



# MINUTES OF THE SPECIAL BOARD MEETING

**TUESDAY, JANUARY 23, 2024**

Minutes of the Special Meeting of the Niagara Catholic District School Board, held on Tuesday, January 23, 2024 at 6:00 p.m. in the Father Kenneth Burns c.s.c Board Room, at the Catholic Education Centre, 427 Rice Road, Welland.

The meeting was called to order at 6:00 p.m. by Chair Di Lorenzo.

## A. ROUTINE MATTERS

Land Acknowledgement statement was delivered by Trustee Joyner.

### 1. Opening Prayer

Opening Prayer were led by Trustee Turner.

### 2. Roll Call

Chair Di Lorenzo noted that Trustee Benoit joined electronically.

Trustee	Present	Present Electronically	Absent	Excused
Natalia Benoit		✓		
Joseph Bruzzese	✓			
Rhianon Burkholder	✓			
Danny Di Lorenzo	✓			
Larry Huibers	✓			
Doug Joyner	✓			
Jim Marino	✓			
Paul Turner	✓			

The following staff were in attendance:

**Camillo Cipriano**, Director of Education; **Lee Ann Forsyth-Sells**, **Kimberly Kinney**, **Gino Pizzoferrato**, **Pat Rocca**, Superintendents of Education; **Giancarlo Vetrone**, Superintendent of Business & Financial Services; **Clark Euale**, Controller of Facilities Services; **Julia Tiessen**, Executive Officer of Human Resources; **Anna Pisano**, Recording Secretary/Administrative Assistant, Corporate Services

Special Guest:

**Nadya Tymochenko**, Board Legal Counsel

**3. Approval of the Agenda**

Moved by Trustee Marino

Seconded by Trustee Turner

**THAT** the Niagara Catholic District School Board approve the Agenda of the Special Board Meeting of January 23, 2024, as presented.

**CARRIED**

**4. Declaration of Conflict of Interest**

No Declaration of Conflict of Interest were declared with any items on the agenda.

**5. Trustee Code of Conduct Investigation Report**

Chair Di Lorenzo emphasized the Trustee Code of Conduct Policy and the findings of the independent investigation conducted by Parker Sim LLP.

Chair Di Lorenzo noted that as per the Trustee Code of Conduct Policy, the investigation report will be added to the minutes as Appendix A

A recorded vote was taken to accept the investigation report.

<b>NAME</b>	<b>YEA</b>	<b>NAY</b>
Joseph Bruzzese		✓
Rhianon Burkholder	✓	
Larry Huibers	✓	
Doug Joyner	✓	
Jim Marino	✓	
Paul Turner	✓	
Danny Di Lorenzo	✓	

After discussion, the following motion was put forth;

Moved by Trustee Burkholder

Seconded by Trustee Marino

**THAT** based on the independent investigation by Parker Sim LLP, the Niagara Catholic District School Board finds Trustee Benoit in breach of the Trustee Code of Conduct.

A recorded vote was taken

NAME	YEA	NAY
Joseph Bruzzese		✓
Rhianon Burkholder	✓	
Larry Huibers	✓	
Doug Joyner	✓	
Jim Marino	✓	
Paul Turner	✓	
Danny Di Lorenzo	✓	

**CARRIED**

Following this decision further discussion took place regarding disciplinary action.

Trustee Burkholder took over as chair at this time.

The following motion was put forth;

Moved by Trustee Di Lorenzo

Seconded by Trustee Bruzzese

**THAT** the Niagara Catholic District School Board bar Trustee Benoit from attending all Board and Committee meetings, and further censures and relieves Trustee Benoit of all duties and roles as a Trustee until June 30, 2024.

A recorded vote was taken.

NAME	YEA	NAY
Paul Turner	✓	
Jim Marino	✓	
Doug Joyner	✓	
Larry Huibers	✓	
Joseph Bruzzese	✓	
Paul Turner	✓	
Danny Di Lorenzo	✓	

**CARRIED**

Trustee Di Lorenzo took over as chair at this time.

The following motion was put forth;

Moved by Trustee Burkholder

Seconded by Trustee Huibers

**THAT** the Niagara Catholic District School Board resolve to disassociate itself from any actions or statements previously made by Trustee Benoit.

A recorded vote was taken.

NAME	YEA	NAY	ABSTAIN
Paul Turner	✓		
Jim Marino	✓		
Doug Joyner	✓		
Larry Huibers	✓		
Joseph Bruzzese			✓
Paul Turner	✓		
Danny Di Lorenzo	✓		

**CARRIED**

**B. BUSINESS IN CAMERA**

**C. REPORT ON THE IN-CAMERA SESSION**

**D. MOMENT OF SILENT REFLECTION FOR LIFE**

**E. ADJOURNMENT**

Moved by Trustee Burkholder

Seconded by Trustee Marino

**THAT** the January 23, 2024 Special Meeting of the Niagara Catholic District School Board be adjourned.

**CARRIED**

This meeting was adjourned at 6:49 p.m.

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Minutes of the Special Meeting of the Niagara Catholic District School Board held on **January 23, 2024**.

