

## SCHEDULE “A”

### I. OVERVIEW

1. In accordance with s. 34(5) of the *Human Rights Code*, the Applicant, the Ontario English Catholic Teachers’ Association (“**OECTA**”), brings this Application on behalf of one of its members, Teacher JW (the “**Claimant Teacher**”), on grounds that the Claimant Teacher has experienced discrimination and harassment in employment on the basis of his sexual orientation and his association with the broader Two-Spirit, Lesbian, Gay, Bisexual, Trans, Queer, Intersex, and/or Asexual (“**2SLGBTQIA+**”) community.<sup>1</sup>
2. The discrimination and harassment in question arose in relation to the dissemination of email communications authored by the individual Respondent, School Trustee Frank Alexander (“**Respondent Alexander**”) in September 2023. Respondent Alexander is an elected School Trustee who also serves as Chair of the York Catholic District School Board (“**YCDSB**” or the “**Respondent School Board**”).
3. The Claimant Teacher is a permanent teacher employed by the organizational Respondent, the YCDSB. The Claimant Teacher is a member of the 2SLGBTQIA+ community.
4. In response to ongoing discriminatory attitudes throughout the YCDSB towards students, staff, and community members who identify as or support members of the 2SLGBTQIA+ community, in March 2022 the YCDSB created a Gender, Sexuality and Catholic Education Committee. This Committee was created with the express mandate of supporting, *inter alia*, staff who identify as 2SLGBTQIA+. Respondent Alexander is a member of this Committee.
5. Contrary to the Committee’s mandate, in September 2023, Respondent Alexander sent email communications to members of the Committee in which he made harassing and discriminatory remarks about the 2SLGBTQIA+ community and requested that the Committee be immediately disbanded. The communications likewise linked to an offensive YouTube video which, among other things, suggested that pedophiles have “infiltrated” the 2SLGBTQIA+ community.
6. Respondent Alexander sent these communications with the knowledge and understanding that they would be shared with stakeholders outside of the Committee, including OECTA’s Local Unit Executive. Respondent Alexander knew or ought to have known that the Claimant Teacher is a member of the Local Unit Executive, and thus would receive these offensive communications. Respondent Alexander sent these communications nonetheless. In doing so, Respondent Alexander requested that his communications spark conversations across the

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<sup>1</sup> A completed Form 27 has been filed contemporaneously with the Tribunal.

YCDSB on these issues, and he identified his concerns with the 2SLGBTQIA+ community as a “potential danger that lurks within our Board”.

7. Respondent Alexander’s communications have had a profound, harmful, and painful impact on the Claimant Teacher. Put simply, the Claimant Teacher no longer feels safe, respected, or protected in the course of his employment. The communications were discriminatory and harassing in nature, and have caused injury to the Claimant Teacher’s dignity, feelings, and self-respect. In sharing these communications, Respondent Alexander knew or ought to have known that they were harmful, offensive, and perpetuated the prejudice and stigma faced by 2SLGBTQIA+ staff.
8. Representatives of the Respondent School Board received Respondent Alexander’s communications and are aware that they have been sent to various OECTA members, including the Claimant Teacher. The Respondent School Board has nonetheless failed to investigate and respond to Respondent Alexander’s communications. The Respondent School Board’s inaction contributes to and perpetuates the discrimination and harassment experienced by the Claimant Teacher.
9. On behalf of the Claimant Teacher, OECTA seek individual remedies against Respondent Alexander and the Respondent School Board, respectively, as well as public interest remedies designed to ensure the discrimination and harassment described herein is addressed.

## II. PARTIES

10. The Applicant, OECTA, is the statutory bargaining agent<sup>2</sup> for all elementary and secondary school teachers and occasional teachers employed by English-language Catholic School Boards in Ontario pursuant to section 10 of the *School Board Collective Bargaining Act*, 2014, S.O. 2014, c. 5 (“**SBCBA**”).
11. OECTA currently has approximately 45,000 members working in approximately 1,135 Catholic elementary schools and 219 Catholic secondary schools throughout Ontario. OECTA’s members educate over 575,000 students across Ontario.
12. OECTA holds bargaining rights at the YCDSB by virtue of the *SBCBA*. Its members’ local interests are represented by OECTA’s local unit, the York Catholic Teachers.

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<sup>2</sup> The *SBCBA* provides for separate local and central bargaining and as well separate local and central grievance arbitration procedures. Pursuant to section 10(3) of *SBCBA*, OECTA is the bargaining agent for both local bargaining and local grievance and arbitration matters. Pursuant to paragraph 3 of section 19 of the *SBCBA*, OECTA is the bargaining agency for both central bargaining and central grievance and arbitration matters.

