

**YORK CATHOLIC DISTRICT SCHOOL BOARD  
AGENDA  
SPECIAL BOARD MEETING**

**REVISED**

**Tuesday, November 7, 2023**

**Immediately Following Special CTW - approximately 5:30 pm**

Page#

- |                                                                                                                                                                                                                                                                                                                               |              |    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|----|
| 1. <b>OPENING PRAYER / LAND ACKNOWLEDGEMENT</b>                                                                                                                                                                                                                                                                               | F. Alexander |    |
| 2. <b>ROLL CALL</b>                                                                                                                                                                                                                                                                                                           | D. Scuglia   |    |
| 3. <b>APPROVAL OF NEW MATERIAL</b>                                                                                                                                                                                                                                                                                            | F. Alexander |    |
| 4. <b>APPROVAL OF AGENDA</b>                                                                                                                                                                                                                                                                                                  | F. Alexander |    |
| 5. <b>DECLARATIONS OF CONFLICT OF INTEREST FOR CURRENT MEETING</b>                                                                                                                                                                                                                                                            |              |    |
| 6. <b>DECLARATIONS OF CONFLICT OF INTEREST FROM PREVIOUS MEETING</b>                                                                                                                                                                                                                                                          |              |    |
| 7. <b>APPROVAL OF PREVIOUS MINUTES: NIL</b>                                                                                                                                                                                                                                                                                   |              |    |
| 8. <b>BUSINESS ARISING FROM THE MINUTES</b>                                                                                                                                                                                                                                                                                   |              |    |
| 9. <b>CHAIR'S REPORT / UPDATE / INSPIRATIONAL MESSAGES: NIL</b>                                                                                                                                                                                                                                                               |              |    |
| 10. <b>OCSTA BOARD OF DIRECTOR'S UPDATE: NIL</b>                                                                                                                                                                                                                                                                              |              |    |
| 11. <b>DIRECTOR'S REPORT: NIL</b>                                                                                                                                                                                                                                                                                             |              |    |
| 12. <b>STUDENT TRUSTEES' REPORT: NIL</b>                                                                                                                                                                                                                                                                                      |              |    |
| 13. <b>RECOGNITION / OUTSIDE PRESENTATIONS: NIL</b>                                                                                                                                                                                                                                                                           |              |    |
| 14. <b>DELEGATIONS: NIL</b>                                                                                                                                                                                                                                                                                                   |              |    |
| 15. <b>JOURNEY TOWARDS OUR VISION - STAFF PRESENTATIONS: NIL</b>                                                                                                                                                                                                                                                              |              |    |
| 16. <b>ACTION ITEM(S) (PART C) (including Committee Reports) :</b>                                                                                                                                                                                                                                                            |              |    |
| a) Receipt of Report No. 2023:25 Special Committee of the Whole (Nov 3)                                                                                                                                                                                                                                                       | F. Alexander | 2  |
| a) Approval of Report No. 2023:26 Special Committee of the Whole (Nov 7)                                                                                                                                                                                                                                                      | F. Alexander |    |
| b) TBD                                                                                                                                                                                                                                                                                                                        | F. Alexander |    |
| 17. <b>DISCUSSION ITEM(S): NIL</b>                                                                                                                                                                                                                                                                                            |              |    |
| 18. <b>INFORMATION ITEM(S):</b>                                                                                                                                                                                                                                                                                               |              |    |
| a) Written Submissions of Trustee McNicol's Counsel dated October 13 and 25, 2023 with Respect of the Board's Determination and Sanctions on Trustee McNicol of September 26, 2023 under Policy 118 Trustee Code of Conduct                                                                                                   | F. Alexander | 3  |
| b) Letter from Chair of YCDSB Board of Trustees to Counsel for Trustee McNicol, dated October 19, 2023                                                                                                                                                                                                                        | F. Alexander | 17 |
| 19. <b>NOTICES OF MOTION:</b>                                                                                                                                                                                                                                                                                                 |              |    |
| <i>(Notices of Motion are to be submitted in writing and will return to the subsequent meeting as Information, the following meeting as Discussion, and finally Action at the next Board Meeting.)</i>                                                                                                                        |              |    |
| a) Reconsideration of the Board's Determination and Sanctions on Trustee McNicol of September 26, 2023 under Policy 118 Trustee Code of Conduct, and Consideration of Trustee McNicol's Written Submission in Respect to the Board's Determination and Sanctions, Pursuant to ss. 2183(6), (8), and (11) of the Education Act |              |    |
| 20. <b>FUTURE AGENDA ITEM(S) / REQUEST FOR INFORMATION</b>                                                                                                                                                                                                                                                                    |              |    |
| 21. <b>ADJOURNMENT</b>                                                                                                                                                                                                                                                                                                        | F. Alexander |    |

