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**RE: TORONTO DISTRICT SCHOOL BOARD
CODE OF CONDUCT COMPLAINT INVESTIGATION #0417**

This is the Final Report of the Office of the Integrity Commissioner of the Toronto District School Board (the “TDSB”) in relation to a complaint regarding allegations of contraventions of the Board Member Code of Conduct (the “Code”) by Trustee Sheila Cary-Meagher, Ward 16 (the “Respondent”).

I. Summary

This report presents the findings of my investigation under the Code relating to the conduct of the Respondent in connection with a complaint received on December, 2017 (the “Complaint”). The Respondent is a member of the Board of Trustees (the “Board”).

The Complainant alleged that the Respondent made inappropriate utterances at a November 27, 2017 Expulsion Hearing (the “Expulsion Hearing”), contrary to two provisions of the Code:

1. Guiding Principle (formerly Rule 4.1(a), now rule 6.1(a)): the Respondent used disparaging comments in relation to issues of sexual orientation, thereby contravening Rule 6.1(a) of the Code.; and
2. Discreditable Conduct (formerly Rule 4.10, now Rule 6.10): the Respondent used language that refers to an individual’s sexual orientation, in a pejorative and demeaning way, thereby contravening the Rule 6.10 of the Code which requires Trustees to treat other Board Members, the public and TDSB staff, respectfully and without abuse, bullying, or intimidation and to ensure that their work environment is free from discrimination and harassment.

The Complainant alleged that the Respondent used the word “dyke” repeatedly as a derogatory term and in a disparaging way. After the Complainant told the Respondent that he found the Respondent’s language “problematic”, the Respondent continued to use the term. When the Complainant spoke up a second time noting that the word was “wrong to use” and “personally offensive”, the Respondent replied “I don’t care”. The Respondent admits that she used the words alleged by the Complainant. However, the Respondent disputes the context of her phrase “I don’t care” and states that she had no intention to offend anyone.

I find that the Trustee’s conduct also engaged the TDSB Workplace Harassment Prevention Policy (“Harassment Prevention Policy”) and Human Rights Policy as her comments were made in the presence of staff and ultimately, the conduct engaged a staff member. I have considered the application of those policies in respect of Issue #2.

Summary of Findings

With respect to Issue #1, I find that Rule 6.1(a) of the Code contains one of the principles which guides the interpretation and application of the Code provisions which set out prohibited

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conduct. Rule 6.1(a) is one of the fundamental guiding principles to inform ethical behavior for TDSB Trustees. It is not a stand-alone provision which lends itself to a finding of a breach of the Code; rather, it informs the analysis of whether a Trustee’s conduct has violated Rules 6.2-6.12 of the Code.

On Issue #2, I find that the actions of the Respondent constitute discreditable conduct contrary to Rule 6.10 of the Code. In considering Rule 6.10 of the Code, I considered the guiding principle set out in Rule 6.1(a) which requires a Trustee to “...serve and be seen to serve their school communities in a constructive, respectful, conscientious and diligent manner”.

I find that the use of the phrase was discriminatory contrary to the Human Rights Policy and that the conduct created a poisoned work environment for a staff member contrary to TDSB’s Harassment Prevention policy. In reaching those conclusions, it is not necessary to consider the intent of the Respondent, but rather the perspective of a reasonable person and of the staff member, whose safe workplace was seriously undermined as a result of the Respondent’s behaviour.

I find that the Respondent reasonably ought to have known that her comments and use of disparaging language was unwelcome, intimidating and disrespectful to the Complainant, staff in attendance at the Expulsion Hearing, and staff and the community generally. Even after being told that her comments were offensive to the Complainant, the Respondent did not cease her conduct. In discussions with me, the Respondent admitted that she should not have used such language and that her actions “crossed the line”. Although she expressed sincere regret for her comments, the Respondent did nonetheless make comments contrary to Rule 6.10 of the Code and in the context, those comments created a poisoned work environment under the Harassment Prevention Policy.

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

II. The Allegations in the Complaint

On November 27, 2017, an Expulsion Hearing was scheduled at 5050 Yonge Street. In addition to the Respondent, two other Trustees (Trustee 1 and Trustee 2) and four members of TDSB staff were in attendance.