13. As the statutory bargaining agent, OECTA strives to make its communities and schools as safe and welcoming as possible for students, teachers, and staff who identify as 2SLGBTQIA+. OECTA is committed to supporting the 2SLGBTQIA+ community and addressing the systemic oppression its members face in the Ontario Catholic education system.
14. The Claimant Teacher is a teacher employed by the York Catholic District School Board. He has been a teacher with the York Catholic District School Board since 2008 and has been an OECTA member since that time. The Claimant Teacher is currently a permanent teacher employed at a secondary school within the Board. Since 2008, the Claimant Teacher has held many positions within OECTA, including elected roles on OECTA's York Catholic Teachers' Unit Executive, which is ongoing. He is also a past president of the York Catholic Teachers' Occasional Teachers Unit and has been a long-standing member of OECTA's Diversity Committee, which assesses and responds to human rights-related issues throughout the Board.
15. The Claimant Teacher is an Iraqi-born Canadian who identifies as a member of the 2SLGBTQIA+ community. Specifically, he is a gay man. He is also racialized. The Claimant Teacher relies on OECTA to represent his interests and advocate on his behalf in relation to any human rights related concerns that arise with respect to his intersecting identities in the course of his employment. He relies on his employer, the YCDSB, to ensure that he is free from harassment and discrimination in the course of his employment, and to proactively respond to any such incidents where they arise. The Claimant Teacher's employment is affected by decisions of the YCDSB's Board of Trustees.
16. Respondent Alexander is an elected School Trustee who serves as Chair of the YCDSB. As a Member of the School Board, Respondent Alexander has many important duties pursuant to section 218.1 of the *Education Act*. For example, Respondent Alexander must, at all times:
  - a. Carry out his responsibilities in a manner that assists the Board in fulfilling its duties under the *Act*;
  - b. Attend and participate in meetings of the Board, including meetings of Board committees of which he is a member;
  - c. Consult with parents, students, and supporters of the Board on the Board's multi-year plan;
  - d. Maintain focus on student achievement and well-being; and
  - e. Comply with the Board's Code of Conduct.
17. As Chair of the YCDSB, Respondent Alexander has additional duties in accordance with s. 218.4 of the *Education Act*, which include, but are not limited to, ensuring that members of the Board have the information needed for informed

discussion at Board meetings and providing leadership to the Board in maintaining the Board's focus on its multi-year plan.

18. The Respondent School Board is an English-language Catholic District School Board within the meaning of s. 2 of the *SBCBA*. As an English-language Catholic District School Board, the Board is required pursuant to s. 169.1 of the *Education Act* to, *inter alia*:

- a. Promote student achievement and well-being, which includes an obligation to:
  - i. Promote a positive school climate that is inclusive and accepting of all pupils, including pupils of any race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability;
  - ii. Promote the prevention of bullying;
- b. Ensure effective stewardship of the Board's resources;
- c. Deliver effective and appropriate education programs to its pupils;
- d. Develop and maintain policies and organizational structures that promote the goals identified in clauses (a) to (c) and encourage pupils to achieve their educational goals;
- e. Monitor and evaluate the effectiveness of policies developed by the Board under clause (d) in achieving the Board's goals and the efficiency of the implementation of those policies;
- f. Develop a multi-year plan aimed at achieving the goals referred to in clauses (a) to (c);
- g. Annually review the plan referred to in clause (f) with the Board's director of education or the supervisory officer acting as the Board's director of education; and
- 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.

19. The Respondent School Board's Multi-Year Strategic Plan for 2023-2028 expressly identifies Equity and Inclusion as a priority. The Respondent School Board has committed to building and sustaining an equitable, inclusive, and accessible learning and working environment by:

- a. Recognizing, valuing, integrating, and celebrating the dignity and diversity of all students, staff, and Catholic school communities;

- b. Identifying and eliminating barriers to equity of access, opportunity, and outcome for all, as it acknowledges that “all [are] created in the image of God”; and
  - c. Actively promoting, supporting, and expecting excellence for “all students to achieve their God-Given potential”.<sup>3</sup>
20. Each of the Respondents’ foregoing obligations must be exercised in a manner that is consistent with the *Human Rights Code*.

### III. BACKGROUND

#### a. Relevant School Board Policies and Procedures

21. Both Respondents have responsibilities to School Board staff, students, and the public by virtue of the *Education Act* and its associated regulations. These obligations are typically detailed in policies or procedures released by the Board and updated from time to time.
22. For example, the Respondent School Board has developed Policy 117, *Code of Conduct*, in which it commits to ensuring that all students, parents/guardians, and staff have a right to a safe learning and working environment. The Code of Conduct requires that all members of the York Catholic community:
- a. Respect and comply with applicable federal, provincial, and municipal laws;
  - b. Respect differences in people, in their ideas and opinions;
  - c. Treat one another with dignity and respect at all times (*i.e.*, at meetings and/or discussions of any kind), especially when there is disagreement; and
  - d. Respect and treat others fairly, regardless of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, religion, age, marital status, family status, appearance, or disability.
23. The Director of Education, on behalf of the Respondent School Board, is required to oversee compliance with the *Code of Conduct* and related policies and procedures. All Trustees, including Respondent Alexander, are required to review and approve the *Code of Conduct* in accordance with the *Education Act* and its regulations.
24. The role of the Director of Education is distinct from that of the Trustees. Whereas Trustees are tasked with addressing policy-related issues throughout the Board, pursuant to ss. 283.1 and 283(2) of the *Education Act*, the Director of Education and other managerial staff hold responsibility for managing operational issues that

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<sup>3</sup> YCDSB Multi-Year Strategic Plan, 2023-2028.

arise. It is contrary to ss. 218.1 and 218.4 of the *Education Act*, and the Board's governance model, for a School Trustee to be involved in operational, day-to-day decision making throughout the Board.