Lord our God,  
Grant that our spirit may recognize  
Your Spirit and Your love.  
Help us hold fast to all the blessings  
You have allowed us to experience.  
Send a great light to shine among the  
many people whose task  
is to lead the way so that Your  
kingdom may come.  
Amen

**York Catholic District School Board**

**REPORT NO. 2023:25**

**SPECIAL COMMITTEE OF THE WHOLE BOARD / PRIVATE SESSION**

**To: Special Board Meeting**

**November 7, 2023**

A private session of the Special Committee of the Whole was held on Friday, November 3, 2023 starting at 3:30 pm.

**PRESENT:**

Members: (Present) F. Alexander  
(Virtual) M. Barbieri, C. Cotton, E. Crowe, A. Grella, J. DiMeo,  
M. Iafrate, A. Saggese, J. Wigston

Administration: (Virtual) D. Scuglia

Absent with Notice: Trustee T. McNicol (see below)

Approved Absence: Trustee T. McNicol

Recording Officer: S. Greco (Virtual)

Presiding: F. Alexander, Chair of the Board

**ACTION ITEMS:**

**DECLASSIFIED (Action Items for Approval): NIL**

**CLASSIFIED: NIL**

**Adjournment:** 4:35 pm

F. Alexander, Chair

Barristers &amp; Solicitors

**WeirFoulds** LLP

October 13, 2023

VIA FAX: 905-713-1272

AND EMAIL: frank.alexander@ycdsb.ca

Frank Alexander, Chair  
York Catholic District School Board  
Catholic Education Centre  
320 Bloomington Road West  
Aurora ON L4G 0M1

Dear Mr. Alexander:

**Re: Trustee Theresa McNicol**

I have been retained by Trustee Theresa McNicol to respond to your letter of September 28, 2023. In that correspondence you notified her of a Motion by the Board of Trustees on September 26, 2023 to impose three sanctions on her, and you set Sunday, October 15, 2023 as her deadline to make a written submission to the Board in response. You indicate that the Board was acting pursuant to s. 218.3(6) of the *Education Act* and Section E of Policy 118, the Trustee Code of Conduct.

Also on September 28, 2023, you provided a Notice of Censure, in which you state that she breached

- Policy 117 (I assume you are referring to Policy 118) Trustee Code of Conduct
- Policy 613 Equity and Inclusive Education
- Policy 425 Workplace Harassment

For the reasons that follow, my respectful submission is that the Board's September 26, 2023 Motion to censure Trustee McNicol, and any sanction flowing from it, were made without jurisdiction by the Board and are null and void. Moreover, there is no jurisdiction, and it would be an abuse of process at this point, for the Board and individual Trustees to attempt to resuscitate stale allegations that have inflicted immeasurable harm on Trustee McNicol through inappropriate and very public attempts to misuse legitimate Code of Conduct remedies against her.

It is therefore unnecessary in this letter to address the purported conclusion of the investigator that there were any breaches of these three policies. Trustee McNicol reserves her rights in this

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Partner  
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File 24701.1

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regard, and also reserves her rights with respect to legal entitlements against the Board under the common law and statutes arising out of these matters.