Approved on the **January 30, 2024**.

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Danny Di Lorenzo  
Chair of the Board

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Camillo Cipriano  
Director of Education/Secretary -Treasurer

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**Investigation into a Complaint Pursuant to the Trustee Code of Conduct Policy, Board  
Policy No. 100.12 of the Niagara Catholic District School Board**

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**CONFIDENTIAL**

**Investigator: Cenobar Parker  
Parker Sim LLP**

**25 Adelaide Street East, Suite 1040  
Toronto, ON M5C 3A1**

**Finalized Report Submitted: December 13, 2023**



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## I. INTRODUCTION

Parker Sim LLP (the “Investigator”) was retained by the Niagara Catholic District School Board (the “Board”) to investigate a complaint delivered by Trustee Paul Turner against Trustee Natalia Benoit arising out of comments made by Trustee Benoit following a regular Board meeting on May 23, 2023 (the “Complaint”).<sup>1</sup>


The Complaint alleges that Trustee Benoit violated the Trustee Code of Conduct Policy, Board Policy No. 100.12 (the “Code of Conduct”) for the following reasons:

1. The comparison of flying the Pride Flag to Flying the Nazi Flag. This statement was made on the steps of the Catholic Education Center following the May 23, 2023, Committee of the Whole Meeting. Her dialogue on the steps was recorded and is available on YouTube. It is my belief that you cannot compare a flag that is meant to promote love and acceptance to one that represents hatred, division, and isolation.
2. During her dialogue on the steps, Trustee Natalia Benoit provided wrong information to the people. She did not correctly explain Robert’s Rules and the process for passing a motion. During her dialogue on the steps she portrayed the process that took place during the meeting as being railroaded.
3. Trustee Natalia Benoit created an atmosphere that was chaotic and could have possibly put some individuals at risk.
4. Natalia Benoit supported the parents in saying that action needed to be taken. When someone said that parents should pull their children from (*sic*) school because of the flying of the Pride Flag, Natalia replied “ya ya.” This is unbecoming behaviour of a Trustee who is elected to support student achievement and promote the Boards catholic identity.
5. Natalia Benoit is not the spokesperson for the Board, only the Chair of the Board and Director can speak on behalf of the Board. Natalia was totally out of line taking center court on the steps and addressing an audience.

The Complaint was delivered on June 6, 2023, pursuant to the Code of Conduct. Our mandate is to investigate the allegations set out in the Complaint against Trustee Benoit and to provide an opinion with respect to whether they are substantiated. If the allegations are

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<sup>1</sup> See Appendix A1: The Complaint of Trustee Paul Turner against Trustee Natalia Benoit Dated May 6, 2023



substantiated, we then provide an opinion as to whether they constitute a violation of the Code of Conduct.

In particular, our mandate in conducting this investigation is to investigate and determine, on a balance of probabilities, whether the Code of Conduct has been violated. This requires the determination of (1) factual findings related to the allegations, and (2) determinations as to whether, on the basis of our factual findings, the Respondent engaged in conduct in violation of the Code of Conduct. We have not been requested to make, and therefore have not made, any recommendations as to the appropriate corrective action, if any, based on our findings.

We conducted a comprehensive investigation of the Complaint, which included interviews with the parties as well as: the Director of Education for the Board, Camillo Cipriano, Trustee Larry Huibers, and Vice-Chair of the Board Trustee Rhianon Burkholder. Attempts were made to contact Trustee Joe Bruzzese and his wife, Debra Bruzzese, however the investigator was not able to connect with either Trustee Bruzzese or his wife prior to September 29, 2023 when counsel for the Board advised the Investigator that the Board approved a request by Trustee Benoit to take a leave of absence until January 29, 2024.<sup>2</sup> Further attempts to schedule an interview with Trustee Bruzzese were made in October 2023, without success.<sup>3</sup> As a result, these interviewees were not pursued further in advance of finalizing this report. If determined to be necessary in the future, the investigator would be happy to reach back out to Trustee Bruzzese for an interview.

We invited the parties to deliver documents they considered relevant to the investigation. These primarily consist of: comments received by Trustee Turner in respect of Trustee Benoit's proposed policy to prohibit certain symbols at the Board (discussed in more detail below), and various links to YouTube videos and media coverage of Trustee Benoit on the steps of the Board office after the Board meeting on May 23, 2023. Where these are relevant, they have been referred to in our analysis.

Unfortunately, by the time of our formal retainer the previously publicly available YouTube video, which depicted the specific comments made by Trustee Benoit that form the basis of the Complaint, was no longer available. We requested a copy of the video from the Board and all of the interviewees, but none was able to be provided. Trustee Benoit advised that she contacted the author of the video, Peter Taras, but was unable to reach him.<sup>4</sup> At the time of

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<sup>2</sup> See Appendix C: Email from Nadya Tymochenko to Cenobar Parker dated September 29, 2023 re Trustee Benoit's leave of absence

<sup>3</sup> See Appendix D: Email Thread Between Trustee Joe Bruzzese and Cenobar Parker dated October 16, 2023 re Scheduling an Interview

<sup>4</sup> See Appendix E1: Email from Trustee Natalia Benoit to Cenobar Parker dated August 30, 2023



writing this Report, we were therefore only able to review a shorter clip of the video accessible online through media coverage of the incident.<sup>5</sup>

It is in part due to the inability to review the entire video of Trustee Benoit's comments that the investigator interviewed Director Cipriano, Trustee Huibers and Trustee Burkholder, and tried to interview Trustee Bruzzese and his wife, as persons allegedly in close proximity to her during Trustee Benoit's comments.

