

DURHAM DISTRICT SCHOOL BOARD

SPECIAL BOARD MEETING

Monday, June 27, 2022

9:00 a.m.

Page

1. Call to Order

2. Moment of Silence/Acknowledgement

The Durham District School Board acknowledges that many Indigenous Nations have longstanding relationships, both historic and modern, with the territories upon which our school board and schools are located. Today, this area is home to many Indigenous peoples from across Turtle Island. We acknowledge that the Durham Region forms a part of the traditional and treaty territory of the Mississaugas of Scugog Island First Nation, the Mississauga Peoples and the treaty territory of the Chippewas of Georgina Island First Nation. It is on these ancestral and treaty lands that we teach, learn and live.

3. Declarations of Interest

4. Adoption of Agenda

5. Information Items

6. Recommended Actions

- (a) Integrity Commissioner Report
(Chair Carolyn Morton)

1-42

7. Adjournment



ADR
CHAMBERS

Integrity Commissioner Office
for Durham District School Board

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Investigator
Office of the Integrity Commissioner
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June 6, 2022

SENT BY EMAIL TO:

Trustee Niki Lundquist

And To:

Trustee Darlene Forbes

And To:

Trustee Paul Crawford

cc: DDSB Board of Trustees, c/o Patrick Cotter, Legal Counsel

Re: Final Investigation Report – IC-16397-0122 and IC-16517-0222

1.0 Introduction and Delegation of Investigative Powers

1.1 – Introduction

This is our report respecting separate applications brought Trustee Niki Lundquist (“Trustee Lundquist”) and Trustee Darlene Forbes (“Trustee Forbes”) (collectively the “Complainants”), of the Durham District School Board (“DDSB”, or the “Board”), against Trustee Paul Crawford (“Trustee Crawford”), under the DDSB’s

School Board Member (Trustee) Code of Conduct (the “Code of Conduct” or “Code”). Neither Trustee Lundquist nor Trustee Forbes were previously informed by our office of each other’s complaints, but they fundamentally relate to the same circumstances – accordingly, to conserve the Board’s economic resources by avoiding duplication, we are addressing both complaints herein.

Mr. Michael L. Maynard, Integrity Commissioner for the DDSB, delegated certain of his investigative powers and duties to myself, Mr. Benjamin Drory, on March 18, 2022, to inquire into, investigate, and report upon these matters, subject to his review and approval.

As part of the investigation, we reviewed the formal complaints, the *Code of Conduct*, the *Education Act*, recordings of the relevant meetings, the written materials that were being considered during the meetings, and relevant material from the education governance sector and elsewhere in society.

The Parties’ Positions

Complaints

Trustee Lundquist complained as follows, dated January 26, 2022:

Trustee Crawford’s comments at the last meeting of the Governance Committee were, in my view, a significant breach of his responsibilities as a Trustee. We are required to uphold both the spirit and letter of the law, including human rights law. His words and behaviours will, and have, undermined confidence in the Board and they call into question the Board’s commitment to integrity, as well as its obligation to uphold well-settled human rights principles. Simultaneously, they cause harm by denying the lived reality of those who have experienced systemic racism and oppression as a result of privilege being afforded to those who do not come from equity seeking groups.

As an example, at the Governance meeting of January 24, 2022,

... that some of us are bordering on racism, it shows you how crazy people can act when someone is trying to debate something. On this white supremacy thing, I think we can do without it. Even in the definitions it says a racist ideology based on the belief that white identity is the norm, standard or ideal, and then it does not refer to hate groups or other far right extreme groups. That’s what 90% of people think and it goes against the document. ... White supremacy only refers to what you say it doesn’t

mean. It does. It refers to extremists right or left...

Trustee Crawford then attempts to suggest what white supremacy is according to his own view, despite having been provided with the opportunity to engage with material on this topic at training session. I heard this and so did many members of the public as Trustee Crawford essentially saying that he should be able to redefine white supremacy.

A constituent asked me why the Trustees allow this 'racist' behaviour. I have no answer.

The denial of these ideas and ideals are not about free speech or debate. We are not a debating society. They are about his obligations as a school board Trustee on a Board of Governance. This kind of commentary causes harm to members of the DDSB community and raises broad questions about important concepts of equity, equality, human dignity and inclusion. The denial of white supremacy, the attempt to rewrite a definition of it, falls outside of the contours of a reasonable standard of acceptable behaviour. This is not about "free speech". It is about responsible and respectful speech that supports the dignity of every member of the DDSB community.

This is not a one-off. At the Governance meeting on October 25, Trustee Crawford made the following observations:

"... white – supremacy – it only means one thing, it is surely negative, it is insulting to white people, in fact it insulting to anyone ... it is almost a form of, if you want to stop racism, so let's reverse the racism on the white community. I feel very strongly about that."

"I've already spoken on white-supremacy, it has no business in here"

I would observe that constituents are asking if Paul Crawford is qualified to be a Trustee. I advise that I can offer no comment on fitness to serve. ...

I can point to further comments of a similar concerning nature, along with relatively constant interruptions, obstinance that undermines the work of the Board in the form of a desire to address procedural wrongs that occurred before I was a Trustee, along with ongoing and fairly consistent interruptions of the Chair and Vice Chair, and a sustained and consistent pattern of harassing behaviour as it relates to a staff member.

In my view, the Integrity Commissioner should determine if there has been a breach of ss. 1.2, 1.3, 1.4, 6.1, 6.13, 6.15 and any other provision of the Code that may be relevant in respect of Trustee Crawford's commentary and conduct.

Separately, Trustee Forbes complained on February 4, 2022 respecting sections 6.3, 6.5, 6.7, 6.9, and 6.13 of the Code of Conduct:

I am complaining about the conduct of Trustee Paul Crawford during the Durham District School Board's Governance and Policy meetings on the dates of October 25, 2021 (see meeting, including 1:02:37), November 9, 2021 (see meeting, including 1:34:26) and January 24, 2022 (see meeting including 1:55:16 and 1:54:14).

At these meetings Trustee Paul Crawford used language and espoused racist points of view that are damaging to the reputation of the Board and are counter to the equity and diversity initiatives of the D.D.S.B., and were potentially harmful to the students and staff of the D.D.S.B.

Trustee Crawford responded as follows to both complaints:

This complaint is without merit, and may be under sec 6.8 frivolous, vexatious, etc.

In performing my duties and responsibilities to participate in debate on policies etc. I did not abuse any sections of the Code and did uphold the Ed Act on board member participations, and the requirements of our Procedural bylaws. If I disrespected a board member or was out of order according to our bylaws, during that meeting, the complainants or any member could have raised a point of order and it could have been handled by the Chair and board members and dealt with at that time. ...

Trustee Lundquist submitted a reply on February 28, 2022:

It is ... challenging to provide a substantive reply to this "response" because it is emblematic of the problem that, in part, made the filing of the complaint necessary.

... The fact that the Trustee whose behaviour is at issue does not agree that there has been a violation does not make a complaint frivolous or vexatious. ...

The actions complained of are of serious concern. The denial of white supremacy, calling people "crazy" who don't share the same view and the other issues raised in the complaint speak to a disregard for the impact of one's words on the students and staff in our system and are exceedingly harmful. This was echoed in notes sent to

me by members of the community who viewed these comments in the same light. These words are not debateable. They have very real meaning and the insistence on attempting to redefine them despite the fact that they have been legally recognized, speaks to the fact that they are not genuinely debateable. In insisting that they are, Trustee Crawford causes harm to racialized communities, to people living with mental health disabilities and illness and to the system itself. The very fact that these “debates” persist despite training on these very matters, speaks to the need to have the matter addressed. ...

Trustee Crawford contacted both complainants inappropriately shortly after the complaints were filed. Mr. Maynard wrote to Trustee Crawford about this on February 9, 2022:

It has been brought to my attention that you contacted directly (by email) the Complainants ... to advise them, respectively, that you were “returning” their Code of Conduct (“Code”) complaints. In one case, you advised the Complainant that the matter “...should be filed with the Board as per the Education Act”, and in the other, you stated you were “returning” it “...so it may be filed with the Board as outlined in the Education Act”.

You also advised the Complainants, respectively, that you may determine to file a “counter-complaint” against them “if necessary” (in one case) or “if needed” (in the other), thereby issuing in both cases what appears to be an ultimatum; namely, that if the Complaints were to proceed through the Integrity Commissioner’s office you would in turn file your own “counter-complaints” directly with the Board.

As you are no doubt aware, the Durham District School Board (“Board”), by way of Code of Conduct By-Law #12, Appointment, Selection and Jurisdiction of the Integrity Commissioner (Appendix 1) has appointed an Integrity Commissioner to handle complaints, advice, and education relative the Board’s Code of Conduct. Accordingly, the Complainants are acting within the Board’s prescribed process for filing Formal Complaints under the Code of Conduct by directing such matters to this office. ...

There is no mechanism or process by which a Respondent can unilaterally “return” a Formal Complaint, nor by which a Respondent can require a Complainant to file same directly with the Board. The Board has clearly established that Formal Complaints are to be filed with, and processed by, the Integrity Commissioner.

