied, she clarified that her email was misunderstood and the full context was not provided. Asked what she meant by her statement, the Respondent said that she had previously received a letter from Trustee Kaplan-Myrth's lawyer in which he appeared to be telling her to stop her public comments. The Respondent said that at that time she felt intimidated and bullied by the lawyer and when the Trustee petitioned the Director and Chair to issue a statement that the District would not participate in the Capital Pride parade, the Respondent stated that she felt triggered and remembered the times that she was bullied for her sexual orientation and difficult journey that led to having the District participate in Capital Pride in 2011.

## **H. FACTUAL FINDINGS**

All of the alleged misconduct took the form of written comments. There is no dispute about what was said; rather, the key dispute relates to the characterization of what was said and whether it amounts to a breach of the Code.

Findings are made on a balance of probabilities standard. Here, all of the conduct complained of related to written communications. The Respondent did not suggest that she had not authored the impugned comments. Accordingly, in my analysis, it was not necessary to consider credibility extensively, except with respect to contextual issues (like what happened on a particular phone call which the Respondent stated influenced her next email correspondence or to consider whether the Respondent's information about historical events was accurate). I found that all witnesses were forthcoming and determined that their evidence was credible and reliable. Driving the dispute was a critical difference of opinion on a heavily debated social political issue, but the witnesses appeared to answer questions truthfully in a manner consistent with the written materials.

To be clear, I have not included in this report all information that I have received; however, I considered all emails I received as evidence. As the Integrity Commissioner for the OCDSB and investigator of this Complaint, I have disclosed only what is

necessary in my discretion for this report. . I may disclose in this report such matters as in my opinion are necessary for the purposes of the report. All the content of this report is, in my opinion, necessary.

I determined that between August 14, 2024 and August 29, 2024, there were several email and messenger exchanges relevant to the Complaint. I set out some of these exchanges below. In the body of the report, I have excerpted the key correspondence which highlight the allegedly inappropriate comments. However, due to the nature of the ongoing debate about whether to participate in the Parade, there were many more relevant communications. For ease of reading, I have added a chronology with excerpts from the emails in Appendix A to this report. I carefully considered the entire context when reaching my conclusions.

I have added in details of other relevant events including the communication which withdrew participation in the parade. After the Capital Pride Parade statement, the Director and the Chair received communications inviting an OCDSB decision in favour of official participation in the parade or in favour of withdrawing from the parade.

### **August 6 Statement of Solidarity with Palestine**

On August 6, Capital Pride Parade released its “Statement of Solidarity with Palestine”.<sup>5</sup>

### **August 14 Exchange between the Director and the Respondent:**

On August 14, 2024, the Respondent contacted the Director of Education to confirm whether the OCDSB would be participating in the Pride Parade. The Director confirmed that OCDSB would participate “in support of our students, staff, and school communities...in spite of any political statements that may or may not have been made”.

### **August 15 Exchanges between the Trustees**

On August 15, Trustee Kaplan-Myrth wrote to all trustees with a motion requesting that OCDSB withdraw its participation in the Parade and write a public statement that it condemns Capital Pride for co-opting Pride as an anti-Israel event, alienating Jewish Ottawans and creating an unsafe environment for 2SLGBTQIA+ Jews and allies.

In response, the Respondent wrote:

Dear Trustee Kaplan-Myrth

I will not be supporting this motion as the premise of which I do not agree with.

You can choose to march with us or not. There is no need for anyone to have special security. As always the Ottawa Police Service is there to protect everyone. You can attach whatever narrative you wish to this participation. Your cries of anti-semitism are getting really tired and I know who I am and what I stand for. While I don't always agree with my colleagues on various matters, I don't believe for one second any of them are anti-semitic.

OCDSB participation in the Parade is a long standing proud tradition which can never be abandoned. Our participation is about supporting students, staff and our school communities, end of story.

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<sup>5</sup> See Appendix

The Capital Pride Committee has made comments in the past I have not agreed with. This is a democracy with different view points.

Prominent members of the Jewish Community will march. The OCDSB will march and I look forward to us having yet again the biggest group that people clap and cry tears of joy for.

Take Care

Trustee Donna Blackburn

Barrhaven West/Barrhaven East

On Thu, Aug 15, 2024, 12:19 p.m. Nili Kaplan-myrrh (Trustee) <[nili.kaplan-myrrh@ocdsb.ca](mailto:nili.kaplan-myrrh@ocdsb.ca)> wrote:

A trustee would never say that “cries” of any other form of racism are “getting tired.”

Trustee Blackburn’s response to me is unprofessional and in violation of conduct. I am seeking clarity about how to proceed.

One should be able to have a respectful conversation about a matter as serious as this.

Sincerely,

Trustee Kaplan-Myrrh

On Thu, Aug 15, 2024 at 12:25 PM Donna Blackburn (Trustee) <[donna.blackburn@ocdsb.ca](mailto:donna.blackburn@ocdsb.ca)> wrote:

Trustee Kaplan-Myrrh

Please do. Suggestions that we are all anti-semitic unless we behave the way you command is equally unprofessional.

Can you point to a credible threat against you?

Take Care

Trustee Donna Blackburn

On Thu, Aug 15, 2024, 12:31 p.m. Nili Kaplan-myrrh (Trustee) <[nili.kaplan-myrrh@ocdsb.ca](mailto:nili.kaplan-myrrh@ocdsb.ca)> wrote:

Please let it be formally noted that Trustee Blackburn continues to make comments that are out of line.

I will henceforth refrain from any further conversation on this matter with her, and ask that all further comments be sent directly to Chair Scott and Director Buffone.

On Thu, Aug 15, 2024 at 12:35 PM Donna Blackburn (Trustee) <[donna.blackburn@ocdsb.ca](mailto:donna.blackburn@ocdsb.ca)> wrote:

Trustee Kaplan-Myrrh

Thank you for sharing your opinion on this matter. I have every right to express myself just as you do. I have always been very, very clear, I will never be bullied into silence, not by you, not by any one of your lawyers, not by anyone.

Take Care

Trustee Donna Blackburn

### **August 15 Correspondence with a Member of the Public**

Later on August 15, a member of the public wrote to the Respondent to express her views that, among other things, Capital Pride had released an antisemitic statement and that OCDSB’s attendance at the Pride Parade this year would amount to siding with an organization that fosters a divisive, racist, and intolerant atmosphere.

The Respondent wrote:

Thank you for sharing your thoughts with me.

The OCDSB is participating in the Pride Parade is support of students, staff and school communities.

Unlike some other Trustees I have always been a bridge builder and I will continue to do so.

Many prominent members of the Jewish Community have committed to being at the March. I will be proud to join them.

Take Care

Donna

### **August 19 Operational Decision Not to Attend the Capital Pride Parade**

The District's participation in the Pride parade was historically an administrative decision to participate in a community event on a Sunday. The Director viewed the decision to have the District withdraw participation to be an operational decision, not a Board or Trustee-level decision. Trustee Kaplan-Myrth believed that the Trustee should decide whether to participate in Capital Pride; she wanted to bring an official motion to the Board to not participate in the event. However, that motion did not receive sufficient support to be brought to a meeting.

The Director had been having ongoing discussions with the Complainant, the Respondent and another Trustee, and generally Trustees were saying to the Director that either the District cannot participate or must participate in the Parade. The Director reviewed past decisions and advised the most vocal Trustees with whom he was in discussions, that historically it was an administrative decision to participate in a community event which was held on a Sunday. The Director explained that the administrative decision was made knowing that was "a spectrum of opinions" and the Administration Senior Team's belief that everyone was no longer welcome.

As a result, on August 19, the Director announced that the District had withdrawn from official participation in Capital Pride. The Director believed that the District as an organization could not support a community event that had turned into a geopolitical rally.

However, the Director "messed out" that it was an individual decision to attend or not attend Capital Pride. While the Director prohibited participation of the District, he made clear that individual participation was an individual choice.

In anticipation of official participation, the District developed and printed t-shirts which said "All Welcome". Despite the withdrawal at the organizational level, the t-shirts created by the District remained available to everyone. Each teacher, student and Trustee could decide whether to participate and whether to wear a t-shirt.

## August 17-19 Facebook messenger exchanges between a staff member and the Respondent

The allegations in the Complaint regarding the Facebook exchange relate to comments made by the Respondent after the operational decision.

On August 17, a staff member with whom the Respondent had previously interacted reached out about the OCDSB's participation in the Capital Pride Parade. They had an exchange on Facebook messenger in which the staff member expressed that she felt unwelcomed at the parade and the Respondent expressed that, in her view, the staff member was welcomed. The staff member expressed that it was not about safety but about whether she felt welcomed at the Pride Parade this year.

The Respondent and the staff member discussed meeting but that meeting did not occur. Two days later, after the OCDSB decision to withdraw from the Parade, the exchange continued:

R	There u win no need to meet
A	Not about winning. We can still connect
R	Really this is really not about right or wrong. It is about understanding. I have no desire to connect...it is clear to me that my struggles matter not...the fact I live in daily fear matters not...what matters is the power of the Jewish community...as it always does.

## August 20 Correspondence from Trustees

On Tuesday Aug 20, 2024, a Trustee wrote:

Although, I can appreciate that this is a heated discussion that is evolving by the minute, once again [Trustees] are in a situation where an email chain with all Trustees and senior staff about business of the board has devolved.

Once again, Trustee Kaplan-Myrth has accused some board members of engaging in disrespectful and antisemitic behaviour for following process and asking for a board meeting to be held to discuss this important matter in public. Trustee Blackburn has engaged in back and forth communication started by Trustee Kaplan-Myrth to voice displeasure with the Director of Education's performance and to continue the discourse.

This is continuing to create an untenable working environment. We cannot engage in a productive discussion when we as Trustees are in constant fear of being accused of antisemitism, being racist and are afraid of being screamed at when we do anything.

On Tues., Aug 20, 2024, another Trustee wrote to all Trustees:

I am of the understanding that it is our job to express approval or opposition to how our Director conducts themselves. Trustee Blackburn is entitled to her opinion, whether others agree with it or not.

Trustee Blackburn never said anything about 'ensuring the safety of the Jewish community is Islamophobia.' I feel that it is irresponsible of you to make that hurtful equation.



Moving forward, when engaging in civil discourse, please ensure arguments are presented accurately and in good faith.

## **August 22 Correspondence with a Member of the Public**

On Wed, Aug 21, 2024, 10:00 p.m. a member of the public wrote:

Trustee Blackburn, I am writing to express my concern about your support for this year's Capital Pride event. Historically, Capital Pride has been a celebration of diversity and inclusion. However, these vital principles have been compromised this year. Big time. As you know, many prominent individuals and organizations have chosen not to participate. The list includes Mayor Sutcliffe, Ottawa hospitals and school boards, the University of Ottawa, the Liberal Party of Canada, major banks, federal government departments, the Royal Canadian Mint and the CAA. Their decisions are due to their realization of the serious concerns facing the safety of Ottawa's Jewish community. As an OCDSB trustee, I believe that you have a moral and/or legal obligation to think of all Jewish students in the OCDSB, especially those in Zone 3.

I would request that you opt not to participate in this year's parade. As a person that values diversity and inclusivity, it is essential to ensure that your actions align with these principles. The safety and well being of Jewish public school and high school students, in the upcoming school year, is again at risk. I trust that you will consider this matter with the seriousness that it deserves. Kindly demonstrate your commitment to OCDSB students' personal safety and 100% inclusivity. Thank you for your attention. Feel free to discuss with Pino and any other trustees. I look forward to receiving your email reply.

In response, the Respondent wrote:

Good morning [name]

Thank you for your email. I will be marching in the Pride Parade. I have done so every year since 2011. I will not abandon our LGBTQ students and staff. I also find the Islamophobia generated by the situation despicable<sup>6</sup>. I will be joined by many prominent members of the Jewish community. My commitment to equity and inclusion is second to none. Take Care Trustee Donna Blackburn

Following receipt of the Respondent's response, the member of the public wrote to four individual, including Trustee Kaplan-Myrth saying:

My email and Trustee Blackburn's reply can be shared with the JFO Board and Management Team.