After careful consideration of the evidence gathered, we have concluded that the following allegations are substantiated, and that Trustee Benoit violated the Code of Conduct:

- By comparing the flying of the Pride flag to flying the Nazi flag after the Board meeting on May 23, 2023;
- By mischaracterizing the events at the Board meeting on May 23, 2023, failing to acknowledge that the Board's decision was consistent with its process as set out in the Bylaws and by implying that the Board acted improperly in waiting to vote on the Policy until June 2023;
- In supporting a parent's comment that children should be removed from the Niagara Catholic District School Board; and
- In speaking publicly in a manner that could have been understood as speaking on behalf of the Board.

We have declined to find, on a balance of probabilities, that Trustee Benoit created a chaotic atmosphere or one that could have possibly put some individuals at risk at, or immediately after, the Board meeting, on May 23, 2023. This Report begins with introducing the parties and providing a description of the context in which these events are alleged to have occurred. We then provide a review of the investigation process. Lastly, we set out a description of the evidence, including the credibility and reliability of the persons interviewed, our factual findings, and our analysis, including the applicable legal tests.

We want to thank you for entrusting us with this important and challenging investigation.

Do not hesitate to reach out if we can be of any further assistance.


## **II. THE PARTIES**

### **A. TRUSTEE PAUL TURNER**

The Complainant, Trustee Paul Turner is a Trustee representing Welland at the Board. Trustee Turner was initially elected in 2018. Prior to this, he was a teacher for the Board for

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<sup>5</sup> See <https://www.youtube.com/watch?v=9kMT33kC IE> & <https://www.chch.com/niagara-catholic-school-board-trustee-compares-pride-flag-to-a-nazi-flag/>



over 32 years. He is the author of the Complaint submitted to the Board on June 6, 2023 and explained that it was not an easy decision to deliver a complaint against a fellow trustee.

Trustee Turner explained that part of the reason he initiated this complaint is because during his first term as a Trustee, he was the Trustee who initially proposed flying the Pride flag at the Board. At the time, according to Trustee Turner, the Board was working on a multi-year strategic plan which centered around inclusivity, tolerance, and equity. He felt that flying the Pride flag was an important step to providing a safe environment to all persons at the Board. Trustee Turner explained that the first time the Board flew the Pride flag in June 2021, it was done thoughtfully, after a discussion and vote by the Trustees.<sup>6</sup>

Trustee Turner explained that since 2022 the decision to fly the Pride flag has been made by staff and the Director of Education.

Trustee Turner explained that he has nothing personal against Trustee Benoit, but that he brought the complaint out of concern for the integrity of the Board and its process.

#### B. TRUSTEE NATALIA BENOIT

Trustee Natalia Benoit is the Trustee for the areas of St. Catharines and Niagara-on-the-Lake. She was first elected in October 2022. On April 25, 2023, Trustee Benoit submitted a request to implement a new policy at the Board to Chair Danny DiLorenzo.<sup>7</sup> The policy, entitled “Partisan, Political, or Social Policy Advocacy Activities” (the “Policy”) defines its purpose as follows:

##### Purpose

This policy is designed to promote education instead of indoctrination, defined as the endorsement of partisan, political or social policy matters.

Neutrality and balance in classroom instruction are desired to create an optimal learning environment and atmosphere of inclusiveness, where all students are welcome. Because views and beliefs about partisan, political, or social policy matters are often deeply personal, employees should not, during assigned work hours, advocate to students concerning their views or beliefs on these matters. Such advocacy does not contribute to a positive learning climate and may be disruptive, divisive, and

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<sup>6</sup> Note that we confirmed independently via the Board’s website that the Trustees voted on May 25, 2021 to fly the Pride flag for the first time at the Board.

<sup>7</sup> See Appendix F: Email from Trustee Natalia Benoit to Chair DiLorenzo dated April 25, 2023, with Policy Enclosed

distracting. Rather, classroom instruction should relate to approved curriculum. The district's role is to teach students how to think, not what to think, thereby keeping classrooms as places of education, not indoctrination.

Trustee Benoit acknowledged that the Policy she delivered to the Board was edited from a policy implemented in the U.S.A., by the Central Bucks School District ("Central Bucks"). She states that she had to edit the Central Bucks policy "to Catholicize it to be something we apply to our school (*sic*) because I saw that it was working in their school or school board, and I thought that it would be helpful to have something in place like that as well."<sup>8</sup>

According to Trustee Benoit, she needed help editing the Central Bucks policy, so she asked her husband, and then a family friend who referred her to Teresa Pierre, at Parents as First Educators ("PAFE").