Additionally, I would draw your attention to section 6.53 of the Code of Conduct which states:

Reprisals and Obstruction

Trustees should respect the integrity of this Code of Conduct and are obliged to cooperate with inquiries conducted in accordance with the Complaints Protocol and any other procedures set by the Board for addressing complaints of a breach of this Code of Conduct. Any reprisal or threat of reprisal against a complainant or anyone else for providing relevant information to the Integrity Commissioner is prohibited. It is a violation of this Code of Conduct to obstruct the Integrity Commissioner in the carrying out of her or his responsibilities, for example, by destroying documents or erasing electronic communications. [emphasis added]

I must advise you that it is highly improper for a Respondent to directly contact a Complainant about their Formal Complaint, and most particularly to do so in the manner described herein. Such conduct could quite possibly be a contravention of the Code – in particular, at least section 6.53 (as noted above).

You are accordingly hereby formally requested to cease any and all direct communications with the Complainants in respect of these matters.

Any information you wish to convey in response to these complaints is to be directed to the Integrity Commissioner's office pursuant to the Code of Conduct and its appended Complaint Protocol.

In respect of this formal request by me, in my capacity as Integrity Commissioner for the Board, I would direct your attention to section 6.54 of the Code, which states:

"Trustees of the Board have a duty to respond to and comply with all requests of the Integrity Commissioner and failure to do so is a violation of this Code of Conduct."

I thank you for your kind attention to complying with this request.

Investigation

The Role of a Trustee

The role of a school board trustee is unique. Ontario's *Education Act* (the "Act") sets out rules respecting the qualifications and conduct of Members of School Boards (i.e., better known as trustees).

In 2018, various associations of school boards issued a guide for school board trustees entitled *Good Governance: Guide for Trustees, School Boards, Directors of Education and Communities* (the “Guide”).¹ The Guide described a school board trustee’s role in the following ways:

Introduction²

Taking up the office of school board trustee is a call, not only to carry on the tradition of local decision-making, but to model ethical and courageous leadership that values every member of the board community and reaches for equity of outcomes for our students. ...

... As a leader in school board governance, your job is to ensure that Ontario’s education system continues to adapt and transform to meet the ever-changing needs and shifting challenges of our rapidly evolving world. To do so will require collaborative work with key education partners at all levels of the education system.

... Your many and varied responsibilities are all focused on the central goals of improving student achievement and well-being, ensuring safe and inclusive learning environments, and building public trust.

Governance³

The true test of any board’s governance structure is its effectiveness in promoting and sustaining a board’s standard in achievement, well-being, and equity. ...

In carrying out their role, trustees have the very real challenge of balancing their responsibilities and allegiances as representatives of their communities with their role as education leaders within the decision-making body of the board as a whole. This dual responsibility can mean that the ultimate decisions made are at variance with the specific interest of a particular geographical constituency, demographic population, or interest group.

Roles and Responsibilities of School Boards and Individual Trustees⁴

A school board is responsible for governing the school system in the best interests of

¹ <https://www.ocsta.on.ca/ocsta/wp-content/uploads/2019/01/OESC-Good-Governance-Guide-Fizzz-Design-as-of-Nov-12.pdf>

² Guide, p. 9

³ Guide, p. 27

⁴ Guide, p. 33

all students in its jurisdiction and on behalf of the communities it serves. The school board, as a corporate body, is the legislative source of all decisions, and individual trustees are granted no authority through the Education Act. Unlike provincial and federal parliaments, school board members do not vote according to an official affiliation, nor are there governing trustees and opposition trustees.

... Legal accountability for board decisions applies to the board as a corporate entity rather than to individual trustees. In fact, the Act gives no individual authority to trustees. As members of the corporate board, trustees are legally accountable to the public for the collective decisions of the board and for the delivery and quality of educational services.

Responsibilities of Individual Trustees⁵

A school trustee is a member of a board, not a member of parliament ...

As the representatives in their local jurisdiction, trustees consider the needs of their communities and ensure that programs and strategies are developed to address specific constituents in the trustee's ward. It is through the process of collaborating and engaging in joint decision making as members of the board that trustees work with the values, priorities, and expectations of the community to translate them into policy.

... [T]rustees carry a dual responsibility – as a representative of their ward and as a member of the board.

...

Individual trustees interpret the role of representing their community in different ways. Some community members expect a trustee to be very active, others do not. Because Ontario's communities are so diverse, the job of the school trustee varies widely. What all trustees have in common is serving the community as elected representatives while focusing on the primary task of acting as members of a board that makes policy decisions, oversees curriculum and program delivery, and fulfils its responsibilities as an employer.

[cont'd next page]

⁵ Guide, p. 43

Code of Conduct for Trustees⁶

... [A]ll school boards are required to have a publicly available code of conduct for trustees and review their code on a regular basis, generally after each municipal and school board election (O. Reg. 246/18).

A code of conduct is not intended to prevent individual trustees from expressing their opinions on issues under consideration by the board, nor is it intended to prevent the public from evaluating a board's decision-making procedures. If used effectively, the code of conduct can serve to encourage respect for divergent views and help boards focus their efforts on student achievement, equity and well-being.

...

... As a matter of good practice, boards may consider engaging accountability and transparency experts (e.g. integrity commissioners) when developing/revising their code of conduct. ...

Code of Conduct

Under the *Education Act*, a Board may adopt a Code of Conduct applicable to its Members.⁷ A Member who has reasonable grounds to believe that another Member has breached the Code of Conduct may bring the alleged breach to the Board's attention,⁸ and the Board shall inquire into the matter.⁹

The DDSB appointed Mr. Maynard as its Integrity Commissioner via a vote held January 18, 2021. Article 3.1(c) of Appendix 1 to the DDSB's *Code of Conduct* establishes the Integrity Commissioner as being responsible for reviewing and inquiring into *Code of Conduct* complaints, pursuant to the Complaints Protocol (Appendix 2), on the Board's behalf.

Trustee Lundquist and Trustee Forbes identified the following provisions of the *Code of Conduct* as responsibilities that Trustee Crawford potentially breached:

1.2 A Trustee position is an elected position which carries with it the understanding that the electorate will decide at election time its support for the effectiveness of a Trustee. At the same time, it is important to recognize the public

⁶ Guide, p. 44

⁷ S. 218.2

⁸ S. 218.3(1)

⁹ S. 218.3(2)

trust and responsibility the collective body carries and that this trust and responsibility is honoured through determining and enforcing norms of acceptable behaviour.

1.3 A code of conduct policy contributes to confidence in public education and respect for the integrity of Trustees in the community. It deals with acceptable and respectful behaviours.

1.4 Trustees will support the Vision and Values, and Strategic Priorities of the Durham District School Board.

6.1 Transparency, accountability, and public confidence are fundamental components for the effective governance of school boards as public bodies responsible to their communities and to the provincial government. The conduct of the members of the Board of Trustees must be of the highest standard to maintain the confidence of the public.

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

6.5 Trustees, as leaders of the Board, must uphold the dignity of the office and conduct themselves in a professional manner at all times, and especially when attending Board events, or while on Board property.

6.6 Trustees shall ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to any person, including Board staff or fellow Board members.

6.7 No Trustee shall engage in conduct during meetings of the Board or committees of the Board, and at all other times that would discredit or compromise the integrity of the Board.

6.8 A Trustee shall not advance allegations of misconduct and/or a breach of this Code of Conduct that are trivial, vexatious, made in bad faith or vindictive in nature against another Trustee of the Board.

6.9 Trustees shall serve and be seen to serve their school communities in a constructive, respectful, conscientious and diligent manner.

6.13 Trustees shall seek to serve the public interest by upholding both the letter and

the spirit of the laws of the Federal Parliament and Ontario Legislature, and the bylaws and policies adopted by the Board.

6.16 The following provincial and federal legislation also applies to Trustees:

- a) Criminal Code of Canada*
- b) Education Act*
- c) Municipal Conflict of Interest Act*
- d) Municipal Elections Act, 1996*
- e) Municipal Freedom of Information and Protection of Privacy Act*
- f) Occupational Health and Safety Act*
- g) Ombudsman Act*
- h) Ontario Human Rights Code*

The *Code of Conduct* also sets out permissible sanctions, consistent with s. 218.3(3) of the *Education Act*, if the Board (i.e., the Integrity Commissioner) determines that a Trustee has breached the *Code of Conduct*:

8.1 If the Board determines that the Trustee has breached the Board's Code of Conduct, the Board may impose one or more of the following sanctions:

- a) Censure of the Trustee.*
- b) Barring the Trustee from attending all or part of a meeting of the Board or a meeting of a committee of the Board.*
- c) Barring the member from sitting on one or more committees of the Board, for the period of time specified by the Board.*

8.2 The Board shall not impose a sanction which is more onerous than the above but may impose one that is less onerous such as a warning or a requirement that the Trustee successfully complete specified professional development courses at the expense of the Board. The Board has no power to declare the Trustee's seat vacant.