The Board's September 26, 2023 Motion was null and void, and beyond the Board's jurisdiction, for several reasons. As I will explain in more detail below,

1. No complaint of a breach of the Code of Conduct was ever processed as required by the Procedure Addendum to Policy 118, and none of the steps required by that Addendum was followed. The complainants made abundantly clear that their complaint was "outside the scope" of the Code of Conduct.
2. The belated attempt by Vice-Chair lafrate to file a Code of Conduct complaint against Trustee McNicol by email on September 2, 2023, after receiving the JMJ Workplace Investigation Law LLP (JMJ) report on August 22, 2023, is about 14 months out of time, and it too has not been and cannot be processed under the Procedure Addendum to Policy 118.
3. The Board made no inquiries, and made no determination, as required by s. 218.3(2), (3) and (6) of the *Education Act* and Superior Court jurisprudence, of whether Trustee McNicol breached the Code of Conduct.
4. The Board has purported to impose a sanction – barring Trustee McNicol from Board meetings for more than three years – that is clearly unavailable under s. 218.3(3) of the *Education Act* and section 3.6.7 of the Procedure Addendum to Policy 118. In any event, it is entirely disproportionate and without precedent in its severity.
5. Policy 425 on Workplace Harassment evidently applies, as it states, "to all York Catholic District School Board employees. All staff are expected to abide by this policy". There is no provision to make a complaint against a Trustee.
6. Policy 613 on Equity and Inclusive Education also has no application to trustees, and there is no provision to make a complaint against a Trustee.

For all of these reasons the Board had no jurisdiction to issue any sanctions on September 26, 2023, and they are null and void. Moreover, the Board has no jurisdiction to commence a Code of Conduct or any other investigation process at this point under the *Education Act* and the Board's policies.

**1. There is no Code of Conduct complaint for the Board to act upon**

Trustee Elizabeth Crowe, Board Chair at the time, wrote to Trustees on July 7, 2022 that any concerns regarding Trustee McNicol's July 3, 2022 correspondence would have to be dealt with by filing a complaint under Policy 118. Trustee Marchese, on behalf of the intended complainants,

declined to do so, as she later confirmed to JMJ. Trustee Marchese wrote on July 18, 2022 that the Code of Conduct was never intended to cover complaints of discrimination.

As Chair Crowe stated in her August 13, 2022 Report to the Special Committee of the Whole, "the parties did not wish to pursue the use of our Code of Conduct policy and its Procedure to address their complaint. They wished to have a meeting with all trustees except Trustee McNicol...." As Chair Crowe told JMJ, her colleagues had 15 days to lodge a Code of Conduct complaint<sup>1</sup>, and they refused to do so because they felt the Code of Conduct policy and procedure did not deal with disciplinary actions and felt they needed a different and more public process.

The result is that none of the steps that are required by the Code of Conduct Procedure took place: informal complaint procedure, meetings to discuss remedial measures, formal complaint procedure, notice of a written complaint to Trustee McNicol, and much more. All of these have time limits that are intended to ensure expeditious resolution of conduct issues.

It is worthwhile to look again at the process flowchart that appears on the last page of the Code of Conduct Procedure, which stipulates the steps and the time frames for the processing of a Code of Conduct investigation. None was carried out; there was no Code of Conduct investigation or decision.

There were then motions on September 27 and December 20, 2022 and a letter from Education Minister Lecce on April 3, 2023. The Board then passed a motion on April 25, 2023 to engage an external investigator, which turned out to be JMJ.

The April 25, 2023 makes no reference to the Code of Conduct, or to any policy of the York Catholic District School Board. JMJ received no mandate to investigate breaches of any of the three policies listed above. After making findings of fact, the JMJ report searches for policies to apply, and it lists these three.