When at the scheduled time to begin the hearing, the student and his family had not arrived, the expulsion committee decided to wait an additional 30 minutes before starting the meeting. While waiting for the student and family to arrive, the Respondent began a discussion about an individual. In referencing the openly gay individual, the Respondent used a word “dyke” in a manner that referred to the individual’s sexual orientation in a sarcastic and mocking way. The Respondent is alleged to have found humour in the use of the word.

After a few minutes, the Complainant communicated to the Respondent that he found her use of the word and the way that it was used, “problematic, especially if [the individual] was a lesbian”.

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The Respondent is alleged to have said that she “didn’t think it was a problem” and that she thought her play on words was clever. The Complainant stated that the Respondent’s use of the term was not appropriate.

While the Respondent initially changed topics, her conversation ultimately came back to the individual. The Respondent repeatedly stated her dislike for the individual, called her a “bitch” and used the word “dyke” a number of times.

The Complainant again spoke up and stated that he found the use of the word personally offensive. The Respondent is alleged to have said “I don’t care”. The Complainant expressed consternation and pressed the Respondent to clarify her reasons for saying “I don’t care”:

Complainant: “Are you saying that you don’t care what an employee of the board thinks?”

Respondent: “not really...and don’t you hate her too?”

Complainant: “I [don’t] really know her and my opinion of her [has] nothing to do with it”

Trustee 1: “Thanks for saying that”

Trustee 2: *Nodding in agreement* “Let’s start the hearing”

After the hearing, the Complainant thought that “at this point some comment would be made on the inappropriateness of the remarks”. No comment was made. As the Complainant left the hearing room, he was approached by Trustees 1 and 2.

According to the Complainant,

[Trustee 1 and Trustee 2] apologized for the comments made by their colleague.

I thanked them, but said that I was very unhappy that I was the one left to challenge a Trustee on her inappropriate and homophobic comments. I said that I felt that it should not have been left to me, for a number of reasons, but also because I was just about to present a case over which they had complete authority. They agreed and apologized again. They said that if I would like to make a complaint I could contact the office of the Integrity Commissioner and gave me her name.

The Complainant also stated that:

“Trustees are powerful people in the lives of staff and can have a direct impact on their work-life experiences...The opinion expressed suggests that some staff and students could be discriminated against based on their sexual orientation.

My concern is about an abuse of power, discrimination, ignorance, and arrogance which runs counter to the Board’s values around equity and diversity. The behavior of this Trustee feeds a latent ‘culture of fear’ that most of us hoped was fading. I am also concerned that a new administrator may not have felt empowered enough to confront a group of Trustees in this situation, and the behavior might have gone unchallenged.

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The Director’s message on the Board’s website closes with the statement: ‘TDSB. Expect More’

I did and I do.”

III. **The Relevant Policies and Provisions**

A. *The Board Member Code of Conduct*

The Code is a document that sets out the ethical standards adopted by the Board. While the Code is to be considered in its entirety, the wording of each provision has been carefully crafted to provide a roadmap for Trustees to conduct themselves at all times in such a way as to promote respect for the Board, colleagues, the public and the TDSB.

The Code’s stated objective is set out in Rule 1:

This Board Member Code of Conduct (“Code of Conduct”) supports both legislated requirements and Board-established by-laws, policies and procedures that set out the governance and accountability framework at the Toronto District School Board (TDSB). The *Education Act* gives school boards the authority to adopt codes of conduct that apply to board members. This Code of Conduct supports the Board’s commitment to meeting high standards of conduct by trustees and staff.

Rule 6.1 sets out the guiding principles for the interpretation and application of the Code rules. Rule 6.1(a) states that:

Members of the Board shall serve and be seen to serve their school communities in a constructive, respectful, conscientious and diligent manner.

Rule 6.10 of the Code prohibits “Discreditable Conduct”. It provides that:

All members of the Board 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 their work environment is free from discrimination and harassment. This provision applies to all forms of written and oral communications, including via social media...

These relevant Code rules underscore that school board Trustees hold positions of privilege. Therefore, they must discharge their duties in a manner that recognizes a fundamental commitment to the wellbeing of the community as a whole and have high regard for the integrity of the Board.

The Code rules require Trustees to recognize the importance of cooperation with other Board Members and respect for the professional roles and dignity of staff. In accordance with Code rules, Trustees will, among other things, (i) strive to create an atmosphere during Board, Committee and other Board-related activities, that is conducive to solving issues of the Board,

(ii) use respectful language and (iii) behave with dignity towards fellow Trustees, staff and the public.

