



Lakhani Campea LLP  
EMPLOYMENT LAW & LITIGATION SERVICES

CONFIDENTIAL

Ottawa-Carleton District School Board  
**FORMAL REVIEW  
REPORT  
FINDINGS**

2650 Bristol Circle, Unit 200  
Oakville, Ontario L6H 6Z7  
Phone: (289) 815-4524

---

LCHRLAW.COM

PREPARED BY: ZAHEER LAKHANI

JUNE 24, 2020

**Table of Contents**

Introduction and Mandate ..... - 1 -

Legal Framework ..... - 1 -

Overview of the Investigation ..... - 3 -

The Complaint..... - 5 -

Trustee Blackburn’s Response ..... - 6 -

Credibility ..... - 10 -

Factual Findings and Concluding Summation..... - 11 -

## ***Introduction and Mandate***

I was retained by Ottawa-Carleton District School Board (“OCDSB”) to conduct an independent formal review (“review”) as an outside consultant in accordance with section 4.22 and 4.23 of Policy P.073.GOV, Board Member Code of Conduct (“Code of Conduct”). Although I am a lawyer, I did not act as legal counsel for the OCDSB in this matter, only as an independent and neutral consultant.

This review is conducted pursuant to a formal complaint made under the Code of Conduct against Trustee Donna Blackburn (“Trustee Blackburn”). The complaint was lodged by Trustee Christine Boothby (“Trustee Boothby”) and alleges that Trustee Blackburn contravened the Civil Behaviour expectations outlined in sections 3.8, 3.15 and 3.18 of the Code of Conduct. The complaint stems from an incident, described below, that took place on 27 March 2020 at the City of Ottawa (the “City”) park in Barrhaven.

My mandate was to conduct an independent, objective review of the allegations raised, and then make findings of fact. Pursuant to Section 4.26 of the Code of Conduct, my review does *“not contain a recommendation or opinion as to whether the Code of Conduct has been breached.”*

During this process, I conducted necessary interviews with the parties and any relevant witnesses in order to prepare this report.

## ***Legal Framework***

This investigation was conducted within the framework of OCDSB’s Code of Conduct as well as with reference to the *Education Act*, R.S.O. 1990, c. E.2.

Relevant excerpts include the following:

### **P.073.GOV, Board Member Code of Conduct (“Code of Conduct”)**

#### **1.0 OBJECTIVE**

To establish a standard of conduct and a mechanism for managing inappropriate conduct for Ottawa-Carleton District School Board members in discharging their duties as the legislative officers of the Board entrusted with the duty as fiduciaries to act at all times with the utmost good faith and respect in the best interests of the organization.

#### Code of Conduct

3.1 The Board believes that the conduct of its members is integral to the quality of work, the reputation and the integrity of the Board of Trustees.

3.2 All members of the Board shall be governed equally by this code of conduct and are expected to uphold the letter and spirit of this Code of Conduct.

3.3 The Code of Conduct shall apply to members of the Board with respect to issues raised by, and amongst, members of the Board.

#### Steps of Formal Review

4.24 Regardless of who undertakes the formal review, it shall be undertaken using the following steps:

a) 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.

4.26 The final report of the investigators shall outline the finding of facts, but not contain a recommendation or opinion as to whether the Code of Conduct has been breached. This will be determined by the Board of Trustees as a whole.

#### ***O. Reg. 246/18: MEMBERS OF SCHOOL BOARDS - CODE OF CONDUCT under Education Act, R.S.O. 1990, c. E.2***

##### **Code of conduct**

1. (1) Every board shall adopt a code of conduct that applies to the members of the board.

#### ***Education Act, R.S.O. 1990, c. E.2***

##### **Code of conduct**

**218.2** (1) A board may adopt a code of conduct that applies to the members of the board. 2009, c. 25, s. 25.

**218.3** (1) A member of a board who has reasonable grounds to believe that a member of the board has breached the board's code of conduct may bring the alleged breach to the attention of the board. 2009, c. 25, s. 25.