The DDSB's Draft Human Rights Policy and Consultations

The present complaints arose in the context that the Board undertook a community consultation in 2020-21 to draft a new Human Rights Policy. Trustees reviewed a Draft Policy at the October 25, 2021 Governance and Policy Committee meeting, and a special meeting of the committee was held on November 9, 2021 to review additional procedures related thereto.

The Board published slides outlining its framework for developing the Human

Rights Policy and Procedures, and Consultation Plan.¹⁰ It stated it has a legal duty to protect human rights for students and employees, as a service provider and employer. The Board felt its existing policies and procedures inadequately met legislative requirements, or supported safe, equitable, respectful and inclusive environments free from discrimination and harassment. The Board declared that the legislative framework for its new Policy would involve all of: the *Human Rights Code*; *Accessibility for Ontarians with Disabilities Act*; *Occupational Health and Safety Act*; *Anti-Racism Act*; *Education Act*; *United Nations Declaration on the Rights of Indigenous Peoples*; and the *Truth and Reconciliation Commission of Canada's Report and Calls to Action*.

The Board committed in its Framework to affirming the existence and impacts of historical and ongoing systemic discrimination – including colonialism, oppression, racism, ableism, sexism, homophobia, transphobia – and recognizing the need for respectful learning/working environments and anti-colonial, anti-oppressive, anti-racist, and anti-discriminatory approaches and actions to prevent and address discrimination. It proposed to incorporate intersectionality and anti-discrimination into all analyses. The new Policy would apply to all DDSB community members, including trustees and committee members.

The Board also released a vision statement respecting Equity & Inclusive Education:¹¹

The Durham District School Board's vision is that Ontario schools need to be places where everyone can succeed in a culture of high expectations. We strive to have an open and inclusive environment in education in all our schools and for all our students.

...

DDSB recognizes that protecting human rights is an important part of students' and employees' sense of safety, well-being, mattering and belonging, and to their learning and success. We are committed to providing services, employment and learning and working environments that are welcoming, respectful, safe, inclusive, equitable, accessible and free from discrimination, harassment, racism, oppression and harm.

¹⁰ <https://www.ddsb.ca/en/whats-happening/resources/Documents/Human-Rights/Policy-and-Consultation-Plan-Framework.pdf>

¹¹ <https://www.ddsb.ca/en/about-ddsb/equity-inclusive-education.aspx#HumanRightsDidYouKnow>

... As a service provider and an employer, the DDSB is committed to meeting its legal obligations under the Human Rights Code, including the duty to accommodate and to proactively identify, prevent and address potential discrimination and harassment.

This means that the DDSB will, among other things:

- *Reflect on, analyze and address systems of power and privilege, and discriminatory experiences and outcomes*
- *Identify, prevent and address discriminatory barriers, disadvantages, disparities, disproportionalities and harm*
- *Increase equitable experiences, access, opportunities and outcomes*
- *...*
- *Not treat anyone differently because of biases, assumptions or stereotypes associated with a Human Rights-Code related characteristic(s) or combination of characteristics (e.g., ancestry, race, disability, sex, gender identity, gender expression, sexual orientation, creed/religion, etc.) ...*

As at November 2021,¹² the Board's draft Human Rights, Anti-Discrimination and Anti-Racism Policy included the following provisions:

1.1 The Durham District School Board ("DDSB") adopts this policy to protect, uphold and promote human rights and to proactively prevent discrimination and discriminatory barriers in all DDSB service, employment and learning and working environments. ...

1.2 This policy refers to certain terms related to human rights and equity and, as such, a glossary of key terms is attached at Appendix "A".

...

1.6 Systemic discrimination and racism exist in the DDSB and stem from discriminatory and racist ideologies, systems, cultures and the structural dominance of white supremacy, sexism, ableism, heteronormativity, cishnormativity/cisgenderism, cissexism and faithism. In adopting this policy, the DDSB confirms its commitment to understanding and combatting:

- a) The impacts of historical and ongoing colonialism, systemic discrimination*

¹² <https://www.ddsb.ca/en/whats-happening/resources/Documents/Human-Rights/Human-Rights-Policy-DRAFT-Nov-2021.pdf>

and oppression, including but not limited to the legacies and ongoing intergenerational effects of residential schools, enslavement and discriminatory structures, policies and practices against people based on ancestry, race, disability, sex, sexual orientation, gender identity, gender expression, creed, age, other Human Rights Code prohibited grounds, combination of grounds and socioeconomic status; and

- b) The impacts of discriminatory ideologies including but not limited to white supremacy, racism, xenophobia, patriarchy, sexism, ableism, heteronormativity, homophobia, cisnormativity/cisgenderism, cissexism, biphobia, transphobia, faithism, ageism and classism which are pervasive, deeply entrenched and operate in society, institutions, structures, policies and standards, including in educational institutions and which result in, perpetuate and/or uphold inaccurate and negative information, biases, attitudes, stereotypes, stigmatization and its discriminatory structures and barriers for people based on Human Rights Code grounds, combination of grounds and socioeconomic status.*

1.7 The DDSB recognizes and acknowledges that the education system and the DDSB's learning and working environments are not neutral as they are based on colonialism, oppression, and systemic discrimination, and that this results in, upholds and sustains structures, policies, practices, standards, rules and decision making that have serious negative consequences ...

1.8 In light of the foregoing, the DDSB recognizes that if it does not actively and appropriately address discrimination in a timely manner in its learning and working environments, it is complicit in ongoing discrimination.

...

2.2 The DDSB is expressly adopting a proactive human rights, anti-discrimination, anti-oppression and anti-racism framework and approach to education and employment that will centre the work of the DDSB. ...

...

3.28 All Duty Bearers shall, within the scope of their role and authority, contribute to and support safe, welcoming, equitable, respectful, accessible and inclusive environments in the DDSB free from discrimination, oppression, harassment and harm.

Undue Hardship

3.34 *Undue hardship is the legal test which sets the parameters as to the extent an organization must accommodate Human Rights Code related needs to support a student's meaningful access to education or an employee's access to work. It is a very high standard.*

3.35 *In assessing whether it would cause undue hardship to accommodate a student or employee's Human Rights Code related needs, only three factors can be considered:*

- a) Costs;*
- b) Outside sources of funding; and*
- c) Health and safety requirements where health and safety risks cannot be adequately mitigated or reduced.*

3.36 *To amount to undue hardship, costs must be:*

- a) Quantifiable;*
- b) Shown to be related to the accommodation and not offset through outside sources of funding; and*
- c) So substantial that they would alter the essential nature of the organization, or so significant that it would substantially alter its viability.*

3.37 *Costs are considered from an organizational perspective rather than from a school or departmental perspective. Where possible, steps are to be taken to recover the costs of accommodation through grants, subsidies, other outside sources of funding and cost sharing options. A student or employee seeking accommodation is also expected to avail themselves of any available outside sources of funding to help cover expenses related to their own accommodation.*

The Draft Glossary of Terms included the following:

Anti-Black racism: *prejudice, attitudes, beliefs, stereotyping and discrimination that is directed at people of African descent and is rooted in their unique history and experience of enslavement and its legacy. Anti-Black racism is deeply entrenched in Canadian institutions, policies and practices.*

Anti-racism: *an active and consistent process of change to eliminate individual, institutional and systemic racism as well as the oppression and injustice racism causes. An anti-racism approach is a systematic method of analysis, and a proactive course of action rooted in the recognition of the existence of racism, including systemic racism. Anti-racism actively seeks to identify, remove, prevent, and*

mitigate racially inequitable outcomes and power imbalances between groups and change the structures that sustain inequities.

Race: *a social construct to categorize people based on geographic, historical, political, economic and social factors. This social construction of race is called “racialization” and the process also contains a value judgement or response to individuals or groups. In addition to physical characteristics such as colour, some characteristics that are commonly racialized include language, accent, name, clothing, beliefs and practices. Racial categories are not based on science or biology but on differences that society has created (i.e., “socially constructed”), with significant consequences for people’s lives. Racial categories may vary over time and place and can overlap with ethnic, cultural or religious groupings.*

Racism: *a belief that one group is superior or inferior to others. Racism can be openly displayed in racial “jokes”, slurs or hate crimes. It can also be more deeply rooted in attitudes, values and stereotypical beliefs, and are assumptions that have evolved over time and have become part of systems and institutions. Racism includes ideas or practices that establish, maintain or perpetuate the racial superiority or dominance of one group over another.*

White supremacy: *a racist ideology based on the belief that white identity is the norm, standard and ideal. “It does not refer to extreme hate groups or far right extremists. It is not about good and bad people. It is about the accumulation of social, cultural and institutional power that has and continues to advantage a group of people” (from Addressing Anti-Asian Racism: A Resource for Educator, TDSB and ETFO). It refers to the “pervasiveness, magnitude, and normalcy of white privilege, dominance, and assumed superiority in society” (from Is Everyone Really Equal? An Introduction to Key Concepts in Social Justice Education, Ozlem Sensoy, Robin DiAngelo).*

The Impugned Comments

Trustee Lundquist and Trustee Forbes took issue with comments Trustee Crawford made at a series of Governance Committee meetings. We reviewed the recordings of those meetings, and I transcribed their relevant portions.

