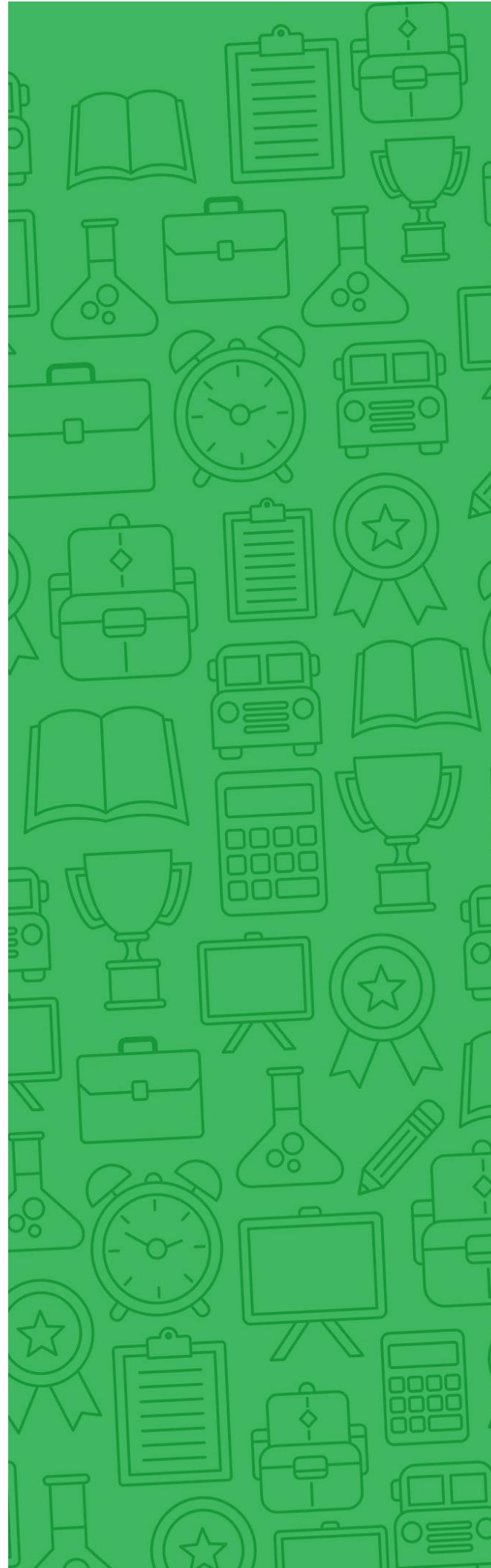




TDSB Board Member Code of Conduct  
Complaint Investigation Report naming  
TRUSTEE ALEXANDRA LULKA



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## I. Preamble

This is the Final Report of the Office of the Integrity Commissioner of the Toronto District School Board (the “TDSB”) in relation to two complaints regarding allegations of contraventions of the TDSB’s Board Member Code of Conduct (Policy P075) (the “Code”) by Trustee Alexandra Lulka, Ward 5 (the “Respondent”). This investigation was conducted within the framework of TDSB’s Code of Conduct as well as with reference to the *Education Act*, R.S.O. 1990, c. E.2.

The Complainants alleged that the Respondent had contravened sections 6.1a, c, d, e; 6.6a; 6.9a, b; 6.10a, b; and 6.11 of the Code of Conduct by posting a public Twitter statement (the “Respondent’s Twitter Statement”) which was alleged to have mischaracterized the actions of a TDSB employee (“the staff person”) as having distributed some materials that were anti-Semitic thus constituting harassment and discrimination, interfered with an ongoing TDSB staff investigation, and falsely or maliciously injured the professional reputation of the staff person.

Before setting out my analysis and findings, I wish to clarify the limits of my role as Integrity Commissioner. This investigation is about the Respondent’s comments and whether these were not in compliance with Code rules set out in the Complaints; not about the employee’s conduct vis a vis sending out the Mailouts, what definition of antisemitism should be used by the TDSB, or how the TDSB should address the situation that ensued following the May Mailouts. The underlying issues about the Palestinian-Israeli conflict are difficult ones, which my office is not equipped to opine on. I will not analyse those issues in this report, and I will not touch on concerns raised about how the activity engendered by the Mailouts affected students and teachers of, or with, an affiliation with named religious and ethno-cultural perspectives (except as set out in the expert opinion of the Human Rights Independent Investigator) or whether the Mailouts were appropriate and the apparent lack of detailed oversight as to the Mailouts themselves. However, I have decided that in order to give a thoughtful treatment of the Complaints before me, operating in a vacuum which views integrity commissioners as inflexible and unable to navigate nuanced discussions that touch on real life issues, would render my role ineffective and the complaint investigation process, removed from any relevance.

The Complaints investigated by this Office came about within the context of two pivotal issues:

- 1) What information should be included when teaching about the Israeli-Palestinian conflict? The answer to this question does not fall within the jurisdiction of this Office to opine. However, in the gap created by an absence of an informed and responsible discussion in the departments tasked with the oversight and expertise in harassment, human rights and discrimination, students, teachers, Trustees and the public reached out to this Office seeking a resolution to an issue that should have been addressed by the school board administration. While teaching this topic, educators should be required to carefully emphasize the misinformation that has

been circulated about the recent violence between the Israelis and Palestinians on the internet. Many scholarly and journalistic articles contain unbiased information that together with an informed guide to the readings, could provide an appropriate treatment of the subject matter. However, many articles written by experts in the subject area, contain hurtful perspectives and words that trigger decade-long misconceptions that feed into stereotypes and discrimination. The investigation of a Board Member Code of Conduct complaint is not the appropriate venue to debate how to address this important but difficult subject area.

2) What language and content should be included in definitions of discriminatory terms? As pointed out by Mr. Mohammed Amin, Co-Chair of the Muslim Jewish Forum of Greater Manchester and Chairman of the Council of the Islam & Liberty Network, while referring to the UK context, how perspective can be incorporated into language is an important issue to unpackage. Infact, Mr. Amin states:

- Many on the political left see it as a conflict between colonizers and colonized, like many previous imperialist conflicts. This comes across very strongly in some of the positions taken by the extreme left of the Labour Party. For more background on this, see the book *"The Left's Jewish Problem - Jeremy Corbyn, Israel and Anti-Semitism"* by Dave Rich.
- More recently, what was historically seen as a territorial conflict has come to be seen as a religious conflict. This is shown most simply by comparing the name of Hamas (*Islamic Resistance Movement*) with organizations such as the PLO (*Palestine Liberation Organisation*).<sup>1</sup>

Teaching about contested history is a challenge faced by educators. Teaching students how to think critically about the impact of historical and present-day racism is a divisive topic that in Canada has focused primarily on anti-black and anti-indigenous racism. Educational equity seeks to provide opportunities and achieve excellent outcomes for all students by providing individual students with the supports they need to succeed. This issue stands at the forefront of many of the unresolved agenda items at the Board and has been included in several of the Annual Reports of this Office.

Currently, most educational equity research involves how materials should convey closing gaps in student achievement and increasing public confidence.<sup>2</sup> Avoidance of engaging in valuable and authentic equity learning through silence or evasion of discussions during turbulent times, effectively "impedes movement

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<sup>1</sup> <https://www.mohammedamin.com/Middle-East/Thinking-about-Israel-Palestine-dispute.html>

<sup>2</sup> Achieving Excellence: A Renewed Vision for Education in Ontario (2014).

toward progressive, antiracist education”.<sup>3</sup> The avoidance used by some educators are often a result of their discomfort with learning about race, diversity, and oppression, often translates into a strong commitment to maintaining dominance despite professing to be supporting policies of inclusion, equity and diversity.

Experts recommend that teaching modules for education in the area of ethnocultural contested history:

“be designed in consultation with a variety of different Jewish, Muslim and Christian groups to incorporate a variety of different perspectives and sources. Such a module might, if properly designed, perform a critical historical function and suggest the transformative socio-political possibilities of the study of the past which as we have seen as a feature of History that is vitally important to Muslim children.”<sup>4</sup>

Says one expert in the subject area:

“[A]nti-Semitism is alive and well, and increasingly it masquerades as criticism of Israel. But as the executive director of T’ruah, a Jewish organization dedicated to protecting human rights here, in Israel and in the occupied Palestinian territories, I know it’s possible to criticize Israel without veering into anti-Semitism. I do it every day.”<sup>5</sup>

There is so much that requires careful consideration, oversight and preparation when addressing this very important and often divisive topic. However, during the May 2021 unrest in the area often plagued by violence, a Mailout was distributed by an employee of the TDSB which led to a Trustee making comments which are the basis for the complaints subject of this report. What is the role of a municipal integrity commissioner whether at the council or school board level? One author of political accountability, David W. Arbuckle, stated that:

“Phillip MacEwen, in his review of the high-profile case in the City of Vaughan involving then Deputy Mayor Michael DiBiase, highlights that ‘no matter how comprehensive the rules, there will on occasion be situations where the ethical course of action is not clear and an individual will need authoritative advice and guidance.’”<sup>6</sup> Arbuckle goes on to say that “there is no universally understood definition of an accountability officer” (Anand & Sossin, 2018), [many see] “[t]he most important function of municipal accountability officers is to provide much-needed information for local media, for potential council candidates, and for

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<sup>3</sup> Berchini, C.N. (2017). Critiquing un/critical pedagogies to move toward a pedagogy of responsibility in teacher education. *Journal of Teacher Education*, 68(5), 467

<sup>4</sup> <https://www.mohammedamin.com/Middle-East/Teaching-Israel-Palestine-conflict-essential.html>

<sup>5</sup> [https://www.washingtonpost.com/outlook/how-to-tell-when-criticism-of-israel-is-actually-anti-semitism/2018/05/17/cb58bf10-59eb-11e8-b656-a5f8c2a9295d\\_story.html](https://www.washingtonpost.com/outlook/how-to-tell-when-criticism-of-israel-is-actually-anti-semitism/2018/05/17/cb58bf10-59eb-11e8-b656-a5f8c2a9295d_story.html)

<sup>6</sup> David W. Arbuckle Western University, Held to Account? An Analysis of Political Accountability in Ontario’s Municipal Sector, Fall 2018

conscientious citizens.’<sup>7</sup> Sancton continues that “rather than expecting accountability officers to take over accountability functions from electors by imposing harsh penalties such as removal from office, we should see them as people who can help municipal voters make informed decisions” (Sancton, 2017).<sup>8</sup>

But what about when gaps in the operational administrative policies of a municipality (or in this case, a school board) lead to actions by elected officials that engage the Code of Conduct? It is against this backdrop that this Office received and investigated the two complaints subject of this investigation report.

Subsequent to these complaints, there have been a number of incidents at the TDSB leading to a recent statement from the TDSB Director of Education and three Associate Directors to Staff of the Board. They wrote:

Dear Staff,

The Toronto District School Board is committed to developing students’ critical thinking skills so they can understand complex issues from many different perspectives. This is particularly true when learning about contemporary social problems and when issues intersect with different identities and lived experiences.

Conversations about Israeli-Palestinian relationships and geopolitical issues have arisen in classrooms, between staff, students, and in professional development sessions. As a board, we have been grappling with how to honour multiple lived experiences and identities (e.g. Palestinian and Israeli) in ways that do not further exclude or cause harm.

As educators, we understand that language and context matter. The phrases “Free Palestine” and “From the River to the Sea” have been in contention. These expressions mean different things to different people because of the diversity of lived experiences in the TDSB community and beyond. Some members of the Jewish community have experienced these phrases as antisemitic, calling for the eradication of Israel, and hateful. Some Palestinians use these phrases as a statement of their human and land rights as people.

Discussions about human rights are often complex and include an examination of competing rights. Our shared goal must be to develop learners who appreciate and are able to make sense of opposing viewpoints. Our position has and will always be to enable students to share their identities safely and to build understanding of conflicting experiences of oppression. Staff will work towards

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<sup>7</sup> Sancton, A. (2017). IMFG Perspectives: Accountability Officers and Integrity in Canadian Municipal Government. Toronto: Institute on Municipal Finance & Governance.

<sup>8</sup> Ibid, Footnote 6

providing supports to ensure students and staff understand the multiple meanings and impacts of these words.

It is anticipated that this geopolitical issue will continue to be raised in TDSB schools for a variety of reasons. We are asking you as staff who are committed to a better future for all of our students, to remain focused on our core mandate - the education of our students and ensuring their identities are given equal consideration, dignity and respect in our schools and workplaces. Nothing more and nothing less.

To that end, TDSB will:

- Appoint an internal staff writing team for up to seven months to support, complement and augment the development of resources;
- Offer professional learning exclusively on antisemitism, and anti-Muslim hate in addition to other forms of discrimination; and
- Seek out guidance from external bodies, including the Ontario Human Rights Commission.

We will continue to update staff as additional resources and information become available. *In the meantime, we can and must intervene and educate where and when racism and hate enter our schools.*<sup>9</sup>

The Integrity Commissioner's Office believes that the above steps and clear guidelines for appropriate behaviour will assist in reducing the conflict at the Board in relation to the divisive and complex Israeli-Palestinian conflict.