(2) If an alleged breach is brought to the attention of the board under subsection (1), the board shall make inquiries into the matter and shall, based on the results of the inquiries, determine whether the member has breached the board's code of conduct. 2009, c. 25, s. 25.

## ***Overview of the Investigation***

Although the complaint was lodged by Trustee Boothby, the basis for the complaint arises out of an encounter between Trustee Blackburn and Styles Lepage ("SL"), a student at the OCDSB, on Friday, March 27, 2020.

Please note that Section 4.24 of the Code of Conduct requires protecting the confidentiality of the parties involved; however, this incident involving the encounter between SL and Trustee Blackburn has been repeatedly referenced in numerous media reports available to the public at large. As such, I will only identify witnesses, and other involved individuals, by way of their initials unless their identities have been similarly made public in various media reports.

Upon being formally retained by the OCDSB on April 9, 2020 as an outside consultant for the purpose of conducting the review, my first course of action was to formally request to speak to SL, which request I made through his father, Matthew Kedroe, on Monday, April 13, 2020.

My rationale for choosing to speak to SL was to adhere to the principles of procedural fairness and natural justice in accordance with Section 4.24 of the Code of Conduct. Simply put, it was SL, not Trustee Boothby nor the father, Mr. Kedroe, who was present during the encounter with Trustee Blackburn. Therefore, SL would be able to offer from his perspective, a first-hand account of what transpired between him and Trustee Blackburn, which would, in turn, allow me to properly particularize the allegations against Trustee Blackburn.

However, because Trustee Blackburn initiated legal action by way of a Notice of Libel against Mr. Kedroe, both Mr. Kedroe and his son, SL, were delayed in their response back to me as they had elected to seek legal representation. This resulted in my communication to them, and specifically SL, being channeled through their legal counsel, Lawrence Greenspon.

I was, therefore, able to interview SL by way of correspondence through his lawyer which resulted in me being provided with a typed statement from SL via an attachment to an email from Mr. Greenspon on May 8, 2020.

I then particularized the allegations and provided SL's statement through correspondence with Trustee Blackburn's legal counsel, Brenda Hollingsworth. Thereafter, I was able to schedule an interview with Trustee Blackburn, who attended her virtual meeting with me on May 23, 2020. Her legal counsel, Ms. Hollingsworth, also attended this meeting.

I subsequently interviewed Trustee Boothby on May 27, 2020. After meeting with Trustee Boothby, I interviewed, virtually/remotely, the following witnesses whom I deemed to be relevant between May 28, 2020 and June 5, 2020 in addition to receiving some additional relevant information provided to me by the City on June 10, 2020:

- Z.D., a local Imam who Trustee Blackburn called during her encounter with SL.

- Susan Carkner, Assistant to Councillor Jan Harder, Ward 3 Barrhaven, who Trustee Blackburn called during her encounter with SL. Please note that I have included Susan Carkner's full name as her identity in this matter was also made public by way of press releases related to the incident.
- Robin Browne, a member of the advocacy group 613-819 Black Hub that addresses Anti-Black Racism in Ottawa. Mr. Browne submitted a delegation to the Board with respect to the encounter between Trustee Blackburn and SL. Please note that I have also included Robin Browne's full name as his identity in this matter was also made public by way of his own public blogs related to the incident. As well, he expressed a desire to be included as a witness to this review.

I also reviewed various press releases, emails, messages and other relevant documents, including:

- Statement from Trustee Evans on the events of March 27, 2020 and the OCDSB Response, prepared by Lyra Evans, Trustee for Zone 9
- Letter of support for Trustee Blackburn prepared by Dr. A.S., Principal of a private Muslim elementary school
- Letter of support for Trustee Blackburn dated May 20, 2020 by an individual who fears reprisal and wishes to remain anonymous
- Trustee Blackburn's media release with respect to the events of March 27, 2020
- Blog prepared by Robin Browne, titled "COVID19 brings out the best in all of us (ok, only some of us)" dated June 3, 2020
- City of Ottawa twitter releases regarding the closing of all City facilities and parks, including park playgrounds dated March 27, 2020
- CBC News release titled 'School Trustee Under Investigation After Confronting Teen' by Joanne Chianello, posted April 1, 2020
- Ottawa Sun article titled 'Ottawa Trustee Donna Blackburn Sorry for Post about Teen, but Says She Did Not Discriminate', dated May 25, 2020 by Jacquie A. Miller
- Basketball Buzz article titled 'Ottawa School Trustee Donna Blackburn Bullies Local Basketball Player Forces Hoops Take-Down' by Edilson J. Silva, published March 28, 2020
- Screen shots of Trustee Blackburn's Facebook posts of March 27, 2020 and March 28, 2020, related to her encounter with SL

- Email from Said Arwo to the Board and copied to various media outlets dated March 28, 2020
- Delegation request by Matthew B. Kedroe, father of SL
- Email communication chain between Susan Carkner and Public Works dated March 27, 2020.

## ***The Complaint***

The following are the particulars/summary of the allegations against Trustee Blackburn derived from my review of the evidence provided by SL:

- On March 27, 2020, Trustee Blackburn approached SL “with a smile on her face”, while he was playing basketball by himself at a public park, to inform him of the park’s closure as a result of COVID-19 measures.
- Trustee Blackburn also told SL that he was putting other people at risk. SL believed that this was not the case as he was not playing with anyone else; in fact, he alleged it was Trustee Blackburn that was putting him at risk by approaching him and standing in close proximity during a global pandemic.
- SL then grabbed his phone to assess if what he was being told by Trustee Blackburn was true given that he was not going to “blindly listen to some random lady off the street”.
- When SL could not find anything online that seemed to support what he was being told, he then expressed through his actions, that he wanted to be left alone, i.e. putting on his headphones and continuing to play by himself.
- At that point, Trustee Blackburn stayed near him and made phone calls within earshot of SL.
- After one of her calls, she then proceeded to ask him personal questions such as his name, what school he attended, and which grade he was in.
- Trustee Blackburn disregarded the fact that SL was playing basketball by himself while others were also at the park participating in various activities in groups.
- Upon being asked personal questions, SL volunteered his name and informed her that he was a high school student in Grade 12. He did not feel comfortable offering her more personal details and, as such, told her he attended St. Paul’s school, although he was, in fact, a student at a different school.

- After Trustee Blackburn asked if he was on the school basketball team, and he confirmed he was, Trustee Blackburn advised him that she would contact his school principal to have him kicked off the team.
- Trustee Blackburn asked him other personal questions such as why he was playing in a park/neighbourhood that was far from his school and where he lived. She also told him that she would be following him home when he refused to share details of where he lived.
- Trustee Blackburn also asked the youth questions regarding his employment status and asked if he worked at a McDonald's.
- Trustee Blackburn informed the youth that people like him end up at Innes (Innes Road Detention Centre).
- Trustee Blackburn also made another phone call within earshot of SL, and advised the person on the other end that she would attend SL's graduation to stop him from graduating and if he did graduate, she would attend the graduation in order to trip him on the stage. As such, according to SL, these comments were not made directly to him.
- Trustee Blackburn also took SL's photo without his permission, posted the photo to her Facebook account and identified herself as a Trustee. The post accompanying the photograph read: "Apparently I have another title Park Patrol. This kid has been playing for over an hour and won't leave. I have called by-law and will stand here until they come. I will follow the kid home if I have to. See why you elected me Trustee, I never give up. I will keep my community safe and this kid needs to learn to follow the rules!! Kid went to St. Paul's."
- Trustee Blackburn breached SL's personal privacy and he felt discriminated against, singled out, and shamed.