While Code rules are not in place to impede a Trustee from publicly stating their position on matters relevant to Board business, including stating their objections to a certain course of action, a Board Trustee must not denigrate decisions or individuals and shall not make pejorative comments with reference to colleagues, TDSB staff or the public. Such behavior undermines the confidence in the Board.

As set out in Rule 6.14 of the Code, the *Education Act* authorizes the Board of Trustees to impose one of the following sanctions on a Trustee who fails to meet their obligations under the Code:

Sanctions:

- i. Censuring the member of the Board;
- ii. Barring the member of the Board from attending all or part of a meeting of the Board or a meeting of the committee of the Board; and
- iii. Barring the member of the Board from sitting on one or more committees of the Board, for the period of time specified by the Board of Trustees

In addition, the Integrity Commissioner may recommend remedial action.

B. The TDSB Workplace Harassment Prevention Policy (P034) and the TDSB Human Rights Policy (P031)

Discrimination and harassment are prohibited under the Ontario *Human Rights Code* and the *Occupational Health and Safety Act* (“OHSA”), as well as TDSB policies including the Workplace Harassment Prevention Policy (P034) and the Human Rights Policy (P031).

In April 2017, the Board approved an updated Harassment Prevention Policy after a comprehensive review by the TDSB Human Rights Office. The Policy aims to promote a climate of understanding and mutual respect where all are equal in dignity and rights and to provide a means of redress for individuals who are discriminated against or harassed contrary to the policy. The Board also adopted an updated Workplace Harassment Prevention and Human Rights Procedure in October 2017 (the “Harassment Prevention Procedure”) which sets out the protocol for considering, among other things, allegations of discrimination and workplace harassment.

IV. The Process Engaged by the Integrity Commissioner

A. Jurisdiction of the Integrity Commissioner

I first considered my jurisdiction to review the Complaint and considered whether the Complaint engaged policies beyond the Code.

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1. Jurisdiction over Code Investigations

Sections 218.1 to 218.3 of the *Education Act* set out the duties of board members and provides the school boards with authority to adopt and enforce a code of conduct that applies to members of the board, who are also referred to as Trustees.

The TDSB adopted the Board Member Code of Conduct and adopted procedural rules for the application of the Code, the Complaint Protocol for the Board Member Code of Conduct (the “Code Protocol”).

The TDSB also appointed an Integrity Commissioner to investigate complaints about violations of the Code and to make recommendation to the Members of the Board. Section 48 of the TDSB Board Services Bylaws, 2015 states that:

The Board shall appoint an Integrity Commissioner to provide accountability services and advice pursuant to the Board Member Code of Conduct and the Complaint Protocol.

(48.1) The Integrity Commissioner carries out in an independent manner the duties and responsibilities of his or her office as set out in these Bylaws, the Complaint Protocol and the Board Member Code of Conduct.

Rule 3.0 of the TDSB’s Code states that:

Integrity Commissioner refers to the Integrity Commissioner appointed by the Board of Trustees in accordance with the Toronto District School Board Bylaws.

Section 6.2 of the Code Protocol states that “[a] request for an inquiry into a complaint that a member of the Board has contravened the Code of Conduct (the “complaint”) may be made to the Integrity Commissioner...”

2. Jurisdiction to applying other relevant TDSB policies

In addition to the Code, I find that this complaint engages the Harassment Prevention Policy and the Human Rights Policy. The policy and Harassment Prevention Procedure applies to harassment and unlawful discrimination against employees from all sources including trustees (section 5). Section 6.4 of the Harassment Prevention Procedure provides that:

Incidents/Complaints against a Trustee, alleging harassment and/or discrimination will be forwarded to the Board’s Integrity Commissioner and will be addressed under the Board Member Code of Conduct policy and procedure.

The Harassment Prevention Procedure provides a standard on which to consider allegations of discrimination and harassment in respect of a staff member. Under the Harassment Prevention Procedure, the investigator will consider all of the evidence gathered and determine whether or not an incident(s) of alleged harassment/discrimination took place and whether it amounts to a breach of the human rights or workplace harassment prevention policy, using the standard of proof called the “balance of probabilities.”

B. The Respondent's Initial Response

I provided the Respondent with a copy of the Complaint. The Respondent provided a written response in which she admitted the conduct. She stated:

I will begin by saying that the narrative in the complaint is true in substance.