Most importantly, I believe that our community must support Nili at the OCDSB table.

## **August 22 communication from Trustee Kaplan-Myrth in response to external sender email of August 22**

The member of the public forwarded the exchange above to Trustee Kaplan-Myrth, who then wrote to all Trustees, the Director of Education and Senior Staff:

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<sup>6</sup> In the Respondent's interview, she advised that the Islamophobia refers to in the August 22 correspondence was from messages she had received from her constituents who felt their voices were not being heard and expressed that they felt that equating their voice with violence and danger was a form of Islamophobia.

The Jewish community has said it is unsafe. Trustee Blackburn is challenging that to the community member. I have removed the community member from this response. I ask Trustee Blackburn to retract her remark and to apologize formally to [a named individual] and to me. Chair Scott, Director Buffone or Executive Officer McCoy, please phone me at your earliest convenience.

In response, the Respondent wrote:

I am not clear what comment I am supposed to retract. Furthermore, there will be many prominent members of the Jewish community marching. I will not be bullied or silenced by anyone. Take Care Trustee Donna Blackburn.

### **August 25 Exchange with the Respondent and Trustee Kaplan-Myrth**

On August 25, after the Parade, Trustee Kaplan-Myrth wrote to the trustees to express concern that the Respondent and other trustees gave the impression to the public that OCDSB had an official float, in a parade that specifically focused on Israel. She noted that one man in the Capital Pride parade was holding a sign that read, “#NotAboutNili Unmask Zionism.” Trustee Kaplan-Myrth stated that the use of Zionism as a discriminatory slur, and the specific targeting of Trustee Kaplan-Myrth, were grossly inappropriate for a parade that was supposed to celebrate diversity and inclusivity.

In her email to the Board, Trustee Kaplan-Myrth wrote:

This is who you were walking with today. Any of you who walked with a yellow school bus and waved at crowds. You disrespected Jewish and Israeli students and staff by participating in an event that targets us.

In response, the Respondent wrote:

Thank you for sharing your opinion. We had a wonderful time and proved to this city we will never let down our kids. When you talk of being attacked, a little saying about glass and a house come to mind.

## **I. ANALYSIS**

The Complaint alleges that the Respondent’s conduct was discriminatory and undermined a decision of OCDSB staff. Given the language used, I have also considered the rules about respectful language which were raised with the Respondent in my interview of her.

### **The Relevant 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.

3.6 When acting or holding themselves out as a Board Member, attending Board events, or while on Board property, Trustees shall conduct themselves in a manner that would not discredit or compromise the integrity of the Board.

3.7 At all times Trustees shall treat persons equally without discrimination based on a person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability and/or socioeconomic disadvantage. This provision applies to all forms of written and oral communication, including via media interviews and correspondence and via social media.

...

3.9 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."<sup>7</sup>

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 3.6 prohibits conduct which discredits or compromises the integrity of the Board. It 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 act in a manner that would not discredit or compromise the integrity of the Board. The purpose of this provision is to ensure trustees 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 may discredit the integrity of the Board.

Rule 3.7 prohibits discrimination on the grounds listed in the Ontario Human Rights Code. While Code complaints often come forward within the context of a political or policy controversy, it is not the role of the Integrity Commissioner to take a side or attempt to resolve the controversy. As the Human Rights Tribunal of Ontario has found, in relation to a University, the Human Rights Code "does not regulate the content of such social, political or academic discussion within a university" and that "it is not discriminatory to critique the articulation of a personal belief in academic work".<sup>8</sup>

<sup>7</sup> *Del Grande v. Toronto Catholic District School Board*, 2023 ONSC 349 at para. 56 ("*Del Grande - Div Ct*")

<sup>8</sup> *Hart v. McMaster University*, 2021 HRTO 241, paragraph 9 and 20.

Rule 3.9 encourages respectful debate and disagreement. There is a difference between expressing one's disagreement with the position of colleague Trustees, staff, or member of the public 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.

The ordinary meaning of the word "demeaning" is causing a lowering of someone's dignity,<sup>9</sup> or, as the Supreme Court of Canada stated in one case, "an affront to person's dignity".<sup>10</sup>

## 2. Civil Behaviour

3.18 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.

Rule 3.18 requires members to make reasonable efforts to resolve issues arising from conflict or disagreement in a respectful and professional manner with the aim to contribute to a productive workplace at OCDSB.

## 3. Upholding Decisions

3.25 All Board Members shall accept that authority rests with the Board, and that a Board Member has no individual authority other than that delegated by the Board.

3.26 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.

Rules 3.25-3.26 require Board Members to uphold decisions of the Board. In Appendix A to the Code, "Board" is defined as the board of trustees. Members cannot denigrate the decisions of the Board but may respectfully state that their position of disagreement with those decisions.

While the Code requires Trustees to accurately describe the decisions of the Board, it does not require that Members endorse positions with which they disagree. Trustees must uphold and not undermine the implementation of decisions of the Board of Trustees, though they can seek reconsideration if permitted under the appropriate bylaw and rules.

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<sup>9</sup> *Findlay v. Mike's Smoke and Gifts (No. 4)*, 1993 CanLII 16461 (ON HRT), at para. 95.

<sup>10</sup> *Janzen v. Platy Enterprises Ltd.*, 1989 CanLII 97 (SCC), [1989] 1 S.C.R. 1252, at 1284

## The Alleged Violations of the Code

- 1) The Respondent's Comments were not Discriminatory and did not violate Rule 3.7 of the Code

The historical context of the Capital Pride Parade is important to my analysis. Here, the Respondent, a member of the 2SLGBTQIA+community, sought to ensure that the members of that community were supported by OCDSB participation at the annual pride parade. While she disagreed with the decision of the Director to pull OCDSB out of the parade, she determined that she would attend as an individual to support a marginalized group. This became a heated issue because many organizations were pulling out of the Parade due to its August 6 statement which was perceived to be antisemitic. Here, certain individuals alleged that by her comments and her participation in the Parade, the Respondent discriminated against Israeli and/or Jewish individuals. This complaint relates to her responses to those individuals.

Courts and the Human Rights Tribunal of Ontario (the "**Tribunal**") differentiate between comments that are perceived as offensive and those that are discriminatory. Words can be personally offensive and hurtful but not amount to substantive discrimination.

The Tribunal has also confirmed that, for the purposes of analysis under the *Code*, there is a difference between experiencing adverse treatment due to a prohibited ground and experiencing discomfort, offence, or hurt arising from a personal or political disagreement, even where the views expressed during that disagreement are linked to a protected ground or inalienable trait (such as religion or place of origin). As noted in *Ketenci v. Ryerson University*, "[...] a person's hurt feelings, anxiety or upset about a situation do not necessarily mean that the *Code* was violated. It is not for the Tribunal to police language used by the parties."<sup>11</sup>

Section 3.7 of the Board Member Code of Conduct states that:

At all times Trustees shall treat persons equally without discrimination based on a person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability and/or socioeconomic disadvantage. This provision applies to all forms of written and oral communication, including via media interviews and correspondence and via social media.

The Complainant sincerely experienced the comments of the Respondent as deeply offensive and hurtful; however, this is not sufficient to meet the legal test for discrimination under the Human Rights Code. It is not sufficient to establish an adverse impact, which is an essential component of the test for discrimination. As the Tribunal observed in

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<sup>11</sup> 2012 HRTO 994 ("*Ketenci*")

*McKenzie v. Isla*, “the mere fact that the applicant found the respondent’s views to be offensive and hurtful is not enough to find that they were discriminatory.”<sup>12</sup>

Several of the Respondent’s comments stem from her interpersonal difficulties with Trustee Kaplan-Myrth in the context of a social and political debate taking place between trustees, and relating to extremely fraught geopolitical circumstances. The Respondent and Trustee Kaplan-Myrth do not see eye to eye about what constitutes discrimination in the matters under this Complaint..

In reaching my conclusion, I considered a recent decision of the Superior Court of Justice in *University of Toronto (Governing Council) v. Doe et al.*, in which the Court noted that there is no commonly understood definition of antisemitism.<sup>13</sup> The Court considered an urgent request to remove an encampment from the University of Toronto campus. There were allegations of antisemitic speech on signs and spoken at the encampment. The Court conducted a detailed review of the language at issue and the difficulty arising from not having a widely accepted definition of antisemitism. The Court wrote:

[75] Part of the controversy arises out of the absence of an agreed definition of antisemitism. That too is a matter of some debate. Different Jewish Intervenor groups proposed different definitions of antisemitism and criticized each other’s definitions in their submissions. Though it appears that the controversy may focus less on the definitions themselves and more on the examples various organizations give about how to apply their definition. The University’s own working group on antisemitism has refused to adopt the definitions advanced by some Intervenor groups as being overly broad.

[76] The details of those definitions do not matter for present purposes. What matters for present purposes is that there is disagreement even within the Jewish community about how to properly define antisemitism. Uncertainties around the definition can lead to allegations of antisemitism where they are perhaps unfounded. The respondents submit that this has led to significant consequences for individuals who object to certain policies of the Israeli government.

...

The Court differentiated between the language which clearly met the definition of hate speech and that which was controversial because of the lack of a commonly understood definition of antisemitism. The Court had the benefit of intervenor groups who provided a detailed historical understanding of the use of certain language, which are not specifically at issue here.

The Court declined to determine whether the speech was antisemitic, given the interlocutory nature of the motion. The Court wrote:

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<sup>12</sup> 2012 HRTO 1908

<sup>13</sup> 2024 ONSC 3755

[106] For purposes of this motion, I do not have to determine how these phrases and symbols are being used. I review this history and analysis merely to point out that the automatic conclusion that those phrases are antisemitic is not justified; especially not on an interlocutory injunction.

[107] The genuine pain that some feel when seeing or hearing these phrases may be the result of attributing malevolent intentions to the speakers when there is no such intention and as well as to speakers using certain phrases in potentially insensitive ways which cause pain to others when that is not intended. The University's policy on Statement on Free Speech expression recognizes that freedom of expression can be hurtful to some. At the same time the Statement notes that University "members should not weigh lightly the shock, hurt, anger or even the silencing effect that may be caused by" certain speech.

[108] The issue may well be the product of a misunderstanding between two cultural divides that is better resolved through open, although not easy, dialogue and mutual education rather than by judicial fiat. In making this statement I am not, however, blind to the fact that certain individuals may use the expressions at issue with the intention of advocating violence or hatred. That reality, however, makes, communication, education and restraint by nonviolent people on both sides all the more desirable.

In *McGill University Health Centre (Montreal General Hospital) v. Syndicat des employés de l'Hôpital général de Montréal*, Abella J. stated at para. 49:

(...) there is a difference between discrimination and a distinction. Not every distinction is discriminatory. It is not enough to impugn an employer's conduct on the basis that what was done had a negative impact on an individual in a protected group. **Such membership alone does not, without more, guarantee access to a human rights remedy. It is the link between that group membership and the arbitrariness of the disadvantaging criterion or conduct, either on its face or in its impact, that triggers the possibility of a remedy.** And it is the claimant who bears this threshold burden. [Emphasis added.]<sup>14</sup>

In *McKenzie*<sup>15</sup>, the Tribunal found that, although the comments at issue were directed at the Applicant because of his religious beliefs, the comments themselves were not "vexatious, or known or ought reasonably to be known to be unwelcome, no matter how personally offensive and hurtful he found them to be" and therefore did not amount to substantive discrimination.

In drawing the line between comments which are "offensive, demeaning, and humiliating" and those that are discriminatory, a decision-maker must consider the constitutional protections for free speech. In *Hart v. McMaster University*, the Tribunal confirmed that, when analyzing offensive speech as the basis for a complaint under the *Code*, "[...] ambiguities respecting the scope of *Code* rights should be interpreted consistently with rights under the *Charter of Rights and Freedoms*, including the right of freedom."<sup>16</sup> The Court held, relying on *McKenzie*:

...it does not intervene in social, political, or academic debate on a university campus (para. 9), that the "*Code* does not regulate the content of such social, political or academic discussion within a university" (para. 20), and that "it is not discriminatory to critique the articulation of a personal belief in academic work" (para. 12).