### ***Trustee Blackburn's Response***

Trustee Blackburn's evidence includes the following derived from her media response:

#### ***Statement of Donna Blackburn***

*On March 27th, 2020 in the early evening, I met SL in Neill-Nesbitt Park in Barrhaven. There has been significant attention given to that meeting. To date, I have not provided my version of events. I have remained silent because the OCDSB has initiated an investigation. I believed that it would be best for the process if I waited for the investigation to run its course before publicly sharing my account of what happened on March 27th.*



*However, given the time that has passed and the continued media interest in this story, I no longer believe it is in the interest of the OCDSB and all of its stakeholders, including my fellow trustees, that the version of events that is circulating remain unanswered.*

*On March 27th, the City announced that because of COVID-19 City parks are closed for all uses, apart from walk throughs. During the late afternoon of March 27th, there were five people playing basketball at Neill-Nesbitt Park. I live across the street from this park. I told the five basketball players that the park was closed. They all left.*

*A few minutes later, SL arrived at the park and began playing basketball. I approached SL for the same reason I approached the first five people. We were at the beginning of the pandemic. The parks had just been closed. We were expecting a spike in COVID-19 cases and I was genuinely concerned for the wellbeing of the community, including the well-being of SL himself. I also knew that if SL continued to play, others would seek to join him. In fact, this is exactly what happened. While I was speaking to SL, five more people entered the park to play basketball. I spoke to the five other people who showed up while SL and I were in the park. They all agreed to leave. Unfortunately, SL did not leave.*

*At no time during my conversation with SL was I closer than 10 feet away from him. Physical distancing was always maintained.*

*During my conversation with SL, he told me that he did not care that there was a pandemic. He did not care that the park was closed. He did not care that he could be fined. I asked him what he would think if I called his basketball coach about his refusal to leave the park. He did not care. Finally, I indicated that I would call By-Law. He told me to go ahead. It was in response to this exchange that I told SL that people who do not care about the rules end up in Innes Road. My point in the moment was simply that choosing to ignore the rules is a slippery slope. However, with the benefit of reflection, I do sincerely regret delivering this message in this way. Of course, I do understand that young black men are disproportionately represented in our criminal justice system. I apologize for using that turn of phrase with SL.*

*During our interaction, SL told me he attended a Catholic school. I am a public school trustee. There have been comments on social media and the regular media about me threatening to interfere with SL's 'ability to graduate or to walk across the stage at graduation. Those statements are simply not true.*

*I was taken aback by SL's response to my request and the tone of our exchange. My plan was to talk to his parents. While I did say I was going to follow him home, that was the reason. I wanted to speak to his parents. For the same reason. I told him I was going to post his photo on my Facebook page. He told me to "go ahead." However, I do agree that I should not have made this post. I realized that myself in less than an hour and removed the post. I am sorry for and regret the posting.*

*I freely admit that I should have handled my engagement with SL differently in the ways I have outlined. I apologize unreservedly for those errors on my part.*

*I have been asked why I did not engage with groups of people who were playing soccer and baseball in the park. I did not see anyone playing soccer. I did see people playing baseball. I had considered speaking to the people playing baseball when I first approached SL. However, since I called By-law while speaking to SL, I decided to leave it to them.*

*I am the mother of a black adult daughter. I am keenly aware of the challenges facing black children and youth growing up in Ottawa. As a member of the LGBTQ+ community, I have firsthand experience dealing with discrimination. It is simply not who I am to discriminate. My record as a Trustee supports this.*

*All my life I have fought against discrimination and hate and I am a tireless advocate for equity-seeking groups within the OCDSB. Further, I have been recognized for my work to fight child poverty and Islamophobia. I have taken positive steps in education to advance initiatives for the black student community. I have been a leader and a resource for teachers, parents and students dealing with issues of gender and sexual orientation.*

*I will continue to do this work for as long as I am elected to serve as a trustee.*

She also provided me with the following information during our interview:

- That, at that time of the interaction with SL (i.e. the outset of the pandemic), she was very concerned about the safety of the community because of the spread of COVID-19 and, at that time, she already had two personal acquaintances who had tested positive for COVID-19.
- That she did not single out or discriminate against SL as she also spoke to others using the facilities at the park, including those that were “white”.
- That all the other people she spoke to had adhered to her request to vacate the park.
- That she approached SL in a friendly manner and, while speaking with him, always remained a safe distance away.
- That it was only when SL ignored her request to leave the park and told her that he did not care about the pandemic, that she warned him that he could be fined, asked him what he would think if she called his basketball coach and told him that she would call By-Law.
- She confirmed that she told SL that people “who do not care about the rules end up in Innes Road.” She added that she said this because she wanted him to know that choosing to ignore rules and expressing that one does not care about rules would result in a “slippery slope”.

- She confirmed that she is fully aware that young black men are disproportionately represented in our criminal justice system and she is remorseful for making reference to Innes Road when speaking with SL.
- She denied that she made any comments to SL indicating that she would interfere with his ability to graduate or trip him when he walked across the stage at graduation.
- She admitted that she did tell him that she would be willing to call his basketball coach. She denied saying that she would call his basketball coach to have him removed from the team, and said she only referenced the basketball coach as a way of trying to appeal to him regarding the urgency of the pandemic by discussing his conduct with someone whom she believed he would respect and listen to. Nevertheless, there was no call made to any basketball coach.
- While speaking to SL, two other young boys/men attended the basketball court. She also asked them to leave and when one of them did not listen, she recognized that they may be youths of a Muslim background and called the local Imam and asked him to speak to them. She said that the Imam did speak to the boys in Arabic and, although she could not understand what was being said, the young men proceeded to leave the park.
- Instead of leaving the basketball court when seeing the other boys leave after their conversation with the Imam, SL chose to remain at the court.
- As SL was still not leaving, she contacted Susan Carkner, assistant to City Councillor Jan Harder and asked if By-Law could attend the park and also remove the hoops.
- She also confirmed that she wanted to talk to SL's parents and that was why she indicated that she would follow him home.
- She also conveyed to SL that she was going to post his photo on her Facebook page and when he replied, "go ahead", that she did post to her Facebook page the comments and image that are described above and shown in various media publications.
- She confirmed that she should not have made this Facebook post and that she is regretful for doing so. She indicated that her intention for posting his image to Facebook was to show that she was concerned for the community in light of the pandemic, that her intention was to speak to his parents and that her reference to calling herself "park patrol" was reflective of her sense of humour.
- She added that her Facebook page is private and confirmed that people who are invited to view her Facebook page are her constituents.

- She added that posting his image and her comments on Facebook was borne out of frustration, that she did not think it through but quickly removed the post and recognized that it was a mistake.
- She confirmed that one of the reasons why she removed the post was because friends of hers on Facebook told her that it was not the right thing to do and she should take it down.
- Finally, she added that she is very concerned with the plight of marginalized groups in Ottawa, has done much for the Muslim community, Syrian refugees and the LGBTQ+ community and added that she is the first openly gay person elected as a Trustee. She added that she has also been an advocate for Black students at the OCDSB and has advocated for the Black Students' Forum.
- She also informed me that she is the mother of a black adult daughter and is "keenly aware of the challenges facing black children and youth growing up in Ottawa".

## ***Credibility***

Given that SL chose not to participate in a virtual live interview, and, as such, I was required to review his version of events only through correspondence via his counsel, my ability to assess his credibility was compromised. Further, SL's statement was not derived from notes made by me during an interview but was, in fact, based on a review of a typewritten statement that SL confirmed was written by him and is identified with the following typewritten heading:

*Statement of Events: March 27, 2020*

*By Styles Lepage*

Further, I do consider and appreciate that SL's evidence would reasonably be impacted by the media attention that SL's father, Matthew Kedroe, has brought to the encounter and also by the fact that Mr. Kedroe has been served with a Libel Notice relating to his allegations that Trustee Blackburn is a racist.

As for Trustee Blackburn, it is clear from her evidence that she has made significant admissions adverse to her interests. Further, the witnesses whom Trustee Blackburn called during the encounter did corroborate portions of her version of events. For these reasons, I do find Trustee Blackburn to be credible in her evidence but, as explained below, I do find some of her explanations for her conduct to be disingenuous.