On October 25, 2021,¹³ following a comment by then-Trustee Linda Stone respecting the proposed definition of “white supremacy”, Trustee Crawford

¹³ https://www.youtube.com/watch?v=oo-M_WW6wWM

stated:¹⁴

Yes. I've got a few comments, but first I'd like to build on that one because that was my main concern. I don't want to be critical of the document, because so much growth has gone into it, and I think everyone's doing a good thing by putting out as much as they have. But from this we need to step back and reduce the size of it, and also we need to look at it almost line by line. And that particular one there, 'white supremacy', it only means one thing. It's purely negative. It's insulting to white people, in fact it's insulting to anyone. If it's just there for the purpose of producing conversation, maybe I would say 'nice try, but don't do it'. If you had have spoken to a public relations person, they would have said 'Get that out of there. If you're trying to sell this and this is what you've actually been working on, then don't put that in there'. It only means one thing, it's insulting, it's almost a form of 'we want to stop racism, so let's reverse the racism on the white community'. So I feel very strongly about that, I would never support any document, no matter how good it is, with that wording in there.

On November 9, 2021,¹⁵ Trustee Crawford discussed the costs of accommodation requests and incorporating them into the budget:¹⁶

... I think I asked at one time about 'undue hardship' and what is it, but I see we have put a definition in there. Is this definition right from the Human Rights Code, or is this ours? Where it says costs, outside sources, health and safety requirements. ... 3.34, 'undue hardship'.

The DDSB's Human Rights and Equity Advisor confirmed that the definitions in the Undue Hardship section came from the *Ontario Human Rights Code*, and from the Human Rights Commission's policies outlining how to apply interpretations of the Code in an organizational context. Trustee Crawford asked:

So where costs are concerned, is this something where we would put the costs into our budgets and operate within it? Can it be that closely monitored?

The Human Rights and Equity Advisor replied that staff included some expected costs around accommodation as part of their budgeting recommendations in the previous meeting. Trustee Crawford replied:¹⁷

¹⁴ *Ibid*, 1:01:48

¹⁵ <https://www.youtube.com/watch?v=sevDzF3C4aY>

¹⁶ *Ibid*, 1:32:08

¹⁷ *Ibid*, 1:34:10

Well we'd still have to know where to draw the line. Especially if it's described ... that we're talking about an individual and we're assessing an individual, wouldn't we have to know how that's going to relate to the whole budget? ... when you start getting to the undue hardship, you have to relate that to the overall budget, I mean you wouldn't use up your entire budget on one individual.

The Superintendent of Education replied that undue hardship is really about meeting students' individual needs, and the AODA's foundation describes accommodation as a collaborative process.

At the January 24, 2022 meeting,¹⁸ Trustee Crawford stated:¹⁹

I was saying it's a great document, a lot of work's gone into it, I'd give it a 90 or a 92. But I mentioned this before, and maybe because I mentioned this got letters saying that some of us are bordering on racism. But anyway, it shows you how crazy people can act just when someone is trying to debate something. On this 'white supremacy' thing, I think we could do without it. Even in the definition, it says 'a racist ideology based on the belief that white identity is the norm, standard and ideal'. And then it says it 'does not refer to extreme hate groups or far-right extremists'. Well that's exactly the picture that comes to my mind and probably 90% of the other people when you mention this. And it goes against much of the document when we're talking about not centering out groups or saying things about groups that could put them in a bad light. So 'white supremacy' only means what you say it doesn't mean, or what someone has said it doesn't mean. It does not refer to hate groups or far-right extremists. It actually refers to extremists, not whether they're right or left. So we need to do something about that, and I think when the document is read in context we could even find statements that would disagree with what we're defining white supremacy as.

... That's the point I want to make tonight, that 'white supremacy' has to come out of there, either that or it has to be described in a different way. And I might even suggest what it would be. A term that should not be used as the insults a large group because of the abhorrent actions of a small minority group, such as the KKK. Thanks.

Trustee Crawford was given an opportunity to participate in an interview respecting these complaints. He eventually asked to participate in writing – through which he simply stated his remarks were during debates on rights, for

¹⁸ <https://www.youtube.com/watch?v=FHjOdnFU9bk>

¹⁹ *Ibid*, 1:53:37

which he received no complaints until the present complaints were submitted. He stated that these complaints were without merit, but withdrew his earlier characterization of them as “vexatious”. Trustee Crawford asserted that he was obliged and responsible to debate a policy placed before trustees, and he would be subject to complaints if he ignored his duty to manage resources properly. He further asserted that he would not participate in further investigations by the Office of the Integrity Commissioner, purportedly on the basis of sections 169.1 and 218.3 of the *Education Act* – which state:

Board responsibility for student achievement and effective stewardship of resources

169.1 (1) *Every board shall,*

(a) *promote student achievement and well-being;*

(b) *ensure effective stewardship of the board’s resources;*

Enforcement of code of conduct

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.*

Trustee Lundquist was provided with opportunities to contribute further to her complaint, but despite having expressed some interest in doing so, ultimately did not provide any further input.

I spoke with Trustee Forbes. She said that Trustee Crawford had expressed the view that the term ‘white supremacy’, as defined in the draft Glossary, was “reverse racism”, which she thought was a potentially hurtful thing to say in public session to many of their staff and students. She said the Board later heard concerns from their affinity networks, who gave a public presentation at a Standing Committee meeting, and people were watching, so it was hurtful to people in their district and potentially damaging to the board.

Trustee Forbes said the board of trustees have to move together, and she did not feel Trustee Crawford’s behaviour would stop unless she made her complaint, because so many of her concerns were expressed by other trustees and staff during the meeting. Trustee Forbes said these are public meetings about public education that is to serve all people in their system, regardless of personal opinions, and it is

not trustees' jobs to bring personal opinions into this – it is simply their job to make sure the Board is observing human rights legislation and protecting the rights of all people in their system, which she felt Trustee Crawford's comments did not bear out.

Trustee Forbes said individual trustees have no individual power – they move as a board and vote as a board, and only Chairs or Vice-Chairs can speak on behalf of the board. However, she said trustees have a fiduciary responsibility for governance of the board that goes beyond simply finances, and human rights legislation is part of that governance.

Trustee Forbes thought the definition of 'white supremacy' was capable of debate but felt that Trustee Crawford went beyond that – he was saying the term had to come out of the Policy entirely. Trustee Forbes said that even though she identifies as white, she understands that there is intersectionality and multiple oppressions that people face based on racialized identity, and many publicly-funded Canadian institutions have been based on white supremacy – by which she meant not just the Ku Klux Klan or lynching people, but that there is a system of oppression which might be a little more subtle. She said public education has to be universal and serve all staff members and students, and the Board cannot simply continue to be blind to the fact that there has fundamentally been oppression, or that it has not served people of colour in a non-biased way.

Trustee Forbes did not think that Trustee Crawford's comments were issues-based (i.e., per s. 6.6 of the *Code*); she thought his statement that the term 'white supremacy' was *reverse racism* was just perpetuating racism – the same system of oppression that the Human Rights Policy was intended to address. Trustee Forbes felt the discussion was about a Human Rights Policy, and grounding it in the laws of Ontario and the Human Rights Code, and trustees had to set their personal opinions aside in doing so. She said if Trustee Crawford had simply said the definitions deviated from the Human Rights Code, or if there were flaws in them relative to other pieces of legislation, then she would not have been offended, but racial discrimination is protected against under the Human Rights Code, and Trustee Crawford's comments were more personal opinion, which did not address anything in the validity of the Policy respecting the legislation to which it had to adhere.

Trustee Forbes thought there has been a long-standing practice at the Board of permissiveness and burying heads in the sand when trustees are saying really awful things, wherein trustees can say whatever they want, and nobody will bat an eye. Trustee Forbes said we live in a world of live-streaming, where there is much

greater potential now for people to hear and see what trustees are saying, so they need to do their jobs much more professionally in ways that really respect human rights and people's lived experiences.

Trustee Forbes added that early in the complaints process, Trustee Crawford essentially threatened her that if she did not retract her complaint, then he would launch a complaint against her, and he had also since sent an email to all other trustees describing why he would not participate in the Integrity Commissioner's process.

On point, Trustee Forbes forwarded me the email that Trustee Crawford sent her on February 8, 2022:

Returning your complaint so it may be filed with the Board as outlined in the Education Act. Use of an IC costs taxpayer dollars that could be used for students (that is one of our responsibilities). I was debating a new policy that was put in front of us to review. It is my job and my rights and my responsibility to deliberate and offer suggestions. IF while doing that I used words or tone that was insulting to you, or anyone else, I apologize. If we cannot resolve this amongst ourselves, we should use the Board as they are the final decision makers and no extra taxpayer dollars will be used on outside firms. If necessary I will file a counter complaint with the Board but don't want to. I will hold off a couple of days. Be well, I am sorry you are upset and for my responsibility in it. Paul

As Trustee Forbes noted, the DDSB's Affinity Networks collectively issued as joint statement at the March 7, 2022 Standing Committee respecting comments that Trustee Crawford and other trustees made:²⁰

This statement is presented on behalf of Affinity Networks of Durham, and in collaboration with community members who may be present this evening.