Trustee Benoit underscores the broad application of the proposed Policy and denies that it targets the Pride flag or any specific community within the Board.

As is detailed below, Trustee Benoit, who is a new Trustee and acknowledges having a lack of familiarity with the Board's processes, states that she understood that the Board would be voting on her Policy at the regularly scheduled Board meeting on May 23, 2023.

There is no question that had the Policy been adopted by the Board on May 23, 2023, the Pride flag would not have flown commencing June 1, 2023.

### **III. THE POLICY AND MANDATE**

Parker Sim LLP was retained to conduct a neutral and independent investigation of the Complaint in accordance with the Formal Process set out in the Code of Conduct. As noted above, our mandate is to investigate and determine whether it was more likely than not that the Respondent violated the Code of Conduct. We reiterate that it is beyond the scope of our investigation to make recommendations with respect to any remedies that might result.

We first interviewed Trustee Turner at his home in Welland on August 16, 2023. Trustee Benoit was interviewed virtually via Microsoft Teams on August 18, 2023. We then interviewed Director Camillo Cipriano on September 7, 2023 and Trustees Huibers and Burkholder via Microsoft Teams on September 14, 2023.<sup>9</sup> Following each interview, the

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<sup>8</sup> See Appendix A3: The Statement of Trustee Natalia Benoit signed September 7, 2023 ("Trustee Benoit Statement"), page 4.

<sup>9</sup> See Appendix A2: The Statement of Trustee Paul Turner signed August 21, 2023 ("Trustee Turner Statement"); Appendix A4: The Statement of Director Camillo Cipriano signed September 12, 2023 ("Director Cipriano Statement"); Appendix A6: The Statement of Trustee Rhianon Burkholder signed October 3, 2023 ("Trustee Burkholder Statement")

Investigator prepared detailed statements of the evidence received which were reviewed and signed by each interviewee.

Prior to the scheduling of their interviews, all interviewees were advised on the importance of confidentiality in the investigation process and provided with a Confidentiality Agreement to review and execute. With the exception of Trustee Benoit, each interviewee executed the Confidentiality Agreement in advance of their interview.<sup>10</sup> At the outset of her interview, Trustee Benoit advised that she was not comfortable signing something she did not fully understand. The confidentiality of the investigation process and its importance to the integrity of the investigation were fully canvassed with Trustee Benoit and she verbally acknowledged her understanding of the importance of confidentiality and agreed to keep the fact of the investigation, as well as any questions asked confidential. Trustee Benoit then signed off on that agreement when she reviewed her statement.<sup>11</sup>

During our interview with Trustee Benoit, she identified three persons who were in close proximity to her when she made her comments outside the Board office: Debra Bruzzese, Peter Taras, and Angela Nicastro. She provided us with the contact information only for Debra Bruzzese and Trustee Joe Bruzzese who we understand to be Mrs. Bruzzese's husband. The investigator contacted Ms. Bruzzese around September 7, 2023. When the investigator did not connect with Ms. Bruzzese, Trustee Benoit was requested to provide her email address. The Investigator followed up with Trustee Benoit to request Ms. Bruzzese as well as Mr. Taras' email addresses or phone numbers.<sup>12</sup> At the time of writing this report, Trustee Benoit had never replied to the Investigator, who was unable to connect with either Ms. Bruzzese or Mr. Taras.

In the intervening period, the Investigator attempted without success to connect with Trustee Bruzzese.

All parties were advised of their right to legal counsel or a support person. All interviewees were advised of their right to a support person. To our knowledge none of the parties retained legal counsel and none of the interviewees relied on any support people.

The investigator was not able to access the video previously posted on Mr. Taras's YouTube channel and appears to have been removed from the internet. What remains is an excerpt of the video embedded within some of the media coverage of Trustee Benoit's comments.<sup>13</sup> These excerpts have been reviewed and considered as part of this investigation.

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<sup>10</sup> See Appendix B: Signed Confidentiality Agreements

<sup>11</sup> See Appendix A3: Trustee Benoit Statement, page 1

<sup>12</sup> See Appendix E3: Email from Cenobar Parker to Trustee Natalia Benoit dated September 11, 2023

<sup>13</sup> <https://www.chch.com/niagara-catholic-school-board-trustee-compares-pride-flag-to-a-nazi-flag/>

All interviewees were asked to provide a copy of the video taken of Trustee Benoit on May 23, 2023. None were able.

Trustee Benoit advised that she had reached out to the owner of the initial video, Mr. Taras, but did not hear back.<sup>14</sup> As noted above, Trustee Benoit ceased communicating with the Investigator and did not provide any contact information for Mr. Taras.

Trustee Burkholder referred the investigator to another video posted on Mr. Taras's YouTube channel from the evening of May 23, 2023, which seems to have been taken after the comments that form the basis of the Complaint.<sup>15</sup>

#### **IV. THE CODE OF CONDUCT**

According to its Mission Statement, the Code of Conduct is part of the Board's governance policies, and is in compliance with the Ontario *Education Act* its Regulations and other "relevant legislation."<sup>16</sup>

The complete Code of Conduct is appended as Appendix H to this report. The Complaint does not identify any specific provisions alleged to have been violated, however for ease of reference, I have reproduced below those provisions of the Code of Conduct that are implicated by the allegations raised in the Complaint.