25. School Trustees likewise have their own *Trustee Code of Conduct*, also known as Policy 118. The *Trustee Code of Conduct* confirms that the role of Trustee "is one where public trust and confidence is essential because Trustees are elected to represent all stakeholders in the Board". Trustees are expressly required to:
- a. Respect and comply with all applicable federal, provincial and municipal laws;
  - b. Uphold and abide by all Board policies, procedures, protocols, and the School Board's *Trustee Code of Ethics*;
  - c. Treat others fairly and with dignity and respect at all times, especially when there is disagreement; and
  - d. Employ appropriate language and professionalism in performing their duties as Trustees, and in all matters of communication (oral and written) including email, social media, telephone and in person meetings with staff, parents, other stakeholders, and members of the community at large.
26. The *Trustee Code of Conduct* further requires that in accordance with the *Human Rights Code* and the *Trustee Code of Ethics*, every Trustee of the School Board, in discharging their duties to the Board, shall ensure the right to equal treatment without discrimination and harassment of every person including but not limited to, fellow trustees, members of the public, and staff. This provision applies to all forms of written and oral communication. The *Trustee Code of Ethics*, for its part, requires that a Trustee treat their fellow Trustees, members of the public, and staff with dignity and respect to ensure a safe and equitable work environment free from abuse, bullying, intimidation, discrimination, and harassment.
27. Pursuant to the *Trustee Code of Conduct*, only a Trustee can allege that the Board's *Code of Conduct* has been breached by another Trustee. Neither OECTA nor the Claimant Teacher have standing to allege a violation of the *Trustee Code of Conduct*. The *Trustee Code of Conduct* expressly states that matters involving the Human Rights Tribunal cannot be dealt with through its internal processes in any event and will be deferred pending the outcome of the Tribunal matter.
28. The Respondent School Board has additional policies and procedures relating to Workplace Harassment and Equity and Inclusive Education. The latter policy requires that all members of the school community respect and treat others fairly, regardless of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability. The Respondent School Board is required to identify, examine, and remove any barriers that exist which prevent full, participatory, school-community relations. Where incidents arise, the Respondent

School Board is likewise required to investigate, in a thorough and timely manner, any claims of discrimination and take appropriate action that is consistent with the *Human Rights Code*.

29. The Board's Policy on Workplace Harassment expressly stipulates that it relates to workplace activities that take place outside of the Board's premises, where activities related to the business of the Board take place, as well as situations in other locations where workplace harassment may have a subsequent impact on working relationships, performance, or environments. Unwanted comments, inferences, or suggestions made online or in written communication are likewise referenced as examples of personal harassment.

**b. Background to the YCDSB Gender, Sexuality and Catholic Education Committee**

30. The Respondent School Board has been troubled by discriminatory attitudes towards students, staff, and community members who identify as or support members of the 2SLGBTQIA+ community.

31. In March 2022, in response to these attitudes, the Director of Education for the Board created the Gender, Sexuality and Catholic Education Committee (the "**Committee**"). The Committee was given a mandate to establish system level guidance, rooted in a Catholic context, that would:

- a. Support students, staff, and families who identify as 2SLGBTQIA+;
- b. Guide the teachings and incorporate knowledge about the 2SLGBTQIA+ community and the particular social justice issues that are faced by the 2SLGBTQIA+ community to students, staff, and families; and
- c. Demonstrate that all 2SLGBTQIA+ students, staff, and families at the Board are beloved children of God, each with their own unique gifts and talents.

32. Discussions, actions, and decisions of the Committee directly concern, relate to, and affect the employment of OECTA's members throughout the Respondent School Board, including the Claimant Teacher.

33. To this end, Terms of Reference were created for the Committee in and around March 2022, which adopted the above-noted mandate of supporting staff and others who identify as 2SLGBTQIA+. The Terms of Reference stipulate that the Committee will create increased participation in the professional development for teachers, guidance instructors, mental health lead(s), student services staff, administrators, and trustees on the experiences of 2SLGBTQIA+ students, implications for student success, and related social justice issues.

34. The Committee's "guiding principles" include a requirement to provide evidence-based, data driven analyses that are developed in consultation with a broad array

of stakeholders. The Committee is also required to report regularly on its activities and achievements.

35. OECTA and its Local Executive at the YCDSB are stakeholders that have been consulted, updated, and informed on the Committee's actions since its inception. As the statutory bargaining agent for teachers throughout the Board, OECTA and its members on the Committee strive to ensure that the Committee works to achieve its mandate of supporting, *inter alia*, staff who identify as 2SLGBTQIA+.
36. The Committee's membership is determined by the Director of Education and the Committee itself. Presently, the Committee includes three (3) Trustees, including Respondent Alexander, the Bishop of the Archdiocese of Toronto – Northern Pastoral Region, and a series of equity and religious officers, among others. Though the Terms of Reference contemplate that "anyone else deemed appropriate by the Committee" could be added as a member, the Director of Education has resisted requests by OECTA to have one of its executive members appointed directly to the Committee.
37. Currently, there are three OECTA members on the Committee: Nancy David, Francesca Sarcinella, and Shannon Ulgiati. OECTA's Committee members report to OECTA and its Local Executive on activities, developments, and achievements of the Committee as they arise. It is accepted and understood by Committee members and Senior Administrators of the Board, including the Director of Education, that the work of the Committee will be reported to OECTA and its members, including its Local Executive at the Board, by its members who sit on the Committee, as the actions of the Committee affect the employment of OECTA's members.
38. The Committee meets at least three (3) times per year, and sub-committees and working groups have been created to assist the Committee in meeting its mandate.
39. For example, in November 2022, two sub-committees were created to support the work of the Committee: (i) the Flag and Symbols Sub-Committee; and (ii) the Professional Education and Speakers Sub-Committee. The Flag and Symbols Sub-Committee was tasked with assessing whether flying the Rainbow Flag at School Board property during the June Pride Month was appropriate. The Professional Education and Speakers Sub-Committee supports members of the larger Committee by providing information, vetting speakers, and recommending community partnerships, which would assist in supporting students, staff and families who identify as 2SLGBTQIA+.
40. The Sub-Committees were created in response to concerns raised by parents and other community members following Pride Month in 2022, during which time the Rainbow Flag was not flown at schools throughout the YCDSB.