<sup>14</sup> 2007 SCC 4 (CanLII), [2007] 1 S.C.R. 161

<sup>15</sup> *McKenzie v. Isla*, 2012 HRTO 1908

<sup>16</sup> 2021 HRTO 241 ("*Hart*")

Recently, the Court of Appeal for Ontario dismissed an appeal brought by a school board trustee from a finding that he breached the Code of Conduct.<sup>17</sup> After an unsuccessful judicial review before the Divisional Court, the Court of Appeal considered his arguments with respect to freedom of expression. The Court wrote:

The Divisional Court balanced Mr. Del Grande’s right to free speech and freedom of religion with the Board’s statutory mandate under the framework set out in *Doré v. Barreau du Québec*, 2012 SCC 12, [2012] 1 S.C.R. 395, and *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, [2015] 1 S.C.R. 613.

...

The Divisional Court found that Mr. Del Grande was not sanctioned based on his religious beliefs or for debating the merits of adding prohibited grounds of discrimination under the Code. He was sanctioned for using “extreme and derogatory rhetoric that fell below the standard of conduct required of a Trustee”, and for making remarks that “did not reflect any sincerely held religious beliefs” but rather used a “slippery slope” argument to mock individuals who seek protection from discrimination based on their gender identity and gender expression.

...

[41] Similarly, in this case, the offensive aspect of Mr. Del Grande’s conduct at the 2019 Board meeting was not his opposition to adding further prohibited grounds of discrimination in the Code of Conduct, but his degrading and (as he acknowledged) flippant equation of gender identity and gender expression to cannibalism, rape, and bestiality.

[42] The Divisional Court noted that the investigation report before the Board was alert to the *Charter* values at stake and that, prior to making the Decisions, the Trustees had lengthy written and oral submissions from Mr. Del Grande. His submissions included that a finding that he had breached the Code would violate his *Charter* rights. The court concluded that the Merits Decision reflected an appropriate balance between the objectives in the *Education Act* and Mr. Del Grande’s *Charter* rights:

[Mr. Del Grande] made his comments in his capacity as a Trustee, in a public meeting that included at least one delegate from the LGBTQ+ community who expressed vulnerability and alienation in the Catholic school system. [Mr. Del Grande] had a duty to “represent all the citizens in the Catholic community” in Toronto and to create a “positive environment that is safe, harmonious, comfortable, inclusive and respectful.” The Board’s determination that [Mr. Del Grande] breached the Code of Conduct by engaging in extreme, disrespectful and demeaning language was reasonable. [Emphasis in original.]

...

[45] The Decisions do not meaningfully impair Mr. Del Grande from expressing his views or from participating in matters before the Board. The sanctions imposed on him do discourage a repetition of the form of expression he engaged in at the November 2019 meeting.

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<sup>17</sup> *Del Grande v. Toronto Catholic District School Board*, 2024 ONCA 769 (CanLII), <<https://canlii.ca/t/k7fvc>>



In the context of a social and political debate taking place in an educational setting, any ambiguities regarding the scope of the *Code*'s protections must be interpreted in a way that respects and is mindful of the Respondent's constitutionally protected freedom of expression. In *Del Grande*, the Court found that the Trustee was sanctioned for his degrading and flippant equation of gender identity and gender expression to cannibalism, rape, and bestiality. This speech went clearly beyond what was protected under political debate.

In a 2021 paper in the *Canadian Journal of Human Rights*<sup>18</sup>, the authors posit "Is it possible for Canadian universities to transcend the simplistic narrative, presented as a free expression v hate speech polarity, to inspire more nuanced dialogue, deliberation and decision-making in relation to campus speech?" The premise of this paper is to seek out a way forward to "reconciling various fundamental rights and freedoms essential to preserv[e] the dignity, equality and liberty of all persons – and thereby preserving the viability of a pluralistic Canadian society" Just as in Canadian universities, school boards "value [...] a sense of belonging, inherent worth and safety for its community members. To that end, [education entities] seek to foster cultures of respect and inclusion and environments that are free from discrimination, harassment and all forms of violence".<sup>19</sup> While this is a slightly different context – a school board – the protection of academic freedom while aiming to protect the dignity of all individuals remains crucial.

Rights guaranteed under the Charter are not absolute. The Code has the force of 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 is in part regulated by such rules to further the objectives of better governance within complex organizations such as the OCDSB. Trustees must follow accepted procedures to dissent so that the Board does not descend into chaos that undermines professionalism and has the effect of harming others. The Court has recognized that the Code limits the individual trustee's constitutional right to freedom of expression.<sup>20</sup>

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. It is up to the Board to consider Charter values when conducting an analysis under *Doré*.<sup>21</sup>

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

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<sup>18</sup> Arig al Shaibah & Sophie Poinar, "Managing Campus Expression and Equality Rights: Contemporary Considerations for Canadian Universities" (2021) 10:1 Can J Hum Rts 73.

<sup>19</sup> *Ibid* 8, at p. 76

<sup>20</sup> *Del Grande* - Div Ct at paras. 76-91

<sup>21</sup> *Doré v. Barreau du Québec*, [2012 SCC 12](#), [2012] 1 S.C.R. 395

instances, the Code provisions go further. They do not simply regulate the *manner* of impact of communication, but they directly control what can and cannot be said. For example:

- Section 3.9 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 3.26 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 3.29 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 clarified (i.e. “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.”)

Having carefully considered what was said and the legal principles from the Tribunal and the Courts, I have determined that the comments do not meet the definition of discriminatory under the Human Rights Code. First, the Complainant has not established an adverse impact due to the comments; offence and hurt feelings are not sufficient to meet the threshold. Second, the Respondent’s comments likely fall within the ambit of protected speech under the *Charter* given that they were made in the context of a political or social debate within the board of an academic institution. Such a context acts as a limit on finding that otherwise hurtful speech runs afoul of the human rights legislation. Third, there is difficulty in determining whether the Respondent’s statements can be tied to specific harmful stereotypes or tropes which denigrate or dehumanize Jewish or Israeli people.

More specifically, the relationship between the Complainant and the Respondent impacts the assessment of the speech between them. To the extent that the Complaint believed the Respondent’s comments implied that the Complainant is a “bully”<sup>22</sup>, while personally hurtful, the Respondent’s comments did not connect calling out hate and expressing fear as being “a bully”. The comment is not an engagement in a stereotype related to a protected ground. The Respondent’s statement about the Complainant’s “cries of

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<sup>22</sup> I have considered whether these comments engaged a stereotype about the large number of Jewish people in the legal profession. Here, it does not appear that the Respondent was making any reference to this possible stereotype – but instead to a specific interaction with the Complainant’s lawyer and feeling bullied by that legal counsel.

antisemitism...growing tired” was hurtful to the Complainant. The Respondent apologized and clarified her intention, which was to say that she did not believe that any of her Trustee colleagues are antisemitic. This apology was accepted by the Complainant. After the Parade, the Complainant linked the Respondent’s individual participation to another individual who attended the Capital Pride Parade with an offensive sign; I found no evidence that the Respondent engaged with the photographed individual or in any way supported the individual’s actions. Accordingly, the Respondent’s participation in a Pride Parade at which harmful things were done or said by others cannot be attributed to her.

- 2) The Respondent did not violate Rules 3.25 or 3.26 of the Code by participating in the Capital Pride Parade nor did she engage in allegedly impermissible lobbying for others to join

Rule 3.26 provides that “each Board Member shall uphold and not undermine the implementation of the decisions of the Board...”.

Having reviewed the facts of the case, I find that the Respondent’s conduct did not seek to undermine the Director’s decision. Indeed, he expressly stated that individuals could attend the Capital Pride Parade, but that the OCDSB would not formally participate. I find that the Respondent’s conduct fell squarely within that left open by the Director – including wearing the t-shirts which continued to be distributed by OCDSB after the Director’s decision to formally withdraw from the Capital Pride Parade.

As there was no decision of the Board (i.e. the Trustees) on this issue, the Respondent did not contravene it.

I note that there were several other trustees who disagreed with the operational decision and who participated in the Parade. Clearly, the participation in the Parade alone was not a violation of the operational decision which expressly allowed for it. As a result, only the comments of the Respondent could have violated the Rules, to the extent that the Rules apply.

Similarly, I do not find that the Respondent’s Facebook post constituted lobbying for individuals to participate in a manner inconsistent with the Director’s decision. The Respondent reposted an image created by someone else. Once made aware that the OCDSB would not be present in its official capacity, she determined that she would attend in a manner consistent with the Director’s expressed view that individuals could attend – and wear the OCDSB t-shirts.

- 3) The Respondent’s Comments did not violate Rules 3.5, 3.6, or 3.9 but some constituted a violation of Rule 3.18

Despite its receipt as hurtful, with two exceptions, I do not find that the Respondent made comments that went beyond expressing disagreement in a respectful manner that contributes to a productive workplace (rule 3.18). I cannot conclude that the comments subject of this Complaint violated Rules 3.5, 3.6, or 3.9 of the Code. The majority of the

comments were not made broadly (like a post on social media) and were made during political debate on a highly contested geopolitical matter. The comments were issue-based and not personal (except to the extent that they were made as a response to the perceived suggestion that trustees were antisemitic if they did not share Trustee Kaplan-Myrth's views). However, I find that certain comments made in exchanges with members of the public did not further OCDSB as a respectful and productive workplace contrary to Rule 3.18.

The context surrounding these issues was difficult. Pride Parades are intended to be celebrations of minority groups who both historically and presently are marginalized because of their 2SLGBTQIA+identities. In that context, the organizing group published a statement on a divisive geopolitical issue marked by devastating international violence. Some groups and community members felt that it was important to proceed with participation in the Pride Parade despite many people expressing that they felt Jewish and/or Israeli people were unwelcomed or feared potential violence against them at the Parade. Although the decision to not participate officially in the Parade was an operational decision, it was a major decision for the District and the subject of discussion outside of Board meetings. The fact that Trustees disagreed on the operational decision and on how to make the decision was unresolved and formed the context within which this Complaint arose.

The Complainant and the Respondent hold extremely different views on the characterization of the Capital Pride Statement and its impact on OCDSB's and their individual participation in the Pride Parade. Equally, the staff member and members of the public with whom the Respondent engaged held different views than the Respondent on the issue.

While these matters came before me as a single complaint, it was important for me to consider the context of each comment:

1. Two of the comments were made in response to a proposed motion by Trustee Kaplan-Myrth to withdraw from the Capital Pride Parade and to condemn the statement of the organizers.
2. One comment was made in an exchange among the trustees after Trustee Kaplan-Myrth sent one photograph to the trustees suggesting that those who participated in the march were talking with an antisemitic protestor because they participated in the parade.
3. One comment was made to a member of the public who sought to have OCDSB withdraw from participation (four days before the decision to do so was made).
4. One of the comments was made in a private Facebook message conversation between the Respondent and a staff member.
5. Two comments were made in response to members of the public expressing their views that the Respondent was wrong to choose to participate in the parade as an individual after the OCDSB Director determined that the organization would not participate.

While Code rules are not in place to impede a Trustee from publicly stating their position on matters relevant to Board business, including stating their objections to a certain course of action, a Board Trustee must contribute to a respectful workplace making every reasonable effort to resolve issues of conflict in a respectful way and not undermine decisions the implementation of decisions of the Board in adherence to rules 3.18 and 3.26.

### *Responses to Trustee Kaplan-Myrth*

In the Respondent's reply to the Complaint and during her interview with me, she advised that her comment "your cries of antisemitism are getting really tired" meant that Trustee Kaplan-Myrth's citing antisemitism as a reason for opposition to the District pulling out of official participation in the parade "was getting really tired" because since the inception of the Parade in the 1980s, the Respondent has marched not only for her own right to love who she loves but "to bring solidarity and safety to all young and not so young, students, teachers and the community, to a safe space that accepts their personhood". The Respondent cited many circumstances throughout the years when political controversy caused some to object to the participation of law enforcement wearing uniforms in the parade. The Respondent shared that nothing would stop her from "supporting queer youth" and she would march for "their freedom and her freedom".