Although I find the person referred to is an obnoxious and malicious person. As she is a public persona I should not have aired my distaste for her in such a demeaning way.

I attempted to apologize to [the Complainant] through the Integrity Commissioner when the complaint was filed [...]

And so I apologize completely for my actions and words and for any embarrassment I may have caused the people present and to the object of my remarks. I crossed the line.

There is no excuse for my actions or comments.

I also apologize to the Board for any embarrassment this may have caused.

The Respondent communicated verbally to me her “profound regret for her actions and statements” and that what she had said at the Expulsion Hearing was “utterly unacceptable”.

C. TDSB Human Rights Offices

In the course of my investigation, I spoke with the TDSB Human Rights Office. I determined that it was not necessary to appoint another investigator. The issues of the breach of the Code and the workplace policies were so intertwined that having two distinct investigations would likely result in duplication of effort. Additionally, as the Respondent admitted the conduct, it became clear that it would be unnecessary to engage a workplace investigator to make factual determinations.

D. Evidence received from Other Individuals

I conducted interviews with other individuals who were in attendance at the Expulsion Hearing. The evidence provided by those individuals corroborated the allegations in the Complaint.

With respect to the accuracy of the conversation as set out in the Complaint, Trustee 1 confirmed that the Respondent had said what was alleged in the Complaint. In addition, Trustee 1 stated that he had attempted to redirect the Respondent away from the continued use of offensive language, especially when the Complainant voiced his discomfort and offense at the content of the conversation. Trustee 1 confirmed that the Respondent did respond that she “did not care” when the employee expressed concern with her use of the term “dyke”. Trustee 2 and a second staff member in attendance at the Expulsion Hearing confirmed what was stated in the Complaint.

These witnesses also confirmed that the tone of the conversation was extremely aggressive. The Respondent displayed clear animus towards the individual who was the subject of her remarks. It was not a light-hearted conversation with a joking tone.

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During the course of this investigation, two TDSB staff approached my office to discuss the Respondent's prior behavior. These individuals were not in attendance at the Expulsion Hearing, and I did not seek out their comments. I determined that the unsolicited comments from the two individuals would be received and considered if there was a dispute about the facts and need to make findings on credibility. Both individuals advised that, in the past, the Respondent's language used at expulsion hearings was inappropriate. One individual stated: "it is exhausting trying to keep [the Respondent] in line".

E. The Complainant's Further Comment

In response the Respondent's reply to the complaint and her expression of apology, the Complainant expressed a sentiment of too little too late:

"I would like to note that while personally offended by the comments, my primary concern is around the fact that this individual has considerable power and influence over the lives of students and staff and over policies set by the Board. The fact that she made the remarks at all and then her seeming inability to understand the inappropriateness of those remarks, makes me question her ability to make decisions in the interests of all Board stakeholders.

In terms of her apology, I find it hard to accept as sincere. She had ample opportunity to recognize and address the inappropriate and offensive nature of her comments prior to and after the formal hearing. On two separate occasions prior to the formal hearing I challenged her on her use of the word 'dyke'; her responses were defensive and dismissive. Her colleagues did not challenge her, but did return to the hearing room after the formal procedures to apologize for her comments and for their own failure to challenge them. Further, if the Trustee had sincerely reflected on the comments and realized their inappropriate nature, she could have called me at any time to discuss them over the approximately two weeks between the end of the hearing and the registration of my formal complaint. That she only seems to have realized the problematic nature of her remarks when called by the Integrity Commissioner makes me doubt her sincerity."

F. Respondent's Comment on My Preliminary Report

My office provided the Respondent with my preliminary report. The Respondent provided a supplementary response strongly denying that her utterances were in reference to an individual's sexual orientation. In my meeting with the Respondent, she demonstrated sincere contrition and surprise at the Respondent's reaction to her statements made at the Expulsion Hearing.

In her supplementary response, the Respondent stated:

My [original response to the complaint] fell far short of the mark because I was so shocked by the accusation of homophobia. My record on that issue over the last 32 years would indicate quite the opposite. Since the late 1970's I have moved and/or supported all the anti-homophobia motions or policy changes that the Board has instituted. I

couldn't believe that [the Complainant] was serious in his assertions. And as a result I responded to [the allegation] that I was rude and dismissive, which I admitted to because on reflection, I felt that my conduct was inappropriate...