The overall evidence presented by the witnesses appears to be credible and I have no reason to dispute their evidence given that some of these witnesses, especially Susan Carkner and the Iman, would appear to have nothing to gain from participating in this review.

With respect to Robin Browne, I confirm that his evidence as it relates to the event itself would be biased as having been sourced from the narrative offered by Matthew Kedroe, but I do

accept his evidence related to how certain images and comments are perceived by the Black Community through the lens of anti- Black racism.

Trustee Boothby's evidence also does not offer any relevance or impact as to what transpired at the park on March 27, 2020, but I found her to be forthright and credible as to how certain undisputed facts, detailed below, are perceived by her in her capacity as a Trustee. I also accept her submissions on how the role of Trustee carries a fiduciary responsibility, and, as such, it is essential for trustees to act in a manner that inspires public confidence.

### ***Factual Findings and Concluding Summation***

Based on my assessment of the evidence, my conclusions on credibility, and on a balance of probabilities, I make the following findings of fact:

- Trustee Blackburn did not conduct herself only as a concerned citizen during her encounter with SL on March 27, 2020, but that her role and status as a Trustee played a significant part in the encounter for the following reasons:
  - She clearly identified herself as a Trustee in her Facebook post by stating that she was elected as a Trustee because she is not one to give up and that she will keep her community safe.
  - She confirmed that her Facebook page includes her constituents who voted for her as a Trustee. Evidence suggests that Ottawa citizens who are in her zone routinely view and comment on her Facebook posts.
  - A subsequent review of her Facebook page confirms that she does discuss OCDSB matters via this medium.
  - In trying to involve the City/By-Law office in her encounter with SL, she contacted Susan Carkner, assistant to Councillor Jan Harder, with whom she is connected and has knowledge of due to the fact that she is an elected Trustee.
  - The connection between her and the Imam, whom she called during her encounter with SL and the other young men who attended the park, is based on her advocacy on behalf of Muslim students as an elected Trustee.
- Trustee Blackburn was not singling out SL for using the basketball court as the evidence, which includes my assessment of her credibility, suggests that she did discuss the park closures with others who were using the basketball court, including the two Muslim boys and other community members, who she identifies as being "white" or perhaps not appearing to be from a marginalized background.
- Trustee Blackburn did inform SL that she would be willing to contact his basketball coach; although she never did so.

- Trustee Blackburn told SL “*people who do not care about the rules end up in Innes Road.*” Innes Road is the Ottawa Carleton Detention Centre.
- Trustee Blackburn posted only SL’s image on Facebook that day and she herself confirmed that she has not posted anyone else’s image from the park because it was only SL who would not listen to her request to vacate the park.
- Trustee Blackburn referred to SL on the Facebook post as “this kid needs to learn to follow the rules!!” and she used exclamation points in this phrase for emphasis.
- Trustee Blackburn, at the time of posting the image, was aware that SL was a young black man who attended secondary school.
- Trustee Blackburn, in a subsequent Facebook post following the encounter, stated as follows:
  - *A big shout out to Susan Carkner, Jan’s assistant. She responded to my concerns immediately and the hoops will be removed. Problem solved and I shed my title of park patrol gladly. The pay sucked and I didn’t appreciate having my judgement questioned!*
- Trustee Blackburn knew that SL was not interested in engaging with her. Indeed, she confirmed that SL was playing for over an hour and was refusing to leave. In the post she wrote that she would follow “the kid” home if she had to.
- Trustee Blackburn’s conduct towards SL was lengthy and unwavering as he would not abide by her request to vacate the park. This conclusion is supported by her Facebook posts where Trustee Blackburn confirms that she remained at the park with SL for over an hour.
- Trustee Blackburn admitted that she did ask SL for his personal details, which she subsequently chose to share in her Facebook post while being aware that he was a student or “kid”, albeit with the incorrect name of the school being offered by SL.
- Evidence confirms that the City’s restrictions on using the park and its facilities were implemented as of March 27, 2020, the exact day of the encounter between Trustee Blackburn and SL.
- Evidence also confirms that rules regarding social distancing and addressing COVID-19’s spread were being updated almost on a daily basis at all levels of government and it was reasonable for any citizen to not be fully aware of the current state of restrictions on any given day. The fact that any citizen, let alone a young man or a “kid” was not fully aware of the updated guidelines is reasonable.