On January 31, 2023, before passing the April 25 motion, the Board had requested a legal opinion on whether the Code of Conduct addressed allegations of harassment and discrimination. The Board received an opinion dated March 7, 2023 confirming that the Code of Conduct did not

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<sup>1</sup> The Procedure states: "A Trustee who has reasonable grounds to believe that another Trustee of the Board has breached the Board's Code of Conduct may bring the alleged breach to the attention of the Chair of the Board no more than fifteen (15) calendar days after the alleged breach comes to the attention of the Trustee reporting the alleged breach."

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incorporate the prohibitions against discrimination under the *Human Rights Code*, since the relationship between trustees did not relate to employment or services, goods or facilities offered to the public.

After passing the April 25, 2023 motion, the Board amended the Code of Conduct on May 15, 2023 to add discrimination and harassment. As JMJ recognized, this did not apply retrospectively to events that had occurred in July 2022, in respect of which all time limits had long expired.

**2. Trustee lafrate's September 2, 2023 "complaint" was never investigated or processed either**

Trustee lafrate attempted to file a Code of Complaint on September 2, 2023, apparently relying on the JMJ report. Trustee lafrate was about 14 months beyond the time limit of 15 days in the Procedure Addendum, which follows the direction in section 3.6.5 of the Code of Conduct that "a complaint of Trustee conduct that is contrary to this policy shall be addressed in a timely manner according to the Procedure".

In any event, none of the steps outlined above that are required to proceed with a Code of Complaint took place following Trustee lafrate's "complaint". Again, there was no Code of Conduct investigation, Trustee McNicol had no opportunity to address the September 2, 2023 memo, and the Chair simply deposited it onto the agenda of the September 26, 2023 with this statement to Trustees: "Because the complaint is related to the Findings of Fact by the investigator who handled the Discrimination Claim, I'm adding it to the related Action Item on the September 26, 2023 Board meeting.

In other words, the only Code of Conduct "complaint" that went before the Board on September 26, 2023 postdated any investigation. This is not the process that is followed in any circumstances, and it is not the process that is mandated by the Code of Conduct and Procedure that the Board put in place as required by the *Education Act*.

**3. The Board made no inquiries and made no determination on whether Trustee McNicol breached the Code of Conduct before issuing its sanction on September 26, 2023**

JMJ's conclusions do not relate to a Code of Conduct complaint, since there was none, and the complainants refused to file one. JMJ's conclusions do not relate to Trustee lafrate's September 2, 2023 "complaint", which postdates the JMJ report. There is no evidence of any other "inquiries" by the Board (required by s. 218.3(2) of the *Education Act*) into an allegation that Trustee McNicol breached the Code of Conduct.

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There is also no evidence that "based on the results of the inquiries", the Board has "[determined] whether the member has breached the Board's code of conduct." There is no motion to that effect on September 26, 2023 or on any other date.

Subsection 218.3(3) allows the Board to impose a sanction only "if the board determines under subsection (2) that the member has breached the board's code of conduct", and satisfaction of that statutory requirement is the precondition to the process that follows: written notice of the determination under subsection (6), and an opportunity to make written submissions within a period of at least 14 days.<sup>2</sup> The Divisional Court made clear that this is a statutory precondition,

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<sup>2</sup> The entire section of the *Education Act* dealing with the Code of Conduct process makes clear the requirement of a "determination" of breach before any sanction and submissions can proceed. **218.3 (1)** A member of a board who has reasonable grounds to believe that a member of the board has breached the board's code of conduct may bring the alleged breach to the attention of the board. 2009, c. 25, s. 25.

**Same**

(2) If an alleged breach is brought to the attention of the board under subsection (1), the board shall make inquiries into the matter and shall, based on the results of the inquiries, determine whether the member has breached the board's code of conduct. 2009, c. 25, s. 25.