### **c. Controversy Regarding Pride Flags and Stickers**

41. Following the creation of the above-noted Sub-Committees, tensions throughout the School Board community and the Committee have continued to rise. In recent times, the Claimant Teacher has come to fear for his safety while working at the Board or attending Board-related meetings in which 2SLGBTQIA+ community issues are addressed.
42. In early 2023, for example, OECTA distributed “Safe Space” stickers to its members, advising teachers that stickers could be displayed, at the teachers’ discretion, outside their classroom, library, gym, and/or workroom, based on their own beliefs and comfort levels. The Claimant Teacher was involved in the distribution of these stickers. These “Safe Space” stickers were designed to signal to students, staff, and other members of the community that the classroom would be a respectful and safe place for all who identify as 2SLGBTQIA+. The stickers were preceded by door hangers that OECTA had distributed in similar fashion in 2013, which had the Pride Flag, the statement “Safe Space”, and the OECTA logo.
43. When teachers began to display these stickers as an indication to students, parents, and fellow staff members that they would support and treat with respect all who identify as 2SLGBTQIA+, certain parents, Board staff, and Trustees took issue with the stickers.
44. The issue was discussed at a School Board meeting on February 28, 2023. Respondent Alexander was present at this meeting. During the meeting, several parents voiced their opposition to the use of these stickers by YCDSB staff. After a series of troubling deputations by parents who called the stickers “truly disgusting”, among other things, participants at the meeting became increasingly disruptive and began to shout, “You’re all pathetic!” and “Stay away from our kids”. The disruptions escalated to the point that Board members were forced to pause the meeting and contact local authorities.
45. OECTA has at all times maintained that the stickers are an expression of support for the principle of inclusiveness. The stickers remain directed at students and staff who identify as members of the 2SLGBTQIA+ community. Such expressions of support are not inconsistent with the Catholic faith.
46. In the following months, discussions ensued about whether the School Board would fly the Rainbow Flag during Pride Month in June 2023. At a subsequent Board meeting on April 25, 2023, the Board noted that it was having an ongoing conversation with a number of stakeholders about how the Board could signal its support for 2SLGBTQIA+ students and staff, and their families, including by flying the Rainbow Flag.
47. At the April 25, 2023, Board meeting, students made a request that the Rainbow Flag be flown outside the Board’s administration buildings and schools. The request was not fully considered as protests by community members opposed to

initiatives supporting the 2SLGBTQIA+ community became disruptive. Police were again called to the Board meeting and the issue was not addressed.

48. The next scheduled Board meeting was May 29, 2023. In the lead-up to this meeting, the Committee prepared a report to update the Board and Trustees on its work, and to provide a series of recommendations issued by the Flag and Symbols and Professional Education & Speakers sub-committees. The specific recommendations were as follows:

- a. The Flag & Symbols sub-committee recommended that the Respondent School Board fly a Rainbow Flag, specifically the Progress Pride Flag, during the month of June at the Catholic Education Centre (“**CEC**”);
- b. The Professional Education & Speakers sub-committee recommended that a module specific to supporting 2SLGBTQIA+ students be created and included in the proposed series for teachers – “Creating Mentally Healthy and Inclusive Classrooms”; and
- c. The Professional Education & Speakers sub-committee recommended that a statement be issued to denounce all forms of hatred and violence against members of the 2SLGBTQIA+ community and that a renewed campaign to encourage the reporting of bullying and harassment be launched.

49. In support of its recommendation to fly the Rainbow Flag, the Flag & Symbols Sub-Committee noted as follows:

“Support through words is abundant and plentiful, it is in the ‘what we do’ that is now the most meaningful and demonstrable sign of support for the 2SLGBTQIA+ community. We can celebrate the importance of this symbol in the recognition and acceptance of everyone by highlighting that the flag stands for inclusivity. We are now living in a time where the voice of the affected group, the members of that particular community which is subjected to the actual oppression and the mistreatment, is the singular voice that should ring the loudest, and which should be given the most consideration when implementing change.

[...] To fly the flag should not be viewed in juxtaposition with the teachings of our faith. We continue to honour the Catholic social teaching principles of ‘solidarity’ and ‘rights and responsibilities’ by representing the Rainbow Flag as the quintessential symbol of acceptance for the 2SLGBTQIA+ community. To support the flag is not to dismiss the tenets of our faith. Flying the flag does not compromise our commitment to the teachings of the Catechism of the Catholic Church.

Flying the Rainbow Flag at the CEC would be consistent with the pastoral mission of the Catholic Church. In no way should it be viewed as undermining our Board's commitment to honouring and respecting the teachings of the Catholic Church. Instead, it would be an attempt to support our 2SLGBTQIA+ students who historically have been disproportionately marginalized and bullied, often with tragic consequences".

50. At the May 29, 2023, meeting of the Board, these recommendations were read and shared with the Board of Trustees. Student Trustees then made a motion that the Progress Flag be flown in accordance with the Flag and Symbols Sub-Committee's recommendation. The motion read as follows:

**STUDENT TRUSTEE MOTION: Motion to Fly the Progress Flag at the CEC**

**Whereas** as a Catholic learning community, we believe that God loves each and every one of us as his own children, and all students and community members are to be supported, regardless of race, gender, or sexual orientation;

**Whereas** the YCDSB is committed to ensuring that all students, regardless of race, gender, or sexual orientation, have access to a safe, inclusive and equitable learning environment;

**Whereas** YCDSB students who are of the 2SLGBTQIA+ community have faced intense discrimination and continue to be disadvantaged in their education;

**Whereas** student and community members have continuously advocated for the YCDSB to fly the Progress Flag as a gesture of support for 2SLGBTQIA+ students, staff and families;

**Whereas** the YCDSB Gender, Sexuality and Catholic Education Committee recommends that the YCDSB fly the Progress Flag during the month of June (as indicated in the May 29th report, Item 17a).