The Respondent advised that her use of "really tired" also refers to the Respondent's opinion that Trustee Kaplan-Myrth has often called Trustees of the Board antisemitic when any criticism is leveled against her and "Trustees are 'very tired' not of the need to call out antisemitism but rather of Trustee Kaplan-Myrth framing any position contrary to her own as antisemitism. The Respondent's statements were made after Trustee Kaplan-Myrth proposed a motion to withdraw OCDSB's participation in the Parade and to make a statement condemning the Capital Pride Statement as antisemitic. The Respondent expressed that she disagreed with the entire premise of the motion which was that participation in the Capital Pride Parade after their August 6 statement was antisemitic. It was in the course of this political debate that the Respondent made two comments – which she later clarified and apologized. While this Complaint is about the Respondent's comments, consideration was given to the fact that other Trustees also felt tired of being unfairly labelled as antisemitic for supporting a proposed motion to bring the matter to Board for decision. In fact, one Trustee wrote to all Trustees saying "we cannot engage in a productive discussion when we as Trustees are in constant fear of being accused of antisemitism, being racist and are afraid of being screamed at when we do anything".

The Respondent acknowledged that certain of her statements were inappropriate and apologized.<sup>23</sup> I have determined that the Respondent's behaviour was not intended to be

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<sup>23</sup> August 16, 2024 - Dear Colleagues

My comments in my email response yesterday were intended to say that I do not think any of my colleagues on the Board are antisemitic and I believe that the Director and the Ottawa Police take the safety of each trustee, our staff and our community seriously. I respect that Trustee Kaplan-Myrth has raised safety concerns. If my comments were taken as disrespectful, I did not intend this. I apologize to Trustee Kaplan-Myrth and to my colleagues on the Board for my comments in my response email.

hurtful, disrespectful or demeaning, however it was received as such. Even though I have found that the Respondent did not breach Rule 3.18, Trustee Kaplan-Myrth experienced those comments as hurtful, disrespectful, and discriminatory. To be clear, a person's comments may be disrespectful regardless of intent. Nonetheless, I accepted the Respondent's explanation of the intent of her statements, which were clarified.

I acknowledge not only that the Respondent did not intend for her conduct to offend, but believe that she was participating in a legitimate political debate regarding the District's participation in the Parade. To the extent that it did offend, the Respondent apologized and Trustee Kaplan-Myrth accepted that apology. I do not consider it appropriate to interfere in light of the context of the exchange (i.e., in the course of debate on a motion). The comments were not personal or directed specifically at Trustee Kaplan-Myrth. The comments were more generally stated through disagreement with the premise of the motion that Trustee Kaplan-Myrth sought to have considered and were issue-based in defending the perceived allegation that the other trustees were supporting antisemitism.

The second exchange involving Trustee Kaplan-Myrth occurred after the Respondent attended the Pride Parade. Trustee Kaplan-Myrth sent an email to trustees effectively criticizing them for marching with an unidentified person holding a sign with the words "Unmask Zionism". I received no evidence that the Respondent was speaking to, knew or was aware of the participation of that individual. Rather, Trustee Kaplan-Myrth chose to express her opinion or invite an inference that the Respondent's participation in the Parade was supporting that unidentified individual. The Respondent was provoked by this allegation and responded with language that could be characterized as equally provocative. In that context, I am not prepared to find that the Respondent breached any rules of the Code.

I find that the Respondent's comments did not take into consideration how Trustee Kaplan-Myrth and others received them. The Respondent's comment were emotive and her tone was defensive. However, the Respondent's comments did not contravene the rules of the Code requiring respectful disagreement to encourage a productive workplace.

#### *Facebook Messenger Exchange with a Staff Member*

The exchange with the staff member cannot be divorced from its context. For the most part, it occurred before the official decision on OCDSB's participation. That staff member made clear that she had no concerns about her safety at the Parade. Rather, she felt that organizers of the Capital Pride Parade had made Jewish people feel unwelcomed at the Parade and asked that the Respondent consider that issue. Immediately after OCDSB withdrew, the Respondent, continuing the dialogue with the staff member and Facebook acquaintance, wrote a brash message from which one can infer that the Respondent was upset that the OCDSB withdrew support for the Pride Parade because of its organizers statement on the Israeli/Palestinian conflict.

In that moment, the Respondent felt that the entire discourse was pitting her identity as a member of the 2SLGBTQIA+equity-seeking group against what she perceived as the more powerful Jewish community, which she believed was aiming to eliminate her participation in an important event to her. In the context of a private conversation with a single individual, the Respondent made a statement about her perception that the power of the Jewish community was exceeding that of the 2SLGBTQIA+community.

I considered whether the Code of Conduct can regulate a member's conduct in his or her own private time. There is an argument that the Code does not apply to statements made to personal acquaintances on one's private time. On the other hand, there is an argument that a person holding public Office is always representing the public organization to which they were elected and therefore always bound by the Code.

Actions or behaviour which occurs in private when a Trustee has an expectation that they are not carrying out their elected duty (namely, conversations that take place at private eating establishments or between acquaintances over emails or social media absent the public) are generally not captured by Code rules. The statutory basis for codes of conduct is *Regulation 246/18 Members of School Board – Code of Conduct*, under the *Education Act*. A code of conduct may only apply to conduct that is connected to or affects a Trustee's duties as a Board Member. That is not to say that private conduct can never have an impact on official duties. However, in the conversation with the staff member set out in the Complaint, it was clear that the Respondent believed that she was not communicating in her capacity of a Trustee, but rather to an acquaintance about a political issue of interest to both herself and the other individual.<sup>24</sup> To be clear, even informal conversations can be governed by the Code.

Here, it was clear from the context that the exchange though discussing matters at the District (in particular, the merits of the an official District participation in the Parade), was taking place between the individual and the Respondent in her personal capacity. I found that the initial conversation on August 17 was not a violation of the Code rules. Indeed, the staff member and the Respondent seemed to be engaging in a discussion on a divisive issue in a manner which respected that multiple views points could be held. However, after the OCDSB operational decision to withdraw, the Respondent's comments in the conversation suggested that the staff member had "won" because of the operational decision to withdraw. In response to the staff person stating that there was no winner or right/wrong but that it is about understanding, the Respondent stated that this was about the power of the Jewish community – suggesting that it was winning against the 2SLGBTQIA+ community. This crossed the line from respectful and understanding discourse to assigning blame to a group and its perceived power that caused the Director

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<sup>24</sup> The Respondent has advised that this individual has since contacted her again to resume conversations of general interest to them both.

and senior team to make the operational decision to not officially participate in the Pride Parade due to its organizers' statement.

I appreciate that the Respondent was upset and did not support the operational decision; however, her comments to an OCDSB staff person, though as part of a personal conversation with someone who she had conversed on social media with for some time, did not support a healthy and productive workplace. The Respondent was speaking through direct message and was carrying on a conversation with an acquaintance who she was preparing to meet socially. Her comment was a lapse of judgment. The Respondent knew or ought to have known that the suggestion that the staff member won and that it was tied to the power of the Jewish community would be unproductive and disrespectful to the staff member and of course, once the staff person chose to make their private conversation public, it was perceived as disrespectful to the Jewish community.

#### *Exchanges with Members of the Public*

The Respondent was engaged with three members of the public on August 15 and twice on August 22.

In two of the comments, the Respondent stated (i) that she would not be bullied or silenced and (ii) that members of the Jewish community did intend to participate. The Respondent felt that members of the public were attempting to bully or silence her from supporting OCDSB's continued participation in the Parade, and after the official withdrawal, from her own personal choice to participate unofficially. These statements, while taken as dismissive or hurtful, expressed the Respondent's views that she was entitled to an opinion on the issue and that she would express her disagreement with the District not officially participating and her continued support of 2SLGBTQIA+ students.

The Respondent stated, before the Director's decision to withdraw OCDSB from the Parade:

Thank you for sharing your thoughts with me. The OCDSB is participating in the Pride Parade in support of students, staff and school communities. Unlike some other Trustees, I have always been a bridge builder and I will continue to do so. Many prominent members of the Jewish Community have committed to being at the March. I will be proud to join them."

The Respondent's comments were received as dismissive of the member of the public's concerns. By stating that others who share the same identity will attend, the Respondent was attempting to show that the member of the public would not be alone – or that Jewish community members were welcome. The Respondent ought to carefully consider her words when responding to members of the public. Nonetheless, this phrase in the context in which she used it was not a breach of the Code. She was expressing her view that attending at the Parade would build bridges in the community. Her statement is not disrespectful, abusive, or unprofessional; the individuals disagreed about what was the appropriate response to a third parties' public statement on a divisive issue.



When the Respondent stated that:

“I am not clear what comment I am supposed to retract. Furthermore, there will be many prominent members of the Jewish community marching. I will not be bullied or silenced by anyone.”

The Respondent was referring to when in the past, Trustee Kaplan-Myrth’s lawyer had threatened her with legal action if she continued to speak with the media about a particular issue. At that time, she had said “I won’t be bullied, not by a lawyer and not by multiple Code Complaints”. The Respondent expressed the same sentiment here to reinforce that she was entitled to have a view and to share it on a political issue being considered by the District. Rule 3.18 sets out the rules that Trustees must make every reasonable effort to resolve issues arising as a result of conflict in a professional manner that contributes to a healthy and productive workplace. There is a kinder way to express the same idea (e.g., I am entitled to have an opinion, even when we disagree). Nonetheless, in the circumstances, I do not find that this rises to the level of a Code breach. The Respondent did not believe that her statement would be received as accusatory (i.e., that the individual writing to her was being a bully). Rather, the Respondent appeared to be commenting more generally on the weight of the many emails sent to her. While I have found no contravention of the Code, this is not an endorsement of the Respondent’s apparent difficulty in controlling her frustration. The Trustee has been an elected school board trustee for several terms. Trustees individually are free to disagree or agree with the posts, and to communicate their views according to their judgement. However, though the Respondent did not cross the line here; she must be more careful in considering that “lashing out” because she is frustrated is not in the spirit of making reasonable efforts to resolve issues.

When the Respondent stated ,

“Thank you for your email. I will be marching in the Pride Parade. I have done so every year since 2011. I will not abandon our LGBTQ students and staff. I also find the Islamophobia generated by the situation despicable. I will be joined by many prominent members of the Jewish community. My commitment and equity and inclusion is second to none.”

I respect that the Respondent has a right to stand up for perceived injustice. Here, the Respondent voiced her honestly held belief that many of her constituents with cultural connections involved in the conflict, had written to her advising that they were being targeted after the release of the Capital Pride statement. It was this targeting of constituents of belonging to a cultural group that the Respondent was referring to as Islamophobia and despicable. She referred generally to the “Islamophobia” generated during the political debate of whether the OCDSB should participate officially in the parade. Based on what she had heard from members of the public, the Respondent communicated what her constituents’ reaction to the Parade statement had been, at times, Islamophobic. I accept the Respondent’s explanation for including this statement – that she had been told about perceived incidents of Islamophobia and that she did not explain thoroughly the information to place this comment in context.

In a circumstance when a Jewish member of the community was raising an issue of the perceived antisemitism in the Capital Pride Statement, the Respondent ought to have known better than to respond with the statement that she made. It did not serve to create a constructive conversation or engage in respectful debate. It was received as the Respondent suggesting that the member of the public had unwarranted concerns. The statement also suggested that the decision not to participate was abandoning the 2SLGBTQIA+ community members. This was the dichotomy honestly believed by the Respondent.

Rule 3.18 is aimed at ensuring a respectful workplace. The Respondent's comments were sent to other trustees and staff members and as a result, her conduct is reviewable under this rule. The Respondent was upset by comments suggesting that participating, supporting and marching in the Parade was tantamount to supporting antisemitism. As she conveyed to me during the interview, she had decided that she would march as she had since 2011. However, she advised that "OCDSB participation in the Parade is a long standing proud tradition which can never be abandoned. Our participation is about supporting students, staff and our school communities, end of story". While I accept that the Respondent had no intention of upsetting the recipient of her email, the Respondent knew from her communications with others, that her comments were being received as hurtful. While she has a right to express herself and the Rules do limit Charter rights as minimally as possible, the objective of the Code requires Trustees to adhere to prescribed rules of conduct. If the Respondent had made a single comment in the heat of the moment, I may have found that in the two instances I set out above, the conduct of the Respondent did not rise to level of running afoul of the Code. However, in the two instances I set out above, I find that the Respondent's conduct was not in accordance with principles of Rule 3.18, but I find that this contravention occurred through an error in judgement in good faith.