Dear Chairperson Morton and Board of Trustees,

Please accept this letter on behalf of Affinity Networks of Durham, pursuant to comments from the January 24, 2022 Governance Committee meeting, specific to the Human Rights Policy and Procedure. In response to this meeting, Affinity Networks would like it to be noted for the record that we and the communities that we serve have been deeply impacted by the implications of problematic statements

²⁰ March 7, 2022 Standing Committee beginning at 5:33, as presented by Shahana Arain (Co-Chair, MEND) <https://www.youtube.com/watch?v=k6l6ozTUzI>

made on January 24, and want to particularly focus on the experience of those identifying as 2SLGBTQI+, for whom these statements have resulted in further fear and re-traumatization.

Affinity Networks exist because inequities in our system need to be addressed. And while we work alongside the Durham District School Board, we are also here as advocates for our colleagues, our students, and the diverse communities we serve. With the goal of centering identity, and with respect to intersectionality, Affinity Networks are committed to eliminating barriers, empowering voice, and engaging in critical discourse. As Affinity Networks, when needed we are prepared to provide critical feedback to the Board in order to elicit necessary change. It is for this reason we want to be clear on our position as regards to freedom of speech and the language and culture of white supremacy. There should be no confusion between freedom of speech covering as racist and/or discriminatory ideology, nor should there be a backing away from clearly naming and defining white supremacy culture, and how it operates in its relationship to colonialism and power and privilege.

In an effort of good faith, with the intention of building relationships, and listening and learning, Affinity Networks would like to extend a formal invitation to our Trustees to join in a collaborative effort in which to unpack and further deconstruct the thematic notions presented at the January 24th Governance Committee meeting. Our goal is to move together in the work of Indigenous rights and human rights, and offer Trustees an opportunity to not only understand the full works of Affinity Networks, but also an entry point in exercising power and privilege in the best benefit of all those we serve in public education. We look forward to your response of our invitation, and we offer this letter on behalf of Affinity Networks as represented by KIEN,²¹ DBEN,²² Shalom Durham,²³ NINE,²⁴ Pride Network, MEND,²⁵ and DENSA²⁶.

Thank you.

Separately, Mr. Maynard requested and obtained a variety of information from the office of the DDSB's Director of Education, which we determined was relevant to this matter.

²¹ Keenanow Indigenous Employees Network

²² Durham Black Educators Network

²³ Jewish Educators Network of the DDSB

²⁴ Neurodivergent Infinity Network of Educators

²⁵ Muslim Educators Network of Durham

²⁶ Durham Educators Network of South Asians

The Director of Education sent all Trustees a formal letter on January 31, 2022, in response to the discussion at the January 24, 2022 Governance meeting:

Dear Trustees,

I am writing to respectfully express my reflections with the public discourse regarding the Draft Human Rights, Anti-Discrimination and Anti-Racism Policy. I have received several questions this week, and think it is best to respond to all Trustees. Specifically, to confirm the training, resources and presentations that have been made available to Trustees to facilitate a full appreciation of the human rights issues within the Durham District School Board (DDSB) and of Trustees' responsibilities in relation to discussing and addressing these issues. Additionally, I will address findings from the review of the York Region District School Board (YRDSB) which I believe is relevant, the purpose of the Glossary of Terms within the draft policy, and the potential risk there is to community confidence.

Training, Resources and Presentations

... Staff members, particularly from the Equity and Accountability and Assessment Departments, have worked tirelessly on human rights issues over the last number of years.

They have done this work in consultation with communities in support of the Board's Ignite Learning Strategic Plan that states the DDSB will privilege equity for both students and staff as a foundational core of our classrooms and workspaces.

...

The Province of Ontario has also mandated that school boards address equity. Ontario's Education Equity Action Plan, 2017, calls on districts to identify and eliminate discriminatory practices, systemic barriers and bias from schools and classrooms.

The key recent training, resources and presentations provided to Trustees to support this work include the following:

- 1. May 19, 2020: Presentation of the Ministry Review of Peel District School Board (PDSB):*
- 2. December 16, 2020/January 25, 2021: Part 1 – Intensive Human Rights for School Board Leaders Program, Osgoode Hall/York University;*
- 3. January 14, 2021: PD Session, Census data;*
- 4. February 16, 2021: Board Presentation: Census data;*

5. *April 1, 2021: Njeri Damali Sojourner-Campbell, PD session: School Board Policy Through the Lens of Human Rights;*
6. *January 10, 2022: Tina Lopes, Arlo Kempf, PD session: School Boards and Anti-Discrimination*

...

The Human Rights PD offered by Osgoode Hall in December 2020/January 2021 was a specialized module for Trustees organized by the Ministry of Education. Its goal was for Trustees to gain further knowledge of their responsibilities in supporting human rights. ...

...

The session with Njeri Damali Sojourner-Campbell in April 2021 took an in-depth look at the legal framework of the Human Rights Code within the educational context and impressed upon Trustees the need for public school boards in Ontario to engage in robust policy-making to address racism and oppression in working and learning environments.

Finally, the January 2022 session with Tina Lopes and Arlo Kempf, provided Trustees with an understanding of oppression, white supremacy and other key concepts captured in the Board's draft policy.

Review of YRDSB Case/Herbert Report

In addition to these resources being made available to Trustees, I wish to draw your attention to the findings of the Case/Herbert Report into complaints against the YRDSB.²⁷ It confirms the need for leadership to instill community confidence in the Board's commitment to equity.

Of note from the report:

Regarding the two very publicly reported incidents of racism and Islamophobia, the YRDSB community – and indeed those beyond that community – needed to see strong and ethical leadership. The Board failed to demonstrate that leadership. There was a complete absence among Board members of any appreciation of their obligation to take a strong and

²⁷ Review of the York Region District School Board (April 7, 2017)
http://www.edu.gov.on.ca/eng/new/2017/YRDSB_review_report_2017.pdf

unequivocal stand against racism and intolerance at the YRDSB. We feel compelled to denounce the Board's responses. In the instance of the now-resigned trustee using a racist term in reference to a parent, we asked Board members why a code of conduct complaint was not filed against that trustee. Although only one trustee was witness to the racist term being used, any of the Board members could have filed a complaint and by doing so have taken a principled stand as an elected leader of the school board. The responses we heard did not provide any assurances that the members appreciated the gravity of the incident or the community's need to see the board take a strong stance against racism. ... The Board similarly failed to exercise strong and ethical leadership in handling the Islamophobic Facebook postings by a school board principal. Again, rather than take an immediate and unequivocal stance against Islamophobia and intolerance as soon as the Board had knowledge of these postings, the Board appeared to have completely deferred to staff on this matter. ... [W]e were told that it was up to the director and the administration to take the necessary steps to respond. ... [N]ot one Board member acknowledged that the Board had a role to play in reassuring the community of their commitment to the school board's value statement of "demonstrating equity and inclusivity in all that we do." We heard from many community members that such a statement from the Board would have gone a long way in healing the deep divisions and loss of confidence that resulted from the Board's and the administration's bungled handling of this incident. While the Board's response, or lack thereof, is troubling, what is more disconcerting is the Board members' lack of appreciation of their responsibility to the community in such circumstances.

Governance Framework and the Glossary of Terms

There have been questions about changing definitions within the Glossary of Terms based on Trustees' preferences of how they would like certain terms to be defined. These definitions were not created by DDSB staff; they are from the Ontario Human Rights Commission, Anti-Racism Directorate, Ministry of Education documents and resources from other districts. These terms were not born of the policy and are provided to support understanding of their use within the policy.

While the Board may choose to remove their use from the policy, they have been welcomed by affinity groups and community members as an important step in naming the oppression experienced by marginalized staff and students. It is staff's opinion that they are important to have as part of the policy in terms of equity work and that common understanding of their meaning be part of that work.

Risks to the Board

We have seen the Ministry intervene in the affairs of school boards when matters of governance and equity intersect. ...

The PDSB report made it clear that directors of education do have a duty that human rights are respected both in board and operational business. Moreover, I would be remiss in my commitment to support you and your collective success if I did not identify risks to the Board. We have all worked extremely hard to improve the confidence of marginalized communities. In the last week, affinity groups, members of the senior team, and other staff are now expressing significant concerns as to the nature of the discourse at the Governance Committee which is creating a reputational risk. I share their concerns.

I therefore strongly urge the Board to be cognizant of its obligations to the community to demonstrate strong and ethical leadership on these issues, as highlighted in the Case/Herbert report. This is particularly important for those most impacted by systemic racism and discrimination within the District. It is these marginalized members of our community that the policy aims to protect and that are the most vulnerable to harm from public comments by members of the Board as well as Trustees' silence in response to those comments. [...]

The Director of Education also emailed all trustees on February 5, 2021:

I am writing in response to recent questions from a Trustee about our work on anti-racism at the DDSB. In this regard, I thought it important to share some of the key resources that our District has developed over the past several years. These documents have been created by board staff in conjunction with our community partners. ...