## II. Summary

This report presents the investigation findings in connection with the three allegations raised in the complaints:

- 1) the Respondent undertook an act of discrimination and harassment through the posting of the Respondent's Twitter Statement which was alleged to have supported and perpetuated several harmful and recurring "closed views" or stereotypes about Palestinians and/or Muslims ("Issue #1").
- 2) by publicly posting a statement on social media about a TDSB employee, the Respondent used her influence of office to improperly influence the Board's decision in respect of the disciplinary action of a staff person ("Issue #2").
- 3) the Respondent's Twitter Statement asserted that the resources of a staff person provided in a student mailout were "antisemitic" thereby maliciously and falsely injuring the professional reputation of the staff person and attempting to use their authority or

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<sup>9</sup> Statement issued on November 18, 2021.

influence for the purpose of influencing any staff member with the intent of interfering with that person (“Issue #3”).

On Issue #1, upon review of all information received during this investigation, I rely on the Independent Investigator’s conclusion and I find that the Respondent’s conduct posting the Twitter Statement fell within the TDSB definition of being discriminatory and did breach Rule 6.10 of the Code. The Respondent’s Twitter Statement did not constitute harassment.

With respect to Issue #2, I conclude on a balance of probabilities that the Respondent’s conduct did not breach Rule 6.9(b) of the Code. The Respondent should not have retweeted a media article that took an entrenched position on a matter that likely would be the subject of an internal review. Although the Twitter Statement of the Respondent carries the weight of a Trustee with the credibility afforded that role, the statement was not intended to, nor did it, improperly influence TDSB staff to open an investigation or to conclude it in a particular way.

On Issue #3, due to a lack of expert guidance on the issue, I was unable to reach a conclusion about whether the actions of the Respondent constituted a breach of rule 6.9 (a) which states that all members of the Board shall refrain from maliciously or falsely injuring the professional reputation of staff members of the Board.

I noted that the Respondent’s Twitter Statement specifically called out some of the material of the employee’s Mailout as encouraging antisemitism. By publicly stating that some of the materials in the Mailouts were encouraging antisemitism and violence, the Respondent appeared to call into question the legitimacy of the staff person’s actions, however, I cannot conclude that her comments were false. At least three exceptions were found in the sample reviewed by the TDSB Human Rights Office (the “HRO”) of a multi-page list of additional resources (including websites, podcasts, books, as well as documents with a list of further resources). However, there was insufficient expert guidance in the HRO’s assessment to allow me to reach a conclusion about whether the actions of the Respondent constituted a breach of rule 6.9 (a) which states that all members of the Board shall refrain from maliciously or falsely injuring the professional reputation of staff members of the Board.

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

I have exercised my discretion to disclose only those particulars that I have determined are necessary for the purposes of the report. In my role, I have considered the need for the Board of Trustees and the public to understand the factual basis for my findings and my recommendations. The matter subject of this Complaint has played out very publicly and the transparency of the Integrity Commissioner regime is premised on public reporting of the findings of a formal Code investigation if the Integrity Commissioner finds



a breach of the Code. However, I have also considered the countervailing privacy interests of the Complainants, as well as the staff person, particularly because the allegations of the Complaints involve events that relate to the professional reputation of a staff person. As well, I have recognized the broader interest in publicly disclosing necessary and sufficient information in reports involving allegations of harassment and discrimination to facilitate informed decision-making by the Board of Trustees.

### **III. The process leading up to this Report**

I set out below a summary of the complaint process:

In May 2021, the Israeli-Palestinian conflict escalated and resulted in days of violence throughout Jerusalem and Gaza. Hundreds were killed.

On May 16 and May 19, 2021, materials concerning the ongoing Israeli-Palestinian conflict, primarily focused on the Palestinian experience and perspective, although it also included some materials on antisemitism, were consolidated into a resource package by the staff person, a Student Equity Program Advisor with the TDSB, and circulated through an opt-in mailing list (the “May Mailouts”).

These Mailouts were part of the “Gender-Based Violence Preventing Mailing List” which has been a resource consolidated by the staff person for 12 years. The staff person advised that the Mailouts fell within their role of a Student Equity Program Advisor who is tasked with providing resources and articles connected to current events to educators and community members for use in the classroom.<sup>10</sup> The staff person had created a process through which an individual could opt-in to the Mailout by sending the staff person an email. Approximately 1,700 people receive the Mailouts. The staff person who sent out the Mailouts is employed with the TDSB as a Student Equity Program Advisor, which assists schools, educators and students in their anti-oppression activities. The staff person has been sending out resource mailouts to teachers on an opt-in basis, and the TDSB website has referenced the Mailout list on its public website for over 12 years. The staff person does not write resources but rather pulls together different writings and articles and assembles them in topic areas. Over time, the resources that were compiled for the mailouts covered topics like antisemitism, white supremacy, the Holocaust, George Floyd’s death, the Land Back movement for indigenous peoples, resources for educators on anti-Black racism, the defunding of the police, and other issues of importance.

The following introduction was included at the top of both May 2021 Mailouts:

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<sup>10</sup> The Office of the Integrity Commission is not tasked, nor has she determined if the distribution of the “Mailouts” was a function of the job description of Student Equity Program Advisor – Gender Based Violence Prevention.

An opt-in mailout that includes resources, event announcements and other news and articles related to gender-based violence prevention, sexual violence prevention and healthy relationships using a critical anti-racist, intersectional and decolonial framework that call outs antisemitism and Islamophobia.

These resources use a power analysis and support critical thinking and action on transforming conditions that enable harm and creating ones that promote healing, care, dignity and liberation. These resources aim to support 2SLGBTQ+ youth with multiple identities and belonging to BLACK, INDIGENOUS, RACIALIZED and DISABLED communities. They are in support of Indigenous sovereignty, Indigenous self-determination and LAND BACK.

The May 16<sup>th</sup> Mailout includes “a lot of history and information about the [Israeli-Palestinian] conflict.” The mailout also includes several news articles regarding Canada’s involvement in the conflict.

According to the Complainant, the May 19<sup>th</sup> Mailout was more focused on what the Complainant calls “educator resources that folks could actually read and utilize” to teach about the conflict and the topic of Palestine in their classrooms. In keeping with the staff person’s stated goal of centering marginalized voices, these materials include numerous materials by Arab and Palestinian authors and/or which speak about the experiences of Palestinians (particularly Palestinian children). This Mailout also recommends resources assembled and distributed by Jewish Voices for Peace, including their essay collection *On Anti-Semitism, Solidarity and the Struggle for Justice*.

Both May Mailouts include, at item #12, a “Continuously Updated Master list of Sources on Palestine (Resources by multiple researchers, scholars, academics, authors.)” In each of the May Mailouts, the staff person included the following disclaimer:

I’ve read many of these links, but not all. Many are from well-known scholars, historians and journalists. The articles I’ve read use a critical race praxis and are transparent and intentional about calling out anti-Semitism. Read these with a critical anti-racist lens, and ensure credibility and intersectional anti-oppressive frameworks that use a clear analysis of power.

The staff person learned that Sue Ann Levy of the Toronto Sun would be publishing an article about the May Mailouts. There was a communication between the HRO and the staff person on or about May 21, 2021, in which the staff person sought advice from the HRO about the materials. While the staff person and members of the HRO have slightly different recollection of the meeting, I find that the HRO office told the staff person that (i) upon brief review, it did not appear that the articles were antisemitic but rather named marginalization and oppression of Palestinians and Muslims, and that (ii) they would need to conduct a more detailed review to definitely conclude that the materials were not anti-

Semitic.

On May 22, 2021, an article by Sue Ann Levy was published in the Toronto Sun entitled “Virulent anti-Israel manual sent out to TDSB teachers,” which identified the staff person and labeled the May Mailouts as anti-Semitic. The article stated that:

An educator with the Toronto District School Board (TDSB) is under investigation after he allegedly sent a virulently anti-Israel manual out to teachers that suggests a documentary and a book about a terrorist, recommends children’s books that characterize Israelis as thieves and murderers, and gives advice on how to teach students about the hateful Boycott, Divestment and Sanctions (BDS) movement against Israel.

[...]

[The staff member] is part of the Board’s Gender-based Violence unit, whose core function, according to TDSB online materials, is to prevent and address “gender-based violence, homophobia, sexual harassment, and inappropriate sexual behaviour by students towards other students in schools.”

[...]

There’s also a whole section on what BDS is all about – a movement that calls for the boycott of Israeli authors, artists, academics and products – and why teachers should be interested in supporting the movement.

[...]

In an attempt to perhaps offset or excuse the anti-Israel content in the manual, it ends with a four-page primer on noting that even “contentious, strident or harsh criticism of Israel or its policies- including those that led to the creation of Israel – is not “*per se* anti-Semitic”

[...]

TDSB spokesman Ryan Bird said these resources were not “vetted, approved or sanctioned” by the TDSB. He said TDSB staff, including the employee services department, is currently investigating this matter. In the meantime, the staff member’s current and previous group mailings have been removed from TDSB email inboxes. Bird added that the employee in question’s social media feed is also being investigated for “any hateful comments and actions”.<sup>11</sup>

The Respondent retweeted Sue Ann Levy’s article. On May 23, 2021, the Respondent

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<sup>11</sup> Sue Ann Levy, Toronto Sun, May 22, 2021, <https://torontosun.com/news/local-news/levy-virulent-anti-israel-manual-sent-out-to-tdsb-teachers>

posted a Statement on her Facebook page and Twitter account condemning the May Mailouts. In the Respondent's post, she wrote: "My Statement regarding the reprehensible unsanctioned materials distributed to the TDSB teachers". She then posted a picture containing the following text:

This past week has already been very exhausting and distressing for many members of the Jewish and Israeli communities in Canada as a result of both the fighting in the Middle East and rising antisemitism here at home. I was deeply disturbed to recently discover that virulently anti-Israel and even antisemitic materials were distributed to the TDSB teachers through an opt-in list by a TDSB employee. I was outraged to discover that some of this material justifies suicide bombings and other forms of terrorism. This is reprehensible. These materials were provided by an employee from the TDSB equity department, the very department that should be countering antisemitism and violence, not fanning the flames

I will be demanding a full investigation into this alarming incident and working to ensure that none of these hateful materials ever see the inside of a TDSB classroom.

We must all do better to combat antisemitism, especially in these trying times.

At the time of my review of the May 23, 2021, posting on the Respondent's Twitter page, she had 600 Followers. There were 21 Comments and 26 Shares of this particular post.

At the time of my review, the Respondent's Twitter Statement remained posted on Twitter as well as on the Respondent's Facebook page.

The TDSB put out a statement on Twitter (which the Respondent retweeted) on May 19, 2021, which read:

We know the current crisis in the Middle East deeply impacts many of us in our TDSB family and our hearts & thoughts are with all those affected – particularly Israelis and Palestinians who are experiencing this violence firsthand.

It contained a link to a more detailed statement from the Interim Director of Education and the Board Chair which noted that the "topic is being widely discussed and we want to ensure that our students, staff and their families are supported during this tremendously difficult time. We all have an individual and collective responsibility to ensure that the TDSB is a welcoming, inclusive, and safe space for all students, staff and families. Whether in the classroom or other shared spaces, we encourage compassionate, caring and respectful conversations in our school communities."

Following the Toronto Sun articles, the HRO clarified to the staff person that the comments of the office on May 21<sup>st</sup> that "the articles did not appear to be antisemitic" were based on a cursory review and that "all of the materials would need to be reviewed fully by [the HRO] before [the HRO] would be able to make a statement about the content

of the materials themselves”.

In a second Toronto Sun article run on May 27, 2021, the following was said:

Although he’s officially on home assignment, [the staff person] is still filling Twitter page with anti-Israel messages amid claims he’s being punished for having the courage to engage in difficult conversations.

[...]

And the student equity program advisor [...] has found himself plenty of support [...] CUPE Ontario, CUPW and the Canadian Federation of Students (CFS).<sup>12</sup>

While I have confirmed that the Respondent’s Twitter Statement did not name the staff person as the author of the May Mailouts, by retweeting the Toronto Sun article which did name the staff person as the author, the retweet had the effect of identifying the staff person.

The TDSB’s Spokesperson sent out a press release that said “The resources in question were not reviewed or approved by the TDSB. Staff, including the Board’s Employee Services Department, are currently investigating this matter. During this time, the staff member will be on home assignment. We are also in the process of removing this staff member’s current and previous group mailings/newsletters from the TDSB email inboxes.”<sup>13</sup>

*i. Response of the Community to the Twitter Statement*

It is clear from the response to the Respondent’s Twitter Statement that it was polarizing.