However, I must most vigorously dispute [the Complainant's] interpretation of my comments.

My apology to [the Complainant] was for my flip and dismissive manner in response to his comments. I cannot imagine that anyone who is aware of me within this system would say that I have knowingly uttered anything that would disparage a person because of the sexual preference. It is not the kind of person that I am nor consistent with the work I have done for 32 years.

During my discussions with the Respondent, she strongly stated that her disdain and levity was directed at the person to whom she called a "dyke" and not directed at that individual's sexual orientation. The use of "dyke" was, for the Respondent, a "play on words" and "a use of language". In an effort to clarify further her position and to explain how she often looks at the different meanings of words, the Respondent offered the following anecdote:

I am a daughter of a dentist. My mother used to tease my dad by calling our family dental caries, which of course, is the technical term for tooth decay. It was, and is, to me a very funny coincidence of names.

V. Findings of the Integrity Commissioner

A. Analysis

The words used are not in dispute. The Respondent confirmed that she had made the utterances set out in the Complaint. However, while the Respondent initially acknowledged that her conduct was inappropriate and apologized, in her supplementary response, the Respondent "vigorously disputed" the Complainant's interpretation of her comments as discriminatory. The Respondent characterized her behaviour as rude and dismissive but stated that she never "knowingly uttered anything that would disparage a person because of their sexual preference".

Having reviewed all of the evidence, I am left with no doubt that the Respondent has breached Rule 6.10 of the Code by failing to treat members of the public and staff respectfully and failing to ensure that staff's work environment was free from discrimination. I find that the Respondent repeatedly used the word "dyke" as a pejorative term to refer to an openly gay female. The discriminatory comments did not promote the Trustee's service of the school community in a "constructive, respectful, conscientious and diligent manner".

1. Discrimination

The Human Rights Policy is currently under review. The policy states:

4.1 Grounds of Discrimination

The Board upholds and supports the right to equal treatment without discrimination based on the following prohibited grounds:

...

- sexual orientation

...

4.2. Forms of Discrimination

Discrimination is defined as unfair treatment of a person or group based on the grounds listed above. Discrimination can occur in many ways including the following:

- Direct discrimination: Any action from individuals, groups or organizations, whether intended or unintended, which differentiates between persons based on their membership in a protected group as set out in this policy other than special programs designed to address the conditions of individuals or groups.
...
- Harassment: A form of discrimination defined as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. Sexual harassment is a particular form of harassment. It can take the form of a sexual advance, request for sexual favours or sexual flirtation or banter made by any person, including a person in a position to grant, confer or deny a benefit, privilege, or advancement, where the person engaging in such conduct knows, or ought reasonably to know, that it is unwelcome. Sexual attention by an employee toward a student is unacceptable under any circumstances and shall constitute a violation of this policy.
...
- Negative or “poisoned” environments created and fostered by acts or omissions that maintain offensive or intimidating climates for study or work. Poisoned learning environments include inappropriate or non-inclusive curriculum and pedagogy, bias or discriminatory barriers in existing policies, programs, or assessment procedures, and discriminatory comments made by teachers and other employees. Poisoned working environments thrive where there is managerial or supervisory condonation of discriminatory or harassing behaviour. Poisoned environments can also be created where there is inattention to fair and equitable recruitment and employment policies, practices and procedures.

Under the updated Harassment Prevention Procedure, discrimination is defined:

Discrimination is any practice or behaviour, whether intentional or not, which has a negative effect on an individual or group because of any of the prohibited grounds of the Code including race, ancestry, place of origin, ethnic origin, colour, citizenship, creed (religion), sex, gender identity, gender expression, sexual orientation, age, marital status, family status, disability/perceived disability, or receipt of public assistance (applies to the social area of housing only). [emphasis added]

A person's comments may be discriminatory regardless of intent.