## **J. CONCLUSION**

I find that the Respondent did not violate Rules 3.5, 3.7, 3.9, 3.25 and 3.26. I recommend that the Board find that the Respondent, in respect of the two comments noted above, contravened Rule 3.18 of the Code. In these two limited circumstances, as pointed out above, I accept that the Respondent did not intend to cause harm or to engage in a manner that was hurtful; however, I find that the Respondent's comments crossed the line of respectful comments and strayed from the civility requirements for trustees at the OCDSB.

The next step after this finding of breach is to determine if the comments that crossed the line were made through an error in judgement in good faith. I am cognizant of avoiding any chilling effect on individuals engaging in productive civil discourse engaged in from a place of approaching difficult conversations in search of understanding or truth (i.e., thinking out loud together about divisive issues). This is an important role for trustees at the school board. Short correspondence – like Facebook messages and email – written quickly and engaging with difficult issues - can be unproductive as the recipient lacks the context intended by the writer.

In a proceeding in 2000, the Superior Court wrote:

“Trustees collectively and individually owe a public duty to carry out their responsibilities and the work of the Board in good faith and with reasonable diligence. They are elected for that purpose. They need not be of like mind. They may hold strong and conflicting views. They may debate with vigour, and occasionally with rancour. There is no rule requiring trustees to like each other. But they do have one overarching responsibility - a shared public duty to advance the work of the Board to which they had the privilege of being elected.”<sup>25</sup>

In the decision *Ford v. Magder*, the judicial review of a municipal integrity commissioner decision, Justice Hackland considered the complete factual background and the respondent's contravention in making his determination as to whether the contravention was committed by an error in judgment. His Honour wrote at para. 53:

The case law confirms that an error in judgment...must have occurred honestly and in good faith. In this context, good faith involves such considerations as whether a reasonable explanation is offered for the respondent's conduct ... There must be some diligence on the respondent's part; that is, some effort to understand and appreciate his obligations. Outright ignorance of the law will not suffice, nor will willful blindness as to one's obligations.

Justice Hackland wrote that where there is a “stubborn sense of entitlement and a dismissive and confrontational attitude to the Integrity Commissioner and the Code of Conduct ...and the respondent's actions [are] characterized by ignorance of the law and lack of diligence in securing professional advice...[the actions amount to] willful blindness and as such...are incompatible with an error in judgment.”

Justice Hackland was considering a matter about the *Municipal Conflict of Interest Act* in relation to whether a councillor failed to declare a pecuniary interest. However, I considered this language in interpreting the phrase “error of judgment made in good faith”, which is language included in the OCDSB Code in section 4.40.

Here, the term “good faith” that has been chosen in drafting the OCDSB Code does not convey that a finding of contravention by error in judgement in good faith means that the actions of a Respondent under investigation have been appropriate, but rather the Respondent proceeded with “good faith” and made an error of judgment when she breached the Code. He or she must be forthright and open, honestly believing that they are acting in accordance with their obligations. The Code does not require perfection of conduct. However, good intentions and a complete lack of willful contravention may excuse a penalty for the breach. It is not simply that a Trustee did not intend to breach the Code. Typically, it is not a defence to an offence to say that you did not intend to breach the law. One is assumed to know the law (and in the matter before me, Trustees including the Respondent, received Code training).

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<sup>25</sup> *Hearst (Town) v. District School Board Ontario North East*, [2000] O.J. No. 3419 (SCJ) at paras. 41 and 43

A violation of the Code will be found to be committed through an error in judgement in good faith when on a balance of probabilities, a Trustee is found not to have acted carelessly nor with a desire to harm. The drafters of the Code and the Trustees who unanimously approved the Code, chose to include this language for circumstances such as these when following an investigation, the Integrity Commissioner determines that the Trustee being investigated proceeded with a good faith belief that their conduct did not run afoul of the rules, and in particular where the Respondent had an altruistic motive and good intentions and misunderstood what speech constitutes a breach of the Code. The Code does not waive responsibility for a Trustee who willfully disparages Board decisions or with knowledge and willfully ignores Board policies. The Code, as written and approved by the Board of Trustees, states that, in accordance with Rule 4.40, if the Board determines that there has been a contravention committed through an error of judgement made in good faith, no sanction shall be imposed.

The Board delegated the fact-finding to me, and I have recommended a finding that the Respondent breached the Code. It is my finding that the Respondent's conduct demonstrated her understanding that she was engaged in political debate with senior staff and other Trustees who were considering bringing a motion to Board to reverse the operational decision not to attend the Pride Parade. The Respondent considered all of her actions in this context and did not consider separately that she was engaging with the public who had less information about the ongoing discussions. She did not consider where the line was with respect to Code contravention within the context of this debate. The Respondent should have been more thoughtful and, she should be reminded that Trustees are held to a higher standard of behaviour than a general member of the public, because their Office requires them to consider the dignity of those with whom they interact in an official capacity. The Respondent should not respond in kind to what she sees as a provocation.

There is a line of permissible speech that that is allowed in political debate and as set out in this report, I find that the Respondent did not cross that line except in the two instances where, though she was standing up for 2SLGBTQIA+ students and staff, she did not fully consider that her comments would not be received as respectful and professional. In a decision of a municipal integrity commissioner, the commissioner wrote "Provincial Integrity Commissioner set a relatively low bar for what constitutes an error of judgement made in good faith."<sup>26</sup> In fact, he went on:

Former Ontario Integrity Commissioner Osborne found good-faith errors by an MPP who passed off a news reporter as a legislative staff member, in order to facilitate her unauthorized entry into the Don Jail during the SARS lockdown, and by an MPP who used the Government of Ontario courier service to ship eight large boxes overseas for a friend. In each case, a key factor seemed to be the presence of an altruistic motive.

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Gobin v Nicholson, 2020 ONMIC 13 (CanLII)

I have found that there were two breaches in respect of the identified comments. The Respondent was engaged in discourse in relation to a difficult geopolitical issue, in circumstances where she was being criticized for her honestly held beliefs that the statement made by Capital Pride should not change the OCDSB's participation in the Pride Parade which was created to recognize and celebrate 2SLGBTQIA+ people. June 1986 marked the first gay pride celebration in Ottawa with a simple event attended by 50 people. In 1997, the Pride Committee of Ottawa-Gatineau (today's Capital Pride) received their first official proclamation from Ottawa City Council.<sup>27</sup> It is within this history of struggle for the right to exist and celebrate personhood including her own, that the Respondent took offense at being labelled antisemitic for attending a parade that marked Ottawa's recognition of queer people and their right to celebrate, advocate, educate and connect people, respecting the full diversity of the 2SLGBTQIA+ community.

The Respondent reacted to being told that celebrating and supporting 2SLGBTQIA+ youth was tantamount to discrimination. The forum of communication of her disagreement was not appropriate for a productive discussion on a complex issue. The Respondent used short-hand that was received as offensive and as failing to appropriately consider the difficult issue for all perspectives. The Respondent should have more carefully considered the dignity of the person with whom she was interacting and should have been more civil. The Respondent made her statements based on honestly held beliefs that the operational decision of the District fell short of the support that 2SLGBTQIA+ students, staff and community members deserved. For the reasons set out above, I find that the Respondent made an error in judgment in failing to provide sufficient context for her words to be understood as she intended them. .

In accordance with section 4.40 of the Code, where the Integrity Commissioner makes a finding that the contravention occurred by error in judgement in good faith, no sanction shall be imposed.

Respectfully submitted,

This 19th day of November 2024



Suzanne Craig

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<sup>27</sup> [www.ottawafestivals.ca/a-short-history-of-pride-celebrations-in-ottawa/](http://www.ottawafestivals.ca/a-short-history-of-pride-celebrations-in-ottawa/)

## APPENDIX A

### EMAIL CORRESPONDENCE NOTED IN CHRONOLOGY ABOVE

August 6, 2024 – Capital Pride Statement

As we head into our local Pride season in August, we wish to reaffirm our commitment to solidarity as the core principle guiding our work. While our mandate is focused on queer and trans communities in the region, the violence and instability we are witnessing around the globe have had far-reaching impacts on many members of our local communities. These issues demand our collective attention.

Over the past year, we have been witness to escalating levels of violence in Israel and Palestine. We are aware of how polarizing this conflict has been and how painful it is for members of our local communities to witness the ongoing death and devastation inflicted on innocent civilians. In this moment, 2SLGBTQIA+ organizations across the country and around the world have been called upon to take action.

We are committed to creating spaces where all queer and trans people feel safe to celebrate Pride together. To that end, we are deeply concerned by the rising tide of **antisemitism** and **Islamophobia** we are witnessing here in Canada. As a community facing **rising levels** of hate-motivated crimes, we know all too well how hate erodes our security. In this climate, we reaffirm that intolerance has no place in our events.

Following Hamas' attack on Israel on October 7, 2023, the world watched in horror as the full extent of the **atrocities** committed against civilians were uncovered. We condemn in the strongest possible terms the acts of terrorism committed that day. By the same token, we cannot stay silent in the face of Israel's endless and brutal campaign in **Gaza** and mounting violence in the **West Bank**, where innocent Palestinians—many of whom have friends, families and loved ones in our communities—are being slaughtered, **dehumanized** and **dispossessed of their land** in flagrant **violation of international law**. The situation is so dire that the International Court of Justice expressed grave concerns with the state of the war in Gaza, stating that there is a **plausible risk of genocide**.

Part of the growing Islamophobic sentiment we are witnessing is fuelled by the **pink-washing** of the war in Gaza and racist notions that all Palestinians are homophobic and transphobic. By portraying itself as a protector of the rights of queer and trans people in the Middle East, Israel seeks to draw attention away from its abhorrent **human rights abuses** against Palestinians. We refuse to be complicit in this violence. Indeed, to withhold our **solidarity** from Palestinians in the name of upholding 2SLGBTQIA+ rights betrays the promise of liberation that guides our work. We join our voice to the calls for greater protection of civilians and reject any attempts to use a devastating conflict as a pretext to advance hate.

To breathe life into our sincere hope for an end to this war and justice for all its victims, we commit to the following actions:

- Integrating resources such as the **Palestinian BDS National Committee's** boycott list in our existing review process of current and future sponsorship agreements;
- Hosting *Zaffa: A Queer Arab Showcase*, a Signature Event as part of the 2024 Capital Pride Festival that features discussions about ongoing issues facing LGBTQIA+ Arabs locally and abroad;
- Recognizing the ongoing genocide against Palestinians in opening remarks at 2024 Capital Pride Festival Signature Events; and
- Working with all our partners, both public and private, to push for an immediate and permanent ceasefire, the immediate release of all hostages, increased access to humanitarian aid, and more accessible pathways for refugees.

These commitments serve only as a starting point for other work that will continue past this month. Our mission in organizing the Capital Pride Festival remains to celebrate, advocate, educate and connect people, respecting the full diversity of the 2SLGBTQ+ community.

### August 14 Exchange between the Director and the Respondent:

On August 14, 2024, the Respondent contacted the Director of Education to obtain confirmation on whether the OCDSB would be official participating in the Pride Parade.

The Director responded as follows:

Hi Donna,  
 Yes, I can confirm our participation in the pride parade... in support of our students, staff and school communities.. in spite of any political statements that may or may not have been made.  
 Take good care, P

The Respondent replied:

Awesome, thank you so much.

As always we can look forward to leading biggest group.

See you soon.

Donna

### August 15 Exchanges between the Trustees

On August 15, the following email conversation took place:

On Thu, Aug 15, 2024, 11:40 a.m. Nili Kaplan-Myrth (Trustee) <[nili.kaplan-myrth@ocdsb.ca](mailto:nili.kaplan-myrth@ocdsb.ca)> wrote:

Good morning, fellow trustees.