The Twitter Statement received a number of comments commending the Respondent and concurring with her conclusion that the Mailouts were antisemitic. The staff person also received numerous critical messages. The Independent Investigator found that “while the evidence we’ve reviewed in this investigation does not suggest that [the Respondent] is alone responsible for identifying [the staff person] as the source of the May Mailouts (in fact, [the staff person] admits that he published a tweet identifying himself as the author of the May Mailouts), it does appear that the Trustee’s Twitter Statement, coupled with her retweeting Ms. Levy’s article, at least contributed to a significant number of harassing and sometimes threatening messages which were sent to [the staff person] after the Trustee’s Twitter Statement was published. As [the staff person] described in his interview [with the Independent Investigator] : The Twitter ones [the “harassing and hateful messages”] came immediately after [the Respondent’s] statement. There was a barrage of them. They were DMs on Twitter, via email, including my work email, but the majority

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<sup>12</sup> Sue Ann Levy, Toronto Sun, May 27, 2021 <https://torontosun.com/news/local-news/levy-tdsb-educator-still-tweeting-virulent-anti-israel-messages>

<sup>13</sup> From interview with staff

were comments on other Twitter feeds and on Facebook, and I don't have Facebook. These are still ongoing. They would say things like: "you should not be teaching my children" - "you deserve to be fired"- "people like you are Nazis in disguise." There is also a group of educators and lawyers that have organized a campaign to have my Ontario College of Teachers license revoked." There was a strong response against the staff member's materials and commending the Twitter Statement.

On the other hand, on May 28, 2021, the Ontario Parent Action Network – Fighting for Public Education is on Facebook, posted:

This came to us via friends, and with a request to share:

**"IMMEDIATE ACTION REQUIRED"**

The TDSB human rights office is being bombarded with letters from parents and other stakeholders claiming anti-Semitism in an attempt to shut down Palestine advocacy in schools. We need to flood the offices with as many letters for the rights of Palestinian advocates.

**THESE LETTERS MUST BE SENT TODAY TO THE FOLLOWING THREE PLACE BY CLICKING ONTO THE BELOW QUICK LINKS:**

1. "Human Rights office at TDSB" <https://tinyurl.com/3k5zuwnv>

This letter addresses the lack of safe space for Palestinian students in our schools in light of the Toronto Sun article by Sue-Ann Levy. The TDSB has legitimized the culture of fear that this article provokes. Also included is Trustee Luka's statements on May 23 via Twitter. These statements have contributed to harassment and racism towards Arab/Palestinian members of the TDSB.

2. "Integrity Commissioner" <https://tinyurl.com/36bjxnxe>

This letter addresses Trustee Lulka's statements where she has equated [sic] Pro-Palestinian education and terror/suicide bombing.

3. "School Board Trustee" <https://tinyurl.com/hebmft6f>

This letter goes to School Board Trustee to encourage them to lead the TDSB in support [the staff person], a Toronto District School Board anti-oppression educator who has been recently targeted by Postmedia Columnist Sue Ann Levy.

From May 28, 2021 to June 21, 2021, the Office of the Integrity Commissioner received over 1000 emails with the identical subject line and text in the body of the email. The content of the emails received by this Office mirrored the content of the May 28<sup>th</sup> letter sent out by the Ontario Parent Action Network. None of the emails received by this Office contained complaints set out in the form prescribed by the Complaint Protocol (Form 708A). However, this demonstrates that there was a strong community response

believing that the Respondent's Twitter Statement was discriminatory against Muslims and Palestinians.

*ii. The allegations in the Complaints and Notice to the Respondent*

On June 4, 2021, this Office received a formal complaint under the Code. The complaint was submitted on the TDSB Code Complaint Form, to which the Complainant attached a copy of the Respondent's Twitter Statement. On June 6, 2021, this Office received a second formal complaint under the Code, submitted on the TDSB Code Complaint Form having the same subject matter as the June 4<sup>th</sup> Complaint.

After a review of the two formal complaints, I determined that the two complaints were substantively the same in allegations and issues raised and, for this reason, I decided that it would be most appropriate to conduct one inquiry with respect to both Complaints. I conducted an initial classification to determine if each matter raised in the respective complaints, was on its face, a complaint with respect to non-compliance with the Code. I determined that there were sufficient grounds in respect of Rules 6.6(a), 6.9(a), 6.9(b), and 6.10 of the Code to commence an investigation. Rule 6.1(a), (c), (d) and (e) of the Code, which the Complaints referenced, are guiding principles. Rule 6.1 is a rule that sets out the principles that guide the interpretation of the Code that the Integrity Commissioner may use in the application of the rules during her investigation. I decided to conduct a single investigation in both formal complaints. As explained below, I did not investigate the complaint in respect of Rules 6.6 and 6.11.

I wrote to the Complainants acknowledging receipt of their Code complaints. I advised that I had conducted an initial classification review of the complaint and the supporting documentation and that I had decided to open a complaint investigation file.

On June 14, 2021, the details of the allegations were provided to the Respondent in accordance with Rule 6.5 of the TDSB Code Complaint Protocol (the "Complaint Protocol"), requesting that the Respondent provide my office with a written response to the complaint within ten days. The Complainants were provided with a copy of the Respondent's response to their Complaints, and one submitted supplementary comments in reply.

On June 25, 2021, I wrote to the Acting Senior Manager HRO and advised that I had received 2 formal complaints in which a Trustee had been named as a Respondent and that the complaint alleged that the Member had contravened several rules of the Code, including Rule 6.10. Pursuant to Rule 6.10 (b), the Integrity Commissioner shall consult with the Human Rights Office.

On June 28, 2021, I spoke with Acting Senior Manager HRO who advised that it is the position of the HRO that when complaints are received by that office against a senior executive, it would not be inappropriate to conduct a threshold assessment or investigation of the complaint as there may be a perception that the office could not

impartially conduct the investigation. The Acting Senior Manager explained that for the same reasons, it is the position of the HRO that any complaint naming a Trustee would be forwarded to the Office of the Integrity Commissioner with no further involvement of the HRO.

On July 6, 2021, I engaged an Independent Investigator expert in Human Rights, Harassment and Discrimination, to conduct a threshold assessment. After the Independent Investigator determined that this met the *prima facie* case of discrimination test (as detailed below), I engaged the Independent Investigator to conduct the human rights investigation.

From August 3, 2021 to September 3, 2021 the Independent Investigator conducted the Human Rights Investigation comprised of interviews with the parties, review of some of the resources in the Mailouts (which did not include a review of all of the linked materials as directed by the Office of the Integrity Commissioner), and review of TDSB Human Rights policies, relevant case law and other relevant documents.

Some delays resulted from the need to accommodate vacation time of one Complainant and health accommodations of one interviewee.

On September 24, 2021, this Office received the Independent Investigator's report.

On October 3, 2021, I received notice from the Respondent that she would be away from October 7<sup>th</sup> to October 23<sup>rd</sup>, 2021 without access to Board emails.

On November 2, I provided the Respondent with a copy of the basis for my proposed findings of the investigation, and I advised them that I required any comments on the preliminary findings on or before November 5, 2021, specifically on any errors or omissions of facts, and any statement that they wished to make regarding recommended sanctions. I advised that this request for comments was not to be viewed as an opportunity to provide any additional evidence or responses to allegations contained in the complaint but rather a requirement of section 6.6(b) of the Complaint Protocol for the Board Member Code of Conduct (Governance Procedure PR708).

On November 4<sup>th</sup>, I received the Respondent's written comments and by telephone interview.

After review of those comments and further consultation with the Independent Investigator, I reached my final conclusions.

On November 30, 2021, I forwarded a copy of the final report to the Complainants and the Respondent.



### *iii. Section 6.10: The Role of the TDSB Human Rights Office*

The Complaint Protocol for the Board Member Code of Conduct (the “Complaint Protocol”) sets out that upon receipt of a Code complaint that raises allegations of discrimination and/or harassment, the Integrity Commissioner shall consult with the TDSB Human Rights Office to determine whether the matter was a Code complaint in which the actions of a Trustee triggered the TDSB human rights policies. Upon commencing the investigation of this Office and after having spoken with the Respondent, I wrote to the HRO on June 25, 2021 to advise that I had received Code complaints alleging contraventions under Rule 6.10 of the Code. I am required under the Code to consult with the HRO.

In discussions with the HRO, I was advised that when a senior official or Trustee is named as a Respondent in a harassment or discrimination complaint, the HRO does not take carriage of conducting a Threshold Assessment to determine if the complaint rises to the level of a discrimination or human rights complaint on its face and does not investigate the actions of the Trustee in respect of contraventions of the TDSB policies. In circumstances that involve allegations against a senior official of the TDSB, the HRO maintains a roster of independent investigators with human rights expertise whose services can be used to conduct an investigation into whether the senior official actions have contravened the TDSB Workplace Harassment Prevention, Human Rights policies and the *Ontario Human Rights Codes*. This Office recognizes having exclusive jurisdiction in respect of a decision on whether a Trustee has contravened the Code.

As a result of consultations between the HRO and this Office, I engaged the specific process for complaints under Rule 6.10 which involves an investigation by an independent third party (in this case, the “Independent Investigator”).

### *iv. Independent Human Rights Investigator*

Rule 6.10 (b) of the Code sets out the process to follow when a complainant alleges harassment or discriminatory behaviour by a Trustee. When in receipt of a Code complaint alleging Workplace Violence Harassment or Human Rights policies contravention, the role of the Integrity Commissioner is to determine if the matter is a complaint for the purposes of the Code (in other words, is the matter within the jurisdiction of the Integrity Commissioner to investigate) and if so, to determine whether the matter requires a bifurcated review, beginning with the investigation by the HRO or, as the case may be, a Human Rights Independent Investigator retained by the Integrity Commissioner. The Independent Investigator will assess whether the conduct likely amounted to harassment or discrimination contrary to the Board’s policies on a balance of probabilities standard.

This Office engaged an Independent Investigator to conduct an initial threshold assessment to determine if the Complaints met the threshold of a complaint that engages human rights under *Ontario’s Human Rights Code* and/or the TDSB’s Human Rights policies (specifically P.031), as referenced in section 6.10 of the Trustee Code of Conduct.

### *v. Human Rights Threshold Assessment*

The purpose of a Threshold Assessment is to determine whether a Complaint raises a *prima facie* case of discrimination, harassment, or reprisal contrary to the TDSB Human Rights Policy (P031). That is, assuming the material allegations as set out in the Complaint are true, whether the allegations present the factual foundation needed to support a claim of discrimination or harassment.

If, on the face of the Complaint, the allegations do not meet the definition of harassment or discrimination, the Office of the Integrity Commissioner will proceed with the investigation of the complaint in respect of any other Code rules.

The Complaints subject of this report allege that the Respondent's Twitter Statement contravenes numerous sections of the Code, including section 6.10 (Discreditable Conduct) which sets out the process for addressing allegedly harassing or discriminatory behaviour by Trustees. The Complaints allege that the Respondent's Twitter Statement is harassing, discriminatory (specifically, Islamophobic), constitutes "an act of anti-Palestinian racism," and has created or contributed to a toxic or unsafe working and/or learning environment for students, staff, and for one of the Complainants.

The TDSB's Human Rights Policy (P031) states that it applies to Trustees (section 2) and then states that "[a]ll those who are covered by this policy are [...] entitled to have access to the complaint procedures." All complaints about Trustees which fall under the Code are investigated by the Integrity Commissioner. The Integrity Commissioner is required to appoint an Independent Investigator, sometimes with assistance of the HRO. The TDSB as an employer also has an obligation to investigate allegations of harassment and discrimination in terms of adherence to ensure a safe and respectful workplace.

As detailed by the Independent Investigator, the Supreme Court of Canada has described the test for a "*prima facie* case" as:

The complainant in proceedings before human rights tribunals must show a *prima facie* case of discrimination. A *prima facie* case in this context is one which covers the allegations made and which, if they are believed, is complete and sufficient to justify a verdict in the complainant's favour in the absence of an answer from the respondent-employer.<sup>14</sup>

While discrimination is not defined in *Ontario's Human Rights Code*, Policy P.031 on Human Rights defines discrimination as "unfair treatment of a person or group" based on one of the listed prohibited grounds. The Policy also makes clear that discrimination can be based on association: "Discrimination against individuals because of their relationship or association with a person or persons identified by a prohibited ground of discrimination

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<sup>14</sup> OHRC and O'Malley v. Simpson-Sears Ltd. [1985] 2 SCR 526 at 558.

under the policy.” This mirrors section 12 of the Human Rights Code which prohibits discrimination because of association.

The Independent Investigator conducted the threshold assessment and determined that the Complaints raise allegations of discrimination on the basis of creed (Islamophobia) as well as race, ancestry, and/or place of origin (anti-Palestinian racism).

While the Respondent’s Twitter Statement did not appear to overtly discriminate against Palestinians or Muslims, on a preliminary review and prior to an investigation, the content appeared to perpetuate negative stereotypes and beliefs about both groups when it stated that the materials which included Palestinian voices and perspectives “justify suicide bombings and other forms of terrorism”, equating a Palestinian perspective as one that would “justify suicide bombings and other forms of terrorism.” The Independent Investigator preliminary review determined that “equating of pro-Palestinian Muslim materials with anti-Israel and antisemitic sentiment may perpetuate seeing Islam as “separate and ‘other’” without “values in common with other cultures.” On its face (and therefore, prior to a review of the facts), it appeared that the statement equated pro-Palestinian Muslim materials with support or justification for suicide bombings thus could be read to perpetuate the view of Islam “as violent, aggressive, threatening, supportive of terrorism and engaged in a ‘clash of civilizations.’” As such, the Independent Investigator concluded the Threshold Assessment with a position that the comments in the Respondent’s Twitter Statement on its face, may support a harmful and recurring “closed view” or stereotype about Palestinians and/or Muslims more broadly.