#### **CATHOLIC FAITH, COMMUNITY AND CULTURE**

Each Niagara Catholic District School Board Trustee shall, within the duties prescribed in the *Education Act*, its Regulations and other applicable legislation and reflecting a ministry within the Church:

- Acknowledge that Catholic schools are an expression of the teaching mission of the Church;
- Provide an example to the Catholic community that reflects the teaching of the Church;
- Provide the best possible Catholic education according to the programs approved by the Canadian Conference of Catholic Bishops and the Minister of Education;
- Recognize and rigorously defend the constitutional right of Catholic education and the democratic and corporate authority of the Board
- Respect the confidentiality of the Board;

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<sup>14</sup> See Appendix E1: Email from Trustee Natalia Benoit to Cenobar Parker dated August 30, 2023

<sup>15</sup> [https://www.youtube.com/watch?v=9kMT33kC\\_1E](https://www.youtube.com/watch?v=9kMT33kC_1E)

<sup>16</sup> *Education Act* [RSO 1990, c E.2.](#)

- Ensure the affairs of the Board are conducted with openness, justice and compassion;
- Work to improve personal knowledge of current Catholic educational research and practices;
- Affirm a strong sense of Christian Catholic community; and
- Provide support, encouragement and prayer for the efforts of all persons engaged in the ministry of Catholic education in Canada.

#### CIVIL BEHAVIOUR AND COMMUNICATION

Trustees shall at all times act with decorum and shall be respectful of other Trustees, the Director of Education, staff, students, all members of the Niagara Catholic community, as well as the public.

Trustees must:

- Respect and comply with all applicable federal, provincial and municipal laws;
- Demonstrate honesty and integrity;
- Respect differences in people, their ideas, and their opinions;
- Treat one another with dignity and respect at all times, and especially when there is disagreement;
- Respect and treat others fairly, regardless of, for example, race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, gender, sexual orientation, age, or disability; and
- Respect the rights of others.

....Subject to the duty of a Trustee under subsection 218.1(e) of the *Education Act* to uphold the implementation of any Board resolution after it is passed by the Board, a Trustee may not make disparaging remarks about another Trustee or a group of Trustees in expressing comments, or disagreement or speculate on the motives of a Trustee, a group of Trustees, or Board staff. With the exception of the Chair of the Board and/or the Director of Education, no individual Trustee or group of Trustees has the authority to speak on behalf of the Board.

Trustees' shall ensure that all information they communicate in the course of their duties is accurate and complete.

## COMPLYING WITH LEGISLATION

All Trustees are expected to comply with the following duties of Board members as set out in section 218.1 of the *Education Act*:

A member of a board shall,

- a) carry out their responsibilities in a manner that assists the board in fulfilling its duties under this Act, the regulations and the guidelines issued under this Act, including but not limited to the board's duties under section 169.1;
- ....
- e) uphold the implementation of any board resolution after it is passed by the board;
- f) entrust the day-to-day operations and management of the board to its staff through the board's director of education;
- g) maintain focus on student achievement and well-being; and
- h) comply with the board's code of conduct.

## UPHOLDING DECISION

Trustees must understand their role as a corporate body and the expectation that they may deliberate with many voices but must act as one.

Trustees must:

Accept that authority rests with the Board and that they have no individual authority other than that delegated by the Board;

- Uphold the implementation of any Board resolution after it is passed by the Board;
- Comply with Niagara Catholic District School Board By-Laws (100.1), Policies and Administrative Procedures; and
- Refrain from speaking on behalf of the Board unless authorized to do so by the Board. The only official spokespersons for the Board are the Chair of the Board and the Director of Education.

## **V. THE LEGAL FRAMEWORK**

In determining whether the allegations amount to a violation of the Code of Conduct, we first consider the evidence as a whole, and whether it is more likely than not that the allegation occurred.

If the allegation is substantiated, we then consider whether the conduct violates any of the provisions of the Code of Conduct.

In considering the comments made by Trustee Benoit, and specifically whether they constitute a violation of the Code of Conduct, we have reviewed and taken into consideration the relevant jurisprudence from the Human Rights Tribunal, and specifically whether comparing the Pride flag to the Nazi flag creates a poisoned environment.

## **VI. THE ALLEGATIONS**

The details of the allegations and the relevant evidence are set out below. Given that all interviewees signed off on detailed statements from their interviews, we have only referenced here those aspects of the evidence relied on. All of the evidence was, however, thoroughly considered in the course of our investigation and subsequent deliberation.

## **VII. THE EVIDENCE**

### **A. CREDIBILITY AND RELIABILITY**

The present allegations do not necessarily turn on the *viva voce* evidence of the parties or any witnesses.

The limited excerpt from the video taken, as well as Trustee Benoit's acknowledgement of her comments is highly persuasive in determining, on a balance of probabilities whether the conduct complained of, in fact happened.