51. The motion was defeated. Respondent Alexander voted against the motion. In response to the motion, Respondent Alexander said that the Board would instead focus its attention on making systemic changes that support marginalized students (though he did not detail what those changes might be). He suggested that his role as Chair was "to make sure that Christ remains at the centre of who we are [and] that Catholic education remains strong".

52. In response to Respondent Alexander and the Board's refusal to support the flying of the Rainbow Flag during Pride Month, Ontario's Minister of Education, Stephen Lecce, expressed public disappointment. He sent an email to all Catholic and Public School Boards on May 30, 2023, stating the following:

"It is incumbent on all school Boards to ensure all students – most especially 2SLGBTQ+ students – feel supported, reflected in their schools, and welcomed within our communities. That includes celebrating Pride in constructive, positive and meaningful ways to affirm that 2SLGBTQ+ students know that their educators and staff, school Board administrators, and government stand with them."

53. That same day, Respondent Alexander wrote a letter to all staff of the School Board in which he noted the following:

"[...] After listening to the input of community members, the Board of Trustees also decided to maintain our long-standing policy of only flying Canadian flags on YCDSB property, in order to equally represent all of the YCDSB's many communities.

I acknowledge that the past several months have been difficult for many members of our community. Let us move forward with the knowledge that we are all God's children and we are called to love each other as God loves us".

54. In response to this letter, Mike Totten, President of OECTA's York Catholic Teachers' Unit, issued a responding letter to Respondent Alexander, the Board of Trustees, and all of OECTA's York Unit members, in which he noted:

"[...] It has been disturbing to attend recent school Board meetings where my members, York Catholic teachers, and others have been harassed by individuals who would cherry-pick biblical passages and use them as a cudgel to promote hate and discrimination.

As a lifelong and devout Catholic, it is embarrassing to watch a majority of voting Trustees hide behind the symbols of our faith in an effort to justify homophobia, transphobia, and bigotry. This is the ultimate act of cowardice, and the very antithesis of Catholic values that my members teach our students.

[...] Will the York CDSB continue to bury its collective head in the sand while students, parents, and others in the 2SLGBTQIA+ community are subjected to disrespectful or hateful remarks and actions, and where the perpetrators

misuse our faith as a basis for their positions? Will the York CDSB continue to peddle in repulsive and illogical doublespeak, like the idea that refusing to fly the Pride flag is somehow a symbol of equality?

Or, will the York CDSB show courage and real leadership, and acknowledge that flying the Pride flag is a visual representation and indication to students, staff, families – everyone – of our commitment to promoting respect, human rights, and a culture in our Catholic education community that celebrates diversity and contributes to creating a more inclusive society?

It is time to do better! As always York Catholic teachers fight for social justice, equity, and 2SLGBTQIA+ rights – human rights!”

55. Neither Respondent Alexander nor the Respondent School Board responded to this communication.
56. On June 8, 2023, student walkouts occurred at many of the Respondent School Board’s schools, varying in size and scope. The walkouts were a response to the Board’s refusal to fly the Rainbow Flag outside its offices and schools. Students who engaged in the walkouts supported the Flag and Symbols Sub-Committee’s recommendation that the Rainbow Flag be flown. Incidents arose at the Cardinal Carter, St. Brother Andre, and St. Elizabeth Board Schools in which students protesting in support of the 2SLGBTQIA+ community were physically assaulted, threatened, and/or bullied. Police were called to intervene at each of these schools.
57. At a June 20, 2023, meeting of the Board, it was discussed that the Ontario Catholic School Trustees’ Association (“**OCSTA**”), the statutory bargaining agency for all of Ontario’s 29 English Catholic School Boards, had created and released a learning module for Catholic Trustees developed especially for Catholic Trustees titled, “Equity, Diversity and Inclusion, and Our Faith, the Law and Anti-Racism”. The faith segment of the learning module was said to have included a video presentation by His Eminence Cardinal Thomas Collins.
58. Neither OECTA nor the Claimant Teacher have seen a copy of these modules nor has the Committee reported on its involvement. It is unclear whether Respondent Alexander has completed these modules.

**d. Human Rights and Equity Office Recommendations for 2SLGBTQIA+ Community Issues**

59. In response to the ongoing issues described above, at an August 29, 2023, meeting of the Board, the Board’s Human Rights and Equity Office presented its Annual Report for 2022-2023.