This is a letter that I never thought I would write.

I am writing to give notice of motion for the Ottawa District School Board to take a stance re Capital Pride.

I am asking for five other trustees to support adding my motion to the special meeting on Monday, August 19.

I ask in my motion that OCDSB write a public statement that it condemns Capital Pride for co-opting Pride as an anti-Israel event, alienating Jewish Ottawans and creating an unsafe environment for 2SLGBTQ+ Jews and allies. Other organizations (for example CHEO) are likely to do the same. Capital Pride made this political. If OCDSB participates without consideration of the issues I raise below, then it is a statement that the district and Board condone the political position of Capital Pride.

Here is the proposed motion:

WHEREAS we have a commitment as a District and a Board to equity, diversity, and inclusivity, which includes standing up for the rights of Ottawa students and staff to feel safe expressing their gender-identity and sexuality, to live and study in inclusive environments.

WHEREAS the organizers of Capital Pride issued a troubling statement in solidarity with Palestine, asserting that they will integrate the Palestinian BDS National Committee into future sponsorship, that they plan to speak for Palestinians in their opening remarks of 2024 Capital Pride Festival events.

WHEREAS it is inappropriate for Capital Pride to discuss the Israel-Gaza conflict. Capital Pride has never previously made a statement about international politics, nor has it condemned countries such as Iran or Uganda where there is a death penalty for homosexuality, and at least 67 countries have national laws criminalizing same-sex relations between consenting adults. In addition, at least nine countries have national laws criminalizing forms of gender expression that target transgender and gender nonconforming people. Afghanistan, Algeria, Bangladesh, Brunei, Barundi, Cameroon, Chad, Comoros, Cook Islands, Dominica, Egypt, Eritrea, Eswatini, Ethiopia, Gambia, Ghana, Grenada, Guinea, Guyana, Iran, Jamaica, Kenya, Kiribati, Kuwait, Lebanon, Liberia, Libya, Malawi, Malaysia, Maldives, Mauritania, Mauritius, Morocco, Myanmar (Burma), Namibia, Occupied Palestinian Territory (Gaza), Nigeria, Oman, Pakistan, Papua New Guinea, Qatar, St Lucia, Saint Vincent, Samoa, Saudi Arabia, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Sri Lanka, Sudan, Syria, Tanzania, Togo, Tonga, Tunisia, Turkmenistan, Tuvalu, Uganda, United Arab Emirates, Uzbekistan, Yemen, Zambia, Zimbabwe.

WHEREAS it is a violation of OCDSB governing principles and the Ontario Education Act and Ontario Human Rights for our district to march in a parade that specifically targets a group based on their religion or nationality. WHEREAS on August 8, 2024, the Mayor of Ottawa, Mark Sutcliffe, stated that he reached out to Capital Pride's executive director to talk about his concerns about inclusion and safety at this year's event for Jewish Ottawans, to no avail.

WHEREAS on August 14, 2024, Mayor Sutcliffe asserted that "the Pride Festival is a time to unite against rising hate and demonstrate our support for Ottawa's diverse 2SLGBTQ+ community," yet nothing further has been done about the inclusion or safety of the Jewish community in Capital Pride.

WHEREAS Toronto's 2024 Pride parade was disrupted by anti-Israel protesters and Jewish attendees had to be evacuated by security.

WHEREAS Montreal's 2024 Pride parade was disrupted by violent anti-Israel protests.

WHEREAS the Jewish Federation of Ottawa, Hillel Ottawa, rabbis of multiple congregations in Ottawa, other Jewish organizations, and progressive, conservative, religious, as well as secular Jewish community groups reached out to the directors of Capital Pride to raise concerns about the co-opting of Pride as an anti-Israel event. "We challenge Capital Pride and its supporters to reflect on the principles of unity and solidarity that Pride is meant to represent. It is time to rise above divisive politics and recommit to creating a truly inclusive environment for all 2SLGBTQ+ community, including those who are Jewish," they wrote in a press release on August 14, 2024.

The organizers of Capital Pride doubled down, refused to change their statement or plans to speak against Israel.

WHEREAS Trustee Kaplan-Myrth is Israeli and Jewish and walking in the parade is not safe for her, unless OCDSB hires special security to walk with her.

WHEREAS it is not safe for most of the Jewish community in Ottawa, including Jewish staff and students, to attend Capital Pride in 2024, unless they are provided with special security by the OCDSB.

WHEREAS Capital Pride has refused to provide security for Jewish attendees.

WHEREAS it is inappropriate for OCDSB to participate in events in which organizers encourage people to take a stance against Israel and in which there will be people who call for death to Jews.

#### THEREFORE BE IT RESOLVE

That OCDSB withdraw from Capital Pride for 2024.

That OCDSB issue a statement that it will only participate in events that are a safe space for EVERYONE, which includes 2SLGBTQ+ Jews and their friends, family, colleagues, allies.

Note: As of my writing this, while most Jewish organizations have withdrawn from Capital Pride, non-Jewish organizations are deliberating. If all organizations withdrew from participation in Pride—the Children's Hospital of Eastern Ontario, the Ottawa Hospital, Youth Services Bureau, Ottawa RedBlacks, Ottawa Carleton District School Board, Ottawa Catholic School Board, University of Ottawa, Carleton University, etc.—it would be a clear statement that Pride cannot be manipulated to create divisiveness. As I have said repeatedly, "no space for hate" must be a commitment to stand up against all discrimination, period.

Please consider this motion. According to Bylaw 8.5, I require five other trustees to support (in writing) adding my motion to special meeting of August. Five of you, surely, care enough about the safety of Jews at Pride that you will support a discussion of the issue.

Sincerely,

Trustee Kaplan-Myrth

### August 15 Correspondence with a Member of the Public

On Thu, Aug 15, 2024, 12:58 p.m. wrote:

Dear Trustee Blackburn,

I am reaching out as a concerned OCDSB parent who just became aware of the recently released Capital Pride [antisemitic statement](#). This unjust decision left my family feeling marginalized and vulnerable. Sadly, as a result, we made the difficult decision of not joining the Pride Parade this year. How can we support an event that marginalizes Jewish 2SLGBTQ+ individuals and the broader Jewish community? Importantly, this biased decision does not even align with Capital Pride's mission of 'respecting the full diversity of the 2SLGBTQ+ community'.

I am aware that the OCDSB is a proud participant in this event. However, since OCDSB has a commitment to equity, diversity and inclusion, I am asking you to stand behind this commitment and opt out of the Parade this year. How can the OCDSB support an event that specifically targets and excludes a group based on their



religion and nationality? Capital Pride, unfortunately, chose a divisive position instead of focusing on creating a truly inclusive environment for everyone.

I appreciate the various opinions of Canadians about the current conflict in the Middle East and I do not expect people to support Israeli politics. However, this is not about politics. This is about Canadian OCDSB Jewish students and the support that they deserve. Siding with an organization that fosters a divisive, racist, and intolerant atmosphere in the city is unacceptable.

As a representative of the OCDSB community and its diverse students, I ask you to put your personal beliefs aside and rise above divisive politics. OCDSB should withdraw from Capital Pride this year. Capital Pride needs to know that their divisive decision does not align with the Canadian values of living in an inclusive environment that encompasses everyone, including Jewish members of the community.

Thank you, in advance, for your support.

On Thu, Aug 15, 2024 at 1:11 PM Donna Blackburn (Trustee) <[donna.blackburn@ocdsb.ca](mailto:donna.blackburn@ocdsb.ca)> wrote:

Thank you for sharing your thoughts with me.

The OCDSB is participating in the Pride Parade is support of students, staff and school communities.

Unlike some other Trustees I have always been a bridge builder and I will continue to do so.

Many prominent members of the Jewish Community have committed to being at the March. I will be proud to join them.

Take Care

Donna

On Thu, Aug 15, 2024, 1:26 p.m. wrote:

This is very disappointing to hear since it clearly supports antisemitism and contravenes OCDSB's commitment and Capital Pride mission. Regardless, thank you for your response.

### **August 16 Correspondence between Trustees**

On August 16, 2024, Trustee Kaplan-Myrth wrote in an email to the Director, Chair of the Board of Trustees, General Counsel, Integrity Commissioner, former Manager of Board Services, and a Superintendent of Education:

I am writing to express dismay that despite my attempts to speak with you privately, asking you to address this issue of safety at Pride, it was left to me to raise it.

Chair Scott had the option to put this item in the agenda in a manner that would avoid \*my\* being the one to raise the issue of safety at Capital Pride. She chose not to do so, leaving it up to me.

Chair Scott then insisted that I had to seek five other signatures to even raise the discussion.

Chair Scott was then silent when the response to my notice of motion was Trustee Blackburn's disrespectful and discriminatory response that she is tired of my "crying antisemitism."

I expect an apology from Trustee Blackburn, to the group, noting that her response was out of order.

Please indicate what I must do now, as the Chair's silence in response to another swipe at me—and at the Jewish community at large, which is what led to my notice of motion—is unacceptable.

On August 16, 2024, the Chair wrote to Trustee Kaplan-Myrth advising:

There have been on-going discussions regarding the statement by Capital Pride and OCDSB participation in the Pride Parade. Our participation in the Pride Parade has always been an operational matter, and I understand that you have had discussions directly with Pino, as have I, regarding how best to respond to the statement. Those discussions have not ended.

The Special Board meeting was originally contemplated solely to address Alysha's resignation, with a view to having the meeting on a date this week. That changed when the Minister notified us of the new regulation

regarding Board Member Code of Conduct, with the directive that boards should have compliant policies in place by 28 August, and staff indicated that they would be able to bring a draft revision to our current policy and address both issues in a single meeting if we held the special meeting next week.

When you proposed bringing forward a motion regarding Capital Pride, I referred you to the relevant sections in the by-law. I reiterate that discussions on the impact of the Capital Pride statement and what response would be in the best interests of the Board, our students and our staff, are on-going.

Yesterday when your proposed motion was sent to trustees, swiftly followed by Donna Blackburn's response, I was engaged in several meetings with various staff members. While Donna Blackburn did respond to your message, I am aware that she is out of town this week and may be challenging to reach. I will address her emails and the nature of her remarks with her when she is back.

Lynn

### **August 16 Apology from the Respondent**

On Fri, Aug 16, 2024 at 1:45 the Respondent wrote:

Dear Colleagues

My comments in my email response yesterday were intended to say that I do not think any of my colleagues on the Board are antisemitic and I believe that the Director and the Ottawa Police take the safety of each trustee, our staff and our community seriously. I respect that Trustee Kaplan-Myrth has raised safety concerns. If my comments were taken as disrespectful, I did not intend this. I apologize to Trustee Kaplan-Myrth and to my colleagues on the Board for my comments in my response email.

Take Care

Trustee Donna Blackburn

On August 16, 2024, Trustee Kaplan-Myrth wrote

Thank you. Apology accepted.

Onwards and upwards,  
Nili

### **August 17-19 Communications between the Respondent and a staff member of the OCDSB. The staff person sent the private conversation to Trustee KM and Trustee KM sent on to other Trustees on Aug 22:**

[ Named individual] Thu, Aug 22, 2024 at 1:22 PM To: OCDSB Director , nili.kaplan-myrth@ocdsb.ca, lynn.scott@ocdsb.ca, "Justine Bell (Trustee)" , "Donna Dickson (Trustee)" , "Suzanne Nash (Trustee)" , "Cathryne Milburn (Trustee)" , "Matthew Lee (Trustee)" , "Amanda Presley (Trustee)" , "Lyra Evans (Trustee)" , "Jennifer Jennekens (Trustee)" , Pino Buffone Hello OCDSB Trustee Board.