**Same**

(3) If the board determines under subsection (2) that the member has breached the board's code of conduct, the board may impose one or more of the following sanctions:

1. Censure of the member.
2. Barring the member from attending all or part of a meeting of the board or a meeting of a committee of the board.
3. Barring the member from sitting on one or more committees of the board, for the period of time specified by the board.

(6) If a board determines that a member has breached the board's code of conduct under subsection (2),

- (a) the board shall give the member written notice of the determination and of any sanction imposed by the board;
- (b) the notice shall inform the member that he or she may make written submissions to the board in respect of the determination or sanction by a date specified in the notice that is at least 14 days after the notice is received by the member; and

stating in the recent *Del Grande* decision involving the Toronto Catholic District School Board: "The board is required to make a determination as to whether misconduct has occurred..."<sup>3</sup>

**4. The sanction imposed by the Board on September 26, 2023 is unauthorized and beyond its jurisdiction**

The *Education Act* and the Board's own Code of Conduct specifically limit the sanctions that are available to the Board. Under s. 218.3(3), there are three<sup>4</sup>:

- censure;
- exclusion from all or part of a board or committee meeting; or
- exclusion from one or more committees for a period of time.

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(c) the board shall consider any submissions made by the member in accordance with clause (b) and shall confirm or revoke the determination within 14 days after the submissions are received.

(7) If the board revokes a determination under clause (6) (c), any sanction imposed by the board is revoked. 2009, c. 25, s. 25.

**Same**

(8) If the board confirms a determination under clause (6) (c), the board shall, within the time referred to in that clause, confirm, vary or revoke the sanction.

<sup>3</sup> *Del Grande v. Toronto Catholic District School Board*, 2023 ONSC 349, at para 43

<sup>4</sup> (3) If the board determines under subsection (2) that the member has breached the board's code of conduct, the board may impose one or more of the following sanctions:

1. Censure of the member.
2. Barring the member from attending all or part of a meeting of the board or a meeting of a committee of the board.
3. Barring the member from sitting on one or more committees of the board, for the period of time specified by the board.



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In its Code of Conduct, the Board specifically confirms that it does not have the authority to impose any more onerous sanctions.<sup>5</sup>

The third paragraph of the September 26, 2023 resolution – barring Trustee McNicol from attending all committee meetings for more than three years – is superfluous, because it is covered by the second paragraph of the resolution. The second paragraph of the resolution is unlawful, since the Board's jurisdiction allows it to bar a trustee from attending a Board meeting, not all Board meetings for more than three years.

If the Legislature intended to allow Boards to exclude Trustees for most of an electoral term, para 3 of s. 218.3(3) would be unnecessary; para 2, which applies equally to committee and Board meeting exclusion, would already cover exclusion from multiple meetings, not just a meeting. Exclusion from multiple meetings is permitted only in the case of committees under para 3.

Quite apart from the Board's absence of jurisdiction, a prohibition of more than three years is disproportionate and punitive to the Trustee's constituents, who are thereby disenfranchised. Even if it were theoretically authorized, such a penalty is clearly unreasonable. You will see that in the *Del Grande* case, the TCDSB imposed several sanctions, but did not bar the trustee from participating in Board meetings, despite finding that he had engaged in very serious misconduct.

In that case Mr. Del Grande had made "offensive and inappropriate" comments about "fetishistic behaviour" to express his opposition to the addition of gender identity and gender expression as protected grounds of discrimination in the TCDSB's Code of Conduct, as directed by the Minister of Education.

**5. Policy 425 on Workplace Harassment (cited in the September 26, 2023 resolution) does not apply to Trustees**

It would be surprising to the senior management and Trustees of the Board, and to the reader of Policy 425, to read JMJ's inclusion of Trustees in the Board's Workplace Harassment policy. The conclusion to the contrary in the JMJ report is clearly incorrect and unreasonable.

