



## DURHAM DISTRICT SCHOOL BOARD

### SPECIAL BOARD MEETING

Monday, February 6, 2023

7:45 p.m.

PAGE

1. Call to Order

2. Land 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. Recommended Actions

- (a) Integrity Commissioner Report  
(External Legal Counsel Dolores Barbini, Chair Donna Edwards)

7. Adjournment

1-54



**ADR**  
C H A M B E R S

Integrity Commissioner Office  
for Durham District School Board

**BENJAMIN DRORY**

Senior Investigator

ADR Chambers

Office of the Integrity Commissioner

E-mail: [bdrory@adr.ca](mailto:bdrory@adr.ca)

January 23, 2023

SENT BY EMAIL TO:

**Niki Lundquist**

**Scott Templeton**

**Darlene Forbes**

**Alicia McAuley**

**Trustee Linda Stone**

**cc:**

**Trustee Donna Edwards, Chair, Durham District School Board**

**Dolores M. Barbini, Counsel**

**Re: Investigation Report – IC-16396-0122, IC-16461-0222, IC-16516-0222, and  
IC-17823-0522**

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### **Case History and Context**

Our office conducted an investigation between February to June 2022, respecting conduct by Mr. Paul Crawford, then a Trustee of the Durham District School Board (the “Board”, or alternately “DDSB”), based on independent applications brought by then-Trustee Niki Lundquist (January 26, 2022), then-Trustee Scott Templeton (February 2, 2022), and then-Trustee Darlene Forbes (February 4, 2022). I was the lead Investigator in that matter. Our office issued a Report in that matter dated June 6, 2022 (the “Crawford Report”).<sup>1</sup> The Crawford Report, which the Board considered on June 27, 2022, found that Mr. Crawford contravened the *DDSB School Board Member (Trustee) Code of Conduct* (the “Code of

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<sup>1</sup> <https://calendar.ddsbc.ca/meetings/Detail/2022-06-27-0900-Special-Board-Meeting/9ee915ab-0560-4787-bd64-aebd0103082c>

*Conduct*”).

The Crawford Report was the first report our office published respecting a DDSB matter. The Board’s Integrity Commissioner, Michael L. Maynard, and I set out a number of principles therein that I believe appropriately apply to any potential matter our office might consider. Among them:

- “Political speech” by elected municipal politicians enjoys significant protection, even where it could generate material discomfort or unease among the citizenry; but there are significant legislative differences between municipal councillors and school board trustees. Unlike politicians, a Trustee’s governance role is not foundationally about “giving voice” to the opinions of themselves or others, or to argue for their personal political viewpoints – rather, it is to help the local education system adapt and transform effectively to changing needs and shifting challenges.
- Trustees are simply more limited than councillors in their “freedom” to speak. To the extent a Trustee’s speech might harm members of the local community, it may run counter to their overarching obligation of advancing public education equitably, and can be contrary to the *Code of Conduct*.
- Section 1.4 of the Board’s *Code of Conduct* that was then in force set out an explicit requirement that “Trustees will support the Vision and Values, and Strategic Priorities of the Durham District School Board.” Section 1.4 was not akin to a ‘Preamble’ section, and could not be read as anything other than a direct and binding obligation. The Board’s Vision and Values, and Strategic Priorities, were not optional for any of its Trustees.
- Consistent with s. 218.3(3) of the *Education Act*, section 8.1 of the Board’s then-*Code of Conduct* allowed only a limited range of permissible sanctions if the Board determined that a Trustee had breached the *Code of Conduct*

During the same timeframe as the Crawford investigation, I was also investigating allegations arising out of similar circumstances against Trustee Linda Stone – each of the complainants in the Crawford matter (then-Trustees Ms. Lundquist, Mr. Templeton, and Ms. Forbes) also initiated complaints against Trustee Stone on the same dates they initiated complaints against then-Trustee Crawford – i.e., January 26, February 2, and February 4, 2022, respectively. Ms. Alicia McAuley, a member of the public, also formally filed a complaint against Trustee Stone on May 12,

2022, which was merged with the other complaints, as it partly related to the same incidents. None of the four complainants were informed by our office about the existence of each other's complaints. In both the Stone matter and the Crawford matter, merging multiple complaints about fundamentally similar allegations promoted conserving the Board's economic resources, by avoiding duplication.

Trustee Stone resigned from her office as a trustee of the Board on May 16, 2022. Shortly after that time, our office consented to a request from the Board that the investigation into Trustee Stone's conduct be stopped. However, Trustee Stone was subsequently re-elected to office as a Trustee of the Board by the municipal election of October 24, 2022. The election saw a significant change in the composition of the Board's Trustees, with at least 7 of its 11 seats now filled by new Trustees.<sup>2</sup> In December 2022, the Board asked our office to re-open the investigation into Trustee Stone that was previously stopped. On December 19, 2022, Mr. Maynard delegated full authority to me to complete the investigation into these matters, from the stage it had been stopped in mid-May 2022.

The *Code of Conduct* was amended on May 5, 2022. A new *Code of Conduct* (the "New Code")<sup>3</sup> applies to Trustee's conduct since that date. Previously, an older version of the *Code of Conduct* (the "Old Code")<sup>4</sup> applied to Trustees' conduct up until May 4, 2022. All of the conduct in the Crawford matter was subject to the Old Code. This case also predominantly concerns the Old Code, with the exception of alleged conduct between May 5-16, 2022 that was subject to the New Code.

What follows is my report respecting the complaints brought by Ms. Lundquist, Mr. Templeton, Ms. Forbes, and Ms. McAuley against Trustee Stone under the Board's *Code of Conduct*, pertaining to conduct by Trustee Stone prior to her resignation from the Board on May 16, 2022. Trustee Stone was not subject to the *Code of Conduct* after that time, until she became subject to it again upon her re-election on October 24, 2022. Section 1.4 of the New Code speaks to the *Code of Conduct's* applicability:

*1.4 This Code of Conduct applies to all members of the Board of Trustees. It applies to members of the Board of Trustees from the date the Declaration is filed under*

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<sup>2</sup> "Durham's school board trustee results: Who is new, who got re-elected?", DurhamRegion.com (October 24, 2022) <https://www.durhamregion.com/news-story/10748073-durham-s-school-board-trustee-results-who-is-new-who-got-re-elected/>

<sup>3</sup> <https://www.ddsb.ca/en/about-ddsb/resources/Documents/IntegrityCommissioner/Board-Member-Trustee-Code-of-Conduct-Appendix-A-0-0-2.pdf>

<sup>4</sup> <https://www.ddsb.ca/en/about-ddsb/resources/Documents/IntegrityCommissioner/By-Law-12-Code-of-Conduct-with-Appendices.pdf>

*section 209(1) of the Education Act and only while they hold the office. Conduct of a Trustee outside of this timeframe is not subject to sanction under this Code of Conduct.*

During this investigation, I reviewed the formal complaints, the Old Code and the New Code, the *Education Act*, recordings of relevant meetings, written materials that were considered during those meetings, evidence provided by the parties (including 'tweets'), and relevant material from the education governance sector and other social writings. Parts of this Report reiterate information from the Crawford Report, as some interpretive principles and public information applied centrally to both. However, in other ways the conduct complained about in the two cases were materially different. In short, I believe Trustee Stone's conduct was both more inappropriate and more persistent than then-Trustee Crawford's.

## **The Parties' Positions**

### ***Complaints***

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

*... Over the past several months, Trustee Stone has improperly used the platform of Trustee to espouse her own personal and political views. She has undermined confidence in the Board, has caused questions to be raised about the Board's commitment to integrity and its obligation to uphold well-settled human rights principles.*

*During the course of the governance meeting of Monday [January] 24, 2022 ... and amidst the discussion of the proposed Human Rights Policy, Trustee Stone offered her personal views of "free speech", provided commentary on the issue of "free speech" in other boards and used events in other boards as examples to reinforce her assertion that somehow she is being silenced. That commentary can be found at the 2 hour 21 minute mark in the meeting. I would suggest it is appropriate to listen to the entirety of the meeting.*

*Trustee Stone went on, in what I can only describe as an inappropriate diatribe, about her personal viewpoints and further detailed her perception that she is being "cancelled". She did not specify who is cancelling her or how. At no time did she connect these views to the actual policy being discussed. Trustee Stone did not appear to appreciate that those views are contrary to long-standing and well recognized human rights principles. Further, Trustee Stone continue to speak over another Trustee (Forbes) who attempted to raise concerns about the inappropriate*

*direction of the conversation.*

*This is not the first incident where Trustee Stone has failed to appreciate her obligations to uphold human rights as part of a Board of Trustees, under the Education Act, the Code of Conduct and general rule of law. She has made commentary about gender, transgenderism, suggested that schools are 'encouraging' gender dysphoria and denied the scope of white supremacy and systemic racism. Her denial of those ideas and ideals are not about free speech in her private life, but are about her obligations as a Trustee on a Board of Governance. Her comments cause harm to members of the DDSB community and raise broad questions about understanding of basic, but important concepts of equity, equality, human dignity and inclusion. All of which 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.*

*Those comments have been made in public meetings that have also recorded. Particularly instructive are the comments made in the October 25<sup>th</sup> and November 9<sup>th</sup> governance meetings. As just one example:*

*"So, the term is white-supremacy and I'm concerned about it. Because I'm worried about our staff, our students, our parents and how this term will be taken. This term separates whites from anyone else. This term is derogatory even though it is explained that it is not derogatory..."*

*"I'd like it removed from all of the wording in the policy."*

*Comments of a similar nature have been made in other meetings that may or may not be recorded because of the in-camera nature of those meetings.*

*In my view the Integrity Commissioner should determine if there has been a breach of s. 1.2, 1.3, 1.4, 6.1, 6.13, 6.16 and any other provision of the Code that may be relevant in respect of the Trustee's commentary and conduct.*

Then-Trustee Templeton complained on February 2, 2022:

*I [was] among the Whitby School Board Trustee's that attended the Jan 24 2022 meeting where the event took place.*

*When we are allow a Durham District School Board with obvious different views of what is racism and what is free speech it sends the wrong message to the*

community.

*The Human Rights policy is about inclusion of all, but when the Chair of the Governance committee reads a prepared statement that promotes her personal belief that promotes divide we should all take that as a sign of ignorance.*

*I ran for chair of the governance committee because throughout her term as trustee she as exhibited signs of trying to share ideologies instead of dealing with issues in the documents.*

*The situation I am referring to occurs at the end of the governance meeting with roughly 7 minutes left.*

Then-Trustee Forbes complained on February 4, 2022:

*I am complaining about the conduct of Trustee Linda Stone during the Durham District School Board's Governance and Policy meetings on the dates of October 25, 2021 (see meeting including 53:58, 59:25 and 1:27:39), November 9, 2021 (see meeting including 1:16:07, 1:22:39, 1:41:18), January 24, 2022 (see meeting including 2:21:23-2:27:00), and January 31, 2022 at 4:52.*

*At these meetings: Trustee Linda Stone espoused racist and transphobic points of view which are damaging to the reputation of the DDSB, run counter to the equity and diversity initiatives of the DDSB, and were potentially harmful to the students and staff of the DDSB.*

Ms. Alicia McAuley, a Whitby resident, complained about Trustee Stone on May 12, 2022, stating she believed Trustee Stone had contravened sections 1.4, 6.3, 6.9, 6.13, 6.16(h), 6.49, and 6.51 of the *Code of Conduct*. She wrote:<sup>5</sup>

1. Trustee Stone retweeted a posted dated April 19, 2022 from her account (@1Trustee Stone)<sup>6</sup> ([https://twitter.com/ MikeRamsay/status/1516342163185012741](https://twitter.com/MikeRamsay/status/1516342163185012741)) that takes a negative view of anti-racism work in schools, citing concerns about "critical race theory" and its impact on "free speech". Amplifying such sentiment contradicts the DDSB's stated commitment to addressing anti-Black racism in schools and creating

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<sup>5</sup> Trustee Stone's original posts from this time period were subsequently deleted, and are now unavailable. However, in the case of 'retweets', the original posts retweeted can still be viewed through the links.

<sup>6</sup> This account no longer exists, but was formerly located at: <https://twitter.com/1TrusteeStone> (See also Exhibit 1)

*safe, equitable and inclusive spaces that are free from discrimination.*

2. *At the Governance and Policy Committee Meeting on November 9, 2021 (1:15:54 onwards), Trustee Stone made several problematic remarks about gender identity and transgender rights, including that students should be encouraged to “seek counselling to find out whether or not something else may be interfering with what the child is actually go through and they may not be trans, but that’s what they think is happening” and repeatedly made comments about “biological males” that were anti-trans in nature and sentiment, and therefore contradict the DDSB’s stated values of upholding and supporting the human rights of trans people, and maintaining an environment where trans students feel safe, supported and respected.*

3. *Trustee Stone tweeted in support of anti-trans activism on April 18, 2022 (<https://twitter.com/1TrusteeStone/status/1516107715977830403>), which is a direct contradiction of the DDSB’s stated values and policies regarding gender identity and human rights.*

4. *Trustee Stone retweeted a post dated May 2, 2022 (<https://twitter.com/coachblade/status/1521141518471360512>) that purposely misgenders trans athletes and perpetuates dangerous falsehoods against transgender women, which not only contradicts the DDSB’s stated values and policies, but also violates the Ontario Human Rights Code policy on preventing discrimination based on gender identity and gender expression.*

5. *Trustee Stone retweeted a post dated May 4, 2022 (<https://twitter.com/maryricehasson/status/1521701456537128960>) that used anti-trans language and amplified messaging of an anti-trans activist group whose mission is “to raise awareness and support efforts to stop the unethical treatment of children under the duplicitous banner of gender identity”, which perpetuates harmful narratives around transgender people/trans identity and directly conflicts with the DDSB’s policies around gender identity and human rights. (see original post in Exhibit 2)*

6. *Trustee Stone retweeted a post dated May 5, 2022 (<https://twitter.com/EllementRogue/status/1522402610040512518>) that used anti-trans/non-inclusive language regarding the term “chest feeding”. This contradicts the DDSB’s stated commitment to educating staff and students about inclusive language.*

7. *On May 11, Trustee Stone posted a tweet to her account*

<https://twitter.com/1TrusteeStone/status/1524477473378942976?cxt=HHwWgICyzeuLhKggAAAA>) that read “How many different pronouns must a teacher memorize. If 23 students all have different pronouns and the teacher gets one wrong, would that be grounds for a complaint?” This directly contradicts the DDSB’s stated commitment to educating staff and students about inclusive language, and values of diversity and inclusion in DDSB schools. (See Exhibit 2)

8. On May 11, Trustee Stone posted a tweet to her account (<https://twitter.com/1TrusteeStone/status/1524478341767696390?cxt=HHwWjMC4zbG-hKggAAAA>) that read “Should parents be told if their child is transitioning in school? Schools do not have to tell you if your child requests that you not be told. Children have rights.” The confidentiality of the student is written into the DDSB’s human rights policy, and was explained to Trustee Stone at the Governance and Policy Meeting on November 9, 2021 (from 1:15:50). Upholding the rights of children and students is the mandate of the Board and therefore the responsibility of the Trustee as well, which is not reflected in this tweet.

Ms. McAuley also identified in December 2022 that she found the following May 14, 2022 tweets and retweets from Trustee Stone’s account problematic, for which she provided screen captures:

*Should biological men complete in women’s sports?* (5:26 pm; see Exhibit 3)

*Can trans men become priests?* (6:17 pm; see Exhibit 4)

*How many different pronouns are there? And could they be changed daily? That might make it even more difficult for teachers.* (9:02 pm; see Exhibit 5)

Trustee Stone was provided opportunities in both spring 2022 and December 2022 to provide written replies to the parties’ complaints, but opted not to do so. She did, however, agree to be interviewed in spring 2022.

## **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 (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”).<sup>7</sup> The Guide described a school board trustee’s role in the following ways:

### Introduction<sup>8</sup>

*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.*

### Governance<sup>9</sup>

*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 Trustees<sup>10</sup>

*A school board is responsible for governing the school system in the best interests of all students in its jurisdiction and on behalf of the communities it serves. The*

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<sup>7</sup> <https://www.ocsta.on.ca/ocsta/wp-content/uploads/2019/01/OESC-Good-Governance-Guide-Fizzz-Design-as-of-Nov-12.pdf>

<sup>8</sup> Guide, p. 9

<sup>9</sup> Guide, p. 27

<sup>10</sup> Guide, p. 33

*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 Trustees<sup>11</sup>

*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.*

### Code of Conduct for Trustees<sup>12</sup>

*... [A]ll school boards are required to have a publicly available code of conduct for*

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<sup>11</sup> Guide, p. 43

<sup>12</sup> Guide, p. 44

*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 school board may adopt a code of conduct applicable to its members.<sup>13</sup> A member of a school board 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,<sup>14</sup> and the board shall inquire into the matter.<sup>15</sup>

The Board appointed Mr. Maynard as its Integrity Commissioner via a vote held on January 18, 2021. Article 3.1(c) of Appendix 1 to the Old Code made the Integrity Commissioner responsible for reviewing and making inquiries respecting *Code of Conduct* complaints, pursuant to the Complaint Protocol. Members of the public could also raise complaints against trustees, pursuant to Article 6 of Appendix 2 to the Old Code.

Between the four Complainants, they identified the following provisions of the Old Code as relevant:

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

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<sup>13</sup> S. 218.2

<sup>14</sup> S. 218.3(1)

<sup>15</sup> S. 218.3(2)

*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*

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

6.51 *Trustees are required to observe the terms of all policies and procedures established by the Board that apply to members of the Board.*

In accordance with s. 218.3(3) of the *Education Act*, the Old Code set out permissible sanctions if the Board (i.e., the Integrity Commissioner upon his appointment) determined 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***

These complaints arose out of the context that the Board undertook a community

consultation during 2020 and 2021 to draft a new human rights policy. Trustees reviewed a draft policy at the October 25, 2021 meeting of the Governance and Policy Committee, and that Committee then held a Special Meeting on November 9, 2021 to review additional procedures for the new human rights policy.

The Board published a “Framework for the Development of a Human Rights Policy and Procedures and Consultation Plan” in November 2020.<sup>16</sup> It stated therein that it has a legal duty to protect human rights for students and employees, as a service provider and employer, and it felt its existing policies and procedures inadequately met legislative requirements or supported safe, equitable, respectful, and inclusive environments free from discrimination and harassment. 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 affirm the existence and impacts of historical and ongoing systemic discrimination – including colonialism, oppression, racism, ableism, sexism, homophobia, transphobia – and recognize 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 human rights policy was to apply to all DDSB community members, including trustees and committee members.

The Board also released a vision statement respecting Equity & Inclusive Education:<sup>17</sup>

*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.*

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<sup>16</sup> <https://www.ddsb.ca/en/whats-happening/resources/Documents/Human-Rights/Policy-and-Consultation-Plan-Framework.pdf>

<sup>17</sup> <https://www.ddsb.ca/en/about-ddsb/equity-inclusive-education.aspx#HumanRightsDidYouKnow>

*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.*

*... 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,<sup>18</sup> the Board's Draft Human Rights, Anti-Discrimination and Anti-Racism Policy (the "Draft Policy", "Policy", or "Human Rights 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".*

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<sup>18</sup> <https://www.ddsb.ca/en/whats-happening/resources/Documents/Human-Rights/Human-Rights-Policy-DRAFT-Nov-2021.pdf>

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 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, cishnormativity/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. ...*

...

3.27 *All employees are responsible for upholding the Human Rights Code, this policy and any related procedure and are referenced in this policy as “Duty Bearers”. Under this policy, reference to the term employee or Duty Bearer shall include temporary, casual and contract staff, volunteers, university and college students on placement, interns and any other person included in the definition of “worker” under the Occupational Health and Safety Act.*

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.*

The Draft Glossary of Terms to the Policy included within it the following terms:

***Cis/cisgender:*** *a person whose gender identity is in alignment with the sex they were assigned at birth.*

***Cisgenderism:*** *prejudice that denies, ignores, denigrates, or stigmatizes diverse, non-cisgender identities.*

***Cisnormativity:*** *the common assumption that all people are cisgender and that everyone accepts this as “the norm”. The term cisnormativity is used to describe systemic prejudice against trans people.*

***Cissexism:*** *a system of oppression that considers cis people to be superior to trans people. It includes harmful beliefs that it is “normal” to be cis and “abnormal” to be trans. Examples include scrutinizing the genders of trans people more than those of cis people or defining beauty on how cis people look.*

***Katelynn’s Principle:*** *decisions affecting children must centre the child, reflect their voice and respect their rights and identities (e.g., ancestry, race, disability, sexual orientation, gender identity, gender expression, creed/religion, etc.)*

***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 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***

All four complainants took issue with comments Trustee Stone made at one or several Governance Committee meetings. I reviewed the recordings of those meetings, and have transcribed their relevant portions as follows.

On October 25, 2021,<sup>19</sup> Trustee Stone stated:<sup>20</sup>

*I’m going to go on with my last request, which is on p. 68. And this may be a hot button request, but I’m going to say it anyway. And I’ve written some things down. So, the term is ‘white supremacy’. And I’m concerned about it because I’m worried about our staff, our students, our parents, and how this term will be taken. This term separates whites from anyone else. This term is derogatory, even though it is explained that it’s not derogatory, people take it as derogatory, believe me. So I was interested to see that you actually had to put a quote in there stating that you are ‘not saying that people are good or bad’. Just the fact that you had to put that*

<sup>19</sup> [https://www.youtube.com/watch?v=oo-M\\_WW6wWM](https://www.youtube.com/watch?v=oo-M_WW6wWM)

<sup>20</sup> *Ibid*, 59:11-1:01:15

*definition in shows that there is concern. I'm really worried that this is going to hurt and offend people, and in my little anecdotal world, it does. So I wondered if it could be removed, so as not to criticize people, so as not to make people feel small, or as if they've done something wrong because of the colour of their skin. I'm sure we do not want to create any negative before we start with this policy. So I'm going to ask if this term can be changed, if you can use different wording, and I'd like it removed from all the wording in the policy.*

The Board's Director of Education replied that the trustees would need to discuss the specifics of Trustee Stone's request, and pass a motion on how they felt about it.

Later in the meeting, Trustee Stone focused on getting buy-in to the Policy, and stated:<sup>21</sup>

*I would just like to say with the phrase 'white supremacy' and what you may hear back from your consultations is that I think people are afraid to broach it. I think they ... you may not hear what some people are really thinking because they're afraid to speak about it. They're not going to tell you all the time what they're actually thinking. And they might find it a hurtful phrase, but you may not hear that from them. So I hope that people are brave enough to speak up, because I think it's vital for you to hear exactly what people ... and maybe they won't, I don't know. But I just know from, you know, my few anecdotal people that I speak with and what I've heard is that it's hurtful to people. And people are afraid to speak up because they are afraid to be called names. They're afraid to be called racist if they say anything about it. I think that's shameful, that they should be able to speak their truth and what they're thinking as well as anybody else. So I hope that people are open and honest with you, and I do look forward to the comments to come as well. Thank you.*

During the November 9, 2021 Special Meeting, addressing the topic of "Privacy and Confidentiality" in the Draft Policy,<sup>22</sup> Trustee Stone asked:<sup>23</sup>

*Starting on p. 59. I was a little bit disturbed to see that you would keep things private with the student and not let parents know what's going on with the student. And that even goes into whether the student is going to undergo surgery or other procedures. I'm assuming this privacy starts at the age of 16? Is that the age that*

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<sup>21</sup> *Ibid*, 1:27:29-1:28:52

<sup>22</sup> See Agenda: <https://calendar.ddsbc.ca/meetings/Detail/2021-11-09-1830-Special-Governance-and-Policy-Committee-Meeting/0b15db40-49e6-4041-a45e-add800ab7f58>

<sup>23</sup> <https://www.youtube.com/watch?v=sevDzF3C4aY>, at 1:15:53

*it?...*

The Board's Human Rights and Equity Advisor replied that the confidentiality concerned students' rights, and wasn't related to keeping the surgeries from parents or families. She identified that staff are responsible under Ontario's Human Rights Code to uphold students' rights within school environments, and recognize and affirm their gender identity, and they would let a child lead in terms of recognizing how they identify their gender.

Trustee Stone later asked:<sup>24</sup>

*On p. 63. ... when you use the word cisnormativity, are you talking about things like saying ... men cannot get pregnant or give birth, or that men can't breast feed or even use the term feed breast feed or should we use the term chest feed, is that what you mean when you use the term cisnormativity?*

The Human Rights and Equity Advisor replied that "cisnormativity" in the Glossary of Terms of the Draft Policy was about a common assumption that all people are cisgender and that everyone accepts that as the norm, and the term described systemic prejudice against trans people.

Trustee Stone commented further:<sup>25</sup>

*I have one last question myself. Which goes back to informing parents about their children's decisions at school. If you don't inform the parents that a child is trans because the child doesn't want the parents informed, I'm just wondering in general, do we send any information out to parents saying that if this is the case, we do not inform parents of what will be going on if the child has asked that. So it's nothing specific, but is there a general letter that goes out to parents so that they know that they may not be informed?*

The Human Rights and Equity Advisor replied that the Board doesn't send out formal notifications like that, but they hoped to raise awareness through releasing the Human Rights Policy and its procedures, and through the consultation process.

Approaching the end of the January 24, 2022 meeting,<sup>26</sup> Trustee Stone stated that she wished to make some comments.<sup>27</sup> At the Director of Education's suggestion,

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<sup>24</sup> *Ibid*, 1:22:24

<sup>25</sup> *Ibid*, 1:40:34

<sup>26</sup> <https://www.youtube.com/watch?v=FHjOdnFU9bk>

<sup>27</sup> *Ibid*, 2:20:14

Trustee Stone transferred Chair-ship of the meeting to then-Trustee Patrice Barnes for its remainder, so that she could speak as a participant. Trustee Stone then read from a prepared speech:

*So I have several areas to talk about, but I'm just going to keep it to one area for tonight, because I don't want to take up any more time, and that is around free speech. If this moves to Standing then I'll bring up the other comments in Standing. So I've written a couple of things down.*

*Do we teach that heterodox ideas and opinions are accepted, or do we teach our students that only the orthodox ideas of the day are acceptable? Is diversity of thought encouraged? When anyone speaks against the orthodox thinking, has a differing opinion or merely would like terms explained or defined, they will, as I was, told that their questions and comments are offensive and harmful, and that it showed a lack of understanding of human rights. I will point out that if our students and staff, public, whoever's listening, are not strong enough, resilient enough, and are hurt or offended or might not agree with them, then we have a very big problem. Our students and staff might want to look at engaging in dialogue and conversation with people who don't always agree with them, as opposed to saying they are offended or hurt. Try seeing things from other people's point of view. Are we teaching our students to be intolerant of other views? This definitely goes against the Human Rights Policy.*

*My point of why people are afraid to speak about what they are really thinking, which is what I brought up at the last meeting, is for fear of reprisal, which happens often. So people police their words, they lie, or worse, they stay silent. The attacks on free speech is a universal tactic of intolerant groups, who wish to only have their beliefs heard. Fall in line with the orthodox way of thinking, or you will be cancelled, chastised, dossed, fired, and most certainly have epithets and ad hominem thrown at you. This is no way to create a cohesive and understanding society. We must remember that to be offended is a choice, and should never be considered a human right to which those who did not call, to which those who did the so-called offending, will be called before the Human Rights Court.*

*I'm quoting Lorrie Goldstein right now. "Free speech does not mean speech should be free of consequences, but it's ridiculous to call for the heads of anyone or everyone who runs afoul of progressive orthodoxy in order to intimidate them into silence." We need look no further than what just happened at the Waterloo Region School Board,<sup>28</sup> who silenced a teacher of 20 years for voicing her concerns around books*

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<sup>28</sup> This appeared to be in reference to the following news, published a week earlier:

*that she thought were too sexually explicit for young students, and books that made transitioning seem easy and seamless, almost cool, her words. And another where a male was made to wonder why he wasn't thinking about naked girls. Because she questioned and voiced her concerns to this Board, she was silenced and told that she was going against the Human Rights Policy. ...*

Trustee Forbes attempted to raise a Point of Order;<sup>29</sup> Chair Barnes interjected and asked if Trustee Stone wished to continue in her line of statement, which Trustee Stone affirmed. Trustee Forbes interjected and asked if the focus of the discussion was about the Board's Human Rights Policy, or was now opening to scrutinize other boards' human rights policies. She said she was concerned about the direction of the conversation. After further inquiry by Chair Barnes, Trustee Stone continued.<sup>30</sup>

*I just want to be clear I am not referring to hate speech, racism, or other forms of bigotry. As a Board I am concerned about shutting down opinions and diversity of thought. That's what this whole thing was about. That was just an example of what happened at the other Board. It's not about the other Board. It's an example of what happened. So that is my concern about the Human Rights policy that we have. Are people going to be called up because somebody is offended or hurt? When that is maybe not their intention. But you know what, intention doesn't matter. I think it's dangerous. ...*

*Trustee Barnes, I'm just concerned that people will be called out, as I was, for asking for definitions at the last meeting we had, ask for definitions, just wanted to clarify, and then I was told that I was offensive, and hurt people, and that I didn't understand Human Rights policy. So I'm just saying, I'm just making a statement, that I'm hoping this doesn't continue to occur. Because people are allowed to speak. They have differing opinions. And that should be accepted. And the teacher from the other Board should have been heard. But she stepped down. So that's all I have to say.*

Trustee Stone opened the next Governance Committee meeting as follows, on January 31, 2022:<sup>31</sup>

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“‘Silenced and punished’: WRDSB teacher speaks out about controversial school board meeting”, CTV News Kitchener (January 21, 2022) <https://kitchener.ctvnews.ca/silenced-and-punished-wrdsb-teacher-speaks-out-about-controversial-school-board-meeting-1.5750409>

<sup>29</sup> January 24, 2022 meeting, 2:25:30

<sup>30</sup> Starting at 2:27:02

<sup>31</sup> <https://www.youtube.com/watch?v=fsKFN37U02g>, at 4:37

*Good evening everyone. I'd like to call this meeting to order. Before the land acknowledgements are said I have a statement to make. I just want to say, as I have said before, that the Human Rights Policy is one of the most important policies that Trustees will see. And I agree with the Policy, except in certain areas. But considering from what I have heard my voice is no longer welcome or wanted, and I no longer feel safe on this Committee, therefore I will be stepping down as Chair, and I will leave the meeting, and I hope that the irony of this is not lost on people. Thank you.*

### ***Party interviews***

I spoke with three of the complainants, and Trustee Stone. Then-Trustee Templeton said he was most concerned that Trustee Stone was trying to push her own agenda, which trustees aren't supposed to do – trustees are supposed to work within the Board, under the *Code of Conduct*. Mr. Templeton said there had been several different scenarios of Trustee Stone pushing her own agenda with respect to both white supremacy and transgenderism. He said you can't go against the definitions that are in the Human Rights Code, which he asserted sets out definitions of white supremacy and transgenderism.<sup>32</sup> Mr. Templeton was further bothered by the fact Trustee Stone's transgenderism comments came after she had already been given an answer by the Director of Education, which should have ended it, but Trustee Stone continued going off topic about it. Mr. Templeton forwarded me an email on point that was sent by the Board's Director of Education to all trustees on February 15, 2022 – so in fact after the meetings in question – cc'ing the Board's Counsel and Human Rights and Equity Advisor:

*Dear Trustees:*

*I received the following question from a trustee and am providing my response to all of you.*

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<sup>32</sup> I note for clarity that the Ontario Human Rights Code does not actually define “white supremacy”. <https://www.ontario.ca/laws/statute/90h19>  
The Ontario Human Rights Commission has a Policy on preventing discrimination owing to gender identity and/or expression – which identifies that people are protected under the Human Rights Code from discrimination and harassment owing to gender identity and expression in employment, housing, facilities and services, contracts, and membership in unions, trade or professional organizations. <https://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression#:~:text=Under%20the%20Ontario%20Human%20Rights,unions%2C%20trade%20or%20professional%20associations.>

*I was having a discussion with another trustee around transgender children in our schools. I would just like to clarify whether or not we would allow children to be on puberty blockers and hormone therapy without the knowledge of their parents. At what age would we start a transition at school. Would we start at age 5?*

*The role of educators is different from medical practitioners and this question relates to the medical field. We did respond to a similar question related to educators' role at the November Governance and Policy Committee meeting. We have no new information to add to the response we gave at that time: Educators have legal obligations to honour and respect the rights of a child/student, including the right to express their self identified lived/felt gender identity in our learning environments, free from discrimination.*

*If there are any further follow-up questions, we will address those at the Governance and Policy Committee Meeting and/or the Standing Committee Meeting.*

Then-Trustee Forbes replied to all on that email the next day (February 16, 2022):

*Director Marsh and Trustees,*

*Questions such as these have been repeatedly asked and answered. I am deeply concerned that some Trustees appear or unable or unwilling to distinguish the DDSB's human rights policy, which aims to protect the rights and dignity of all staff, students, and community members, from their personal views.*

Mr. Templeton said trustees follow policies and procedures in the *Code of Conduct*, and the proposed 'white supremacy' term pretty much had the exact same definition used in the Ontario Human Rights Code. He thought the definition could only be debatable if someone raised it with the provincial government, and Trustee Stone went well beyond the topics that were being discussed at the meetings. He felt a trustee's role is not akin to a municipal politician – he acknowledged that trustees can bring forward issues they're hearing from parents, but the proper action is usually to forward the concerns to a Superintendent or the Director of Education, because once you get past policies you're into the Board's operations, which trustees aren't supposed to be involved in. He said trustees are involved in approving policies and procedures, but trying to direct Superintendents in certain directions was problematic. He said Trustee Stone simply wasn't happy with the answer she received, so she kept raising it, including at the meeting.

I spoke with then-Trustee Forbes. She said the Board heard concerns from their Affinity Networks later, who presented at a Standing Committee meeting, and people were watching, so Trustee Stone's comments were hurtful to people in their district and potentially damaging to the Board. Ms. Forbes said that on top of her 'white supremacy' concerns, she was offended by the way Trustee Stone had huge issues with the gender expression piece of the legislation. Ms. Forbes said she'd consider herself an ally, and she thought aggressively questioning the Board's staff – for example, questioning whether the DDSB counsels children to change their gender expression, prescribes medications, or would hide children's identities from their parents – was totally out of step with what the Human Rights Policy was about. She said the Policy was about upholding people's rights and dignity to express their gender, and the Board has no agenda to counsel children to change their gender; it just isn't going to misgender them or discriminate against them, and would create a safe space for them. Ms. Forbes said the Board has transgender and non-binary staff and students, and she could only imagine how upset they would be if they heard the views being expressed by Trustee Stone. She said she'd also be incredibly upset and concerned if she were the parent of a child who was trans or contemplating a gender change to their assigned sex at birth, and wouldn't know if it would be safe to send her child to an environment like that.

Ms. Forbes said she found Trustee Stone's January 24, 2022 speech about heterodoxy and all sorts of somewhat extreme far-right language inappropriate and divisive. She said the members of the Board have to move together, and she didn't feel Trustee Stone's behaviour would stop unless she made her complaints, because so many other trustees and staff also expressed concerns during the meeting. Ms. Forbes said these are public meetings about public education to serve all people in their system, regardless of personal opinions, and it isn't trustees' jobs to bring personal opinions into it – it's 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 Stone's comments didn't bear out.

Ms. Forbes said trustees have no individual power – they move as a board and vote as a board, but trustees have fiduciary responsibilities for governance of the board, including human rights legislation. She said the Board can't violate human rights because they don't happen to agree with people's identity.

Ms. Forbes thought the definition of 'white supremacy' was capable of debate, but even though she identifies as white she can still understand that there's intersectionality and multiple oppressions that people face based on racialized identity, and many publicly-funded Canadian institutions have been based on white supremacy – not just the Ku Klux Klan or lynching, but a system of

oppression that might be a little more subtle. She said public education has to be universal and serve all staff members and students, and the Board can't just continue to be blind to the fact that there has fundamentally been oppression, or that it hasn't served people of colour in a non-biased way.

Ms. Forbes didn't think Trustee Stone's comments were issues-based (per s. 6.6 of the Old Code), as she repeatedly mentioned things that didn't have anything to do with the Policy. She described that Trustee Stone brought up other school boards' policies, said it was dangerous to have a human rights policy, and questioned whether the Board was counselling people to be trans or hiding it, which had nothing to do with the Policy. She thought it appeared like someone who had a real phobia or hatred towards trans people, and Trustee Stone wasn't addressing the language in the Human Rights Code. Ms. Forbes felt the discussion was about grounding the Human Rights Policy in provincial laws and the Human Rights Code, and trustees had to mostly set their personal opinions aside in doing so. She said if Trustee Stone had simply said the definitions deviated from the Human Rights Code, or there were flaws in them relative to other pieces of legislation, then she wouldn't have been offended, but things like gender expression and racial discrimination are protected under the Human Rights Code. She thought Trustees Stone's comments were personal opinions that didn't address the validity of the Policy as it related to adherence to provincial legislation.

Ms. Forbes thought there had been long-standing practices of permissiveness and burying heads in the sand when DDSB trustees have said really awful things. She said we live in a world of live-streaming, and it is much easier 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.

I spoke with Trustee Stone in April 2022. She said it was important to raise her points during the Governance Committee meetings because she knew people who had complained – people who told her they were hurt and thought the 'white supremacy' definition was a racist term. She said she wasn't just speaking for herself, although she largely agreed with the sentiment – she felt she had a duty to bring things forward, and the Policy was a working document. She said the Board can't simply pass policies at face value, that was the whole point of the Committee – i.e., to talk about these issues and work through them.

Trustee Stone thought the term 'white supremacy' was part of the Ontario Human

Rights Code,<sup>33</sup> but she didn't think that necessarily meant the Board had to use the proposed term. She wasn't aware of any directives to trustees respecting racism or white supremacy – she acknowledged that trustees would have to follow the Ontario Human Rights Code, but she didn't necessarily consider there to be a directive, and confirmed the trustees had received educational sessions about racism. She felt it was incumbent on her as a trustee to bring forward concerns she heard from people, and perhaps the term “white supremacy” could be re-worded so that it wouldn't be as harmful as some people felt it was. She thought “white supremacy” was subjective, and her whole point in bringing it up was so that there could be some discussion around it.

Trustee Stone disputed that she had failed to uphold the dignity of her office, or had discredited or compromised the integrity of the Board (i.e., per ss. 6.5 and 6.7 of the Old Code). She said she doesn't just come into meetings giving personal opinions – she hears from parents and staff, and needs to speak out from what she's heard from other people – in her view, that was her obligation as a trustee, and it would've been irresponsible to say the working Policy was perfect the way it was.

Trustee Stone felt her comment about the Waterloo Region School Board was issues-based (i.e., respecting s. 6.6 of the Old Code), relating to the Draft Policy that was being discussed. She was alarmed by what happened to the teacher in Waterloo, and wanted people to feel comfortable coming into the DDSB and speaking at public sessions. She didn't want people to be stifled in their speech – i.e., to be shut down, and have to leave meetings if they came forward with opinions or concerns because that'd be a very dangerous policy to set. She didn't want the Board to do what Waterloo did to the public or staff if they came to speak about perhaps the same topic (i.e., sexually explicit books in elementary libraries). She felt the Board's Human Rights Policy had to be open and fluid enough to welcome and accept stakeholders to not be afraid to speak up. She said complaints could be made simply because of subjective viewpoints, without understanding that people have different views and opinions, and that it's fair to bring those forward without fear of recourse.

Then-Trustee Lundquist was provided with opportunities to speak to her complaint in both spring 2022 and winter 2022/2023, but despite having expressed interest in doing so, ultimately did not provide any further input within the timeframes and parameters that were granted.

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<sup>33</sup> Again, the Ontario Human Rights Code does not contain a definition of “white supremacy”.  
<https://www.ontario.ca/laws/statute/90h19>

I spoke with Ms. McAuley in January 2023; there had previously been insufficient time to contact her in spring 2022 between the filing of her complaint on May 12 and Trustee Stone's resignation on May 16. She said what most concerned her about Trustee Stone's comments or tweets was a pattern of behaviour, and especially an overall sentiment towards people in the trans community. She said she first noticed Trustee Stone's comments during the November 9, 2021 meeting, and became more concerned when she realized there was more happening on Twitter. She said taken as a whole, it spoke to a troubling sentiment towards the entire trans community; she has people she cares deeply about who are part of the LGBTQ community, and friends whose children are part of the trans community, and there is harm done in the way Trustee Stone purposely misgenders people, especially the way she specifically and repeatedly refers to trans women on Twitter as biological men, which is very derogatory towards the trans community. She said it creates a sense of a lack of respect and understanding, dehumanizing the trans community and eroding their human rights. She said trans children are subject to greater risk of bullying and mental and physical harm from their peers, so to see an adult in a position of power within the school board speaking about the trans community in such a disrespectful and dehumanizing way made her question the Board's ability to enforce its own human rights policy, and it would trickle down to the school level – how could adults tell children they couldn't say those things, when an elected person sits on the school board and says those things with no ramifications?

Ms. McAuley said she expected trustees would need to adopt understandings that reflect the policies they're expected to uphold, and if there's a personal conflict with what was in the policies, then she'd expect further education to be conducted, either at the personal level or for all trustees, so they'd have a deeper understanding of the policies they're expected to uphold. She said even if trustees' beliefs don't necessarily line up completely with the Board's policies, at the end of the day they're still expected to uphold them.

Ms. McAuley felt the questions Trustee Stone was raising during the November 9, 2021 meeting were disingenuous. She said based on what others were saying during the meeting, the definitions of the terms were very clearly laid out within the document, and she would have expected that if trustees came to the meeting prepared to discuss the document's content, they'd have familiarized themselves with the definitions and wouldn't have needed to belabour their point, purposely mislabeling the definitions that had been clearly defined. Ms. McAuley said Trustee Stone repeatedly speaks about representing constituents and having open dialogue and discussion or debate, but at the end of the day, human rights and the

inherent humanity of transgender people aren't a topic of debate. She said people may privately hold those types of beliefs, that's unfortunately their right if they choose, but when those beliefs start entering a public space impacting children like a school board, where children are supposed to be able to come and feel safe and protected by adults, it becomes very dangerous. She had a hard time thinking the idea should be upheld that people should be allowed to debate someone's humanity and identity, especially in such a harmful and derogatory way, and put it down to a "difference of opinion" – people's humanity and human rights weren't up for debate.

Ms. McAuley said she raised her complaint because she felt Trustee Stone was continuously perpetuating harm against children without any sort of accountability. She said even if a segment of the population agrees with Trustee Stone, not all parents in Oshawa felt that way, so it was inaccurate to say Trustee Stone was representing all of her constituents. She added that an employee she knows within the DDSB has told her if she said the same things Trustee Stone had said, she'd certainly be fired. Ms. McAuley didn't think anyone should have an open platform to say whatever they want without consequence, or consideration of their impact upon children within the DDSB.

As Ms. Forbes described, the DDSB's Affinity Networks collectively issued a joint statement at the March 7, 2022 Standing Committee Meeting with respect to comments that had been made by trustees (particularly Trustee Stone and then-Trustee Crawford) at the January 24, 2022 meeting:<sup>34</sup>

*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 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.*

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<sup>34</sup> March 7, 2022 Standing Committee beginning at 5:33, as presented by Shahana Arain (Co-Chair, MEND) <https://www.youtube.com/watch?v=k6j16ozTUzI>

*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 24<sup>th</sup> 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,<sup>35</sup> DBEN,<sup>36</sup> Shalom Durham,<sup>37</sup> NINE,<sup>38</sup> Pride Network, MEND,<sup>39</sup> and DENSA<sup>40</sup>.*

*Thank you.*

In a separate matter, Mr. Maynard requested and obtained a variety of information from the office of the Board's DDSB's Director of Education, which he provided to me in April 2022 on the basis that it might be relevant to this matter. I have determined that it was relevant. The Director of Education sent all Board trustees a formal letter on January 31, 2022, respecting the discussion at the January 24, 2022 Governance Committee meeting:

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<sup>35</sup> Keenanow Indigenous Employees Network

<sup>36</sup> Durham Black Educators Network

<sup>37</sup> Jewish Educators Network of the DDSB

<sup>38</sup> Neurodivergent Infinity Network of Educators

<sup>39</sup> Muslim Educators Network of Durham

<sup>40</sup> Durham Educators Network of South Asians

*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.<sup>41</sup> 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 unequivocal stand against racism and intolerance at the YRDSB. We feel compelled to denounce the Board's responses. In the instance of the now-*

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<sup>41</sup> 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](http://www.edu.gov.on.ca/eng/new/2017/YRDSB_review_report_2017.pdf)

*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.*

Trustee Stone replied to the Director of Education by email later that morning:

*So what I think I hear you saying is that discussion should cease or only discussion around agreement to the policy can be had. I fail to see why a policy is put in front of trustees if we have no choice but to agree with it.*

*My comments last week were around free speech and the ability for people to express what they are thinking without repercussions. I am not supporting hate speech, bigotry or racism in any form and I am disappointed that I seem to have to spell that out.*

*Let me put this straight – I agree with the policy in principle but there are areas I have trouble with. That does not mean I require more PD, nor does it mean I am a racist, bigot or am spouting hate speech. All of which I believe are abhorrent.*

*I am not sure how such misunderstanding can occur in a room of highly educated people. But it does prove my point that people are afraid to speak what they really think for fear of repercussion.*

The Director of Education emailed all trustees again 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.<sup>42</sup> ... 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 Mr. Maynard about the process generally followed to determine definitions for the Human Rights Policy, the Director of Education identified that Board staff aligned as many terms as they could with the definitions

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<sup>42</sup> 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>

found in publicly-posted documents from the Ontario Human Rights Commission (OHRC), Anti-Racism Directorate (ARD), and Ministry of Education. She noted that some language and understanding had shifted over time – for example, they couldn't find a definition of “white supremacy” in the OHRC's publicly-posted policies – but the terms were in the OHRC's and ARD's websites. She added that the DDSB also looked at other boards' materials, and that although there didn't appear to be a consistent provincial definition of “white supremacy”, the underlying theme/concept was the same across all of the definitions. The Director of Education wrote that the January 24, 2022 Governance Committee meeting had achieved over 1,000 views, and she had heard from many individuals that it made them feel like they didn't belong.

I reviewed information from the Ontario Human Rights Commission, and particularly noted that its Chief Commissioner, Patricia DeGuire, issued a letter to Ontario's Minister of Education on November 1, 2021 advocating for increased accountability for school board trustees. She wrote as follows:<sup>43</sup>

*The Ontario Human Rights Commission (OHRC) welcomes the Ministry of Education's consultation on strengthening accountability for 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*

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<sup>43</sup> [https://www.ohrc.on.ca/en/news\\_centre/ohrc-submission-ministry-education-consultation-strengthening-accountability-school-board-trustees](https://www.ohrc.on.ca/en/news_centre/ohrc-submission-ministry-education-consultation-strengthening-accountability-school-board-trustees)

*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 takes no effort to see how members of the community could feel hurt by Trustee Stone’s comments. However, the harm from her comments must be appropriately weighed against Trustee Stone’s ability to freely participate in good faith debate and decision-making, which is the heart of a trustee’s role.

In different contexts, our office has sometimes held that the right to free expression is paramount. For example, our office has investigated various ethics complaints related to municipal councillors around Ontario, frequently respecting things politicians have said. With respect to politicians, we have often cited *Linton v. Kitras*,<sup>44</sup> a decision of the Township of Centre Wellington’s Integrity Commissioner, for its 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.*<sup>45</sup> ...

...

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<sup>44</sup> *Linton v. Kitras*, 2020 ONMIC 1 (Township of Centre Wellington)

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

<sup>45</sup> *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

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.*<sup>46</sup>

79. Subsequently, Mr. Randy Pepper, the delegate of Integrity Commissioner Cameron, expanded on the same principle in Investigation Report No. BIC-33-1112.<sup>47</sup>

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

...

*... 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.

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<sup>46</sup> City of Brampton, Report No. BIC-030-192 (December 4, 2012)

<sup>47</sup> City of Brampton, Report No. BIC32-1112 (December 18, 2012)

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 municipal 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 similarities end. The Guide was explicit that a school board trustee’s 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 is to effectively help the local education system adapt and transform to changing needs and shifting challenges. They are subordinate to the Ministry of Education and the rules of the *Education Act*. The legislative frameworks of the *Municipal Act* and the *Education Act* are quite different, which leads to different norms respecting appropriate behaviour for elected officials while in office. Trustees are simply far more limited than politicians in their “freedom” to speak. To the extent that a Trustee’s speech might harm members of the local community – recognizing that measuring such can be inherently difficult – it may 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. There are simply certain views and understandings that school boards are expected to uphold and promote as matters of education policy and law.

With respect to gender identity and expression, the Ontario Human Rights Commission (the “Commission”) has stated the following:<sup>48</sup>

*Under the Ontario Human Rights Code, discrimination and harassment because of gender identity or gender expression is against the law. Everyone should be able to have the same opportunities and benefits, and be treated with equal dignity and respect including transgender, transsexual and intersex persons, cross-dressers, and other people whose gender identity or expression is, or is seen to be, different from their birth sex.*

*In 2012 “gender identity” and “gender expression” were added as grounds of discrimination in the Ontario Human Rights Code. To fully address the new Code grounds, as well as the significant legal decisions, policy changes and*

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<sup>48</sup> [https://www.ohrc.on.ca/en/code\\_grounds/gender\\_identity](https://www.ohrc.on.ca/en/code_grounds/gender_identity)

*other developments since its first policy, the OHRC released a new Policy on preventing discrimination based on gender identity and gender expression in April 2014.*

The Commission summarizes its Policy as follows:<sup>49</sup>

### **Summary**

*People who are transgender, or gender non-conforming, come from all walks of life. Yet they are one of the most disadvantaged groups in society. Trans people routinely experience discrimination, harassment and even violence because their gender identity or gender expression is different from their birth-assigned sex.*

*Under the Ontario Human Rights Code (the Code) people are protected from discrimination and harassment because of gender identity and gender expression in employment, housing, facilities and services, contracts, and membership in unions, trade or professional associations.*

***Gender identity** is each person's internal and individual experience of gender. It is their sense of being a woman, a man, both, neither, or anywhere along the gender spectrum. A person's gender identity may be the same as or different from their birth-assigned sex. Gender identity is fundamentally different from a person's sexual orientation.*

***Gender expression** is how a person publicly presents their gender. This can include behaviour and outward appearance such as dress, hair, make-up, body language and voice. A person's chosen name and pronoun are also common ways of expressing gender.*

***Trans or transgender** is an umbrella term referring to people with diverse gender identities and expressions that differ from stereotypical gender norms. It includes but is not limited to people who identify as transgender, trans woman (male-to-female), trans man (female-to-male), transsexual, cross-dresser, gender non-conforming, gender variant or gender queer.*

***Discrimination** happens when a person experiences negative treatment or impact, intentional or not, because of their gender identity or gender expression. It can be direct and obvious or subtle and hidden, but harmful just the same. It can also*

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<sup>49</sup> <https://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression>

*happen on a bigger systemic level such as organizational rules or policies that look neutral but end up excluding trans people. Friends, family or others who face discrimination because of their association with a trans person are also protected.*

***Harassment** is a form of discrimination. It can include sexually explicit or other inappropriate comments, questions, jokes, name-calling, images, email and social media, transphobic, homophobic or other bullying, sexual advances, touching and other unwelcome and ongoing behaviour that insults, demeans, harms or threatens a person in some way. Assault or other violent behaviour is also a criminal matter. Trans people and other persons can experience harassing behaviour because of their gender identity or expression (gender-based harassment) and/or their sex (sexual harassment).*

*Social stereotypes about gender, and prejudice and fear towards trans people are often at the root of discrimination and harassment. Negative attitudes about a trans person's racial identity, family status or other grounds can combine or intersect to make things worse.*

*Everyone has the right to define their own gender identity. Trans people should be recognized and treated as the gender they live in, whether or not they have undergone surgery, or their identity documents are up to date.*

*An organization should have a valid reason for collecting and using personal information that identifies a person's gender. They should keep this information confidential. Trans people can have their name or sex designation changed on identity documents and other records. The criteria and process should not be intrusive or medically based.*

*Trans people should have access to washrooms, change rooms and other gender specific services and facilities based on their lived gender identity.*

*Dress code policies should be inclusive and flexible. They should not prevent trans people and others from dressing according to their expressed gender.*

*Organizations should design or change their rules, practices and facilities to avoid negative effects on trans people and be more inclusive for everyone. Any exceptions must be legitimate in the circumstances, and trans people must be provided any needed accommodation unless it would cause undue hardship.*

*The duty to accommodate the needs of trans people is a shared responsibility. Everyone involved should cooperate in the process, exchange only necessary information and explore options while respecting privacy.*

*Trans people and other gender non-conforming individuals should not be treated negatively while at work, at school, trying to rent an apartment, shopping, eating a meal in a restaurant, using health care services or shelters, dealing with law enforcement and justice services, or at any other time.*

*Organizations are liable for any discrimination and harassment that happens. They are also liable for not accommodating a trans person's needs unless it would cause undue hardship. They must deal with complaints, take steps to prevent problems and provide a safe, welcoming environment for trans people.*

*Organizations should learn about the needs of trans people, look for barriers, develop or change policies and procedures and undertake training. This will help make sure trans people and other gender non-conforming individuals are treated with dignity and respect and enjoy equal rights and freedom from discrimination.*

The Commission's stance is unmistakable – it explicitly states that everyone has the right to define their own gender identity, and the duty to accommodate trans people's needs is a shared responsibility. Trans people and other gender non-conforming individuals should not be treated negatively while at work or school, and organizations are liable for any discrimination that happens. Organizations are explicitly expected to provide a safe, welcoming environment for trans people. Discrimination happens when a person experiences negative treatment or impact because of their gender identity or gender expression (whether intentionally or not), and harassment is a form of discrimination that can include inappropriate comments, email, and social media activity that insults or demeans a person.

Trustee Stone's comments respecting gender identity issues plainly failed to meet the expected standard. Her comments insulted and demeaned trans people, and it would frankly be difficult for me to believe any argument to the contrary – and I note that Trustee Stone herself didn't even try to advance such an argument; rather, her arguments were more along the lines that her statements should be permissible for public policy reasons.

By virtue of her pre-May 5, 2022 comments respecting gender identity, Trustee Stone breached sections 1.4, 6.1, 6.3, 6.13, and 6.49 of the Old Code, which read:

*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.*

*6.13 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.*

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

Trustee Stone's comments failed to support the Vision, Values and Strategic Priorities of the DDSB, or the spirit of the laws of the Ontario Legislature. The DDSB's Vision, Values, and Strategic Priorities 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 Stone's comments did not maintain the public's confidence, nor were they impartial in a way that would inspire public confidence in the Board's abilities and integrity.

The joint submission of the DDSB's Affinity Groups on March 7, 2022 was compelling evidence. I have said before that it is difficult to measure 'harm' from speech, as it necessarily imports significant subjectivity – what one person perceives as offensive can be seen by somebody else as commendable, and there is no universal understanding of 'harm' that all would agree with. Nonetheless, the fact that nine of the DDSB's Affinity Groups joined together collectively to issue a joint statement expressing hurt and alarm at statements trustees made at the Governance Committee meetings was notable – and they stated they particularly wished to focus on the experience of those identifying as 2SLGBTQI+ as having

been re-traumatized, which were comments only Trustee Stone contributed to. The Affinity Groups further condemned ‘freedom of speech’ covering as racist and/or discriminatory ideology, and backing away from clearly naming and defining white supremacy culture. The Affinity Groups represent large portions of the DDSB community, and I find their words were strong evidence that Trustee Stone’s words at the Governance Committee meetings created objective harm.

It is difficult not to concur with sentiments expressed by some of the complainants that Trustee Stone appears to have some sort of animus against the trans community. Whatever the basis for Trustee Stone’s ongoing positions against gender identity and expression issues may be, I simply note that the Ontario Human Rights Commission has formally identified<sup>50</sup> that trans people are one of the most disadvantaged groups in society, who routinely experience discrimination, harassment, and sometimes violence because their gender identity or expression is different from their birth-assigned sex.

A new, updated *Code of Conduct* took effect for the Board on May 5, 2022, but it does not significantly affect the analysis in this case. Many provisions in the Old Code carried over to the New Code unchanged, although there were many re-numberings, and several provisions were modified, added, or deleted. For this case’s purpose, the most significant change from the Old Code to the New Code was the deletion of the Old Code’s section 1.4 – which mandated that “Trustees will support the Vision and Values, and Strategic Priorities of the Durham District School Board.” There is no similar provision in the New Code – so in other words, there is no longer a mandated requirement that trustees must support the Board’s Vision and Values in their conduct. But all of the other sections that Trustee Stone contravened under the Old Code carried over to the New Code. Section 6.1 of the Old Code became section 1.2 in the New Code; section 6.3 remained section 6.3; section 6.13 became section 6.11; and the bulk of section 6.49 became section 6.44. Trustee Stone’s social media activity between May 5 to 16, 2022 also contravened all of these sections, for unchanged reasoning.

If there was any doubt about whether Trustee Stone’s tweets were contrary to the DDSB’s values and commitments, they were explicitly rejected by the DDSB itself – which took the extraordinary step of issuing a public statement distancing itself from Trustee Stone’s tweets on May 13, 2022:<sup>51</sup>

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<sup>50</sup> “Policy on preventing discrimination because of gender identity and gender expression”, Ontario Human Rights Commission (April 14, 2014) <https://www.ohrc.on.ca/en/policy-preventing-discrimination-because-gender-identity-and-gender-expression>

<sup>51</sup> Statement on Recent Public Trustee Comments, DDSB (May 13, 2022) <https://www.ddsb.ca/Modules/News/index.aspx?newsId=1ccc5d50-04e5-4f9a-aa64->

### ***Statement from the Durham District School Board***

*It has come to our attention that an individual Trustee, Linda Stone, has made public statements on twitter. The DDSB does not monitor or maintain this account. The comments made are contrary to the commitment, values and actions of the Durham District School Board and our responsibility to promote and respect the Ontario Human Rights Code. We strive to create learning and working environments that are safe, equitable, inclusive, respectful and welcoming of all identities.*

*We recognize the historical and ongoing oppression that individuals face because of systemic oppression, discrimination and racism. The District acknowledges past and current traumas and is committed to building a system that celebrates, supports, respects, affirms, and embraces the diverse identifies of students and staff.*

Trustee Stone resigned from the Board three days later, on May 16, 2022.

An aspect of this case concerned Trustee Stone's comments respecting "white supremacy" during the October and November 2021 governance meetings. I do not take issue with the way Trustee Stone phrased her wish to remove the definition of "white supremacy" from the Draft Human Rights Policy. Neither the Ontario Human Rights Commission nor the Ontario Human Rights Code have explicitly defined that term. The Director of Education was clear during the October 25, 2021 meeting that trustees would need to discuss the definition, and pass a motion on how they felt about it. In her January 31, 2022 letter, the Director of Education stated that the Board could even remove the term from the Policy entirely, although she noted that the DDSB's staff felt including the term would be welcomed by community members as an important step in naming the oppression some experienced, and staff felt it was important to include as part of equity work.

Routine internet searches establish there isn't one accepted definition of "white supremacy", but rather multiple definitions – the majority of which use different wording than the DDSB drafted in its Draft Policy. Accordingly, the exact wording of the term is not incapable of debate. For example, Dictionary.com<sup>52</sup> defines "white supremacy" as:

*The belief, theory, or doctrine that white people are inherently superior to people*

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[f5e52abcb134&lang=en#](#)

<sup>52</sup> <https://www.dictionary.com/browse/white-supremacy>

*from all other racial and ethnic groups, especially Black people, and are therefore rightfully the dominant group in any society.*

Britannica.com<sup>53</sup> 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-Webster<sup>54</sup> 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*
- 2. the social, economic, and political systems that collectively enable white people to maintain power over people of other races*

Wikipedia<sup>55</sup> 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*

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<sup>53</sup> <https://www.britannica.com/topic/white-supremacy>

<sup>54</sup> <https://www.merriam-webster.com/dictionary/white%20supremacy>

<sup>55</sup> [https://en.wikipedia.org/wiki/White\\_supremacy](https://en.wikipedia.org/wiki/White_supremacy)

*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 capable of debate, which is part of a trustee’s role. However – and this was fundamentally the issue in the Crawford matter – it would be academically dishonest to suggest that “white supremacy” isn’t a generally-accepted notion academically, nor that it is simply limited to explicit racism, such as in older conceptions of white supremacy that focused on groups like the Ku Klux Klan.

The notion of white supremacy has evolved over time, to an understanding that is now 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. This evolution was considered further in the Crawford matter. It would not have been appropriate for any trustee to assert that white supremacy was limited to older notions of the term, and our office has formally expressed this opinion previously.

I find Trustee Stone’s comments respecting “white supremacy” were materially different in character from then-Trustee Crawford’s. Whereas Trustee Crawford explicitly rejected the substance of the proposed “white supremacy” term, Trustee Stone’s comments on October 25, 2021 predominantly reflected concern about how community members would take the term, as some (including herself) felt the term was derogatory but would be afraid to discuss their concerns about it. It is possible that some portion of the community felt that way, although that wouldn’t drive my analysis either way. Given that the exact definition of “white supremacy” can be debated within reasonable boundaries, it was open to the trustees as a group to discuss how and if they wanted to include it – which is consistent with the guidance the Director of Education provided to the trustees.

However, Trustee Stone’s speech at the end of the January 24, 2022 Governance Committee meeting crossed the line of acceptable conduct – it was a soliloquy akin to political speech, and seemingly deliberately so since Trustee Stone prepared and wrote out her words in advance. Trustees are not politicians, and under the *Education Act* do not have the kind of extensive freedoms to speak that civic politicians enjoy under the *Municipal Act*. Trustee Stone’s speech was clearly intended to make a cultural point or statement. Her statement might have possibly found favour among some in the community, but it was inappropriate for a school board trustee, and breached section 6.6 of the Old Code, which requires trustees to

keep their comments issues-based. In discussing events at the Waterloo Region School Board, there was no credible link to the issues on the table (i.e., the DDSB's Draft Human Rights Policy). It was essentially a tangent into political speech about other matters that concerned her culturally. There may be appropriate domains for such comments, but not in the role of a school board trustee.

Trustee Stone's April 18, 2022 retweet respecting race issues was also problematic. She linked to an article in the "Woke Watch Newsletter", written by a high school teacher who was under investigation by the Ontario College of Teachers for opposing critical race theory.<sup>56</sup> The article began as follows:<sup>57</sup>

*Intimidation Masquerading as Virtue is Chilling Free Speech*

*Just a few years ago, a teacher proclaiming that "all children should be treated equally" or that "all lives matter" would have received enthusiastic nods from fellow educators. Today, the situation is so vastly different that such statements can easily put one's career on the line. In this article, I will describe the origins, manifestations and repercussions of this puritanical moral shift, and I hope that you will see why rejecting the new orthodoxy is so crucially important.*

The article was lengthy, but in short it was controversial political opinion, essentially endorsing the "All Lives Matter" movement. The "All Lives Matter" movement is commonly understood to be a rejection of the "Black Lives Matter" movement, which seeks to promote equality and opportunity for a portion of society that has undoubtedly historically been subjected to discrimination. Retweeting it – which reasonably appeared to be endorsing it – was incompatible with a trustee's role. Trustee Stone again breached section 6.49 of the Old Code through this social media activity, as it contributed to an environment of discrimination.

## Decision and Publication

For conduct prior to May 5, 2022, Trustee Stone breached sections 1.4, 6.1, 6.3, 6.13, and 6.49 of the Old Code through her comments about gender identity and expression at various Governance Committee meetings; breached section 6.6 of the

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<sup>56</sup> "Ontario high school teacher under investigation for opposing critical race theory", True North (March 17, 2022) <https://tnc.news/2022/03/17/ontario-high-school-teacher-under-investigation-for-opposing-critical-race-theory/>

<sup>57</sup> Intimidation masquerading as virtue is chilling free speech", Woke Watch Canada (April 13, 2022) [https://wokewatchcanada.substack.com/p/intimidation-masquerading-as-virtue?s=r&utm\\_campaign=post&utm\\_medium=web&utm\\_source=direct](https://wokewatchcanada.substack.com/p/intimidation-masquerading-as-virtue?s=r&utm_campaign=post&utm_medium=web&utm_source=direct)

Old Code through her speech at the end of the January 24, 2022 Governance Committee meeting; and breached section 6.49 of the Old Code again through her retweet concerning race on April 18, 2022.

I further find that Trustee Stone breached sections 1.2, 6.3, 6.11, and 6.44 of the New Code by her social media posts respecting gender identity and expression issues between May 5 to 14, 2022.

The sanctions process respecting both the Old Code and New Code is based on section 218.3(3) of the *Education Act*. Section 8.1 of the Old Code allowed a limited range of permissible sanctions if the Board (i.e., the Integrity Commissioner, or their delegate) determines that a Trustee breached the Old Code:

*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.*

I recommend that the Board censure Trustee Stone for her breaches of the Old Code. The Board can additionally choose to bar Trustee Stone from sitting on one or more of its committees for a time period of its choosing, although I am not making any explicit recommendations on point.

Under the New Code, sanctions are covered by section 7.1. The new provision directs more explicit responsibility upon the Board of Trustees to make its own determination of whether its *Code of Conduct* was breached. Section 7.1 of the New Code reads:

*7.1 If the Integrity Commissioner determines that the Trustee has breached this Code of Conduct, the Integrity Commissioner shall report to the Board of Trustees reciting the findings of the Integrity Commissioner. The Board of Trustees shall consider the report of the Integrity Commissioner and the Board of Trustees shall*

*make its own assessment and determination of whether there has been a breach of the Code of Conduct and, if so, may impose one or more sanctions as provided for in section 218.3 of the Education Act, as may be amended from time to time. The Board has no power to declare the Trustee's seat vacant.*

Accordingly, the Board of Trustees is invited to reach its own determination, based on the facts described herein, respecting whether Trustee Stone's social media activity between May 5 to 14, 2022 constituted a breach of the New Code, and if so, if there are any additional sanctions they find appropriate that are permissible under section 218.3 of the *Education Act*.

I thank the parties for their participation in this complaints process.

Dated at Toronto, this 23<sup>rd</sup> day of January, 2023.

Respectfully submitted by,

A handwritten signature in black ink, appearing to be 'BD' followed by a long horizontal stroke.

Benjamin Drory, Senior Investigator

EXHIBITS

Exhibit 1



**Follow**

**Linda Stone**

@1TrusteeStone

Personal tweets, views and opinions are my own.

📅 Joined April 2018

**116** Following **56** Followers



Followed by LDA Durham Region and Durham District School Board (DDSB)

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Exhibit 2**Linda Stone**

@1TrusteeStone

How many different pronouns must a teacher memorize. If 23 students all have different pronouns and the teacher gets one wrong, would that be grounds for a complaint?

3:52 PM · 2022-05-11 · [Twitter for Android](#)

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Exhibit 3



Exhibit 4



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Exhibit 5



**Linda Stone**

@1TrusteeStone



How many different pronouns are there? And could they be changed daily? That might make it even more difficult for teachers.

9:02 PM · 2022-05-14 · [Twitter for Android](#)