Notwithstanding this, in order to evaluate the evidence of each interviewee and come to factual findings we have assessed the credibility and reliability of each person. Credibility relates to the veracity of the evidence and the party's sincerity and truthfulness. Reliability relates to the factual accuracy of the evidence and the party's ability to accurately observe, recall and recount the events.<sup>17</sup>

- Someone can be credible but provide unreliable evidence. Further, a person may be found to be credible in part, with different weight attached to different parts of the evidence. If someone is not found to be credible, their evidence cannot be reliable.

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<sup>17</sup> *R v Morrissey*, 1995 CanLII 3498 (ONCA).



- To assess credibility in the present case, we consider a number of interrelated factors, such as:
  - inconsistencies and weaknesses between evidence as well as the internal inconsistencies within the person's evidence;
  - the ability to review independent evidence that confirms or contradicts the evidence;
  - the ability to assess the evidence with the preponderance of probabilities which a practical and informed person would recognize as reasonable in that context, without relying on frail assumptions about human behaviour;
  - the candour or evasiveness of the party; and
  - the motive and attitude of the party.<sup>18</sup>
- The reliability of someone's evidence can be impacted by a number of factors, such as the passage of time, the impact of trauma, and whether someone is objective or may be biased in some way.

Overall, we found most interviewees to be credible.

Trustee Turner was thoughtful in his evidence. He acknowledged that he had not been present when Trustee Benoit made her statements after the meeting on May 23, 2023, but that the Complaint arose out of his review of the video recording when it was available on YouTube. Trustee Turner expressly struggled with the decision to deliver a complaint against a fellow Trustee and was careful and considered in his evidence: he did not exaggerate or overstate his evidence, but rather provided significant context to explain and justify his concerns. We found his evidence to be both credible and reliable.

Trustee Benoit was initially reticent to speak with us, however during our meeting was generally cooperative. She gave evidence that did not necessarily serve her, for example acknowledging that she was not aware of and did not explain to the crowd of people after the meeting on May 23, 2023, the Board's process as outlined in the Bylaws. However, she presented at times as avoiding direct questions or hesitant: (1) to confirm her recollection of seemingly basic information (for example, the mood of the crowd and whether she commented on the conduct of her fellow trustees) and (2) to share the video taken of her comments made outside of the Board on May 23, 2023. I find it troubling that she was unable to locate a copy of the video, particularly when she acknowledged having the ability to contact its owner – Peter Taras. Her unwillingness to share a copy of the video does impact our assessment of her credibility when it comes to what was said on the steps of the Board's office that evening. This, in turn, impacts the weight we have placed on her evidence as to

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<sup>18</sup> *Re Novac Estate*, 2008 NSSC 283 at paragraphs 36-37.

the explicit comments made (or not). However, it is not determinative. We have considered the totality of the evidence, together with the limited recorded evidence, to make findings of fact on a balance of probabilities.

We found all of the witnesses to be credible. Trustees Huibers and Burkholder in addition to Director Cipriano were direct in their evidence, acknowledging readily the limits of their recollection but providing clear answers which were in many ways corroborated by the objective evidence, including the YouTube video which captures Director Cipriano's attempted communication with Trustee Benoit on the steps. They all similarly demonstrated significant understanding and empathy for Trustee Benoit. I note, however, that the evidence of the witnesses was at times inconsistent. For example, it was unanimous that Trustees Huibers and Burkholder went outside to hear Trustee Benoit speak together, though each had a slightly different recollection of when they went outside and what they heard. Given the passage of time and the fact that a video recording of the incident circulated for some time which could impact what each thought they heard in person, I found these discrepancies to impact the reliability of their evidence. This is addressed when considering the evidence below.

#### B. THE MAY 23, 2023 BOARD MEETING

As noted above, in advance of the May 23, 2023 Board meeting, Trustee Benoit sought to "motion for a new policy" which she delivered by email to Chair DiLorenzo on April 25, 2023 with a request that the Policy be added "to the agenda" for the May 23, 2023 Board meeting.


The Policy provides that employees "shall not advocate" concerning any partisan, political, or social policy issue. Advocacy is defined in the Policy to include "the use of speech, conduct, or symbols to support or oppose a particular point of view or belief about partisan, political, or social policy issues or matters."<sup>19</sup> The Policy specifically refers to the prohibition on displaying "any flag" among other symbols "that advocates concerning any partisan, political, or social policy issue" though it provides exemptions for the Canadian, Ontario, Catholic, and Vatican flags, in addition to the flags of other countries or Canadian provinces and territories "when directly relevant to a course of study in a social studies or foreign language class."<sup>20</sup> Under the heading "Delegation of Responsibility," the Policy specifies that when implementing and enforcing the Policy, "all flags that have not been mentioned as permitted by the [B]oard" should be kept off school property.<sup>21</sup> While the Policy does not refer explicitly to the Pride flag, it is accepted that if the Policy was adopted, the Pride flag would not be flown at the Board.