The Respondent used the word "dyke" to refer to a person whom she "hated". She did so in the context of a conversation in which she, to use the Respondent's own words "aired my distaste for [an individual] in such a demeaning way". Even if I accepted that the initial use of the word was a "play on words", the Respondent's continued use of the word "dyke", even after the Complainant advised that he found it problematic showed her disregard for the effect of her "play on words". The Respondent appeared to link the sexual orientation of the woman to her "hatred"; when the Complainant raised his concern about her use of the word "dyke" for the second time, the Respondent encouraged the Complainant to state that he hated her too. Whether that was the intention or not, the effect of her conduct was to demean an individual based on her sexual orientation. Her comments were discriminatory contrary to the *Human Rights Code* protected ground of sexual orientation. Indeed, the BC Human Rights Tribunal has held that the phrase word "f[.....] dyke" constituted discrimination when "used as a pejorative comment directed at a person's sexual orientation".¹

The Respondent denies having made light of an individual's sexual orientation and holds the position that she should not have laughed and chuckled about when the Complainant voiced concern about the tone and language used. The Respondent posits that she did not use homophobic slurs because the word "dyke" is used in regular parlance to refer to an individual's sexual orientation. In addition, in her discussions with me, the Respondent wanted to make it abundantly clear that she is not homophobic. In her recollection of the conversation at the Expulsion Hearing, the Respondent said that she was being flip because she "was taken aback by the untoward accusation of the [Complainant]" that caught her off guard. "It seemed to me that the [Complainant] was being overly aggressive to me and I was offended by his aggression".

However, the Complainant, along with the three other witnesses, has confirmed that the Respondent used the word with animus towards a lesbian woman. The Complainant took from the Respondent's conduct that this Trustee would not refrain from or discontinue conduct defined by TDSB policy as discriminatory, even after she was advised that she was using language which could be considered vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome of it. In my view, a reasonable individual who heard the comments made by the Respondent, with the laughter and the tone of disrespect, would conclude that the use of the word was demeaning to gay people

¹ *L.(C.) v. Badyal* (1998) 34 C.H.R.R. D/41 (B.C.H.R.T.) at para. 30. See also *Pardy v. Earle and others* (No. 4), 2011 BCHRT 101

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(and that the sexual orientation of the subject of the comments was one of the reasons that the Respondent “hated” the individual).

While I accept that the Respondent did not intend to disparage an individual’s sexual orientation, her use of the word, her aggressive demeanor, and her complete disregard for staff’s objections to her unwelcome comments demonstrated a heavy handedness on the part of the Respondent that has no place at the TDSB or in any workplace that values and is committed to the equity and dignity of its staff. In reaching this conclusion, I am not finding that the Respondent is homophobic. However, the Respondent used language that was derogatory and discriminatory on the basis of a sexual orientation. Such demonstrated behaviour by trustees cannot be tolerated.

2. Effect on Staff

The purpose of Rule 6.10 includes protecting TDSB staff from the indignity of discriminatory conduct, verbal or otherwise, in a workplace. As pointed out by the Complainant, had he not been a long-time staff person at the TDSB, he may not have felt in a position to challenge the Respondent’s behaviour.

The Respondent was not deterred by the Complainant staff member’s consternation. First, he expressed that the language was problematic and discriminatory generally; after the behaviour continued, he expressed his offense at the remarks personally. The Respondent continued her behaviour and was dismissive of the Complainant in a manner which was not respectful to the Complainant.

While individual trustees are not the “boss” of staff, there is no doubt that staff tend to see trustees as being in a position of authority. Indeed, in the particular circumstances, the Complainant staff member was required to present at the Expulsion Hearing immediately after he had called out the Respondent’s inappropriate behaviour. And the Respondent was a decision-maker who appeared to have discriminated against individuals who are gay. This created a poisoned work environment for the Complainant.

Under the Harassment Prevention Policy, the definition of *poisoned work environment* is:

“a negative working environment created by a form of harassment. The harassment may include inappropriate comments, behaviour, or display of offensive material which has an adverse impact on an individual or a group. The comment of behaviour is typically repetitive in nature and happens over an extended period of time; however, one incident (if serious enough) can poison a work environment and have lasting effects on an individual/group beyond the original incident(s). The offending behaviour or conduct does not have to be directed towards any person or group in particular.”

While the definition refers to more than one incident, even a single statement or incident may be significant or substantial enough to constitute a breach of the Code by creating a poisoned environment for individuals because of their sexual orientation. Slurs or jokes about an individual’s sexual orientation allowed in the workplace may demonstrate an organizational

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culture that is discriminatory, harassing and marginalizing. It is particularly troubling that the individuals with equal authority failed to reproach the Respondent.