This was a private email I received from Trustee Blackburn in response to my last email. I am tired of seeing that "prominent members of the Jewish community" have decided to attend the parade. It doesn't matter. Stop tokenizing those who go against the grain - the Jewish community is not a monolith and the majority of us don't feel safe. Just because some do and it suits Ms. Blackburn's narrative doesn't mean our feelings become moot. Furthermore "prominent" clearly means different things outside the Jewish community, because inside the community, our prominent members are clergy, members of the Jewish Federation, and other Jewish community leaders - that is leaders of the Jewish community, not Jewish leaders in the community. It was also completely inappropriate for her to call out Dr. Kaplan-Myrth in an email I was a part of - I am not a member of the Board, rather a concerned parent, and it made me feel uncomfortable to be included in that conversation Best [Named individual] -----

Forwarded message ----- From: Donna Blackburn (Trustee) Date: Thu, Aug 22, 2024 at 12:01 PM Subject: Re: [External Sender] Concerns Regarding Trustee Participation in the Capital Pride Parade To: [Named individual] Thank you for sharing your opinion. It was the Director of Education 's decision to hand out the OCDSB Pride t-shirts. I respect your decision not to march this year because you would not feel safe. Many prominent members of the Jewish community feel differently than you do and have indicated they will march. Take Care Trustee Donna Blackburn

During an interview with the Respondent, she explained that the OCDSB staff person with whom she was communicating had originally had a text message conversation in 2022:

Respondent (R): Let me know how I can help ur team  
 Ty for all the work of u do for our kids  
 Staff Member (A): Would love to have a cup of coffee and chat  
 R Yes for sure [...]

On August 17, 2024, the conversation about Capital Pride began:

A Hi Donna. I don't usually disagree with your posts. However you latest post is worrisome. If you say you are walking under a banner that says 'Everyone is welcome here' which it the OCDSB philosophy- I don't feel welcome at the Pride Parade as a Jewish staff member of the OCDSB. I know it is a complicated situation and even more aware of how difficult the discussions are in schools. But I don't fee that Pride should be highjacked by this very divisive situation.  
 I am happy t talk in person with you

R I understand that u don't agree with me and am sorry you don't feel safe to march...I am quite confident on march day everything will be fine...Pride has always been political, have said things in the past I totally disagree with...[...]  
 Now I am being called a bunch of names, my intelligence and my integrity being challenged.

A Social media is awful. That's why I am connect with you privately.

R I am going to that parade to support our staff and students...I am gay. I wasn't always safe to say that and still not sometimes.  
 You are welcome to attack me publicly if that is what u would like to do.

A No. That is not what I want at all.  
 All I am saying is that the issues of pride should be pride.

R Ok, well u aren't going to change my mind and regardless this is not my decision.  
 Yep and for me that's all it is  
 U gonna let 12 people stead ur joy go for it  
 Nobody is gonna get hurt

A My comment is not to change your mind. Just to say that that not everybody feels welcome at pride this year. It is not about the safety.

R Well in my opinion u are welcome...hell I will march beside u o the big banner  
 I also think some of the narrative from the Jewish community is Islamophobic.  
 I speak at the mosque all the time...am welcomed with open arms  
 The rabbi in Barrhaven is a bridge builder

A Yip. There are many people trying to build bridges and joint let issues affect communities

R I have spoken to jewish people today who r very grateful to me  
 [...]

The Respondent forwarded pictures of her marching in previous Capital Pride parades.

The text messaging continued with proposed time and locations for a meeting. Two days later, the following exchange continued:

R There u win no need to meet  
 A Not about winning. We can still connect  
 Really this is really not about right or wrong. It is about understanding.  
 R I have no desire to connect...it is clear to me that my struggles matter not...the fact I live in daily fear matters not...what matters is the power of the Jewish community...as it always does.

### **August 19 Call between the Respondent, the Director and others**

On August 19, the Respondent received a call from the Director. When she took the call, she was unaware that there was another trustee and three additional staff members on the call.

The Director placed the call because he knew that the Respondent wanted the OCDSB to participate in the parade. He wanted the Respondent to hear from him why he was leaning towards a decision not to participate in the event. The Director recalls that he caught the Respondent off guard but wanted to bounce ideas off of her as she was a “tremendous Champion of the event”. In the course of this investigation, the Director acknowledged that in hindsight, he should have called her without others on the call.

In her interview and response, the Respondent explained that she felt ambushed by the call, which informed her subsequent responses. The Respondent recalls being told that several Jewish groups had called the OCDSB and were expressing strongly that OCDSB should not participate in the parade.

### **August 19 Operational Decision not to participate in Capital Pride**

On August 19<sup>th</sup>, the District sent out the following message:

As a result of the challenging circumstances surrounding Capital Pride, the OCDSB has made the difficult decision not to participate in the Pride Parade this year. The PRIDE t-shirts, normally distributed on the day of the parade, will be available this week for pick-up at Reception, 133 Greenbank Road between the hours of 9:00 a.m. and 3:00 p.m.

The following statement, which communicates the decision and expresses ongoing commitment to the 2SLGBTQ+ community, will be posted to the OCDSB website in the next few minutes.

#### ***OCDSB Statement Regarding Capital Pride***

At the OCDSB, we are proud to welcome and celebrate students, parents/caregivers and staff who identify as 2SLGBTQ+. Ensuring our schools and workplaces allow everyone to feel a sense of belonging is core to our mandate as a public educational institution. This support and commitment will not change.

We have been involved in Capital Pride for multiple years, including leading the parade on a number of occasions. Through this participation, it has always been our intention to demonstrate that all members of the 2SLGBTQ+ community deserve to feel welcome at the OCDSB.

Ahead of this year’s Capital Pride, organizers of the parade issued a statement concerning events in the Middle East. In response to this statement, some members of the community have expressed feeling unsafe and unwelcome. For an event seeking to promote equity and inclusion, the impact of this decision sadly runs counter to what we have always embraced about Pride.

As a result, we have come to the difficult decision that the District will not participate in the parade this year.

We know that the decision not to participate will be upsetting to some members of our community. Indeed, we deeply regret that we will not be there to showcase our pride.

No matter where you come from, your religion or creed, race or background, or intersectional identities, we believe that every member of this community deserves to feel welcome and safe.

Pino Buffone  
Director of Education

***Kim Clement***  
Executive Assistant to the Director of Education  
Ottawa Carleton District School Board

### August 19 Attempt to Call a Special Meeting

Another Trustee (not the Respondent) emailed all trustees in an effort to obtain support to have a Special Board meeting to consider a motion that OCDSB participate in the Pride Parade on August 25.

The OCDSB bylaws require support from six trustees; only five trustees supported the holding of a Special Meeting. Many of the trustees were on vacation with limited availability.

Accordingly, no special meeting was held, and the Director's decision that OCDSB would not formally participate in the parade was final.

### August 19 Reaction to the Announcement regarding Withdrawal from Capital Pride

On August 19, 2024, an individual wrote to all Trustees:

Date: Mon, Aug 19, 2024, 2:30p.m.  
 Subject: [External Sender] Capital Pride

Dr Kaplan-Myrth,

I'm writing to express concern about your intent to have OCDSB withdraw from Capital Pride following the organization's statement in solidarity with Palestine.

I am struggling to find how the statement makes Capital Pride unsafe for Jews. The statement contained the following. First, Capital Pride expresses concerns about both the October 7 attack and Israel's disproportionate response. Second, it expresses concern about the rising levels of both antisemitism and Islamophobia (and, I would add, anti-Palestinian racism). Third, it goes on to cite a US State Department report on human rights abuses in Palestine. Finally, it commits to the following actions: adopting BDS principles, hosting an Arab Queer show, recognizing the ongoing genocide in its opening remarks, and "[w]orking with all our partners, both public and private, to push for an immediate and permanent ceasefire, the immediate release of all hostages, increased access to humanitarian aid, and more accessible pathways for refugees."

Again, I struggle to see your concerns in that statement. Who exactly won't feel welcome to participate? Nothing in the Capital Pride statement can be characterized as antisemitism, if that's the implication. For one thing, Capital Pride expresses concern about violence in both Israel and Palestine, and about rising levels of antisemitism and Islamophobia. For another, it simply cannot be the case that it is antisemitic to criticize the actions of a democratic government that is engaging in what the International Court of Justice has deemed a plausible case of genocide. By that logic, Israel would be immune from any criticism or accountability ever. The statement also relies on a US Department of State report about well-documented human rights abuses in Palestine, which I assume would be of concern to you and considered a reliable source of information. The statement ends by advocating for a ceasefire, return of hostages, increased access to humanitarian aid, and more accessible pathways for refugees—again, I would expect (and hope) that you agree with all of that. As a doctor and education advocate, I would think this would be especially true for you in light of the toll Israel's ongoing assault has had on Palestinian children, schools, medical personnel and medical facilities in Gaza.

So I return to my question: who would not feel welcome in Capital Pride? The answer must be people who support Israel's actions these past 10 months, which again have been characterized as a plausible case of genocide by the world's highest court. A fair reading of Capital Pride's statement shows its focus is on Israel's actions in the war and the horrific effects on civilians; nothing about it can fairly be read as being antisemitic. Also, it is important to recognize that there is not one "Jewish community": many Jewish people and groups are deeply opposed to Israel's actions in Gaza, including Independent Jewish Voices. Indeed, CBC's reporting of the Capital Pride statement and responses interviews Jewish people with very different views.

Pride has always been a protest movement at its core. Pride has always been political. Pride has always been international in scope. None of this is new.

[...]

On August 19, 2024, an individual wrote to all Trustees:

Date: Mon, Aug 19, 2024, 9:23p.m.  
Subject: [External Sender] Jewish support for Ottawa Pride solidarity statement and for OCDSB participating

Dear OCDSB trustees,

As a devout Jew and as a lesbian, I strongly **support** the OCDSB's participation in the Capital Pride March this coming Sunday.

I believe that the Pride statement of solidarity with Palestinians is a profoundly ethical document which includes opposition to antisemitism and to the human rights violations by Hamas activists on Oct. 7. The Israeli genocide against the Palestinians of Gaza and in the West Bank is immoral, vicious, and violates all I cherish about Judaism. I believe it ultimately (and possibly in the very short term) also threatens the viability of Israel itself, undermining its legitimacy, economy, and threatening regional war which threatens the safety of both Jews and all others in the region. Because Israel and the Israel Lobby claim to do what they do in the name of Jews, they promote the very antisemitism they claim to oppose.

I condemn the Jewish Federation's attack on Capital Pride and its decision to back out of the Pride Parade, ostensibly out of fear that Jews would be subject to attacks if they did participate. Predictably, the Jewish Federation of Ottawa is trying to deflect the very valid criticism of Israel's murderous actions by claiming the Capital Pride statement makes it unsafe for Jews to participate in Pride. This is nonsense. I have marched wearing a placard identifying myself as a Jew in many Palestine solidarity marches alongside thousands of Palestinians and other allies. And over and over again I was welcomed and thanked for doing that.

What I value most about Judaism is its commitment to the values of justice (tzedek), welcoming the stranger (ahavat ger), peace (shalom), saving a life (pikuach nefesh), and loving kindness (chesed). Israel's oppression of Palestinian people profoundly betrays all of those values. The whole point of a Pride march is to proudly stand up together against the oppression of queer people and all others who are oppressed.

I intend to participate the Pride March next Saturday along with many other Jews of conscience. I hope you will join us.