- The City's response to Susan Carkner's request to have the hoops removed in order to enforce COVID-19 social distancing measures, which she made on behalf of Trustee Blackburn, states as follows:
  - *Hi Susan*  
*Removing hoops have been discussed between a few departments and it's not going to happen. The best we'll get is signage that will be going up next week. (Sorry, not me that makes these decisions). What's missing here is parental control and enforcement. One kid in a park isn't a problem, but when there's a group, all that contributes to is transmission of this virus.*  
*Is there any way to get it across to the residents that their kids can bring the virus back from their friends gathering in a park and into their homes ?*  
*Surely people are in tune to the world's situation, and if they are not, they are contributing to "Natural Selection". This isn't society's issue, it's a parental issue. I believe OPS, Bylaw and OPH will respond to group activities in parks, so 311 may be the way to deal with any continued activity.*  
*Sorry, but that's the best I can do.*  
*Have a good weekend.*  
*JK*

Therefore, and after careful consideration of the evidence obtained, I conclude that Trustee Blackburn's conduct in posting an image of a young black man, a "kid" as she referred to him repeatedly in the post (4 times to be exact), and referring to him as someone who needs to learn to follow the rules and whose apparent lack of caring about rules could result in him ending up incarcerated, was racially insensitive given that black persons are routinely over represented in the criminal justice system and face harsher penalties than non-black citizens for trivial or minor infractions.

The racial insensitivity of this comment has since been acknowledged by Trustee Blackburn and she confirmed that she has, as a result, faced severe and increasing media and personal backlash.

However, it should also be noted that this comment is made towards SL, a young black student, for playing basketball by himself, albeit during the park's closure, by an elected official with corresponding fiduciary obligations towards the public. For clarity, elected school trustees are deemed to be fiduciaries according to the common law and, as such, are required to conduct themselves with a very high objective standard of care.<sup>1</sup>

---

<sup>1</sup> *Calgary Roman Catholic Separate School District No. 1 v. O'Malley*, 2007 ABQB 574 (CanLII) at para. 109

It is also relevant to note that the City, in its response to Susan Carkner's request on behalf of Trustee Blackburn, established that the focus of By-Law and OPS (Ottawa Public Service) was to address large public gatherings and not just one person playing basketball.

Finally, Trustee Blackburn stated that her role was to keep the community safe even if it required her to follow a "kid" home and stated that he needed to learn to follow rules. Trustee Blackburn sought out and divulged personal information about SL, all while confirming her status as an elected Trustee to her constituents who follow her on Facebook.

It is also clear from the evidence that Trustee Blackburn is not lacking in self-awareness as she acknowledges that her reference to Innes Road and her initial Facebook post were improper. In fact, Trustee Blackburn confirmed that she has, since this incident, engaged in training related to racial sensitivity.

On a final note, I was in receipt of compelling evidence that Trustee Blackburn has done much for marginalized communities in Ottawa, including OCDSB students, such as promoting prayers for Muslim students in OCDSB schools. I was further informed by the Imam, in relation to the other two boys who attended the park during her encounter with SL, that he regarded Trustee Blackburn's conduct as a form of positive community engagement. As the Imam confirmed, she had called him in order to alleviate the need for the authorities to attend and fine the Muslim boys over using a closed park facility.

Unfortunately, the findings set out above with respect to her encounter with SL, do not support a conclusion of positive community engagement.

Respectfully,  
*Lakhani Campea LLP*



Zaheer Lakhani