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<sup>5</sup> "The Board of Trustees do not have the authority to impose sanctions other than those specifically defined by the Act. The Board shall not impose a sanction which is more onerous than the above but may impose one that is less onerous, such as a warning, a formal apology in writing, or a requirement that the Trustee successfully complete specified professional development courses at the expense of the board."

The policy clearly states its objective: "that all persons employed by the Board have the right to work in an environment free from harassment as defined by the Occupational Health and Safety act and the Ontario Human Rights Code."<sup>6</sup>

Under the heading Responsibilities, it is stated: "This policy applies to all York Catholic District School Board employees. All staff are expected to abide by this policy by refraining from any form of harassment and by fully cooperating in any investigation of a harassment complaint. Fostering a harassment-free workplace is a shared responsibility."<sup>7</sup>

Trustees are not employed by the Board; they are not staff; and they are not situated in the workplace.

The policy provides for the Superintendent of Human Resources to review complaints under the policy. It would be unusual for an employee two levels below the Board in the hierarchy to review complaints against Trustees of the Board.

The Responsibilities section makes clear the role of the Trustees: to receive monthly reports from the Director of Education, and to deal with complaints against senior management.<sup>8</sup>

All of this is clear from the fact that none of the complaint and investigation procedures that are set out in Policy 425 took place in Trustee McNicol's case:

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<sup>6</sup> Section 2 (emphasis added)

<sup>7</sup> Section 4 (emphasis added)

<sup>8</sup> 4.1 Board of Trustees

4.1.1 To receive a monthly report from the Director of Education in the Committee of the Whole which includes the number of complaints and any trends and systemic issues that need to be addressed proactively.

4.1.2 To deal with complaints of harassment against the Director of Education in a timely manner, using an external service provider, as set out in the Procedures to this Policy.

4.1.7 To receive any complaints of harassment regarding a member of the senior team and to forward them to an external service provider for investigation. Trustees shall be notified that a complaint has been received although trustees shall not be told the names of the parties involved. Trustees shall also be notified when the investigation is complete and whether or not the complaint had merit and if any actions are being taken by the Director.

- The complaint was not submitted to Ms. McNicol's immediate supervisor or the Superintendent of Human Resources, as required by section 1.1.1, because a trustee does not have a supervisor, and the complaint was not against the complainants' supervisor.
- There was no screening or acknowledgment of the complaint by the supervisor under section 1.1.2.
- The investigation was not commenced within 10 work days, and no extenuating circumstances were communicated to the parties prior to the expiration of 90 days (or at all) as required by section 1.1.4.
- Neither the School Superintendent nor the Superintendent of Human Resources reviewed the JMJ report to determine whether harassment occurred and what remedies were warranted, as required by section 1.1.5.
- They did not inform the parties in writing of the decision on finding and remedy, as required by section 1.1.6.

None of this occurred, and what was done instead did not comply with Policy 425, because Policy 425 was clearly inapplicable.

**6. Policy 613 on Equity and Inclusive Education (cited in the September 26, 2023 resolution) does not apply to Trustees**

Section 4 lists 11 individuals or groups who have responsibilities under the policy. Its broad reach includes parents, employees and students of the Board, as well as the Superintendent, Directors, Senior Managers, Principals and Teachers. Trustees are not included; indeed, there is not a single reference to Trustees in this policy, and there is no procedure under which complaints against Trustees could be investigated.

Again, Policy 613 did not apply to the complaint against Ms. McNicol. There is no investigation process in Policy 613, and none of the required steps in the general human rights complaints process was followed. No complaint was filed on the complaints form, as required, and there was no intake or preliminary assessment that the requisite threshold was met.

**CONCLUSION**

For all of these reasons, the Board's censure motion and sanctions are unlawful. Ms. McNicol's full rights and privileges, including the right to attend Board meetings, should be reinstated forthwith, and I ask for confirmation no later than October 20, 2023.