60. The Human Rights and Equity Office is an office within the Board that is primarily funded by a Ministry of Education grant designed to allow Boards to employ a senior leader with expertise in human rights and organizational change. The Human Rights and Equity Office has two main objectives: (i) building and maintaining a culture of respect for human rights; and (ii) supporting the resolution of human rights complaints. The work of the Human Rights and Equity Office includes involvement in systemic initiatives and managing advice and complaints.
61. The Human Rights and Equity Office's Annual Report for 2022-2023 confirmed that requests for support came primarily from staff, in the nature of human rights. Approximately 10% of issues brought to the Human Rights and Equity Office related to the flying of the Pride Flag. Gender identity/expression and race and related grounds were the two grounds for which assistance from the Human Rights and Equity Office was primarily sought.
62. In respect of addressing anti-Black racism throughout the Board, the Human Rights and Equity Office confirmed that it acts as a liaison between the Board of Trustees and the broader Black parent community, and that it had developed platforms where Black parents could openly discuss concerns and collaborate on systemic initiatives and support the operationalization of the Board's Multi-Year Strategic Plan and Equity Action Plan.
63. In respect of broader equity issues, the Human Rights and Equity Office recommended that the Board create a similar Advisory Committee on Human Rights and Equity, which would prioritize and focus on 2SLGBTQIA+, Indigenous, and Black community issues. The Annual Report for 2022-2023 suggests that this Committee would seek to enhance training, public transparency and communication, and intersecting systems analyses for data tracking.
64. The Minutes for the August 29, 2023, meeting of the Board, at which time the recommendation by the Human Rights and Equity Office to create an Advisory Committee on Human Rights and Equity was made, state that "the Board of Trustees had the opportunity to ask questions for clarification and expressed their concerns".
65. Representatives of the Human Rights and Equity Office were asked to return to the Board for a meeting on September 26, 2023, to further discuss their recommendations.

#### **IV. COMMUNICATIONS BY RESPONDENT ALEXANDER**

66. On September 6, 2023, prior to the next meeting of the Board, Respondent Alexander unilaterally sent an email titled, "Video with Implications for the YCDSB GENDER, SEXUALITY AND CATHOLIC EDUCATION COMMITTEE". The email was sent to all Trustees and members of the Committee, including OECTA

members and the Director of Education for the Respondent School Board.<sup>4</sup> The full text of Respondent Alexander's email is as follows:

"Hello Everyone,

I invite you all to view the video below.

Having viewed it, I am deeply concerned about the existence of the YCDSB GENDER, SEXUALITY AND CATHOLIC EDUCATION COMMITTEE, within our Board.

I am calling on the Director to disband it.

Dom, please send me your commitment to disband the committee. Send me your response by 4:30pm on Friday, September 8, 2023.

To the committee members, I'm including you in this email, so that you are aware of the implications of sitting on, and supporting this committee.

To Trustees, it's time we took note of the potential danger that lurks within our Board, and take action.

To the Archdiocese, I'm copying Barry White, asking him to share this video with Archbishop Leo, so that he is aware of the potential dangers his lambs face.

I'm looking forward to the Director's response.

Regards,

Frank

<https://www.youtube.com/watch?v=WQ3eK-0RpSo>"

67. The attached video, which Respondent Alexander relied on to call for the disbanding of the Committee, is titled, "\*\*\*BREAKING\*\* Planned Parenthood and its affiliated partners in schools exposed". The video is 18:44 minutes long, and contains disturbing, discriminatory, and harassing statements including but not limited to:

- a. Suggesting that pedophiles have "infiltrated" the 2SLGBTQIA+ community;

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<sup>4</sup> The full list of recipients includes: all Trustees; Maria lafrate; Angela Saggese; Danny Dilallo; David Pimentel; Diana Candido; Domic Scuglia; Francesca Sarcinella; Jennifer Sarna; Jennifer LaGrandeur-Wigston; Lisa Falconi; Luigino Paonessa; Mark Brosens; Michelle Farrell; Michelle Prinzo; Nancy Davie; Bishop John Boissonneau; Shannon Ulgiati; Siobhan Wright; Barry White.

- b. Stating that many in the 2SLGBTQIA+ community support pedophilia and consider pedophiles as part of the broader community;
- c. Describing in explicit detail extreme sexual acts involving defecation and urination, among other things, and arguing that certain initiatives aligned with the 2SLGBTQIA+ community are seeking to teach children about these issues;
- d. Arguing that ongoing discussions about gender identity and related topics currently taking place in school environments are rooted in pro-pedophilia doctrine;
- e. Stating that the government-funded Canadian Centre for Gender and Sexual Diversity contains symbols and imagery on its website which may be a signal to pedophiles that they have the organization's support and/or that such symbols and imagery suggest pedophiles may be involved with the organization;
- f. Alleging that discussions of gender identity and related topics result in the sexualization and confusion of children; and
- g. Urging School Trustees to adopt these views and to speak up against and not be afraid of "woke ideology".

68. Respondent Alexander adopted the statements in this video and suggested that the video speaks to "the potential danger that lurks within our Board".

69. As above, this email was sent to OECTA members who sit on the Committee. As is accepted and understood by Respondent Alexander and the remainder of the Committee, this email was forwarded by OECTA's members on the Committee to OECTA's Local Executive at the School Board. The Claimant Teacher is a member of OECTA's Local Executive at the School Board and received the email after it was sent.

70. Respondent Alexander sent the above email with the knowledge and understanding that it would be shared with stakeholders outside of the Committee, including OECTA's Local Executive and the Claimant Teacher. As above, consultation in this respect is one of the "guiding principles" of the Committee, and OECTA and its Executive have been consulted, updated, and informed on the Committee's actions since its inception. It was an accepted practice that emails and updates such as these would be shared with OECTA's Local Executive.

71. It is OECTA's understanding that Respondent Alexander sent this email immediately before a retreat attended by the Trustees. OECTA has no knowledge of what occurred at the retreat. No OECTA members were invited to this retreat.

72. The following day, on September 7, 2023, Respondent Alexander sent a follow-up email to the same recipients in which he noted as follows:

“Hello Everyone,

I wish to apologize for and clarify the content of my email that accompanied the video I shared with you yesterday.

In it, I asked Director Scuglia to disband the YCDSB GENDER, SEXUALITY AND CATHOLIC EDUCATION COMMITTEE. I was wrong. It's not within my purview to do so. I apologize to Director Scuglia.

Additionally, I should have given everyone pre-notification that I was sending the video. I acted in haste, and didn't.

My reason for sending the video in such haste, was the sense of urgency I felt, given its content and its implications for the well-being of our students.

I trust that it will now spark conversations within the committee, and across YCDSB.

My apologies to everyone for my actions, and the tone and tenor of my earlier email.

Regards,

Frank”

73. Respondent Alexander does not apologize for sending the video, which as above contained harmful, harassing, and discriminatory comments regarding the 2SLGBTQIA+ community. Instead, he apologizes only for having made a request to have the Committee disbanded, noting that it was “not within [his] purview to do so”. This communication, if anything, simply re-confirms Respondent Alexander’s adoption of the comments in the video he had sent previously. He notes that he acted with “urgency” because of the video’s “implications for the well-being of our students” and that he trusts “it will now spark conversations” throughout the YCDSB, beyond the Committee level. He does not, at any time, acknowledge the harmful, harassing, and discriminatory nature of the video and his related comments.
74. OECTA’s Local Executive, including the Claimant Teacher, received Respondent Alexander’s September 7, 2023, email after it was sent. As above, Respondent Alexander sent this email with the knowledge and understanding that it would be shared with stakeholders outside of the Committee, including OECTA’s Local Executive and the Claimant Teacher. This is evident from his comments that his communications “will now spark conversations [...] across YCDSB”, as described above.

### **a. Events Following Respondent Alexander's Communications**

75. It is the Applicant's understanding that there have been no further communications or discussions amongst the Committee, or throughout the Respondent School Board more broadly, regarding Respondent Alexander's communications.
76. At no time has the Respondent School Board taken steps to address Respondent Alexander's conduct. Its Trustees have likewise yet to initiate any action in accordance with Policy 118, *Trustee Code of Conduct*, and have yet to bring Respondent Alexander's conduct forward for consideration.
77. Notably, despite the Board's inaction in relation to Respondent Alexander's conduct, at a Board meeting held on September 26, 2023, Respondent Alexander himself moved under the *Trustee Code of Conduct* to censure another Trustee for "discriminatory and harassing" conduct following comments she had made in the past regarding individuals with Italian ancestry. The comments in question included referring to certain trustees as "Italian Trustees".
78. Respondent Alexander's motion claimed that Trustee McNicol displayed behaviour she knew would "annoy and offend" her fellow trustees. He stated that Trustee McNicol had breached the *Trustee Code of Conduct*, the Board's Equity and Inclusive Education Policy, and the Board's Workplace Harassment Policy. Respondent Alexander's motion was upheld, and it was held that Trustee McNicol will be barred from attending all Board meetings and all Committee meetings of the Board from October 1, 2023, to the end of her term of office on November 14, 2026 as a result. It is the Applicant's understanding that Trustee McNicol appealed this decision, and that her appeal is outstanding.
79. Similar action has not yet been taken by any of Respondent Alexander's fellow Trustees, or the Respondent School Board, in respect of Respondent Alexander's communications from September 2023. Respondent Alexander's conduct has heretofore been ignored and left unaddressed.
80. Neither OECTA nor the Claimant Teacher has standing to initiate a complaint under the Respondent School Board's *Trustee Code of Conduct*. Absent intervention by this Tribunal, Respondent Alexander will experience no repercussions, consequences, or recourse for his actions.
81. Relatedly, at the August 29, 2023, meeting of the Board, the Human Rights and Equity Office issued its recommendation to create an Advisory Committee on Human Rights and Equity, which would prioritize and focus on 2SLGBTQIA+, Indigenous, and Black community issues. Though the Board of Trustees committed at that time to revisiting the recommendation at a further meeting on September 26, 2023, a review of public documentation released in relation to that meeting suggests that no such discussion took place.
82. At the time of filing this Application, the Human Rights and Equity Office's recommendation to create an Advisory Committee on Human Rights and Equity,

which would prioritize and focus on 2SLGBTQIA+ community issues, has been left unaddressed.

## **V. IMPACT OF DISCRIMINATION**

83. The Applicant submits that Respondent Alexander's conduct in sending the above-described communications constitutes discrimination and harassment against the Claimant Teacher in employment on the basis of his sexual orientation and his association with the broader 2SLGBTQIA+ community, contrary to ss. 5, 7, 8, 9, and 12 of the *Human Rights Code* and is not constitutionally protected by section 93 of the *Constitution Acts 1867 to 1982*. The Applicant pleads and relies on these provisions in support of this Application.
84. Respondent Alexander's communication of September 6, 2023, which was sent with the knowledge and understanding that it would be shared with OECTA's Local Executive, has had a profound, harmful, and painful impact on the Claimant Teacher. Put simply, the Claimant Teacher no longer feels safe, respected, or protected in the course of his employment.
85. Respondent Alexander's communication contributes to ongoing rhetoric and dialogue that staff employed by the Respondent School Board who identify as 2SLGBTQIA+ are a "potential danger that lurks within [the] Board". Respondent Alexander's communication, which links to and adopts the comments of an offensive YouTube video, perpetuates stereotypes that those within the 2SLGBTQIA+ community pose a risk to children and students, and that the community engages in grooming and pedophilic behaviour. This is obviously untrue, and the suggestion otherwise constitutes discrimination and harassment contrary to the *Code*.
86. Respondent Alexander's email of September 7, 2023, constitutes a further act of discrimination and harassment. Far from a true retraction or apology, this communication simply acknowledges that Respondent Alexander's request for the Director of the Board to disband the Committee was improper, as the decision to disband such a committee is not within the purview of a Trustee. The communication otherwise maintains the sentiments expressed in the September 6, 2023, communication, noting that "its content and its implications for the well-being of our students" will hopefully "spark conversations within the Committee, and across YCDSB". Such "conversations", which Respondent Alexander encourages, have the direct effect of harming, harassing, and discriminating against staff members who identify as 2SLGBTQIA+, including the Claimant Teacher.
87. Both individually and cumulatively, Respondent Alexander's actions have ostracized and isolated the Claimant Teacher and related 2SLGBTQIA+ community members. These communications are antithetical to the underlying mandate of the Committee. Far from supporting staff who identify as 2SLGBTQIA+, Respondent Alexander has created an unsafe working environment

for 2SLGBTQIA+ community members and has contributed to the ongoing stigma experienced by the Claimant Teacher and others throughout the Board.

88. The Respondent School Board was aware of these communications as the Director of Education for the Board was copied on each email. The Respondent School Board had a duty to investigate and respond to Respondent Alexander's actions, yet it did nothing. The Respondent School Board's inaction with respect to Respondent Alexander's conduct contributes to and perpetuates the discrimination and harassment experienced by the Claimant Teacher. The Respondent School Board's inaction constitutes an act of discrimination in and of itself.

89. As a teacher employed by the Respondent School Board, the Claimant Teacher has a reasonable expectation that the Respondent School Board, and its constituent Committees, will operate in a manner that is compliant with the *Code* and the Respondent School Board's related policies and procedures. The Respondent School Board has failed to take steps to address and proactively respond to discriminatory conduct that has a direct impact on the Claimant Teacher. This, too, contributes to and perpetuates the discrimination and harassment experienced by the Claimant Teacher.

## **VI. REMEDIES REQUESTED**

90. In light of the foregoing, the Applicants are seeking personal and public interest remedies. The Applicants seek individual remedies against Respondent Alexander and the Respondent School Board, respectively, as well as non-monetary and public interest remedies designed to ensure the discrimination and harassment described herein is addressed.

91. On behalf of the Claimant Teacher, OECTA claims general damages from Respondent Alexander to compensate the Claimant Teacher for injuries he has sustained to his dignity, feelings, and self-respect. In relation to the conduct described herein, the Claimant Teacher claims general damages from Respondent Alexander in the sum of \$10,000 for his breach of the Claimant Teacher's right to be free from discrimination and harassment in the course of his employment.

92. On behalf of the Claimant Teacher, OECTA further claims general damages from the Respondent School Board to compensate the Claimant Teacher for injuries he has sustained to his dignity, feelings, and self-respect when the Respondent School Board failed to investigate, respond to, and address Respondent Alexander's conduct, as described herein. The Applicant claims general damages from the Respondent School Board in the sum of an additional \$10,000 for this breach of the Claimant Teacher's right to be free from discrimination and harassment in the course of his employment.

93. OECTA further seeks pre- and post-judgment interest on the foregoing remedies in accordance with the *Courts of Justice Act*.

94. In response to the broader systemic issues relating to this Application, the Applicants further seek a public interest order requiring the Respondent School Board, at its own expense, to retain the services of a qualified and independent consultant with expertise in human rights and 2SLGBTQIA+ issues, to develop a human rights strategy which will include providing mandatory training for all of the Respondent School Board's Members, on discrimination and harassment, with a particular focus on 2SLGBTQIA+ issues.
95. The Applicants further seek an order requiring that the same independent human rights expert conduct an audit of the Respondent School Board's human rights-related policies and practices, inclusive of reviewing the Respondent School Board's current policies and/or procedures respecting discrimination. This expert shall provide the Respondent School Board with advice for improving its internal policies and procedures, which advice the Respondent School Board shall adopt.
96. The Applicants further seek an order that Respondent Alexander undergo human rights and inclusivity training regarding appropriate School Trustee Conduct, particularly as it relates to 2SLGBTQIA+ issues.
97. The Applicants further seek an order that the Respondent School Board be required to undertake an annual assessment of its Board Chair's performance in relation to his duties and compliance with the Board's equity-enhancing measures, and that such assessment be made available to the public and reported on through the Board's procedures.
98. The Applicants further seek an order that the Respondent School Board's *Trustee Code of Conduct* be amended, or a new procedure adopted, to allow complaints by non-Trustees, which must then be assessed, investigated, and ruled upon in the normal course.
99. The Applicants further seek an order that the Respondent School Board, and Respondent Alexander in his capacity as Chair of the Board, implement the recommendations of the Board's Human Rights and Equity Office and create an Advisory Committee on Human Rights and Equity, which would prioritize and focus on 2SLGBTQIA+, Indigenous, and Black community issues. As part of this request, the Applicants seek that that the Advisory Committee be given sufficient funding to achieve its proposed mandate of enhancing training, public transparency and communication, and intersecting systems analyses for data tracking.
100. The Applicants further seek an Order that the Respondent School Board adopt and create policies and procedures that will demarcate the distinct responsibilities of the School Trustees and the Respondent School Board's Director of Education as they relate to policy and operational matters. As above, Respondent Alexander's communications arose in part due to his acknowledged misunderstanding that School Trustees are to be involved in operational decision-making throughout the Board. Policies and procedures confirming that this is not

the case are necessary to ensure that similar conduct is not replicated by a Trustee in the future.

101. The Applicants reserve their right to request further remedies as appropriate and as permitted by this Tribunal.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17<sup>th</sup> DAY OF NOVEMBER, 2023**



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**Bernie Hanson & Tyler Boggs**

**Counsel for OECTA**