In being subjected to these remarks in his workplace, the Complainant had a serious concern about equal treatment without discrimination because of sexual orientation in his employment. The use of the term dyke is discriminatory when the context suggests that the Respondent “hates” the individual whom she repeatedly called a dyke and a bitch. It must be reasonably expected to be offensive and hurtful to a homosexual person (and indeed, to any person, regardless of sexual orientation). Indeed, the Complainant expressed that even though the comment was not made directly about him, he was offended by the comment. When he confronted the Respondent about it, she was dismissive.

This complaint investigation demonstrates that, when considering issues of discrimination and harassment, what matters is not who you believe you are but rather what you portray through your actions and behaviour.² The Respondent had an opportunity to reflect on her comments both during the pre-hearing conversation and after the Expulsion Hearing but prior to the submission of the Complaint. There was an opportunity to live out the intent of the Human Rights Procedure and reflect on why the Complainant voiced concern and discomfort. The Respondent did not see the need to apologize, because in her view, she had no intent to offend. The Harassment Prevention Procedure was enacted to prescribe behaviour that ensures a respectful workplace. Given the history of previous actions of Trustees and the reasons for the introduction of the Office of the Integrity Commissioner and the creation of a TDSB Manager of Human Rights, Trustees, even those with good intentions, must ensure that their actions and words, conform to the equity lens of the Board and respects the staff who passionately work in the best interests of the students

B. Complaint Findings

As a general proposition, a Complainant who alleges that a Trustee has contravened a rule of the Code of Conduct must establish the allegations asserted in the complaint and bears the onus of proving that the breaches put forward in the complaint took place.

Regarding this Complaint, I find that the Respondent did breach Rule 6.10 of the Code through her use of discriminatory and derogatory language. In doing so, she also created a poisoned work environment for TDSB staff contrary to the Harassment Prevention Policy and Human Rights Policy.

C. Appropriate Sanctions

In determining the appropriate sanction, I have carefully considered the Respondent’s submissions. I have concluded that the Respondent’s use of language and subsequent comments and conduct reflect a clear lack of understanding about discrimination in relation to issues of sexual orientation as prescribed under the TDSB policies and procedures.

² Statement by TDSB Human Rights Manager

In her reply to the Complaint, the Respondent states, "the narrative in the complaint is true in substance... so I apologize completely for my actions and words and for any embarrassment I may have caused the people present and to the object of my remarks. I crossed the line. There is no excuse for my actions or comments." In addition, in her supplementary response, the Respondent sets out that her flip statement "I don't care" did not relate to the offence expressed by the Complainant but rather it related to her having no regret for directing harsh comments at the individual subject of the conversation. In the Respondent's view, her levity was directed at her dislike for an individual and not the individual's sexual orientation.

In short, while the Respondent admits that her comments went "over the line" and were "inappropriate", her supplementary response contained a strong denial of any intent to disparage an individual based on their sexual orientation and a clarification that while her utterances were "flip and dismissive", her statement "I don't care" was not made with respect to statements about a person's sexual orientation but rather, about making statements about disliking the individual subject of the conversation.

The Respondent regrets her decision to make public her disdain for the subject of the conversation and for dealing with staff's concern in a dismissive manner. However, she does not view her actions or behavior as contrary to the Human Rights Policy or the Harassment Prevention Policy which require fair and respectful treatment of staff and the public and an environment free from discrimination.

In the circumstances, remedial action is necessary to ensure that the Respondent receives training in human rights. The evidence indicates that the Respondent was dismissive when confronted about her use of the term "dyke". Her supplementary response to the Complaint indicates that she has no appreciation of why the use of discriminatory language in the workplace is offensive and how it can infringe the rights of others which are protected by the Ontario *Human Rights Code*. The Respondent did not seriously consider the concerns of staff who advised her that her comments were offensive, as they connected her expressed hatred for a woman with her sexual orientation.

VI. Integrity Commissioner's Recommendations:

The Integrity Commissioner recommends that the Board impose the following sanction:

1. Barring the Respondent from sitting on any expulsion hearing panels until after she completes the TDSB Human Rights and Prevention of Harassment in the Workplace eModule (the "eModule");

The Integrity Commissioner recommends that the Board impose the following remedial actions:

1. The Respondent must tender a written apology to the Complainant within 30 days of the Board's receipt of this report; and

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2. After completing the eModule, the Respondent must meet with the Human Rights Manager to review the equity principles of the eModule.

I remained seized of this matter until such time as the above have been concluded.

Suzanne Craig
Integrity Commissioner

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