In solidarity,

From: [ **An ACE Committee Member** ]  
Date: Mon, Aug 19, 2024, 2:30 p.m.  
Subject: [External Sender] Capital Pride  
To: [nili.kaplan-myrrh@ocdsb.ca](mailto:nili.kaplan-myrrh@ocdsb.ca) <[nili.kaplan-myrrh@ocdsb.ca](mailto:nili.kaplan-myrrh@ocdsb.ca)>  
Cc: [lynn.scott@ocdsb.ca](mailto:lynn.scott@ocdsb.ca) <[lynn.scott@ocdsb.ca](mailto:lynn.scott@ocdsb.ca)>, [alysha.aziz@ocdsb.ca](mailto:alysha.aziz@ocdsb.ca) <[alysha.aziz@ocdsb.ca](mailto:alysha.aziz@ocdsb.ca)>, [donna.blackburn@ocdsb.ca](mailto:donna.blackburn@ocdsb.ca) <[donna.blackburn@ocdsb.ca](mailto:donna.blackburn@ocdsb.ca)>, [suzanne.nash@ocdsb.ca](mailto:suzanne.nash@ocdsb.ca) <[suzanne.nash@ocdsb.ca](mailto:suzanne.nash@ocdsb.ca)>, [amanda.presley@ocdsb.ca](mailto:amanda.presley@ocdsb.ca) <[amanda.presley@ocdsb.ca](mailto:amanda.presley@ocdsb.ca)>, [lyra.evans@ocdsb.ca](mailto:lyra.evans@ocdsb.ca) <[lyra.evans@ocdsb.ca](mailto:lyra.evans@ocdsb.ca)>, [jennifer.jennekens@ocdsb.ca](mailto:jennifer.jennekens@ocdsb.ca) <[jennifer.jennekens@ocdsb.ca](mailto:jennifer.jennekens@ocdsb.ca)>, [donna.dickson@ocdsb.ca](mailto:donna.dickson@ocdsb.ca) <[donna.dickson@ocdsb.ca](mailto:donna.dickson@ocdsb.ca)>, [justine.bell@ocdsb.ca](mailto:justine.bell@ocdsb.ca) <[justine.bell@ocdsb.ca](mailto:justine.bell@ocdsb.ca)>, [matthewj.lee@ocdsb.ca](mailto:matthewj.lee@ocdsb.ca) <[matthewj.lee@ocdsb.ca](mailto:matthewj.lee@ocdsb.ca)>, [cathryne.milburn@ocdsb.ca](mailto:cathryne.milburn@ocdsb.ca) <[cathryne.milburn@ocdsb.ca](mailto:cathryne.milburn@ocdsb.ca)>

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Again, I struggle to see your concerns in that statement. Who exactly won't feel welcome to participate? Nothing in the Capital Pride statement can be characterized as antisemitism, if that's the implication. For one thing, Capital Pride expresses concern about violence in both Israel and Palestine, and about rising levels of antisemitism and Islamophobia. For another, it simply cannot be the case that it is antisemitic to criticize the actions of a democratic government that is engaging in what the International Court of Justice has deemed a plausible case of genocide. By that logic, Israel would be immune from any criticism or accountability ever. The statement also relies on a US Department of State report about well-documented human rights abuses in Palestine, which I assume would be of concern to you and considered a reliable source of information. The statement ends by advocating for a ceasefire, return of hostages, increased access to humanitarian aid, and more accessible pathways for refugees—again, I would expect (and hope) that you agree with all of that. As a doctor and education advocate, I would think this would be especially true for you in light of the toll Israel's ongoing assault has had on Palestinian children, schools, medical personnel and medical facilities in Gaza.

So I return to my question: who would not feel welcome in Capital Pride? The answer must be people who support Israel's actions these past 10 months, which again have been characterized as a plausible case of genocide by the world's highest court. A fair reading of Capital Pride's statement shows its focus is on Israel's actions in the war and the horrific effects on civilians; nothing about it can fairly be read as being antisemitic. Also, it is important to recognize that there is not one "Jewish community": many Jewish people and groups are deeply opposed to Israel's actions in Gaza, including Independent Jewish Voices. Indeed, CBC's reporting of the Capital Pride statement and responses interviews Jewish people with very different views.

Pride has always been a protest movement at its core. Pride has always been political. Pride has always been international in scope. None of this is new.

I am deeply concerned that you propose to put OCDSB on the side of genocide.

Between August 20 and 25, the Chair of the Board received 441 form letters expressing disappointment that the OCDSB had withdrawn from the Pride parade. The Chair also received many messages expressing a diverse range of views on the subject of OCDSB participation. Some expressed that the Director's decision caused them to have doubts about the OCDSB's continuing commitment to support 2SLGBTQ+ students and staff. Others believed that the Director's decision was sending a negative message to the Palestinian community.

#### **On August 21 The Respondent reposted a poster created and distributed by a OCDSB Teacher on August 21**

On August 21, a teacher made a poster inviting people to attend the Capital Pride Parade with the Respondent.

#### **On August 22**

Another member of the public wrote to all trustees:

Good morning, Thank you again for making the decision to not have OCDSB march in the Capital Pride parade this year. It is very saddening that Capital Pride has decided to take on a political agenda that has nothing to do with celebrating and/or advocating for the unity and inclusion rights of the 2SLGBTQIA community. I was deeply disturbed to receive a copy of an email sent out from an OCDSB teacher from Ridgmount High School – [a named individual]' email presents, as fact, opinions that are not at all universally accepted as true and demonstrates a deep misunderstanding of both the Jewish community in Ottawa and the conflict of the Middle East. It seems like Donna Blackburn is taking a stand against OCDSB decision and rallying up teachers and spreading misinformation. While individuals have the right to walk in the parade they should not be doing so with OCDSB t-shirts and in the name of the OCDSB. You have teachers and trustees who are openly defying a decision you made as an organization and that is a clear violation of code of conduct. Specifically seeing this sentence in the below email from the teacher [a named individual] is harmful and untrue. " Pride means supporting the 2SLGBTQIA+ community, AND standing against genocide." Her statement is problematic for a few reasons, firstly it claims that the war is a genocide which is simply not true by it's definition, and secondly by including her own geopolitical views on what Pride means, she is automatically excludes anyone who has a different opinion about the geopolitical conflict than her owns. You can either support the nation of Israel or you can support the 2SLGBTQIA+ community, but not both. It is simply not true. Pride does not mean standing against Israel and Jewish people (regardless of her clear intentions to do so) - what a slap in the face for those who have fought for years for the rights of the 2SLGBTQIA+ community. Imagine being a Jewish student who is part of the 2SLGBTQIA community and hearing this from your teacher!!!! I am extremely worried and

concerned about the upcoming school year and the safety of all Jewish students based on the various communications I've seen between trustees and some teachers this past summer.

On August 22, 2024

A further member of the public added their voice to the concerns about the Respondent's participation in the Parade:

I will add my voice to the group of those requesting that both Blackburn and [ a named individual] not be permitted to proceed with their plan to represent the OCDSB at Capital Pride. Will Donna Blackburn and [a named individual] be held accountable for defying and undermining the OCDSB's decision? They've made it clear they will be wearing OCDSB shirts and Donna is sending messages as a trustee (not a citizen).

Later on the same day, a member of the public wrote to all trustees expressing concern about the Respondent's intended participation in the Capital Pride Parade.

The District handing out shirts that say OCDSB on them to be worn at the parade directly contravenes the decision for the OCDSB not to walk. Walking as a citizen and walking as a representative of the Board are two different things and you acting as though you don't know the difference is offensive. Your defiance is not just disrespectful to the Jewish community, but also to the Board on which you sit. In terms of security and not feeling safe at Pride, Capital Pride made it clear they would not be providing additional security for Jewish attendees, even though throughout Canada, Pride parades have been shut down due to protests this year, some of which have turned violent. Jewish organizations in Ottawa have made it clear it isn't a good idea for Jewish delegations to walk as a group during pride (what individuals choose to do is up to them). I must ask why you feel you are above the decision of the OCDSB. And why you believe you don't need to listen to the oppressed minority (in this case the Jewish community) when they tell you they don't feel safe - as a queer Jewish woman I don't feel welcome or safe at Pride this year and that isn't for you to debate. Best, [a named individual]



## APPENDIX B

### Director's Speaking Notes

#### Meeting of Advisory Committee on Equity (ACE) - Thursday 26 September 2024

Thank you for allowing me to speak with you today. I greatly appreciate the opportunity, especially as it isn't an easy conversation for any of us. Yet, I believe it's important to address it directly and genuinely.

To begin, I would like to express my profound regret and sorrow for members of our organizational community impacted by the global conflicts continuing to unfold tragically, including members of our Palestinian and Jewish communities, and that I am very sorry for the hurt that this particular matter has caused to members of our 2SLGBTQIA+ community.

I would also like to state that inclusivity - along with diversity, equity and accessibility - is a core value of our collective work as an organization. We are committed to making sure that every member of our organizational family - students and staff, parents/guardians and caregivers - feels that they belong here.

The PRIDE parade has always been a great example of the spirit of that inclusivity, and that's why for years, we've proudly participated in PRIDE. We have valued the opportunity to celebrate our 2SLGBTQIA+ community and the chance to send a clear message that everyone is welcome and safe at the OCDSB.

As you know, just weeks before the parade itself, organizers of Capital PRIDE issued a public statement. I've heard from several individuals that when they first started reading the statement, they didn't initially think it was that controversial, but then as they kept reading, it became evident the statement was increasingly polarizing.

As soon as the statement was issued, we started receiving feedback from members of our organization. Some expressed that the statement made them feel unwelcome. Others referenced what had taken place at the Toronto PRIDE event with the protests there, and they were worried about whether Ottawa's PRIDE parade would be safe. There were also many individuals who agreed with the statement, and said that participating would be a great way of showing our support for our Palestinian community. There were others who did not agree with the statement, saying that it would not be supportive of our Jewish community. And, many members of our 2SLGBTQIA+ community who did not share one of the perspectives noted already, expressed that they now felt caught in the middle of a political issue. If we participated in the parade, some would say we are supporting one side of the political issue. If we didn't participate, others would say we are supporting the other side. In the end, we also found ourselves in the middle of a political situation that did not reflect our core value of inclusivity, as noted at the outset.

As you all know, the scope of our mandate as an organization is reflective of a membership that is broad in nature, especially as it pertains to the many global conflicts that arise that influence our students, our staff and our school communities. Our primary focus as a district school board is public education... understanding that these global conflicts, regardless of the position of any individual and/or group, continue to impact the members of our organization. We must be thoughtful about this reality. We must also do our utmost to ensure our time, energy and resources are spent on this primary focus, especially when there are so many pressing issues on our plate. This doesn't mean we shy away from important social issues, but we have to make sure that anything we do participate in (or endorse as an organization) does not undermine our primary focus to educate our students. From an organizational perspective, the shift in positionality related to the intent of the parade was a key factor in the rationale for the decision made.

Now, to be clear, there were a number of other factors taken into consideration with respect to this decision. The timing of the emergence of this issue, for instance, made the decision even more difficult. The statement was released during the summer season, when many members of our organization (including staff) are away. The statement also came out with very little time before the actual parade. We simply didn't have the opportunity to have the deep, thorough discussions that such a complex issue demands. We also didn't have the capacity to organise an alternative event that would have addressed the concerns raised while still allowing us to celebrate PRIDE in a way that felt right for everyone.

Further, we examined our existing policies and procedures, practices and processes to determine the best course of action for this operational decision. Our human rights policy, for example, centred on a number of principles that include participation and inclusion, and we deemed that aspects of this policy could not be upheld in an organizational decision to participate. To add, members of senior staff spoke to the creation of criteria for consideration in whether or not the organization could/should/would take part in community-based activities and/or events in the future in order to assist the decision-making process, and although it is still a work-in-progress, there were aspects of this particular event that did not allow for a broader 'sense of belonging' for members of the organizational family.

I know this decision has been disappointing to many, and I'm not here to dismiss those feelings. This was a tough call, and we're committed to learning from it. We're already taking steps to engage with all groups of our community - 2SLGBTQIA+, Jewish, Palestinian and beyond - in order to ensure that everyone feels heard and supported moving forward. We've reached out to members of our Queer and Trans Educators's Network (QTEN) with a Thought Exchange Survey and are looking to meet to discuss the implementation of the tangible ideas produced. We're looking to have members of our advisory committees, such as ACE, take part in a working group to review the criteria mentioned. We're also receiving direction from the provincial government in regards to the code of conduct as it pertains to participation in political protests.

In the end, our objective is to keep building an environment where every single person feels safe, valued and welcome. That's what we're working towards every day, and that's where our heads and hearts are at.

Speaking of moving forward, one of the things I was hoping I could hear from you today, is how we might adjust our approach to dealing with situations of this nature. Your feedback will undoubtedly help us through decision-making processes in the future.

Thank you for your time tonight. I really appreciate that this committee was willing to open this space to hear from me and engage with me, and to give me an opportunity to share perspectives with you. I look forward to hearing from you now about how we can move forward. On August 26<sup>th</sup>, an individual wrote: