

DURHAM DISTRICT SCHOOL BOARD

SPECIAL BOARD MEETING

Monday, March 6, 2023

7:45 pm

Page

1. Call to Order

2. Moment of Silence/Acknowledgement

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

3. Declarations of Interest

Verbal

4. Adoption of Agenda

Verbal

5. Recommended Actions

(a) Adoption of Any Resolution from Committee of the Whole, In Camera Standing Committee
(Trustee Emma Cunningham)

Verbal

(b) Consideration of Submissions re: Code of Conduct
(Chair Donna Edwards)

1-9

6. Adjournment

Dear Chair Edwards,

Thank you for the opportunity to respond to the Board's February 6, 2023 decision sanctioning me under the Code of Conduct.

I will begin by stating that I believe the Board's decision is wrong on many grounds, and it should give some serious reconsideration to the appropriateness of its decision and the report submitted by Mr. Ben Drory. I am asking that the decision finding that I breached the Code and to sanction me be revoked for the following reasons:

1. On a basic point of fairness, I think that the determinations are so general and imprecise, that I don't even know what exactly my offending comments are. The Board did not even bother debating or discussing any of Mr. Drory's report or findings. After reading the decision, I am not sure whether it is certain comments, or my views and perspectives, or a combination of both, that have allegedly violated the Code of Conduct.

To provide an example, the first paragraph of the Board's decision says that I "breached one or more of sections 1.4, 6.1, 6.2, 6.13 and 6.49" of the old Code of Conduct. And this breach supposedly results from "comments concerning gender identity and expression" that I made at two different meetings. This is incredibly vague. The decision leaves one to guess which comment infringed which section or sections of the old Code. Did everything I say breach all of those sections, or did one thing I say breach just one of the sections? There is no way to know from your decision, and so it is impossible to defend myself or respond to the decision. I don't even know what is actually being alleged.

The second and third paragraphs are just as troubling. The Board determined that I breached sections 1.4, 6.1, 6.3, 6.13 and 6.49 of the old Code and sections 1.2, 6.3, 6.11 and 6.44 of the existing Code by tweets I have made, or have retweeted. To me, this reads as if every tweet and retweet violated every one of those provisions. However, no explanation is provided as to how this is so. How can I respond to such a general allegation? I do not understand what exactly the Board believes violated the Code. The decision does not explain this.

The decision is unclear on what comment or comments are a violations of which parts of the Code, and how the Board came to their conclusion. This problem is apparent in paragraphs 4, 5 and 6 of the decision as well. With respect to the finding that my comments about the definition of "white supremacy" in our human rights policy breached the previous Code, the Board didn't even bother to identify which section of the previous Code I allegedly breached. Nor did the Board explain why it took a different position from the IC, who found no violation on this point.

2. Mr. Drory did not have the right to investigate alleged breaches of an obsolete code. Also, Mr. Drory should not have investigated any accusations against me without first getting the authority of the Board, which he did not.

3. The Board voted to end the investigation against me in May, 2022 after I resigned. The Board and the IC had no authority to restart the investigation after I was re-elected on October 24, 2022.
4. The Board can't use the existing Code to sanction me for breaches of a previous and no longer operable code. The old code is not operable, it is inoperable, and it cannot be enforced by the Board. The *actual* Code of Conduct that exists now deals only with breaches of the current Code of Conduct and it cannot be repurposed to sanction me for alleged misconduct under a different Code. The Board has no authority to do this.
5. Ms. Alicia McAuley has never been a member of the Board, and was not even entitled to bring an allegation against me to the Board. Under the Education Act, the Board can only make inquiries and determinations about breaches of the Code if a member of the board brings it to the Board's attention. Only then can an inquiry be made. This process was backwards, unfair and not authorized.
6. The Integrity Commissioner and the Board have ignored and simply dismissed my right to free speech. I have the right to free speech under the Charter, and this right needs to be respected. The Board needs to at least consider when you infringe on my free speech, which is what you are doing with this decision.

I wrote the Integrity Commissioner asking about my right to free speech. He replied to me with his opinion that the Charter of Rights and Freedoms does not apply to this situation. This has been the attitude and approach toward me by others on the Board. But this is wrong. You have an obligation to make sure your decisions do not violate my Charter right to free speech. This investigation and decision arise out of a concerted effort to silence and censor me, and to keep me from doing my job as a trustee, which includes debating policy, and bringing the concerns of the public to the Board. It is concerning that the Code is being used to silence a Trustee, who was elected by the public, and to impose ideological conformity.

7. The Code of Conduct was not created to censor debate at Board or Committee meetings. It is not intended to silence dissent or require that everyone conforms in their views. Using the Code of Conduct in this manner is a complete abuse of this Board's authority. The Board should consider the consequences of using the Code in this way. Using the Code of Conduct as a weapon to shut down debate is undemocratic, sets a terrible example for our students, and impedes the proper functioning of the decision-making process. We have to remember that Trustees are elected, just like members of City and Town Councils are elected. This is not an accident. Democratic decision making is part of our governance structure, and this requires free and open debate from a wide range of perspectives, even if some don't like it.

8. I think the Board is mistaken in the way it reads section 6.6 of the Old Code of Conduct. That section says "Trustee 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." It prohibits insults or comments directed at other persons. Its not about limiting the scope of discussion. If a discussion goes off-topic, that is something that needs to be dealt with at the time of the meeting, and is not something that can properly be dealt through a Code complaint. My comments on January 24th, 2022 were not personal; they were issue-based.
9. When the Board is making decisions about my rights as a Trustee and whether they violated the Code, they have to be impartial. It is clear by the comments made by Trustees, in their personal attacks against me, and hyperbolic language about the supposed "harm" that my comments have caused etc. I do not believe that the Board objectively considered whether anything I did actually violated the Code, and were simply determined to punish me for not falling in line with their political orthodoxy on issues of race and gender etc.

Sincerely,

Linda Stone

A handwritten signature in dark ink, appearing to read "Linda Stone", written over a horizontal line.



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Toronto
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File No. 416-665
 March 2, 2023

SENT BY EMAIL

Board of Trustees
 Durham District School Board
 400 Taunton Road East
 Whitby, ON
 L1R 2K6

Dear Sir or Madame:

Re: Process for Consideration of Integrity Commissioner's Report

I provide this letter to advise the Board of Trustees on the process for considering the written submissions of Trustee Stone in respect of the determinations as to breach and sanctions made by the Board of Trustees at the meeting held on February 6, 2023.

Section 218.3 of the *Education Act* provides as follows:

- (6) If a board determines that a member has breached the board's code of conduct under subsection (2),
 - (a) the board shall give the member written notice of the determination and of any sanction imposed by the board;
 - (b) the notice shall inform the member that he or she may make written submissions to the board in respect of the determination or sanction by a date specified in the notice that is at least 14 days after the notice is received by the member; and
 - (c) the board shall consider any submissions made by the member in accordance with clause (b) and shall confirm or revoke the determination within 14 days after the submissions are received.

The Board gave the member written notice of the determination of breaches and of the sanctions imposed. The member made written submissions to the Board within the timelines provided by the Board of Trustees.

Confirm or Revoke Determinations of Breaches

The Board must now consider the written submissions from the member and must “confirm or revoke” the determinations of breaches made by the Board on February 6, 2023.

The breaches found by the Board on February 6, 2023, are set out in Appendix “A”.

Sanctions

In terms of sanctions:

If the board revokes a determination of breach, any sanction imposed by the board is revoked; and

If the board confirms a determination of breach, the board must still confirm, vary or revoke its decision(s) on sanction(s).

The sanctions imposed by the Board on February 6, 2023, are set out in Appendix “B”.

The relevant provisions of the Education Act are set out in Appendix “C”.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Dolores M. Barbini'.

Dolores M. Barbini

DMB/dd

Appendix “A”

At a Special Board meeting held on February 6, 2023, the Board determined, as follows:

1. That Trustee Stone breached one or more of sections 1.4, 6.1, 6.3, 6.13, and 6.49 of the operative Code of Conduct (the Old Code of Conduct) as a result of comments concerning gender identity and expression which she made at Governance & Policy Committee meetings between October 25th and January 31st as set out at pages 19-20 of the Integrity Commissioner's report.
2. That Trustee Stone breached sections 1.4, 6.1, 6.3, 6.13, and 6.49 of the operative Code of Conduct (the Old Code of Conduct) as a result of her pre-May 5, 2022, Twitter comments concerning gender identity, as set out at pages 7 and 8 of the Integrity Commissioner's Report.
3. That Trustee Stone did breach all sections 1.2, 6.3, 6.11, and 6.44 of the operative Code of Conduct (the New Code of Conduct) as a result of social media posts concerning gender identity and expression issues between May 5 to 14, 2022, as set at pages 7-8 of the Integrity Commissioner's Report.
4. That Trustee Stone did breach section 6.6 of operative Code of Conduct (the Old Code of Conduct) as a result of the content of her speech at the end of the January 24, 2022, Governance & Policy Committee meeting, as set out pages 21-23 of the Integrity Commissioner's report.
5. That Trustee Stone did breach section 6.49 of the operative Code of Conduct as result of the retweet she made concerning race on April 18, 2022, as set out at page 48 of the Integrity Commissioner's Report.
6. That Trustee Stone did breach the operative Code of Conduct (the Old Code of Conduct) as result of her comments regarding the definition of “white supremacy” in the then draft Human Rights Policy, as set out at pages 18 and 19 of the Integrity Commissioner's Report.

Appendix “B”

The Board determined to impose the following sanctions:

- (a) That Trustee Stone be barred from all of the next Board Meeting;
- (b) That Trustee Stone be barred from sitting on any and all Committees of the Board until December 31, 2023; and
- (c) That Trustee Stone be censured.

Appendix “C”

The relevant provisions of the *Education Act* provide as follows:

- 218.3 (1) A member of a board who has reasonable grounds to believe that a member of the board has breached the board's code of conduct may bring the alleged breach to the attention of the board.
- (2) If an alleged breach is brought to the attention of the board under subsection (1), the board shall make inquiries into the matter and shall, based on the results of the inquiries, determine whether the member has breached the board's code of conduct.
- (3) If the board determines under subsection (2) that the member has breached the board's code of conduct, the board may impose one or more of the following sanctions:
1. Censure of the member.
 2. Barring the member from attending all or part of a meeting of the board or a meeting of a committee of the board.
 3. Barring the member from sitting on one or more committees of the board, for the period of time specified by the board
- (6) If a board determines that a member has breached the board's code of conduct under subsection (2),
- (d) the board shall give the member written notice of the determination and of any sanction imposed by the board;
 - (e) the notice shall inform the member that he or she may make written submissions to the board in respect of the determination or sanction by a date specified in the notice that is at least 14 days after the notice is received by the member; and
 - (f) the board shall consider any submissions made by the member in accordance with clause (b) and shall confirm or revoke the determination within 14 days after the submissions are received.

- (7) If the board revokes a determination under clause (6) (c), any sanction imposed by the board is revoked.
- (8) If the board confirms a determination under clause (6) (c), the board shall, within the time referred to in that clause, confirm, vary or revoke the sanction.
- (9) If a sanction is varied or revoked under subsection (7) or (8), the variation or revocation shall be deemed to be effective as of the date the original determination was made under subsection (2).
- (10) Despite subsection 207 (1) but subject to subsection (11), the part of a meeting of the board during which a breach or alleged breach of the board's code of conduct is considered may be closed to the public when the breach or alleged breach involves any of the matters described in clauses 207 (2) (a) to (e).
- (11) A board shall do the following things by resolution at a meeting of the board, and the vote on the resolution shall be open to the public:
 - 1) Make a determination under subsection (2) that a member has breached the board's code of conduct.
 - 2) Impose a sanction under subsection (3).
 - 3) Confirm or revoke a determination under clause (6) (c).
 - 4) Confirm, vary or revoke a sanction under subsection (8). 2009, c. 25, s. 25.
- (12) A member who is alleged to have breached the board's code of conduct shall not vote on a resolution to do any of the things described in paragraphs 1 to 4 of subsection (11).
- (13) The passage of a resolution to do any of the things described in paragraphs 1 to 4 of subsection (11) shall be recorded in the minutes of the meeting.