The Independent Investigator concluded that there is a *prima facie* case that the Respondent’s Twitter Statement is:

- discriminatory against Muslims, Palestinians, and those persons engaged in the political act of promoting the causes of those who have such characteristics; and
- is harassment under the Human Rights Code and OHSA and may have created or contributed to a poisoned work environment for the Complainant who circulated the mailout.

#### *vi. Investigation Process*

In the course of this investigation, I followed the specific process applicable to harassment complaints under Rule 6.10 of the Code. While I was awaiting the results of the Independent Investigator related to Issue #1, I carried out my own investigation of Issues #2 and #3. Upon receipt of the Independent Investigator’s Report (the “Investigator’s Report”), I concluded my review of Issue #1, making a determination on Board Member Code compliance.

Section 6.6(a) of the Complaint Protocol for the Board Member Code of Conduct, PR708 (the “Complaint Protocol”) states that “[t]he Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the receipt of the

Complaint Form/Affidavit of the complaint. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report to the Board and will advise the parties of the anticipated date that the report will be available". The bifurcated process set out in section 6.10(b) of the Code acted to suspend the 90-day timeframe set out for the Integrity Commissioner. The time during which the Independent Investigator conduct their investigation is not counted in the 90-day count. In any event, the Independent Investigator advised the Complainants and the Respondents of their process throughout the Human Rights investigation.

#### ***IV. The Independent Investigator's Report<sup>15</sup>***

On July 6, 2021, the Integrity Commissioner contacted the Independent Investigator, who provided the Threshold Assessment on the issue of discrimination and harassment on July 15, 2021.

The Integrity Commissioner retained the Independent Investigator to conduct the harassment and discrimination investigation. The Independent Investigator conducted interviews with Complainants and Respondents from August 3<sup>rd</sup> to September 3<sup>rd</sup> and requested and received additional documents. The Independent Investigator reviewed the Code complaints, the Respondent's response to the complaints, the TDSB Human Rights policies, relevant case law, and interviewed the Complainants and the Respondents via virtual meetings. The Investigator's Report sets out the parties' Statements, their analysis and findings regarding the Statements, the Respondent's Twitter Statement and samples of the May Mailouts.

#### ***V. The Integrity Commissioner's Investigation***

During the investigation conducted by this Office, I interviewed 8 individuals orally or in writing. I reviewed the Investigator's Report. I spoke with the Respondent on 3 occasions during this investigation and I interviewed a number of other witnesses with knowledge of the underlying events. I spoke briefly with one of the Complainants, however, all other discussions with the parties with respect to the Human Rights portion of the investigation, were carried out by the Independent Investigator in accordance with section 6.10 of the Code.

I spoke with the Respondent providing opportunities to reply to the Complaints and provide clarification on the investigation process. The Respondent confirmed that she wrote the Twitter Statement in response to concerns raised by her constituents. I exercised my discretion to disclose in this report, only those particulars that I determined were necessary to afford the Board of Trustees an understanding of the substance of the Respondent's reply to the allegations.

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<sup>15</sup> Independent Investigators: Cenobar Parker and Morgan Sim, Parker Sim LLP, <https://www.parkersim.com/>

All information and documents that I received were provided voluntarily to me and to the Independent Investigator pursuant to my exercise of the Code Protocol investigation powers. In the course of my investigation, I also reviewed extensively the materials in the May Mailouts including the links, the Respondent's Twitter Statement, the Toronto Sun articles, public and confidential Board documents, the Board's Workplace Harassment Prevention and Human Rights policies, Board and other emails, Facebook and Twitter pages of the Respondent, the staff person and some members of the community and certain other materials.

## **VI. Alleged Violations of the Code**

The June 4<sup>th</sup> Complaint set out that:

- The Respondent had contravened section(s) 6.1a, c, d; 6.6a; 6.9a; 6.10a, b, c of the Member Code of Conduct by:
  - o Making a public Twitter post which mischaracterized the actions of TDSB employee [named staff person];
  - o Interfering with an ongoing investigation;
  - o Contributing directly to hate and harassment;
  - o All of which were a misuse of the Respondent's public position.

The Complaint alleged that:

[t]he Trustee's post asserts that the resources [...] provided are antisemitic, de facto calling [the staff person] antisemitic – a serious claim. Furthermore, the post falsely claims that the materials [...] provided via an opt-in mailout "justify suicide bombings and other forms of terrorism." It is completely inappropriate and a disgusting violation of her public position, for a trustee to mischaracterize an employee's actions in this way and to do so publicly, and during an investigation.

To make hateful and virulent conclusive statements about [the staff person] and the material during an ongoing investigation is misuse of her public position and takes away any chance of [the staff person] having a fair and unbiased investigation. Further, her comments harm [the staff person's] reputation and career and opened [the staff person] up (as could be reasonably expected) to hundreds of harassing and hateful messages. While the Trustee does not name [the staff person] specifically, it is clear she is writing about [the staff person] from context, (there are three Toronto Sun articles and the TDSB provided public comments confirming [the staff person's] name, [...] employee status, that [the staff person] sent out materials via an opt-in mailout, and that [the staff person] was under investigation. [The staff person] experience her comments as deeply hurtful and harassing.

The TDSB has become a poisoned environment for [the staff person] as a direct result of her comments – which continue to be publicly posted. Finally, her suggestion that any content or individual that is critical of Israel promotes terrorism

and suicide bombings is also deeply Islamophobic, an act of anti-Palestinian racism and contributes to an unsafe working/learning environments for students, staff and [the staff person].

The complaint goes on to set out that “[t]he Respondent’s retweet of the Toronto Sun article lends to the position that she endorsed and supported the position set out in the Sun article thus forcing the hand of the decision-makers tasked with conducting an investigation and making public statements for the TDSB:

the Respondent’s Twitter Statements “mischaracterized the actions of TDSB employee [...], interfer[ed] with an ongoing investigation, contribut[ed] directly to hate and harassment and are a misuse of [the Respondent’s] public position

And

[took] away any chance of [the staff person participating in] an unbiased investigation

As set out in the Complaints, the Respondent is alleged to have posted in her Twitter Statement that the May Mailouts contained resources that “justify suicide bombings and other forms of terrorism” and to do so is a “violation of [the Respondent’s] position, in that a Trustee has mischaracterized an employee’s actions in a very public way, and during an investigation.

The June 6<sup>th</sup> Complaint set out that they have reason to believe that the Respondent breached Rules 6.1(a), (c), (d), (e), 6.6(a), 6.9(a), (b), 6.10(a), (b) and 6.11.

This Complaint went on to cite the various Rules from the Code. In subsequent clarification, the Complainant’s concerns with respect the Rules were identified as follows:

#### Improper Use of Influence

The Complaint alleges that the Respondent improperly influenced any future decision of the Board in respect of an investigation into staff action, to her private advantage, to another person or otherwise by implying guilt before an investigation was completed.

#### Conduct Respecting Staff Members

The Complaint alleges that the posting of the Respondent’s Twitter Statement was an improper use of her authority and had the outcome of falsely injuring the professional reputation of the staff person by equating the staff member’s resources with promoting “suicide bombing and other forms of terrorism” and being antisemitic without proof of the same or completion of the investigation.

## Discreditable Conduct

The Complaint alleges that the Respondent was harassing and discriminatory towards the staff person by publicly displaying anti-Palestinian racism and assumed that the staff member's resources were antisemitic and that they were critical of Israel and promoting terrorism and suicide bombings.

## Failure to Adhere to the Board Policies and Procedures

The Complaint alleges that the Respondent failed to observe the terms of all policies and procedures established by The Board including in respect of harassment and discrimination.

Both complaints do not provide supporting documentation beyond copy of the Respondent's Twitter Statement. In addition, information provided to the Independent Investigator during course of that portion of the investigation was not very detailed. Clearly, both Complainants put significant weight on the Twitter Statement in an of itself.

## VII. **Additional Facts: Review of the May Mailouts**

During my investigation, I learned that, on or about May 21, 2021 (prior to the Respondent's Twitter Statement), the staff person reached out to the HRO seeking advice about the May Mailouts and whether they met the definition of antisemitic. The information received during this investigation identified the staff person as having said that the HRO advised that they found nothing antisemitic in the sampling of resource materials they initially reviewed. However, the HRO sent a follow up email indicating that they had not reviewed all of the materials. During this investigation, this Office was advised that in a subsequent interaction between the staff person and the HRO, the staff person was told that upon further review, the HRO staff took a different position.

Under TDSB Policy PO37 (the "Equity Policy"), antisemitism is defined as:

A certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.

On or around June 4, 2021, the HRO completed a review of the May Mailouts to determine if the content contravened the TDSB Human Rights Policy. The HRO concluded that the main articles in the May Mailouts did not express hatred or criticism towards Jews as an ethnic group or as a creed or religion. The HRO concluded that stating one's support of Palestinians does not indicate support for terrorist groups or hate of Jewish peoples nor

are criticisms of Israeli state policies, government and army *de facto* antisemitic, though the HRO noted that criticisms can be done in an antisemitic way.

The HRO did conclude that certain links were problematic and could be reasonably considered to contain antisemitic materials and seen to be contributing to antisemitism.<sup>16</sup> “In particular, some of these materials dismiss the historical connection of Jewish people to the land; lump all Israelis together; notes that “martyrdom operations (called “suicide bombing” )” are a legitimate means of resistance; and refer to “the “Iron Fist” policy of crushing the bones of Palestinian children’s hands” which feeds into the ‘blood libel’ trope. [Note: according to an article in the Chicago Tribune an “iron fist” policy was enacted by Rabin and “resulted in hundreds of fractured limbs”].<sup>17</sup>

Finally, the HRO confirmed that some of the materials contained in the links support the use of violence and terrorism against Israeli Jews; specifically, including a link to the website of the Popular Front for the Liberation of Palestine (a group that is currently on Canada’s Listed Terrorist Entities), documentary and resources about Leila Khaled who was involved in plane hijackings, and an interview with Ghassan Kanafani, who was involved in violent actions against civilians.

In addition, during the course of this investigation, this Office learned that the Respondent communicated directly with the HRO regarding her concerns with the May Mailouts prior to posting the Twitter Statement.

The TDSB spokesman stated that “to [their] knowledge, [the May Mailouts] were not approved by anyone at the TDSB”.<sup>18</sup>

## **VIII. The Respondent’s Response to the Complaint**

The Respondent provided a written response to the complaint. It stated:

On May 23, 2021, I made a singular public statement in reaction to an emerging story from the Toronto Sun on the distribution of unsanctioned materials to TDSB teachers that contained content which I view as highly offensive and troubling. I do not believe issuing a public statement on this matter to be an issue. I made the statement after hearing concerns from constituents who felt traumatized by the incident. Given the concern over this incident, it is reasonable that a public statement be issued by an elected representative. I believe that to be within the scope of my responsibilities as a Trustee. I also retweeted the article from the Toronto Sun which broke this story. A retweet does not entail an endorsement of the material within it. I do not believe there is any issue with retweeting an article,

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<sup>16</sup> from the list in item 12 of May Mailouts #26 and #27 “PALESTINE: A Master List - Continuously Updated Master list of Sources on Palestine (Resources by multiple researchers, scholars, academics, authors),”

<sup>17</sup> Excerpt from the HRO Review and Assessment, TDSB HRO 2021-06-04

<sup>18</sup> Received via email to the Office of the Integrity Commissioner



and if there is I was not aware. My statement was not issued with any intent to influence an investigation. In my statement I called for an investigation to take place. I believe this to be an appropriate response to the incident, and in keeping with my role as a Trustee. I do not believe my statement on social media impacts any investigation. I had no call to action in the statement that would exert influence. At no time did I call for a specific outcome to an investigation. I have no role in the investigation mentioned. I have no influence over the outcome of the investigation. I have not been privy to details regarding the investigation. I believe other claims in the complaints are outside the jurisdiction of the Integrity Commissioner and will not be responding to those matters.

In my conversations with the Respondent, she confirmed that she had reviewed the May 19 Mailout provided to her by her constituents in advance of publicly posting her Twitter Statement and Facebook Post. The Mailouts were brought to her attention by her constituents. She did not recall whether she reviewed the entire May 16 Mailout. During the course of the investigation, it became apparent that the version of the Mailouts reviewed by the Respondent did not contain the disclaimer set out in section 12. It was not apparent who modified this document, though I accept that it was not the Respondent.

## **IX. Relevant provisions of the Code**

### **A. *Issue #1: Discreditable Conduct under Rule 6.10***

Rule 6.10 states:

(a) 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.

(b) Harassing or discriminatory behaviour, as indicated in the TDSB Workplace Harassment Prevention and Human Rights policies and the Ontario Human Rights Code, which occurs in the course of, or is related to, the performance of official business and duties of the Board Members, is subject to this Code of Conduct.