**Legal costs reimbursement**

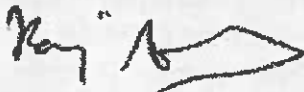
Section C of the Code of Conduct Procedure states: "In circumstances where a legal or procedural issue arises in the course of a complaint, a Trustee may find it necessary to retain legal counsel."

That was necessary here. The above submission address an absence of proper process and compliance with the governing law and the Board's own policies. Trustee McNicol has been required to obtain legal representation to protect her interests, her reputation and the integrity of Board processes.

In my respectful submission, she is entitled to reimbursement of her legal expenses that have resulted and may continue to accrue if the Board persists in its course of action. I make this point without prejudice to any other legal remedy that may be available to Trustee McNicol apart from the reconsideration process that these submissions directly address.

Yours truly,

**WeirFoulds LLP**



Raj Anand  
Partner

RA/dh

October 25, 2023

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File 24701.1

Dear Mr. Alexander:

**Re: Trustee Theresa McNicol**

Thank you for your letter of October 19. I now understand that the Board will be holding a special meeting on October 26, 2023 to consider the matters you refer to in your letter.

I reiterate my submissions of October 13, 2023. For the reasons set out in that letter, the Board meeting of September 25, 2023 did not produce any valid sanction under the *Education Act*, and therefore there is no sanction to “reconsider” on October 26. The only valid resolution in these circumstances is one that recognizes that the sanctions imposed on September 25 are null and void, and no sanction under the *Education Act* is in place against Trustee McNicol at this point.

I will first address documentary disclosure for the meeting tomorrow, and *then* address the reasons why there is no sanction to be reconsidered tomorrow that complies with the *Education Act*.

Documentary disclosure

Following receipt of your letter, I attempted to get in touch with Mr. Scuglia on Friday and Monday, and was in touch with Board Secretary Silvana Greco about this. I was hoping to obtain some important information in order to advise and represent Trustee McNicol in relation to your letter.

In particular, I was trying to ascertain what written material will be presented to the Board, apart from my letter of October 13, 2023 and yours of October 19, 2023, and whether the Board will be considering any legal or other advice or other material before or at the special Board meeting. My client requests the opportunity to review and respond to any such advice or other material, and she reserves her legal rights in that regard pending receipt of such information.

No jurisdiction to conduct “reconsideration” under the *Education Act*, Procedure 118 or the Procedure Addendum to Policy 118

The “reconsideration” process that you have scheduled for the special Board meeting on October 26, 2023 is not available, and any resolutions that are based on the sanctions purportedly imposed on September 25, 2023 will be null and void.

Your October 19 letter confirms that the Board intends to carry out the process that is in place for a code of conduct complaint. In considering sanctions against Trustee McNicol, the Board is not purporting to rely on Policy 425 or Policy 613. For reasons stated earlier, those policies do not apply in any event, but I will focus on the policy and statutory process regarding code of conduct complaints that you have indicated the Board is relying on.

The process that you refer to in your October 19 letter is also inapplicable to Trustee McNicol’s case.

As my earlier letter makes clear, the statute, Policy 118, the Procedure Addendum to Policy 118 and the jurisprudence are all crystal clear that any enforcement of the code of conduct by the Board:

1. is based on a code of conduct complaint by a trustee;
2. requires a majority determination by resolution of the board that there has been a breach of the code of conduct;
3. can only then result in a second majority resolution imposing one or more of the listed sanctions; and
4. can only then allow the board to reconsider its first or second resolutions.

Conditions 1 and 2 did not occur; therefore condition 3 is unlawful, and condition 4 is not available.

These points can be seen from the following excerpts of the governing documents.

*Procedure Addendum p. 4:*

“Both the determination of a breach and the decision on sanction shall require a vote of a simple majority....”

### *E. NOTIFICATION AND RECONSIDERATION OF DECISION BY BOARD*

If the board determines that a Trustee has breached the Board's Code of Conduct, the Board shall:

- i) Give the Trustee written notice of the determination, the reasons for the decision, and any sanctions imposed by the Board.