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<sup>19</sup> See Appendix G: Policy Proposed by Trustee Benoit titled "Partisan, Political, or Social Policy Advocacy Activities" (The "Policy"), page 1, "Definitions."

<sup>20</sup> See Appendix G: The Policy, page 3.

<sup>21</sup> See Appendix G: The Policy, page 4



It was certainly the impression of Trustee Turner that the significance of considering the Policy at the May 23, 2023 meeting was to avoid the flying of the Pride flag and during her interview, Trustee Benoit acknowledged that the public support for the Policy on May 23, 2023 was focused on its adoption to prevent the Pride flag from flying during the month of June.<sup>22</sup>

Per the By-Laws Policy, Governance Policy No. 1001. (the “Bylaws”), the most recent edition of “Robert’s Rules of Order” shall govern motions and debates.<sup>23</sup> Per subsection (c) of Bylaw 21 “[a] Notice of Motion shall not be discussed or seconded at the meeting at which it is initially presented.”

Trustee Benoit’s Policy Request was initially presented at the May 23, 2023 Board meeting. During that meeting all of the Trustees were in attendance, with the exception of Chair DiLorenzo who is marked in the Minutes as having been “Excused.”<sup>24</sup> In Chair DiLorenzo’s absence, Vice-Chair Burkholder chaired the meeting, with Trustee Huibers, a former Chair of the Board, sitting in as Vice-Chair.

All interviewees acknowledged that there were a large number of people in the gallery during the meeting that night. Trustee Benoit’s evidence is that they came because they understood Trustee Benoit’s Policy would be discussed. When asked how people knew to attend, Trustee Benoit stated that she told Ms. Pierre from PAFE about the motion, who may have told people to attend.<sup>25</sup>

Trustees Turner, Huibers, and Burkholder advised that, other than meetings where awards are being given or where delegations are being made, the Board meetings do not draw significant crowds.<sup>26</sup> Each interviewee used different language, but agreed that the persons in the gallery that evening were animated.

During her interview, Trustee Benoit confirmed that she was advised that the motion would be “presented” on May 23, 2023. It is clear that Trustee Benoit did not understand what ‘presenting a motion’ meant in accordance with the Bylaws. Trustee Benoit understood the Bylaws to say that “it [the motion] has to be submitted a month in advance and if submitted on April 24, 2023, it would have been on the May meeting agenda.”<sup>27</sup>

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<sup>22</sup> See Appendix A3: Trustee Benoit Statement, page 8

<sup>23</sup> See Appendix I: Board By-Laws Policy, Bylaw 21. Motions and Debate

<sup>24</sup> See Appendix J: Minutes of the Board Meeting on May 23, 2023, page 1

<sup>25</sup> See Appendix A3: Trustee Benoit Statement, page 5

<sup>26</sup> See Appendix A6: Trustee Burkholder Statement, page 3; See Appendix A5: Trustee Huibers Statement, page 3; See Appendix A2: Trustee Turner Statement, page 3

<sup>27</sup> See Appendix A3: Trustee Benoit Statement, page 3

As she submitted the motion to Chair DiLorenzo on April 25, 2023, she understood that the motion would be put to the Board on May 23, 2023 and voted on. According to Trustee Benoit:

Yes, I did [submit it by email]. ... I understood it [the Bylaws] differently. I am new and have never done this before. I understood that the motion had to be delivered a month before [it was discussed/voted on]. I didn't know that it would be 'presented' first [in that it would be included in the meeting package] and then Trustees would sit with it to be discussed at the next Board meeting. I thought when he [Chair DiLorenzo] said about presenting it that it would be presented on May 23, 2023, and we would be voting on it.<sup>28</sup>

Trustee Benoit confirmed that during the May 23, 2023 meeting, once she was told that the Bylaws required the vote on the Policy to be deferred to the June 2023 Board meeting, she requested the Bylaws to be suspended:

When I found out [the Motion] was going to be discussed in June 2023, I asked to suspend the Bylaws temporarily and there was a majority that said no, which is understandable because you want to be able to digest things. So that's how that went in the [May 23, 2023] Board meeting.<sup>29</sup>

During the interview, the Investigator reviewed Bylaw 21(c) together with Trustee Benoit who acknowledged that she was unaware of the Board's process as described in the Bylaws on the evening of May 23, 2023.

The Bylaws require a vote of three-quarters of the members present in order to be temporarily suspended.<sup>30</sup> Per the Minutes from the May 23, 2023 Board meeting, the majority of Trustees voted against Trustee Benoit's request to suspend the Bylaws.<sup>31</sup>

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<sup>28</sup> See Appendix A3: Trustee Benoit Statement, page 3

<sup>29</sup> See Appendix A3: Trustee Benoit Statement, page 4

<sup>30</sup> See Appendix I: Board By-Laws Policy, Bylaw 20, Rules of Order.

<sup>31</sup> See Appendix J: Minutes of the Board Meeting on May 23, 2023

## VIII. THE ALLEGATIONS

### A. COMPARING THE PRIDE FLAG TO THE NAZI FLAG

#### *a. Trustee Benoit did Compare the Pride Flag to the Nazi Flag*

Trustee Turner alleges that after the Board meeting on May 23, 2023, while standing on the steps of the Catholic Education Center, Trustee Benoit compared flying the Pride Flag to flying the Nazi flag.