Rule 6.10 of the Code requires Trustees to treat members of the public, one another, and staff members with respect and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment. The obligation includes the requirement to comply with the TDSB Workplace Harassment Prevention and Human Rights policies and the *Ontario Human Rights Code*. The purpose of this Rule is to ensure a safe and respectful workplace that is free from harassment. It is the policy of the Board that all persons be treated fairly in the workplace in an environment free from discrimination and personal and sexual harassment. The policies ensure a safe and respectful workplace environment and appropriate management of any occurrences of

harassment and discrimination as defined by the policies. The Human Rights and Workplace Harassment Prevention policies also apply to the actions of Trustees and will provide guidance to the Independent Investigator in the event that the Integrity Commissioner receives a Code complaint and pursuant to rule 6.10(b) refers the investigation of the allegations of harassment and discrimination to an Independent Investigator. Upon receipt of the findings of the Independent Investigator, the Integrity Commissioner shall utilize the Investigator's findings to make a determination on the application of the Code of Conduct and the merits of an investigation on the ethical conduct of the Trustee named in the complaint. By requiring Trustees to comply with the Workplace Harassment Prevention and Human Rights policies, Rule 6.10 incorporates into the Code by reference the obligations found in the TDSB policy.

The Workplace Harassment Policy defines harassment as: "...engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome or is workplace sexual harassment". The Ontario Human Rights Code defines harassment as "... engaging in the course of vexatious comments or conduct that is known or ought reasonably to be known to be unwelcome..." Usually, harassment is offensive behaviour that is repeated after an employee knows it is unwelcome. However, harassment may also occur from a serious, single remark or action and need not be directed at a particular individual. The Board has a responsibility to prevent harassment, but staff members in managerial roles are required to proactively prevent harassment from occurring in the workplace and to deal in a fair and expeditious manner when an allegation of harassment is brought to their attention. Under the policy, incidents and 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.

***B. Issue #2: Conduct Respecting Staff Members -Interference with Staff Duties under Rule 6.9(b)***

Under the heading "Conduct respecting staff members", Rule 6.9(b) states:

No members of the Board shall compel staff members to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. No member of the Board shall use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

The allegations of improper influence in this section are more specific and expressly include attempts to influence a staff member's duties.

***C. Issue #3: Conduct Respecting Staff Members under Rule 6.9 (a)***

Rule 6.9(a) of the Code requires Trustees to refrain from:

(a) maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff members of the Board, and members of the Board shall show respect for the professional capacities of staff members.

Many Councillor Codes of Conduct include a similar Rule. Former City of Toronto Integrity Commissioner Valerie Jepsen wrote in *Byford v Matlow*<sup>19</sup>

City Council has considered the application of Article XII to councillors' public statements about members of staff on five previous occasions. Based on the prior cases on this Article, the helpful commentary referred to above and the TPS Bylaw in place at the City of Toronto, the following principles apply when considering whether councillors' statements about staff contravenes Article XII:

1. When questioning staff reports or actions, member of Council should ensure that their comments are in the nature of "fair comment", and related to the substance of the report and not the authors of their suggested motivations. This means that members of Council can raise concerns about whether information is correct, or whether staff considered certain information, such as local concerns. The Toronto public service is prepared (and expect) to respond to these kinds of questions from City Council. City Council discharges its duties when it is robustly and fairly scrutinizing the information and advice that staff provide.
2. However, members of Council should not publicly state or imply that a particular public servant, or a group of public servants, acted for political or private motivations or in a way that is negligent or that failed to meet professional standards. Serious concerns about staff misconduct should be raised with the public servant's supervisor, the City Manager, the applicable governing board, or as a last resort, the Auditor General through the disclosure of wrongdoing mechanism in the TPS Bylaw. However, these types of statements will not normally be tolerated by the Speaker or a Chair in a Council proceeding, and could result in a Councillor being found to have contravened the Code of Conduct.
3. Extra scrutiny should be applied to public statements about the public service that are broadcast in mass media. This is because staff do not have the same platform as members of Council to engage in the public arena. (They do not have political accountability)

To violate Rule 6.9(a), the comment must (i) maliciously injure or (ii) falsely injure the staff person's reputation or (iii) fail to show respect for the professional capacities of staff members. A finding of malice requires a conclusion about the

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<sup>19</sup> 2018 ONMIC 5 (CanLII), <<https://canlii.ca/t/hv1ts>>

Respondent's intent. A finding that the comment was "false" requires a consideration of whether the statement or statements are true (but there is no need to consider the Respondent's intent).

***D. Rules 6.1, 6.6 and 6.11: not investigated***

I concluded that Rule 6.1 sets out the fundamental components and the guiding principles to guide in the interpretation of the operational rules of the Code. A preamble or purpose section to the Code is not an operative enforceable provision. The intent of a preamble or purpose section (i.e., statement of principles) is to assist in providing context to the operative provisions that follow. These are general principles of the Code which guide the interpretation and application of the Code provisions. These fundamental guiding principles inform ethical behaviour for Trustees. They are not stand-alone provisions which lead to a finding of a breach of the Code but rather inform the analysis of whether a Member conduct has violated rules of the Code. Therefore, I will not be including in the investigation, the review of Rules 6.1(a), (c), (d) and (e).

Rule 6.6 prohibits a Trustee from using the influence of their office for any purpose other than for the exercise of her or his official duties. In particular, no Trustee shall use the status of the office to improperly influence the decision of another person to the private advantage of oneself or otherwise. Such conduct would include attempts to secure preferential treatment beyond activities in which Trustees normally engage on behalf of their constituents as part of their official duties, or improperly prejudice another person or persons.<sup>20</sup> However, the Respondent did not post the Twitter Statement for a private advantage. The Respondent was commenting with the public purpose of combating antisemitism, which is a public or collective issue and in the public interest. On its face, the conduct of the Respondent was not an attempt to improperly influence to the private advantage of herself or otherwise.

Further, I did not investigate allegations of Rule 6.11- Failure to Adhere to the Board Policies and Procedures – because in order for there to be grounds for the commencement of a complaint investigation in respect of adherence to Board policy, there must be a relevant policy which was allegedly violated. In my preliminary investigation, I learned that the Board does not have a comprehensive communications policy regarding the circumstances of this complaint nor a trustee-staff relations policy.

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<sup>20</sup> Grimes (Re), 2016 ONMIC 7

## X. Analysis

### **Issue #1 -Was the Respondent's Twitter Statement discriminatory as defined by the TDSB Human Rights Policy and the Ontario Human Rights Code?**

The Respondent saw her tweet as a communication to her constituents and thus part of the performance of her official duties. There is no dispute that her comments are subject to the Code of Conduct.

I have relied on the analysis performed by the Independent Investigator in reaching my conclusion on this issue.

The Independent Investigator reasoned that “[w]hen determining whether the [Respondent’s] Twitter Statement is discriminatory as alleged, we must consider the overall content of the materials she is referring to as well as the purpose which the materials were designed to serve.”

The Independent Investigator noted that “any assessment of whether the [Respondent’s] Twitter Statement is unfairly engaging and perpetuating harmful tropes about Palestinians or Muslims must consider the actual content of the materials which are being referred to.” The Independent Investigator noted that they were not engaged to examine whether the May Mailouts breached the TDSB’s Human Rights Policy or were anti-Semitic but only if the Respondent’s Twitter Statement was discriminatory. They noted that, of the links reviewed by the HRO, the HRO had concluded that only three resources “could reasonably be considered to contain antisemitic material, references, or allusions (overt or subtle), could reasonably be seen to be contributing to antisemitism.”

The Independent Investigator asked the Respondent to identify what materials she referred to in her Twitter Statement, which she said were anti-Israel, antisemitic, and/or encouraged violence and suicide bombing.. The Respondent provided a brief answer to the Independent Investigator identifying the materials in section #5 and #8 as being problematic (in addition to those highlighted by the HRO). The Independent Investigator sought further responses to their questions posed to the Respondent, and specifically stated that they were not asking the Respondent to review the materials again, but to identify which ones she had previously reviewed which she referred to in her statement. However, in May 2021, Hamas was carrying out rocket attacks on civilians, including in Tel Aviv. The Respondent shared with me that her sister who lives in Tel Aviv, had spent the month hiding in her stairwell because her residence was not equipped with a bomb shelter. During the interviews with the Integrity Commissioner in respect of this investigation, the Respondent communicated that it was “highly triggering, highly offensive, and deeply hurtful” to be required to re-review those documents to respond to the Independent Investigator, having already received and read the problematic materials. The Respondent advised that in reviewing the materials again, for the purpose of providing answers to the Independent Investigator, the Respondent stayed up all night reading the materials and “cried [her] eyes out at the thought that these [highly offensive and deeply hurtful materials] could be used in the classroom, caused the Respondent to

relieve the trauma of fear for her sister's life. The Respondent was unable to provide further information, and to accommodate her, I asked the Independent Investigator to complete its mandate without obtaining the outstanding answers to their questions.

The Independent Investigator raised their concern that the notice statement placed at the beginning of section #12 of the May Mailouts was missing from the copy reviewed by the Respondent. The evidence received by the Independent Investigator was that the Respondent had received the mailout as a PDF document attached to an email (which is not the native form of the Mailout). The Respondent advised that an email sent to her by a Holocaust Studies organization did not have the notice statement. This was notable to the Independent Investigator from the perspective that they concluded the notice statement was purposefully removed by someone. The Independent Investigator concluded that this has no real bearing on the outcome because (1) the disclaimer was in the version of the May Mailouts that were distributed widely, and provides important context for the way in which the materials need to be viewed; and (2) the Respondent's evidence to the Independent Investigator was that the disclaimer had no impact on her assessment of the May Mailouts as a whole.

The Independent Investigator reasoned that the analysis as to whether discrimination has taken place must focus on the *effects* of the Respondent's actions, not her intent or subjective understanding of a situation or the resources circulated. The Independent Investigator concluded that the purpose of the May Mailouts was to provide teachers with resources that center Palestinian voices within the context of the broader Israel-Palestinian conflict. The Independent Investigator found that this is significant because the May Mailouts sought to provide information through the lens of many of the Palestinian and Arab and Muslim children taught at the TDSB. Any potentially objectional materials were contained in the links in item #12 which was a continuously updated master list of resources on Palestine – and were included in the disclaimer specifying that the staff person had not reviewed all of the links and urging teachers to use their professional judgment when reviewing those materials. The HRO has not concluded that the resources in section #5 and #8 were antisemitic as this was not included in their retainer agreement with the Integrity Commissioner. The Independent Investigator concluded that the Respondent's Twitter Statement fundamentally mischaracterized materials which were intended to, and do for the most part: (1) center the voices of marginalized Palestinians (particularly those of Palestinian children) as well as Muslims more broadly, and (2) assist educators in understanding and discussing the Palestinian struggle for self-determination and human rights in a manner that provides thoughtful guidance on how one might critique the Israeli government and army without perpetuating anti-Semitism.

The Independent Investigator's Report concluded that equating pro-Palestinian materials with anti-Semitic sentiment may perpetuate seeing Palestinians and Muslims, as the two are often equated, as "separate and 'other'" without "values in common with other cultures" (one of the "closed views" of Islam that has been noted by the human rights bodies as characterizing Islamophobia). The Independent Investigator noted that a definition of Islamophobia is contained at page 33 of the TDSB Equity Policy and this definition mirrors that set out in the Ontario Human Rights Commission's Policy and

guidelines on racism and racial discrimination, which has been cited by the Ontario Human Rights Tribunal. A more detailed definition of Islamophobia was considered in the OHRC's "Human Rights and Creed Research and Consultation Report" (2013) which cites the (1997) British Runnymede Trust Report, *Islamophobia: A Challenge for Us All*, which outlines eight recurring "closed views" of Islam that characterize Islamophobia. The Independent Investigator reasons that this, along with a statement equating pro-Palestinian materials with support or justification for suicide bombings and terrorism similarly may perpetuate the dangerous and harmful stereotype which views Muslims, and particularly Palestinian Muslims, "as violent, aggressive, threatening, supportive of terrorism and engaged in a 'clash of civilizations.'" As such, the Investigator's Report concluded that these comments in the Respondent's Twitter Statement supported and perpetuated several harmful and recurring "closed views" or stereotypes about Palestinians and/or Muslims more broadly and that having these stereotypes perpetuated in a public statement by a publicly elected Trustee who participates in governing the TDSB for all students is discriminatory both within the meaning of the relevant TDSB policies as well as within the meaning of the Human Rights Code.

The Independent Investigator noted that they understood the Respondent's "desire to amplify the alleged concerns of her constituents and to ensure they are addressed. However, it is the conclusive, overarching, and unequivocal nature of the [Respondent's] Twitter Statement along with its invocation of Islamophobic tropes which paints all Palestinian voices with the same negative brush that makes the statement discriminatory." The Respondent's statements carried the weight of her office, and there was a clear power difference between the Respondent and the staff person. The evidence reviewed by the Independent Investigator showed that the impact of the Respondent's Twitter Statement on the staff person was immediate and substantial and that the Twitter Statement had an adverse impact which was felt beyond staff person by Palestinian and Muslim members of the TDSB community and those that identify with the cause of Palestinian human rights and self-determination.

The Independent Investigator concluded that the Respondent's Twitter Statement supported and perpetuated several harmful and recurring "closed views" or stereotypes about Palestinians and/or Muslims more broadly. Having these stereotypes perpetuated in a public statement by a publicly elected Trustee who participates in governing the TDSB for all students is discriminatory both within the meaning of the relevant TDSB policies as well as within the meaning of the *Human Rights Code*.

I carefully reviewed the Independent Investigator's report and analysis and my office's own notes from my broader investigation.