#### *Education Act:*

s. 218.3(11) paragraphs 1 and 2, and then paragraphs 3 and 4, respectively contain the same requirements of two resolutions to make a determination and impose a sanction, and two further resolutions to confirm or revoke a determination or a sanction.

s. 218.3(2): "if an alleged breach is brought to the board under subsection (1), the board shall make inquiries...and shall...determine whether the member has breached the board's code of conduct."

s. 218.3(3): "If [and only if] the board determines under subsection (2) that the member has breached the board's code of conduct, the board may impose one...of the...sanctions...."

s. 218.3(6): the Sept. 28 notice is permitted only "if a board determines that a member has breached the board's code of conduct under subsection (2)". That did not occur.

#### Conclusion

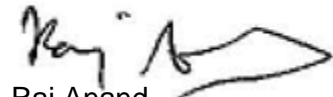
In short, the statutory and policy prerequisites to "reconsideration" are not present. No resolution as described in your October 19 letter can be passed that will comply with the provincial statute and the policies that govern the Board.

If any resolution has to be passed to bring finality to this matter, the only lawful resolution would be one that declares that no valid determination of breach under s. 218.3(1) has been made, and therefore no valid sanction under s. 218.3(3) has been imposed. The September 28 letters of censure and sanction are therefore null and void.

For reasons I set out earlier, no new code of conduct complaint can be brought at this point.

Yours truly,

**WeirFoulds LLP**

A handwritten signature in black ink, appearing to read "Raj Anand", with a stylized flourish extending to the right.

Raj Anand  
Partner

RA/dh

cc: Domenic Scuglia via email: [domenic.scuglia@ycdsb.ca](mailto:domenic.scuglia@ycdsb.ca)





# York Catholic District School Board

Catholic Education Centre, 320 Bloomington Road West, Aurora, Ontario L4G 0M1

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**Elizabeth Crowe**  
Aurora/King  
Whitchurch Stouffville

October 19, 2023

**Theresa McNicol**  
East Gwillimbury/  
Georgina/Newmarket

Sent by email: [ranand@weirfoulds.com](mailto:ranand@weirfoulds.com)

**Carol Cotton**  
Markham  
Area 1, Wards 1, 2, 3, 6

Raj Anand, Partner  
WeirFoulds LLP  
4100 – 66 Wellington Street  
PO Box 35, TD Bank Tower  
Toronto, Ontario, M5K 1B7

**Frank Alexander**  
*Chair*  
Markham  
Area 2, Wards 4, 5, 7, 8

Dear Mr. Anand,

**Maria Iafrate**  
*Vice-Chair*  
Richmond Hill

Re: Trustee Theresa McNicol

**Joseph DiMeo**  
Richmond Hill

This letter is to acknowledge your letter of October 13, 2023.

**Angela Saggese**  
Vaughan  
Area 1, Ward 1

Now that we have received Trustee McNicol's response to the Board's sanctions, we will now proceed to satisfy the requirements of the Education Act 218.3 (6) and SECTION E: NOTIFICATION AND RECONSIDERATION OF DECISION BY BOARD, of Policy 118 – PROCEDURE: ALLEGED BREACH OF THE TRUSTEE CODE OF CONDUCT.

**Michaela Barbieri**  
Vaughan  
Area 2, Ward 2

We will hold a Board Meeting by October 28, 2023 to make a final decision on the Board's original resolution.

**Jennifer Wigston**  
Vaughan,  
Area 3, Wards 3, 4, 5

Yours truly,

**Angela Grella**  
Vaughan  
Area 3, Ward 3, 4, 5

A handwritten signature in black ink, appearing to read 'Frank Alexander', with a horizontal line extending to the right.

Frank Alexander  
Chair of the Board

**Jonah James**  
*Sr. Student Trustee*

**Amira Zamanifar**  
*Sr. Student Trustee*

**Monica Galstyan**  
*Jr. Student Trustee*