Many of the materials that I am sharing with you may be quite familiar to you as we have shared them over time. I am also including some of the work that is taking place at the provincial level, which I thought you might find of interest in framing the provincial landscape and direction. Included in this compilation is the Peel Report (which we did share with Trustees previously). The Peel Report specifically addressed concerns that the Peel Board of Education was not adequately addressing systemic racism. Within the report are a number of recommendations for the Board to implement.

We were also asked to provide in writing the definition of white supremacy. For your interest, I have included a policy document from the TDSB, a board which is

recognized for its leadership in equity work.²⁸ ... The working definition we have been using is from Nicole West-Burns: "White power and privilege is termed white supremacy. When we use the term White supremacy, we do not mean it in its lay usage to indicate extreme hate groups such as the Ku Klux Klan or the dozens of other like it. Rather, we use the term to capture the pervasiveness, magnitude, and normalcy of White privilege, dominance, and assumed superiority. When we use the White supremacy, we are not referring to extreme hate groups or "bad racists". We use the term to capture the all-encompassing dimensions of White privilege, dominance, and assumed superiority in mainstream society".

In response to a question from the Integrity Commissioner about the general process followed for determining definitions for the Human Rights Policy, the Director of Education identified that DDSB staff aligned as many terms as they could with the definitions found in publicly-posted documents from the Ontario Human Rights Commission (OHRC), Anti-Racism Directorate (ARD), and the Ministry of Education. She acknowledged that some language and understanding had shifted over time – for example, they could not find a definition of “white supremacy” in the OHRC’s publicly-posted policies, but the terms appeared in the OHRC’s and ARD’s websites in other documents. She added that the DDSB also looked at other Boards’ materials, and acknowledged that there did not appear to be a consistent provincial definition of “white supremacy”; but she stated that although different definitions are used, the underlying theme/concept was the same across all of the definitions.

We also reviewed information from the Ontario Human Rights Commission, and note that the Chief Commissioner, Patricia DeGuire, issued a letter to the provincial Minister of Education on November 1, 2021, advocating for increased accountability for school board trustees. She wrote as follows:²⁹

The Ontario Human Rights Commission (OHRC) welcomes the Ministry of Education’s consultation on strengthening accountability for school board trustees.

²⁸ The TDSB’s current definition of White supremacy is as follows:

“White supremacy: is a Racist ideology based upon the belief that white people are superior in many ways to people of other Races and therefore white people should be dominant over other Races. In academic usage, particularly in usage which draws on the critical Race theory, the term “white supremacy” can also refer to a political or socioeconomic system where white people enjoy a structural advantage (white Privilege) over other ethnic groups, both at a collective and an individual level. White Privilege is rooted in social-cultural systems of racial Oppression that Disproportionately advantage white people over other Racialized Groups and perpetuate white dominance as the cultural norm.”

<https://ppf.tdsb.on.ca/uploads/files/live/97/200.pdf>

²⁹ https://www.ohrc.on.ca/en/news_centre/ohrc-submission-ministry-education-consultation-strengthening-accountability-school-board-trustees

We are particularly interested in measures to ensure trustees are held accountable if they fail to fulfill their legal obligations under the Ontario Human Rights Code (Code).

The OHRC is concerned about reports of trustees engaging in discriminatory conduct including making homophobic, Islamophobic and racist comments. It is particularly troubling when such behaviour is exhibited by education leaders entrusted with the responsibility to ensure school systems uphold and champion human rights. The Supreme Court of Canada has recognized that school boards must foster an atmosphere of tolerance and respect and cannot rely on the personal views of some individuals to deny equal recognition for the human rights of other members of the community.

... The OHRC supports the Ministry of Education's intention to identify and require, through statutory regulation, minimum standards for trustee codes of conduct, including ensuring human rights are consistently upheld across all publicly funded school boards.

The minimum standards for codes of conduct should require school board trustees to respect, protect and promote human rights at the board and throughout the education system they govern. ... Boards and their trustees must take steps to prevent and respond appropriately to violations of the Code or they may be held "liable" and face monetary penalties or other orders from a tribunal or court.

...

... Stronger sanctions, such as removal from office where the law permits, may be necessary in the case of a very serious breach. The OHRC recommends that school boards have all of the authority necessary to remedy human rights violations.

Analysis

It is clear how members of the community could have felt hurt by Trustee Crawford's comments; however, this must be appropriately balanced against a trustee's ability to freely participate in good faith debate and decision-making, which is the heart of their role.

In different contexts, we have sometimes held that the right to free expression is paramount. For example, our office also investigates ethics complaints related to municipal councillors around Ontario, frequently respecting statements by local

politicians. With respect to politicians, we have often cited *Linton v. Kitras*,³⁰ a decision of the Township of Centre Wellington's Integrity Commissioner, for the following propositions:

68. ... *I wish to comment briefly on the role of municipal councillors.*

69. *Centre Wellington is a democracy. Council Members are elected to office. The democratic nature of the office means that Council Members have political and representational roles in addition to their legislative (law-making) role. ... The Municipal Act confirms that a role of the Council is "to represent the public".*

70. ... *As part of the political process, a Council Member is entitled to form views, to hold views, to express views and, once in office, to give effect to those views.*³¹ ...

...

76. ... *Trying to motivate people to support one's viewpoint (or trying to motivate people to oppose a contrary viewpoint) is part of the political process.*

...

78. *Other Integrity Commissioners have held that they have no jurisdiction over political speech as long as it complies with the Code. As former Brampton Integrity Commissioner Donald Cameron noted in 2012:*

*I cannot and will not be a referee of free speech in a political arena provided it stays within the bounds ... of the Code.*³²

79. *Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112.*³³

Freedom of expression is a fundamental right in Canada so the Code must be interpreted in a manner consistent with this fundamental right. ...

³⁰ *Linton v. Kitras*, 2020 ONMIC 1 (Township of Centre Wellington)

<https://www.canlii.org/en/on/onmic/doc/2020/2020onmic1/2020onmic1.html>

³¹ *Re Cadillac Development Corp. Ltd. And City of Toronto* (1973), 1 O.R. (2d) 20 at 43, cited with approval by *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170 at 1193-4

³² City of Brampton, Report No. BIC-030-192 (December 4, 2012)

³³ City of Brampton, Report No. BIC32-1112 (December 18, 2012)

...

... I find that the Integrity Commissioner has a very limited role in relation to the “freewheeling debate on matters of public interest ...

80. I agree with Integrity Commissioner Cameron’s and Delegate Pepper’s statements concerning the role of the Integrity Commissioner in relation to political speech and adopt them for purposes of this complaint.

81. ... I am reluctant to find that certain arguments (used to energize and mobilize the voters) are out of bounds.

...

87. In my view, utilizing the tools of political debate to respond to unfairness and inaccuracy in political debate is far more appropriate than having Integrity Commissioners police the truth and fairness of political speech: Re Maika, 2018 ONMIC 11, at para. 139.

In short, “political speech” by politicians enjoys a great deal of protection, even where the speech involved could generate significant discomfort or unease among the citizenry.

But there are significant differences between politicians and school board trustees. School board trustees are elected to their positions by the citizenry, through municipal elections, in the same way as municipal councillors – but that is where most of the significant similarities end. The Guide was explicit that “a school board trustee is a member of a board, not a member of parliament.”³⁴ A school board trustee’s governance role is not foundationally about “giving voice” to the opinions of themselves and others around them. Trustees have no individual authority. Rather, as the Guide intimated, their work vis-à-vis Board governance is to effectively help the local education system adapt and transform to changing needs and shifting challenges, not to argue for their own individual political viewpoints. To contrast, municipal councillors do not ‘report’ to anybody, and are subject to the rules of the *Municipal Act, 2001*; conversely, school board trustees are subordinate to the Ministry of Education and are subject to the rules of the *Education Act* (though we note that the *Municipal Conflict of Interest Act* applies to both). The frameworks are quite different, which leads to different norms for what constitutes appropriate behaviour while in office. It should suffice to say that

³⁴ Note 5, *supra*

Trustees are more limited than politicians in their “freedom” to speak. To the extent a Trustee’s speech might harm members of the local community – recognizing that measuring such is inherently difficult – it may run counter to their overarching obligation of advancing public education equitably and may accordingly be contrary to the *Code of Conduct*.

School board trustees must follow the *Ontario Human Rights Code*, as well as what could reasonably be inferred to be Ministry of Education directives. In short, we accept that there are certain views and understandings that school boards are expected to uphold and promote as matters of education policy and law.

The heart of these complaints concerned comments during discussions about a proposed definition of the term “white supremacy”. We note, as acknowledged by the Director of Education, that routine internet searches establish there is not one accepted definition of “white supremacy”, but rather multiple definitions – the majority of which use different wording than the DDSB draft policy. As such, we reject the notion that the term is incapable of any debate.

For example, Dictionary.com³⁵ defines “white supremacy” as:

The belief, theory, or doctrine that white people are inherently superior to people from all other racial and ethnic groups, especially Black people, and are therefore rightfully the dominant group in any society.

Britannica.com³⁶ describes the term as:

Beliefs and ideas purporting the natural superiority of the lighter-skinned, or “white”, human races over other racial groups. In contemporary usage, the term ‘white supremacist’ has been used to describe some groups espousing ultranationalist, racist, or fascist doctrines. White supremacist groups often have relied on violence to achieve their goals.

Merriam-Webster³⁷ defines the term as:

1. the belief that the white race is inherently superior to other races and that white people should have control over people of other races

³⁵ <https://www.dictionary.com/browse/white-supremacy>

³⁶ <https://www.britannica.com/topic/white-supremacy>

³⁷ <https://www.merriam-webster.com/dictionary/white%20supremacy>

2. *the social, economic, and political systems that collectively enable white people to maintain power over people of other races*

Wikipedia³⁸ (which, while crowd-sourced, is a good barometer of social culture) defines the term as:

The belief that white people are superior to those of other races and thus should dominate them. The belief favors the maintenance and defense of any power and privilege held by white people. White supremacy has roots in the now-discredited doctrine of scientific racism and was a key justification for European colonialism. ...

...

As a political ideology, it imposes and maintains cultural, social, political, historical, and/or institutional domination by white people and non-white supporters. This ideology has been put into effect through socioeconomic and legal structures such as the Atlantic slave trade, Jim Crow laws in the United States, the White Australia policies from the 1890s to the mid-1970s, and apartheid in South Africa.

...

In academic usage, particularly in critical race theory or intersectionality, "white supremacy" can also refer to a social system in which white people enjoy structural advantages (privilege) over other ethnic groups, on both a collective and individual level, despite formal legal equality.

This series of varying wordings leaves clear that the exact definition of "white supremacy" is open to deliberation – which is part of a trustee's role.

However, while the nuances of the precise wording are open to discussion, we reject the argument that "white supremacy" is not a generally-accepted notion academically, or that it is simply limited to explicit and extreme forms of racism – such as in older conceptions of white supremacy that solely focused on groups like the Ku Klux Klan. The notion of white supremacy has evolved over time, to an understanding that incorporates concepts more broadly based on systems of power, through which white people tend to enjoy structural advantages over other ethnic groups in spite of formal legal equality. We find it would have been academically dishonest for any trustee to assert that white supremacy was limited to older and more narrowly focused notions of the term – which is effectively what

³⁸ https://en.wikipedia.org/wiki/White_supremacy

Trustee Crawford did. Giving voice to such reductive thinking about this concept is surely capable of harming members of racialized communities, whose lived experiences include barriers erected by systemically racist beliefs and practices. We find that Trustee Crawford's comments were poorly conceived because he carelessly dismissed of the realities faced by many racialized people within the DDSB community.

For context, we note the following article by Robin DiAngelo – one of the authors quoted in the DDSB's proposed definition of "white supremacy". While there are literally hundreds of diverse opinion pieces on white supremacy on the web, we believe this article is directly relevant to the issues in this case, and well reflects the contemporary understanding of the term:

***No, I Won't Stop Saying "White Supremacy"*³⁹**

I am white. When I give talks on what it means to be white in a society deeply separate and unequal by race, I explain that white people who are born and raised in the U.S. grow up in a white supremacist culture. I include myself in this claim, as I enumerate all of the ways in which I was socialized to be complicit in racism. I am not talking about hate groups, of which I am obviously not a member. And no, I don't hate white people. I am addressing most of the audience to who I am speaking, white progressives like me.

If it surprises and unsettles my audience that I use this term to refer to us and not them, even after I have explained how I am using it, then they have not been listening. That recognition should trigger some sense of urgency that continuing education is needed.

...

... White supremacy is not simply the idea that whites are superior to people of colour (although it certainly is that), but a deeper premise that supports this idea – the definition of whites as the norm or standard for human, and people of color as an inherent deviation from that norm.

Thus, when race scholars use the term white supremacy, we do not use it the same way as mainstream culture does. ... Power is not dependent on numbers but on position. We use the term to refer to a socio-political economic system of

³⁹ "No, I Won't Stop Saying 'White Supremacy'", Robin DiAngelo, YES! Magazine, June 30, 2017 <https://www.yesmagazine.org/democracy/2017/06/30/no-i-wont-stop-saying-white-supremacy>

domination based on racial categories that benefit those defined and perceived as white. This system rests on the historical and current accumulation of structural power that privileges, centralizes, and elevates white people as a group. ...

...

These numbers are not a matter of “good people” versus “bad people”. They are a matter of power, control, and dominance by a racial group with a particular self-image, worldview, and set of interests in the position to disseminate that image and worldview and protect those interests across the entire society.

...

Take, for example, the Jackie Robinson story. Robinson is often celebrated as “the first African American to break the color line and play in major-league baseball”. While Robinson was certainly an amazing ballplayer, this story line depicts Robinson as racially special; a black man who broke that color line himself. ... Imagine if instead, the story went something like this: “Jackie Robinson, the first black man whites allowed to play major-league baseball”. This is a critical distinction because no matter how fantastic a player Robinson was, he simply could not play in the major leagues if whites – who control the institution – did not allow it. Were he to walk on the field before being granted permission by white owners and policymakers, the police would have removed him.

Narratives of racial exceptionality obscure the reality of ongoing institutional white control while reinforcing the ideologies of individualism and meritocracy. They also do whites a disservice by obscuring the white allies behind the scenes who worked hard and long to open the field to African American players. ...

...

Naming white supremacy changes the conversation because it shifts the problem to white people, where it belongs. It also points us in the direction of the life-long work that is uniquely ours; challenging our complicity with and investment in racism. Yes, this work includes all white people, even white progressives. None of us have missed being shaped by the white supremacy embedded in our culture. Current research in implicit bias demonstrates that all people have racial bias, that most of it is unconscious, and that it does manifest in our actions. Because white people control the institutions, our racial bias is embedded and infused across society and works to the advantage of all white people, regardless of intentions, awareness, or self-image. Our task is not to exempt ourselves from the impact of these

conditioning forces, but rather to continually seek to identify how these forces shape us and manifest in our specific lives, and interrupt those manifestations.

The term white supremacy seems to be especially resisted by those whites who marched in the 1960s Civil Rights movement. For those of you who did march, I understand that you may have strong negative associations with the term. So let me acknowledge that your involvement was critical. I and many others are grateful for your activism. ...

Having said that, we can now move on to the next point: marching in the 60s did not certify you as racism-free for the rest of your lives, with no re-certification necessary, ever.

...

If we take a closer look at the stories we tell about Jackie Robinson, ourselves, and our activism, we see that these stories mask white supremacy by rendering invisible whites, white advantage, and the racist policies and practices of the institutions we control. This is what we need to make visible, understand, and interrupt.

So, no, we won't stop using the term white supremacy.

It's not on those of us involved in the movement today to change our language for further white comfort. In fact, that is the height of white entitlement. Rather, it is on white people to break out of our comfort zones, realize that things have changed, and initiate our continuing education and skill-building. The internet is overflowing with excellent guides on how to do this. The inability (or refusal to do so) functions as a form of resistance to change and protection of a very limited and problematic world view. This resistance is not benign; it functions to hold the current racial order in place. No neutral stance exists. We need to move on and move forward, because we are calling it what it is: white supremacy.

We do not find Trustee Crawford's comments about the Undue Hardship provisions of the draft Policy on November 9, 2021 problematic. While his narrow focus on the financial costs of accommodations did not seem to acknowledge what DDSB staff were telling him, and could be seen by some as in bad taste, they were nonetheless focused on issues within Trustees' domain, and were within the bounds of acceptable inquiry and discussion.

However, we find that Trustee Crawford crossed the line of acceptable comments on two other occasions in Governance Committee meetings, by attempting to re-

write the notion of what constitutes “white supremacy” in his own terms, to the detriment those who are impacted by systemic racism – the recognition and elimination of which is a primary aim of the Board and its Human Rights Policy.

On October 25, 2021, he stated:

And that particular one there, ‘white supremacy’, it only means one thing. It’s purely negative. It’s insulting to white people, in fact it’s insulting to anyone. ... It only means one thing, it’s insulting, it’s almost a form of ‘we want to stop racism, so let’s reverse the racism on the white community’. So I feel very strongly about that, I would never support any document ... with that wording in there.

On January 24, 2022 he stated:

On this ‘white supremacy’ thing, I think we could do without it. Even in the definition, it says ‘a racist ideology based on the belief that white identity is the norm, standard and ideal’. And then it says it ‘does not refer to extreme hate groups or far-right extremists’. Well that’s exactly the picture that comes to my mind and probably 90% of the other people when you mention this. ... So ‘white supremacy’ only means what you say it doesn’t mean, or what someone has said it doesn’t mean. It does not refer to hate groups or far-right extremists. It actually refers to extremists, not whether they’re right or left. ...

... That’s the point I want to make tonight, that ‘white supremacy’ has to come out of there, either that or it has to be described in a different way. And I might even suggest what it would be. A term that should not be used as the insults a large group because of the abhorrent actions of a small minority group, such as the KKK.

The Director of Education stated during the October 25, 2021 meeting that trustees needed to discuss the definition and determine how they felt about it, and further stated in her January 31, 2022 letter that the Board was free to remove the term from the Policy, but she noted that community members welcomed the term as an important step in naming the oppression some experienced, and staff also felt it was important to include to the policy as part of equity work. Neither the Ontario Human Rights Commission nor the Ontario Human Rights Code have explicitly defined the term “white supremacy”. As per the Director of Education’s comments (as previously noted herein), it could have been a legitimate course of action for Trustee Crawford to have debated whether it was appropriate or necessary to include the term “white supremacy” in the DDSB’s Human Rights Policy, or even to question the specific definition being proposed – as we have noted, the wording of the term is open to being debated. However, we find that

Trustee Crawford went significantly further than this, describing the term as *reverse racism*, and then attempting to reduce the meaning of the term into something that simply no longer reflects the contemporary concepts the term imputes. This fell short of the DDSB's goals vis-à-vis achieving greater equity for all members of its community. Considering the term's historical evolution, which is well documented and easily reviewable, we understand how members of the community could have felt harmed by such statements from someone within Board leadership.

The DDSB's Affinity Groups' joint submission on March 7, 2022 was compelling evidence. It is difficult to measure 'harm' from a Trustee's speech, as it necessarily imports significant subjectivity. What one individual perceives as offensive can often be seen by somebody else as commendable, and there is no universal understanding of 'harm' that everybody would agree with. Nonetheless, it was notable that seven of the DDSB's Affinity Groups joined together to collectively issue a joint statement expressing hurt and alarm at statements trustees made at the Governance meetings (and we acknowledge Trustee Crawford was not the only contributor to this sentiment). The Affinity Groups condemned 'freedom of speech' covering as racist and/or discriminatory ideology, and backing away from clearly naming and defining white supremacy culture. We accept that the Affinity Groups represent large portions of the DDSB community, and their words are strong evidence that Trustee Crawford's words created objective harm.

In creating this harm, Trustee Crawford breached sections 1.4 and 6.9 of the *Code of Conduct*:

1.4 Trustees will support the Vision and Values, and Strategic Priorities of the Durham District School Board.

6.9 Trustees shall serve and be seen to serve their school communities in a constructive, respectful, conscientious and diligent manner.

Trustee Crawford's comments failed to support the DDSB's Vision, Values, and Strategic Priorities, which include – per its statement on Equity and Inclusive Education – analyzing and addressing systems of power and privilege, and discriminatory experiences and outcomes; identifying and addressing discriminatory disparities and harm; and increasing equitable opportunities and outcomes. Trustee Crawford, through his comments, also failed to serve (and be seen as serving) his school community constructively and respectfully. His comment that the proposed definition of “white supremacy” constituted reverse racism was flippant and disrespectful to many members of the DDSB community.

His comment that the draft definition only meant what its drafters said it did not mean was neither constructive nor based on due diligence.

In some other contexts, we have identified that Preamble sections to a Code of Conduct do not create stand-alone obligations, as they tend to state general principles and philosophies, as opposed to mandatory commitments. Sections 1.2 and 1.3 of the *Code of Conduct* are good examples of such provisions – speaking, for example, to the importance of recognizing the public trust and responsibility the Board carries, which is honoured through enforcing norms of acceptable behaviour. Broad statements like that are not capable of being breached in their own right and exist to help guide the overall interpretation of the *Code of Conduct*. But section 1.4 of the *Code of Conduct* is not akin to a Preamble section – it explicitly sets out a requirement that “Trustees will support the Vision and Values, and Strategic Priorities of the Durham District School Board” [emphasis added]. The wording of section 1.4 cannot be read as anything other than a direct and binding obligation – i.e., that all Trustees are mandated to support the DDSB’s Vision and Values, and Strategic Priorities. Trustee Crawford’s comments fell short of this obligation in this case, as the Vision and Values include the aforementioned statement on Equity and Inclusive Education. In short, they are among the DDSB’s highest goals and ideals, and are not optional for any of its Trustees.

Trustee Crawford then exacerbated his statements by failing to engage this complaints process constructively or respectfully. The Integrity Commissioner has been duly appointed by the DDSB to oversee investigations and education respecting the *Code of Conduct*. In this sense the Integrity Commissioner is “the Board”, by way of a limited delegation in the terms of his appointment (as understood in section 218.3 of the *Education Act*), until the point that the Integrity Commissioner reports to the Board with findings and recommendations, upon which the Board makes the final determination. Trustee Crawford provided very limited responses to our inquiries, and, worse, threatened the Complainants with reprisals for having initiated the complaints. Reprisals and obstruction are explicitly prohibited under the *Code of Conduct*, and complying with requests by the Integrity Commissioner is also required thereunder. Sections 6.53 and 6.54 can both lead to stand-alone violations of the *Code of Conduct* – which we reiterate state:

Reprisals and Obstruction

6.53 Trustees should respect the integrity of this Code of Conduct and are obliged to cooperate with inquiries conducted in accordance with the Complaints Protocol and any other procedures set by the Board for addressing complaints of a breach of this Code of Conduct. Any reprisal or threat of reprisal against a complainant or

anyone else for providing relevant information to the Integrity Commissioner is prohibited. It is a violation of this Code of Conduct to obstruct the Integrity Commissioner in the carrying out of her or his responsibilities, for example, by destroying documents or erasing electronic communications.

6.54 Trustees of the Board have a duty to respond to and comply with all requests of the Integrity Commissioner and failure to do so is a violation of this Code of Conduct.

We find that Trustee Crawford breached section 6.53 by his threats and generally inappropriate conduct towards the Complainants shortly after they filed their requests for investigation. We acknowledge that this case was among our office's first investigations for the Board, and Trustee Crawford was warned against his actions by Mr. Maynard's letter of February 9, 2022 – following which Trustee Crawford thereafter complied with Mr. Maynard's directive to cease and desist any direct communications with the Complainants about these matters. This may have prevented further breaches from taking place; but the original communications themselves were clear breaches of section 6.53.

We note that sections 6.53 and 6.54 of the *Code of Conduct* are procedural obligations incumbent upon all Trustees, as opposed to substantive ones. Accordingly, it is unnecessary to receive formal complaints about such matters, as in many cases (and particularly respecting section 6.54) complainants may not even be aware of a respondent's inappropriate procedural behaviour. But there is no question that the complainants in this case were both disturbed by Trustee Crawford's responses to their complaints. Trustee Forbes specifically told both myself and Mr. Maynard as much, and Trustee Lundquist sent Mr. Maynard correspondence that suggested she took issue with it. There is simply no place for such threats of reprisals in the context of a *Code of Conduct* investigation, and no prior warning was necessary for this conduct to have been improper.

Finally, we note that the Complainants advanced several other *Code* sections in their Complaints; ultimately, we found sections 1.4 and 6.9 to be the most directly relevant to the matters at issue and restricted our Report to dealing with those sections (along with s. 6.53, for the above-noted reasons).

Decision and Publication

Trustee Crawford breached sections 1.4, 6.9, and then 6.53 of the *Code of Conduct*, first through his comments at the October 25, 2021 and January 24, 2022 Governance meetings, and then through his threats of reprisal towards both

Complainants shortly after they filed their complaints.

Consistent with s. 218.3(3) of the *Education Act*, section 8.1 of the DDSB's *Code of Conduct* allows a limited range of permissible sanctions if the Integrity Commissioner determines that a Trustee has breached the *Code of Conduct*, per below.

8.1 If the Board determines that the Trustee has breached the Board's Code of Conduct, the Board may impose one or more of the following sanctions:

- a) Censure of the Trustee.*
- b) Barring the Trustee from attending all or part of a meeting of the Board or a meeting of a committee of the Board.*
- c) Barring the member from sitting on one or more committees of the Board, for the period of time specified by the Board.*

8.2 The Board shall not impose a sanction which is more onerous than the above but may impose one that is less onerous such as a warning or a requirement that the Trustee successfully complete specified professional development courses at the expense of the Board. The Board has no power to declare the Trustee's seat vacant.

We recommend that the Board censure Trustee Crawford for his comments and subsequent threats of reprisal. The Board can additionally choose to bar Trustee Crawford from sitting at all part of a meeting, or on one or more of its committees for a time period of its choosing, although we are not recommending such sanctions in this Report.

Respectfully submitted by,



Benjamin Drory, Investigator

7.0 Endorsement and Issuance of Report

I, Michael L. Maynard, Integrity Commissioner for the Durham District School Board, have reviewed the evidence, process, and results of Mr. Drory's Investigation. I agree with and endorse this Report, which we have jointly prepared, in respect of Complaints IC-16397-0122 and IC-16517-0222, and hereby

issue it to the Complainants, Respondent, and the Durham District School Board in conclusion of this matter.

A handwritten signature in black ink, appearing to read 'm. Maynard', with a long, sweeping horizontal stroke extending to the right.

Michael L. Maynard
Integrity Commissioner, Durham District School Board