The Respondents communicated to me that her Twitter Statement did not equate pro-Palestinian materials with antisemitic sentiment, nor did it equate pro-Palestinian materials with support or justification for suicide bombings and terrorism. The Respondent rightly states that there was no mention in her Twitter Statement of Palestinians or Muslims. However, in reliance on the Independent Investigator's findings, the use of terms "suicide bombings" and "other forms of terrorism" evoke a narrative directed at Muslims

and Palestinians, hence included in definitions of Islamophobia. The Respondent complains that these are errors in fact that appear as words ascribed to her by the Independent Investigator. The Respondent sustains that her comments contained in the Twitter Statement “were geared towards the Jewish community and [her] Jewish constituents given what the community was experiencing throughout May of 2021, and given that some of the materials in question were discriminatory to Israelis and Jews specifically”. Importantly, the Independent Investigator points out that as a Trustee who represents a ward, the Respondent must also take into consideration other students and parents in the Board, not only those representing the Jewish community.

While I accept that the Respondent’s was profoundly hurt by reading some of the materials in the May Mailouts which triggered deep trauma of her lived experience as a Jewish woman with family directly impacted by the tragic events in May 2021 and while I accept that the Respondent did not intend for her Twitter Statement to perpetuate Islamophobic tropes, in accordance with the Independent Investigator’s findings, the effect of her words, not the intent of Respondent must be considered in an analysis of whether a statement is discriminatory.

I concluded that a determination on discrimination requires a review and analysis of the facts by experts in human rights. This is why the Codes of Conduct contain code complaint provisions that bifurcate the investigation process, in which the initial assessment is conducted by experts in human rights legislation (either the HRO or an independent investigator) and then, if the human rights assessment determines that the Code complaint triggers the human rights policies, the referral of the human rights portion of the complaint to an independent investigator. I rely on the conclusions of the Independent Investigator in respect to Issue #1.

The Independent Investigator also considered whether the Respondent’s conduct amounted to harassment.

The Independent Investigator concluded that the Respondent knew or ought to have known that her conduct would be unwelcome, and she ought to have known this conduct would incite or invite some of her social media followers to message and even threaten [the staff person] (which they did). However, as a single serious incident of racial or creed-based discrimination, they were unable to conclude that the Trustee’s Twitter Statement constitutes a course of conduct that satisfies the legal definition of harassment within the meaning of the TDSB policies, the OHSA, or the Human Rights Code.

The Complaints alleged that the Respondent’s Twitter Statement was experienced by the staff person as “deeply hurtful and harassing”.

Given the specific process prescribed by the Code for harassment and discrimination complaints under Rule 6.10 (b), I have relied on the Human Rights subject-matter expertise of the information contained in the Independent Investigator’s Investigation Report. I also considered the findings and reasons of the Independent Investigator who



has considerable experience in investigating, among other things, workplace harassment and human rights complaints under the Ontario *Human Rights Code*.

The definition of harassment found in the Ontario *Human Rights Code* is nearly identical to that found in the TDSB's Workplace Harassment Policy as well as the definition of harassment found in the OHSA. The OHSA, for example, defines harassment as engaging in a course of vexatious comment or conduct against a worker in the workplace that is known or ought reasonably to be known to be unwelcome. Under both the OHSA and the *Human Rights Code*, a finding of harassment does not require intent on the part of the perpetrator.

The TDSB's Human Rights Policy states that:

Every student, employee, trustee, parent, and community member has the right to learn and work in an environment free of discrimination and harassment. Discrimination and harassment based on legislated prohibited ground will not be tolerated. Such behaviour must be addressed not only for its cost in individual, human terms, but also for its cost to our social, economic, and civic future.

The Policy goes on to define "Harassment" as "as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome."

The Independent Investigator applied an analysis with both a subjective and objective component and noted that the subjective experience of the Complainant is not the lone determinant of whether the Respondent Trustee's conduct constitutes harassment. There must also be the objective evidence, on a balance of probabilities, that the Respondent knew or ought to have known that the conduct was unwelcome and that the conduct is such that a reasonable person would find vexatious. The Independent Investigator accepted that the staff person had received harassing and threatening comments after the Respondent published her Twitter Statement, some of which were tied to the statement and some of which were not. The Independent Investigator noted that the TDSB departed from its long-standing practice by providing comments to Ms. Levy in response to her media requests, even advising her of the investigation before it had advised the staff person. However, in discussions with senior executives of the Board, I have determined that the internal investigation process had begun and attempts to notify the staff person had been made without success. The Independent Investigator reviewed the effects of the Twitter statement and retweeting of Sue Ann Levy's article on the staff person. The Independent Investigator concluded that, while it was impossible to know exactly how much the Twitter Statement contributed to the harassment which the staff person experienced, at least some of the harassing comments arise directly in reaction to her postings on Twitter and Facebook, including in the comments in reply to these posts.

In respect of the objective analysis, the Independent Investigator concluded that the Respondent ought to have known that her Twitter Statement would be unwelcome and

would incite or invite some of her Twitter or Facebook followers to message and even threaten the staff person in ways that would also be unwelcome.

The Independent Investigator then considered whether this amounts to a “course of conduct” within the definition of “harassment”. The Independent Investigator concluded that it did not. A single serious incident can constitute harassment in the workplace and the jurisprudence indicates that the following factors weigh in favour of a single incident being considered harassing:

- If a single comment is particularly “egregious or virulent,”<sup>21</sup>
- If the single incident involves putting one’s hands on the body of another in a sexual way,<sup>22</sup>
- If an unwanted comment is explicitly sexual, demeaning and/or attacks the dignity of the complainant,<sup>23</sup> and
- If a demeaning act is premeditated, rather than spontaneous.<sup>24</sup>

The case law from the Human Rights Tribunal of Ontario has primarily engaged the conclusion that a single serious incident constitutes harassment where the single serious incident of harassment involved sexual harassment, and often inappropriate physical touching. The Independent Investigator concluded that the case law pointed to a single incident amounting to harassment when the incident involved sexual touching or other egregious acts of sexual harassment. Unable to find any decisions finding harassment under the *Human Rights Code* or the *OHSA* on the basis of comment(s) analogous to those at issue in this case which incited or encouraged further harassment by third parties, the Independent Investigator concluded that, while the Respondent knew or ought to have known that her conduct would be unwelcome, it did not constitute harassment within the meaning of the relevant TDSB policies or legislation. I accept that conclusion.

In light of this evidence, I find the evidence that I have reviewed and the conclusions and reasons contained in the Independent Investigator’s Report show on a balance of probabilities that the Respondent’s Twitter Statement is discriminatory both within the meaning of the relevant TDSB policies and thus a breach of Rule 6.10.

While I am only required to report on an investigation where a breach is found, for the sake of completeness, I include brief comments on the two other issues raised in this

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<sup>21</sup> See for example, *Dunn v Edgewater Manor Restaurant*, 2011 HRT0 1795

<sup>22</sup> See for example, *Murchie v JB's Mongolian Grill*, 2006 HRT0 33

<sup>23</sup> See for example, *Romano v 1577118 Ontario Inc*, 2008 HRT0 9

<sup>24</sup> See for example, *Xu v Quality Meat Packers Ltd*, 2013 HRT0 533

investigation.

***Issue #2 – Improperly influence or attempt to influence the staff's investigation***

Issue #2 sets out that the Respondent's Twitter Statement and the retweeting of the Toronto Sun Article improperly influenced or attempted to influence the Board's decision in respect of the disciplinary action of the staff person in contravention of her obligation under Rule 6.9(b) of the Code.

The Role of Trustees at the TDSB:

The Board of Trustees has no role in the oversight of staff of the TDSB except the Director of Education. In respect of the Director of Education, the *Education Act* states:

**169.1 (1) Every board shall,**

(h) monitor and evaluate the performance of the board's director of education, or the supervisory officer acting as the board's director of education, in meeting,

(i) his or her duties under this Act or any policy, guideline or regulation made under this Act, including duties under the plan referred to in clause (f), and

(ii) any other duties assigned by the board.

Under s. 218.1 of the *Education Act*, the role of the trustee includes:

(d) bring concerns of parents, students and supporters of the board to the attention of the board;

(f) entrust the day-to-day management of the board to its staff through the board's director of education;

... and

(h) comply with the board's code of conduct.

The Director of Education oversees the selection, performance review and discipline of staff, often by delegating to other senior staff members within the Board. Investigations into potential employee misconduct are overseen by the Employee Services department of the TDSB. Trustees have no role in this process (except, in prescribed circumstances in respect of employment of the Director of Education).

The Respondent's comments, including those made on social media are governed by the rules of the Code. Individuals who are elected to the Board are held to a higher standard and may hold positions on matters of relevance to their communities. What is not permitted under the Code is to use one's status as a Trustee to influence the outcome of

a process or the decisions of staff. The Respondent formulated comments on a publicly accessible social media page that is followed by a significant number of individuals and can also be reviewed by staff internal to the TDSB who may have carriage of the review of the actions of a staff person. Based on the information that I have reviewed, the Respondent's request for an investigation was not directed at staff in respect of seeking a review of a particular staff person, but rather regarding a review of what processes of the TDSB would allow hurtful and antisemitic materials to be distributed to students. The Respondent should not have attempted to solicit an investigation of TDSB processes via a Twitter Statement. Based on the information that I received during this Code investigation, the decision to conduct an internal investigation had already been made prior to the Respondent's Twitter Statement. The Respondent did not run afoul of the prohibition contained in Rule 6.9(b) which includes the obligation to refrain from using one's status as a Trustee to improperly command or influence staff.

My analysis of Rule 6.9(b) of the Code does not require me to conclude whether the Twitter and Facebook postings did, in fact, influence staff; rather, I must conclude whether the Respondent intended to influence or intended to attempt to influence staff's investigation process or conclusion. I find that she did not.

While the Respondent advises that she had a conversation with the HRO, she denies having acted in any way to attempt to influence the investigation of the staff person and this was supported by my interviews with staff of the HRO and senior executives of the TDSB. The Respondent's Twitter Statement was released after the time that the TDSB commenced an internal investigation of the staff person.

I find that the Respondent did not post the statement on Twitter with the intent to command or influence staff to commence or continue an investigation in respect of the staff person, in fact an internal investigation had already begun. Rather, the Respondent's intent was in response to an outcry from her community to receive answers on what processes exist at the TDSB to prevent the distribution of antisemitic materials.

The Board of Trustees, as a collective, make decisions on Board policy. The proper forum for the Respondent to address concerns about Board processes is at a session with the full board or in the relevant Committee. Of relevance to the legislative role of the Board is Recommendation 2 of the Toronto District School Board Governance Advisory Panel Report (the "Hall Report")<sup>25</sup> which set out that:

"...the board of trustees clarify and clearly communicate throughout the board and the community the roles and responsibilities of trustees and of the board of trustees in accordance with legislation and good governance practices. While the discipline of an employee, with the exception of the Director of Education, does not reside within the jurisdiction of the Board, the Trustees may – as a collective – vote to direct the Director of Education to commence an investigation, without comment

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<sup>25</sup> [http://www.edu.gov.on.ca/eng/new/2015/tdsb2015.html#\\_Toc427062661](http://www.edu.gov.on.ca/eng/new/2015/tdsb2015.html#_Toc427062661)

on their desired outcome. In the language of the TDSB *Governance Policy*, the powers and duties of the TDSB, as an organization, are distinct from those of individual trustees and those of staff. For example, it is the duty of the Board of Trustees, rather than Staff, to make policy decisions. In making decisions, Trustees shall consider the interests of the TDSB as a whole. Individual Trustees will carry out their duties under section 218.1 of the Education Act.<sup>26</sup>

***Issue #3 – The Respondent’s Twitter Statement asserted that the resources in the Mailout were “anti-Semitic” thereby maliciously or falsely injuring the professional reputation of the staff person***

I find that there is insufficient information to determine whether the Respondent falsely injured the reputation of the staff person. I can conclude that the Respondent did not maliciously injure the reputation of the staff person, as there was no evidence of malicious intent.

I am not an expert in the Israeli-Palestinian conflict. Because the HRO did not provide a thorough analysis of the May Mailouts and the Code does not permit me to retain an Independent Investigator under s. 6.9, there has been no determination about whether the article and links that were anti-Israeli were also antisemitic, I do not have sufficient information to conclude my analysis about whether the statement falsely injured the reputation of the staff person.

The HRO has only reviewed a sample number of the materials in the May Mailouts and states that it does not have expertise on the history of Israel/Palestine and thus is unable to determine if any of the articles beyond those reviewed in the May Mailouts are factually incorrect or factually contested. In addition the Independent Investigator was not retained to review the materials in the May Mailouts with a view to deciding if they could be defined as antisemitic. As such, I am unable to decide whether the Respondent’s Twitter Statement falsely injured the reputation of the staff person.

In light of recent incidents at the TDSB, the Executive Director has committed to engage an expert person to provide resources on this conflict. That is an appropriate response in the circumstances.

In reviewing the information receive during this investigation, I did consider the question posed to me- “Who gets to decide what offends a particular racialized ethnocultural or religious group?” A word may be a pejorative term for members of an ethnocultural or religious group and notwithstanding the characterization by some experts (including members of that group) that the terms are not offensive, to see that word in print is still offensive as an epithet to many. To deviate from a definition of a racial epithet held by a

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<sup>26</sup> TDSB Policy P0086

predominant representative body of experts in the oppression of a particular group, legitimizes comments and actions that are far outside of the boundaries of acceptable speech by that group. I could not make a determination that the actions of the Respondent constituted a breach of rule 6.9(a) of the Code which states that a Trustee shall not maliciously or falsely inure the professional reputation of staff members of the Board.

While many of the articles in the May Mailouts do not express hatred or criticism toward Jews as an ethnic group or as a creed/religion, the HRO found that within the sample of materials they reviewed, there were problems with at least three resources included in item #12 in both May Mailouts. However, what came to light very significantly during this investigation is what is the threshold for offense. While it is clear from the expert analysis of the Independent Investigator that whether the Respondent was offended is irrelevant in arriving at a finding of discrimination, it is necessary for the purposes of my investigation and findings, to consider the question of who gets to decide what offends a Jewish person or any racialized ethnocultural or religious group. A word may be a pejorative term for members of an ethnocultural or religious group and notwithstanding the characterization by some experts (including members of that group) that the term is not offensive, to see that word in print may nonetheless be offensive as an epithet to many in that group and those have affinity to that group. To dismiss a definition of a racial epithet held by a predominant representative body of experts on the oppression of a particular group legitimizes comments and actions that are outside of the boundaries of acceptable speech by that group. In reviewing the content of the May Mailouts (Attachment #1 and #2 to this report set out the 2 Code complaints), it was clear that without a detailed review by the HRO, I could not make a determination that the actions of the Respondent did constitute a breach of rule 6.9 (a) which states that a Trustees shall not maliciously or falsely injure the professional reputation of staff members of the Board.

While many of the articles in the May Mailouts do not express hatred or criticism toward Jews as an ethnic group or as a creed/religion, the HRO found that within the sample of materials they review, there were problems with three or more resources included in item #12 in both May Mailouts: "PALESTINE: A Master list - Continuously Updated Master list of Sources on Palestine (Resources by multiple researchers, scholars, academics, authors). I reviewed those resources and agreed with the Independent Investigator's finding that "[s]ome of these could reasonably be considered to contain anti-Semitic material, references, or allusions (overt or subtle), and could reasonably be seen to be contributing to antisemitism." For example:

- A Short History on the Colonization of Palestine (Flyer) contains some misinformation that could reasonably be seen to support antisemitic tropes. Specifically, dismisses the historical connection of Jewish people to the land; lumps all Israelis together; notes that "martyrdom operations (called "suicide bombing" by Zionists)" are a legitimate means of resistance; and it refers to "the "Iron Fist" policy of crushing the bones of Palestinian children's hands" which feeds into the 'blood libel' trope [note: according to an article in the Chicago Tribune an

“iron fist” policy was enacted by Rabin and “resulted in hundreds of fractured limbs, hands and skulls among Palestinian men, women and children, according to hospital and United Nations relief sources”. The flyer is not wrong that such horrific acts were enacted against children amongst others. However, its framing as an intentional policy targeting children feeds into the blood libel trope that Jews murdered non-Jews, especially children, and used their blood for ritual purposes]

- My People Shall Live by Leila Khaled makes some statements that conflate Jewish people with Zionists, thus levelling critiques towards Jews based on their ethnic/creed identity rather than towards the specific beliefs and actions of some people and the Israeli government.
- There are some links to resources that support the use of violence and terrorism against Israeli Jews; specifically, a link to the website of the Popular Front for the Liberation of Palestine (a group that is currently on Canada’s Listed Terrorist Entities), documentary and resources about Leila Khaled who was involved in plane hijackings, and an interview with Ghassan Kanafani, who was involved in violent actions against civilians.

In this analysis, I am permitted to consider the Respondent’s intent. The concept of malice must consider the Respondent’s intent. However, as I set out below, without a definitive and consensus on the definition of “antisemitism am not able to make a determination that the actions of the Respondent did constitute a breach of rule 6.9 (a) which states that a Trustees shall not maliciously or falsely injure the professional reputation of staff members of the Board. In this part of my analysis, I can consider the Respondent’s intent in considering her words. This differs from the discrimination analysis, set out by the Independent Investigator, which focuses on the impact or effect of the Respondent’s words.

The May 23<sup>rd</sup> Twitter Statement can be considered in two ways: first, it can be parsed out into 5 sections. Second, it can be reviewed holistically to determine if the sections, once read in context convey a different meaning. While I have concluded that I am unable to make a determination in respect of Issue #3, I have set out my analysis to explain the steps taken in reviewing Issue #3.

First, I have reviewed each sentence in the Twitter Statement:

1. *This past week has already been very exhausting and distressing for many members of the Jewish and Israeli communities in Canada as a result of both the fighting in the Middle East and rising antisemitism here at home.*

The Respondent is a member of the Jewish and Israeli community with family who live both in Canada and in Israel. Her expression of the week being “exhausting and distressing” in respect of the May 2021 conflict in the Middle East is a statement of fact and `expression of her lived experience.

2. *I was deeply disturbed to recently discover that virulently anti-Israel and even antisemitic materials were distributed to the TDSB teachers through an opt-in list by a TDSB employee*

The adjective virulently means “full of malice”: malignant *virulent* racists; objectionably harsh or strong *virulent* criticism<sup>27</sup>. I have reviewed Antisemitism Defined: International Holocaust Remembrance Alliance, Adopted by Canada in June 2019.

In the spirit of the Stockholm Declaration that states, “With humanity still scarred by ...antisemitism and xenophobia the international community shares a solemn responsibility to fight those evils,” the committee on Antisemitism and Holocaust Denial called the IHRA Plenary in Budapest 2015 to adopt the following working definition of antisemitism.

On 26 May 2016, the Plenary in Bucharest decided to:

Adopt the following non-legally binding working definition of antisemitism: “Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”

To guide IHRA in its work, the following examples may serve as illustrations: Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong’. It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.

Contemporary examples of antisemitism in public life, the media, schools, the workplace, and in the religious sphere could, taking into account the overall context, include, but are not limited to:

- Calling for, aiding, or justifying the killing or harming of Jews in the name of a radical ideology or an extremist view of religion.
- Making mendacious, dehumanizing, demonizing, or stereotypical allegations about Jews as such or the power of Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions.

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<sup>27</sup> <https://www.merriam-webster.com/dictionary/virulent>



- Accusing Jews as a people of being responsible for real or imagined wrongdoing committed by a single Jewish person or group, or even for acts committed by non-Jews.
- Denying the fact, scope, mechanisms (e.g. gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust).
- Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust.
- Accusing Jewish citizens of being more loyal to Israel, or to the alleged priorities of Jews worldwide, than to the interests of their own nations.
- Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor.
- Applying double standards by requiring of it a behavior not expected or demanded of any other democratic nation.
- Using the symbols and images associated with classic antisemitism (e.g., claims of Jews killing Jesus or blood libel) to characterize Israel or Israelis.
- Drawing comparisons of contemporary Israeli policy to that of the Nazis.
- Holding Jews collectively responsible for actions of the State of Israel.

Based on the above and upon a review of the materials in the May Mailouts,, I found that they did contain some materials that could reasonably be seen to be contributing to antisemitism. . For the purpose of this analysis, while this Office recognizes that the staff person's stated intent was to curate a collective of materials to centre pro-Palestinian voices, the HRO has identified that some antisemitic materials contained within the links in the Mailouts were present. The Respondent advised me that she did not intend that her statement would cover all of the materials in the Mailouts. Rather, she intended to refer only to the offensive materials. This Office recognizes that the Respondent's Twitter Statement did not properly circumscribe to which subset of materials the Respondent intended to refer.

3. *I was outraged to discover that some of this material justifies suicide bombings and other forms of terrorism. This is reprehensible. These materials were provided by an employee from the TDSB equity department, the very department that should be countering antisemitism and violence, not fanning the flames.*

Upon review of the May Mailouts, “some of” the materials did justify suicide bombings and other forms of terrorism. The Respondent’s comments can be taken on their face, to mean that ‘materials that justify suicide bombings and other forms of terrorism’ are reprehensible. The Respondent’s comment that “this is reprehensible” is a statement of her opinion about the promotion or justification of suicide bombings and terrorism.

The materials were distributed by an employee from the TDSB equity department and the TDSB equity department webpage states that:

#### Equitable and Inclusive Education

Staff at the Toronto District School Board (TDSB) work every day to support the uniqueness and diversity of students. We strive to make all students and staff feel welcome and accepted in their school so they can be successful and reach their full potential, regardless of their background or personal circumstances.

Through the work of the Equitable and Inclusive Schools team, the Board ensures that fairness, equity and inclusion are essential principles in our schools and are integrated into all policies, programs, operations and practices.<sup>28</sup>

This statement was made in reference to the prior comments that some of the materials justify suicide bombings and antisemitism. While strongly worded, the fact that any of the materials would encourage violence and antisemitism was enough to support this statement as true.

4. *I will be demanding a full investigation into this alarming incident and, working to ensure that none of these hateful materials ever see the inside of a TDSB classroom.*

This section of the Twitter Statement conveys a call to investigate how the TDSB as an organization could allow antisemitic materials to be distributed (even on an opt-in basis) to students and teachers of the TDSB with a view to ensuring that hateful antisemitic materials do not ever see the inside of a TDSB classroom. However, the Respondent should have foreseen that this could be perceived as calling for an investigation of a particular staff member. I recognize and accept that the Respondent’s intent was to call out the antisemitic content of some of the materials and to seek a high-level investigation by the TDSB to obtain answers to why such materials could form part of materials distributed to students. In the course of the investigation, the Respondent stated that she intentionally did not include in the Twitter Statement, “a call for the staff person to be investigated or fired”, one of the comments conveyed by constituents. In fact, the Respondent acknowledged in interviews with this Office that she contacted my Office on May 25, 2021, confirming her understanding that an individual Trustee cannot demand

individually an investigation of a TDSB employee or predetermine the outcome. At the May 25<sup>th</sup> conversation, I advised the Respondent that putting out a statement generally condemning violence is allowed under the Code, however a Trustee cannot purport to speak on behalf of the Board and cannot call for the investigation or discipline of a staff person.

5.      *We must all do better to combat antisemitism, especially in these trying times*

A call to combat antisemitism and oppression of any kind is not offensive on its face – and is allowable conduct under the Code.

Reviewing each section of the Twitter Statement, I find that read as a whole, the Twitter Statement fails to recognize the nuance or distinction between comments on all of the Mailouts or a small subset of the Mailouts. The language used by the Respondent in her Twitter Statement was capable of suggesting two different meanings: (i) conveying a generalization regarding all of the materials or (ii) conveying that of the materials circulated, *some* were antisemitic, from a terrorist group and promoted violence. Reviewing the entire statement and considering the Respondent’s intent, this Office is unable to determine that her comments were not false.

The Respondent ought to have been more careful to limit her comments about materials being “virulently anti-Israel and even antisemitic” in the same way that she limited her comments on promoting violence to “some of” the materials. I find that, at worst, the Respondent’s statement was vague and she did not intend to refer to all of the materials in the May Mailouts, although I confirm my reliance on the Independent Investigator’s findings in respect of Issue #1 insofar as the standard for discrimination is identified as the outcome and effect of the comments and not the Respondent’s intent.

I further find that any reasonable person reviewing the May Mailouts would understand the Respondent’s comments to be constrained to the offensive materials. I am not tasked with reviewing the conduct of the staff person. However, for the purposes of determining whether Issue #3 was borne out, I reviewed the staff person’s statements of warning to the opt-in readers. The staff person curated resources and wrote:

I’ve read many of these links, ***but not all***. Many are from well-known scholars, historians, and journalists. The articles I’ve read use a critical race praxis and are transparent and intentional about calling out antisemitism. Read these with a critical anti-racist lens, and ensure credibility and intersectional anti-oppressive frameworks that use a clear analysis of power. [emphasis added]

The staff person clearly indicated that he curated this list with the intention to include authors who call out antisemitism. However, as a warning to the readers of the live links, the staff person wrote:

There may be websites linked from this site that are operated by organizations outside of the Toronto District School Board (TDSB). These organizations are solely responsible for the operation and information found on their sites. Linking from this site does not imply any endorsement of the organization or information found on the website. Any comments or inquiries regarding the linked web sites should be direct to the organization operating the website.

For reasons that are not clear, the Respondent was sent a copy of the May Mailout without the disclaimer above section #12. Had she received a copy with the disclaimer, she might have worded her statement differently by, for example, clarifying that there were links distributed which were problematic and which may not have been reviewed by the staff person. However, in respect of the reputation analysis, I cannot find that the Respondent should be penalized for commenting on the information that she received. She was not on the mailing list – and had no reason to believe that any portion of the May Mailouts were removed before it was provided to her. In the future, I have no doubt that she will look to the original source.

The Trustee is a Jewish woman and received numerous messages of concern from constituents in her Ward, many of whom are part of the Jewish community. Within this context, it was not unreasonable for the Respondent to have been offended by some of the materials she did review and to want the links to the problematic material removed. She intended to call out those materials.

Against the backdrop of an ongoing war, the Respondent made a public Twitter statement and in so doing, directed significant scrutiny of the staff person who was named in the Toronto Sun article. In this way, the public nature of the Respondent's comments had the outcome of contributing to the scrutiny of the staff person's actions. I have reviewed the materials in their entirety, and I confirm the conclusion of the HRO, and I find that some of the material in the May Mailouts, in particular the live links, could reasonably be considered to contain antisemitic material, references, or allusions (overt or subtle), could reasonably be seen to be contributing to antisemitism. I find that the Respondent's statement should not have been made publicly but I am unable to determine that she falsely injured the staff person's reputation because I must rely on the TDSB HRO definition of antisemitism which did not provide me with sufficient information to determine if the statement was true. I confirm my reliance on the Independent Investigator's findings in respect of Issue #1 insofar as the standard for discrimination is identified by the outcome and effect of the comments made by the Respondent and not her intent.

### **The Integrity Commissioner's considerations**

1) First, the subjective intent or understanding of the Respondent is not a factor in the assessment of whether her conduct is discriminatory. It is for this reason that the Independent Investigator did not factor the Respondent's intent into their analysis. They

performed their analysis on the basis of the May Mailouts that were sent out, relying on the HRO's determination that some of the materials may be considered antisemitic but that the stated purpose of the staff person in curating the mailout was educational. The Independent Investigator found that many Jewish parents and teachers as well as the HRO viewed some of materials in the main section of the May Mailouts and did not find that these were antisemitic. I acknowledge that citing that some Jewish teachers and students and Jewish organizations did not find the materials antisemitic does not capture the Respondent's lived experience, her trauma when reading the materials triggering her fear for sister during the Tel Aviv bombings by Hamas. But regardless of how the May Mailouts made the Respondent feel, within the context of a discrimination analysis, she is not entitled to respond to an experience of discrimination by perpetuating stereotypes against another group and I rely on the Independent Investigator's finding that the outcome of the Respondent's Twitter Statement was one of perpetuating stereotypes.

2) Second, the Independent Investigator found that the Respondent's use of "some" with reference to a subset of the materials justifying suicide bombings and other forms of terrorism, was insufficient to change the discriminatory **effects** of the Respondent's statement. The Independent Investigator advised that in human rights law, the first step in the discrimination analysis is to consider the effect of the conduct or statement on the individuals who claim offense. A Trustee may voice her opinion, especially in respect of calling out antisemitism. However, a trustee cannot perpetuate harmful anti-Muslim and anti-Palestinian tropes by tying generally pro-Palestinian discourse to antisemitism and violence. The Respondent stated in her comments to me that "[t]o determine that my statement was discriminatory is to say that I can choose to be a Trustee or a Jew but not both". I acknowledge the Respondent's feeling of being hamstrung by a finding that her Twitter Statement was discriminatory. However, this commentary is simply untrue. The Respondent could have carefully crafted a statement to call out the potentially harmful materials while appropriately characterizing other materials as important, positive pro-Palestinian discourse. The Respondent's position as a Trustee means that her comments on social media will carry the weight of the Office. If the Respondent had stated only that she had learned that there were some troubling materials that may promote antisemitism contained within a larger mailout, and that she would be asking that the TDSB determine how these materials were permitted to be distributed, she would not have been found to be furthering anti-Muslim tropes and would likely not have violated the Code in respect of Issue #1.

3) Third, the Independent Investigator found that the Respondent identified materials in the main part of the May Mailouts as antisemitic. In particular, the Respondent advised that her decision to distribute the Twitter Statement was based on the fact that many of her constituents contacted her voicing their outrage upon learning that antisemitic materials were being distributed in classrooms by a department of the TDSB. The HRO reviewed some of those materials and concluded that they were not problematic.

### *Additional Comments*

Based on the information that I received during this investigation, I agree with the Respondent that some of the main materials may be viewed by some in the Jewish community to be antisemitic. In particular, this position can be taken in respect of articles that support an anti-Zionist narrative. In some of the articles that were deemed by the HRO not to be antisemitic, the word 'Zionist' was used as a pejorative. The Respondent explained that this use of the word 'Zionist' in the pejorative is highly offensive to her and many in the Jewish community. The fact that some Jewish families, teachers and community organizations did not find any materials in the main part of the May Mailouts as offensive or antisemitic, does not diminish the fact that the Respondent and many in the Jewish community ascribe to the position that Zionism is the belief that Jews should have the right to self-determination and understanding that the overwhelming majority of Jews are Zionist. When the Respondent defines herself as a proud Zionist, it is offensive to her to be defined as being anti-Palestine because she describes herself this way. The Respondent explains that she does not take the position that criticism of the Israel government or policy is antisemitic, but rather she objects to a position that denies a Jewish person's right to self-determination.

To the Respondent and many in the Jewish community, being a Zionist, is a part of significant part of their Jewish identity and their connection to an ancestral homeland. The Respondent advised that referring to herself as a proud Zionist does not make her any more anti-Palestinian than those who believe that a Pro-Palestine position equals being anti-Semitic. What made the Respondent's Twitter Statement problematic was not her calling out antisemitism – this is and should be a position that all hold – but rather it was that she called out antisemitism, by making a generalized statement that had the effect of painting a collective of individuals and authors as violent. The Respondent is no more an Islamophobe than the staff person is antisemitic. However, given the weight of her office, responding to the outrage of her constituents required her to measure her statements in a careful way to not feed into Islamophobic tropes. Many individuals read the Respondent's Twitter Statement to state that none or very few of the materials contained in the May Mailouts were educational and positive and most were problematic. The Respondent's Twitter Statement did not state this.

I agree with the HRO that the majority of resources provided by the staff person were educational and helped to centre often marginalized voices, however, I am concerned that the HRO has a very limited view of the definition of antisemitism, an incorrect definition of certain terms in the Jewish narrative, including 'Zionist', which is painted incorrectly and pejoratively. Further, the fact that the May Mailouts were provided by way of an opt-in registration process, does not cancel out the fact that the teachers and students who opt-in, should not be required to read through patently antisemitic materials, even if those are found in a subset of the materials in a link that is constantly being updated. The presence of a notice statement warning the reader that the materials in the links have not been reviewed by the creator of the curated materials is concerning. Reading antisemitic materials is never something that a student at the TDSB should find themselves reading. A careful and thoughtful study of Holocaust education may contain

materials that under the supervision of a subject matter expert, can ensure that the horror of antisemitism is conveyed through the readings that identify and condemn such sentiment and that are not left up to the teacher or student to interpret. Whether there were 3 articles in links or main material that contained antisemitic materials or 50, even one article with antisemitic materials is too many for the largest school board in Canada to have distributed. The Respondent should have been more explicit in her language to ensure that, among others, Palestinian children and parents felt heard and understood and encouraged to share their voices and perspectives. However, the Respondent's omitting to mention the educational value of some of the materials does not deny her the right to call out materials she believes to be antisemitic. In future, she ought to be even clearer that the majority of materials were educational and not problematic. Notwithstanding, the Respondent's comments carry the weight of her Office and her title as Trustee brings legitimacy to all of the public statements. I caution the Respondent to be more careful in choosing her words and to circumscribe her comments to ensure that legitimate academic criticism is not muted.

I urge the Respondent to exercise caution and perhaps seek assistance from a human rights expert to ensure that her words are not capable of multiple meanings and are inclusive to all people.

## **XI. Summary of Findings**

When evaluating the integrity and ethical conduct of a Trustee, my role is to apply the rules of the Code to the facts gathered throughout the investigation and make a determination as to whether there has been a breach of the Code. In addition to the Investigator's Report, I have carried out my own review of the evidence and submissions of the parties, including the Complainants' and Respondent's statements, TDSB documents, May 16<sup>th</sup> and May 19<sup>th</sup> Mailouts, the Respondent's May 23<sup>rd</sup> online Facebook and Twitter posts and the HRO Review and Assessment dated June 4, 2021.

I make the following findings in relation to the two complaints:

With respect to Issue #1,

I rely on the conclusions of the Independent Investigator and I find that the Respondent did breach Rule 6.10 of the Code within the TDSB definition of discrimination. In reliance on the Independent Investigator's findings, the allegation of harassment was not borne out.

With reference to Issue #2, I find that the Respondent did not breach Rule 6.9(b) of the Code in that she did not influence or attempt to influence the outcome of an internal staff investigation through publicly posting on Twitter and Facebook.

In respect of Issue #3, I am unable to make a determination on Rule 6.9(a) of the Code for the reasons set out above.

## XII. Conclusion

Based on my review of the information received during this investigation, there is a significant undercurrent of politics, and entrenched conflicting religious and ethno-cultural perspectives. I am not oblivious to the raw sentiment expressed by individual members of the public, staff and Trustees regarding the subject matter at the center of the two Code complaints. However, against this backdrop, my role as Integrity Commissioner is to apply the rules of the Board Member Code of Conduct to the conduct of the Respondent and not to make a determination on the conduct of the staff person. The TDSB has advised that the organization recognizes that there is much work that must be done to support its educators around teaching and learning about topics that are subject of the Mailouts, in a manner that ensures all members of the TDSB community feel safe and supported. Senior executives at the TDSB have told me that they are grateful that this work will be done in partnership with the community as they are working to finalize the secondment of a staff member from the Centre for Israel, Jewish Affairs, and the National Council of Canadian Muslims to help develop resources with regard to antisemitism, Islamophobia and anti-Israel and anti-Palestinian sentiments. The senior executives have advised that the Board is optimistic that, together with all community groups, they will be able to use this important partnership to benefit students and staff. I encourage the TDSB to move forward with this initiative and to review the role of the HRO and the consultation process between the HRO and the Office of the Integrity Commissioner in circumstances where a Trustee's conduct is alleged to have contravened the TDSB Human Rights policies.

Based on the cumulative evidence of the Independent Investigator's Report, my review of the documents and all other information received during the course of this investigation, I conclude the following:

On Issue #1 , as I set out in my reasons above I find the Respondent's Twitter Statement did not constitute harassment but did fall within the Board's policy on discrimination in breach of Rule 6.10 of the Code. I concur with the conclusion of the Independent Investigator that while a review of the Board's handling of the staff person's distribution of materials is not within the investigative jurisdiction of the Office of the Integrity Commissioner or the retainer of the Independent Investigator, "the Board actions (or inactions) on thoughtfully curating the experience of Muslim, and specifically Palestinian, students and families,[...] with a view to enforcing their human rights without reprisal or threat of reprisal." requires deliberate and meaningful reflection of an understanding of the complexities of use language in respect of antisemitism.

I find that with respect to Issue #2 the Respondent's conduct did not interfere with staff's professional role in a manner that breached Rule 6.9(a) of the Code. The Respondent should have known that her Twitter Statement would carry the weight of a Trustee with the credibility afforded that role and should have foreseen that it could impact public reaction to the circumstance of the staff person distributing materials through the May Mailouts. However, the Respondent did not improperly influence Board staff in the performance of their duties with the possibility of predetermining the outcome of a staff



investigation as the staff investigation was independently decided. While a Trustee will typically advocate on behalf of their students and constituents, which may include making a public statement that reiterates details of approved decisions of the Board, demanding a review of TDSB processes is an appropriate subject of a motion at a Board meeting and not a social media post of an elected official.

I note however, that the Respondent's posting of the Twitter Statement was intended to curtail the furtherance of distribution of materials that the Respondent believed were harmful to the wellbeing of students at the TDSB, in particular Jewish students. That being said,, it was the responsibility of the TDSB and not the Respondent to make a determination of whether the materials were inappropriate and discriminatory. I conclude that the Respondent's conduct demonstrated an error in judgement and not a willful desire to cause harm or breach the Code.

On Issue #3, I am unable to make a finding of whether the actions of the Respondent constituted a breach of rule 6.9 (a) which states that a Trustee shall not falsely injure the professional reputation of staff members of the Board. As set out in this report, the HRO determined that some of the content in the materials sent out by the staff person could be viewed as antisemitic under the definition of the TDSB; however, there is no complete review of the materials in the Mailouts. I am not able to reach a firm conclusion on this issue.

## ***XII. Recommendations***

I tender this complaint investigation report to the Board of Trustees for their consideration and make the recommendation of a censure in respect of Issue #1 and the Respondent's breach of Rule 6.10.

In discussions related to previous Code complaint investigation reports, I have been advised by Trustees that in their view, a censure is the harshest penalty that can be meted out to a Trustee. I do not agree with that position. A censure or reprimand is a strong condemnation of an action or statement of a Trustee who has been found to have breached the Code. In my view, a censure is a lesser sanction than removal as Chair of a Committee, removal from a Committee or suspension from attendance at a Committee. I do not recommend that the Respondent face any of these higher sanctions available under the *Education Act* and the Code.

Respectfully submitted by:



Suzanne Craig  
Integrity Commissioner

[TRUSTEE LULKA'S MAY 23, 2021 FACEBOOK POST] – Appendix 1

[TRUSTEE LULKA'S MAY 23, 2021 TWITTER POST] – Appendix 2

[MAY 16, 2021 GBVP MAILOUTS EXCERPTS] – Appendix 3

[ MAY 19, 2021 GBVP MAILOUTS EXCERPTS]- Appendix 4