Trustee Benoit does not deny having made a comment regarding the Nazi flag, but denies that she was comparing it to the Pride flag. Trustee Benoit acknowledged that in the context of discussing her proposed policy which sought ban partisan symbols at the Board, like the Pride flag, she made the following comment: "...any flag at all, like the Nazi flag, we don't want that either, right?"

According to Trustee Benoit, she was correcting Mr. Taras who had apparently asked her a question about the motion with respect to her Policy and the flying of the Pride flag. In response to Mr. Taras' question, which Trustee Benoit could not explicitly recall, she replied by correcting him and saying "it's not just the Pride flag, it was about any flag."<sup>32</sup> Trustee Benoit acknowledges that:

"[i]t wasn't a good idea to say Nazi flag... I was trying to give another example of a controversial flag that we don't want on the school that creates division. It was not in a comparison way, it was just stating that we don't want any flag."


Trustee Turner acknowledged that he was not in attendance when Trustee Benoit made this, or any other, comment captured by video after the Board meeting on May 23, 2023. Director Cipriano and Trustee Huibers similarly confirmed that they did not hear Trustee Benoit make the comment about the Nazi flag.

Trustee Burkholder did provide evidence that she heard Trustee Benoit comment on the Nazi flag and thought that Trustee Benoit was "being more flippant more than anything else." Trustee Burkholder did not know if Trustee Benoit had the recollection or historical knowledge to understand the comment. I do find it unusual that Trustee Burkholder heard the comment concerning the Nazi flag when the evidence is that she was only outside at the same time as Trustee Huibers and Director Cipriano, who both said they did not hear the comment.

Given that there is video evidence of this comment, it may simply be that Trustee Burkholder's recollection is unreliable, in that she is remembering the video of the statement

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<sup>32</sup> See Appendix A3: Trustee Benoit Statement, page 7



and not recalling having heard it in person. That, in my view, is of no consequence to the present allegation as there is video footage available through a video embedded in a news report from CHCH dated May 31, 2023 wherein a gentleman, who I understand to be Mr. Taras says “...up in June, or any flag ...” and at the same time, Trustee Benoit comments “...any flag at all, like the Nazi flag, we don’t want that either, right?”

During her interview, Trustee Benoit acknowledged that she made the comment and that her reference to the Nazi flag was in response to a comment about the Pride flag. In particular, she acknowledged that in identifying the Nazi flag, she was trying to give an example of “a controversial flag that we don’t want on the school that creates division.” I conclude that Trustee Benoit was drawing a comparison, despite her belief to the contrary, between the Nazi flag and the Pride flag, as both being controversial symbols. This is confirmed in her response to the question of *why* she chose to reference to Nazi flag:

It was just the first thing that came into my head as being something that was controversial that causes people to be upset and that was the example I was using to show that we don’t want any flag at all, maybe could have used an Anarchist flag or Chinese flag or whatever. I could have used a better example but that was the first thing that came to mind. For me stating that it was just about the Pride flag took away the message that I was trying to have in this policy which was creating a place of neutrality and respect for each other.

Trustee Benoit also explained that she was upset when people misunderstood her intention. Specifically, she says:

When I saw that they were saying “comparing,” I was really upset because that’s not what I was doing I was just saying any flag. I was just saying any flag, any flag at all, and everyone went off to say that I compared it and that’s not what I was doing. ... I am not coming after them or attacking a particular group. I just want to focus on education, beautiful Catholic education. Let’s just focus on what that means and not focus on personal belief or a symbol that not everyone agrees on. Everyone comes from different places and that is a truth or a fact. We don’t want anyone to feel left out. My intention was to focus on what we were here to do – to learn, not to focus on the upset that was causing the twisting of words.

While we accept that Trustee Benoit was not intending to be hurtful, in effect, Trustee Benoit was comparing the Nazi flag – as another example, *like the Pride flag* – that was controversial

and therefore – according to Trustee Benoit – not appropriately displayed at school. As a result, this allegation is substantiated.

***b. Trustee Benoit Violated the Code of Conduct***

The Nazi flag is a distinctly recognizable symbol of Nazi propaganda. It is associated with the far-right dictatorial regime in power in Germany prior to and through the Second World War, which was characterized by its pursuit of racial “purity” pursued through policies designed to exterminate Jews and other minorities – including homosexuals – by mass murder, among other means. In modern times, it is associated with white-supremacist groups that have similar ideals for the exclusion – or worse – of minorities from various facets of society. It is commonly associated with hate and the intolerance or exclusion of minorities across protected grounds, including sexual minorities.

To the contrary, the Pride flag, which can be represented in a number of different ways, but which always reflects in essence a rainbow, is born out of an intention to include persons historically marginalized in society. It represents support for, and recognition of, LGBTQ2SIA+ persons and has evolved over the years as society has evolved to be more inclusive and recognize the diversity of persons who are not cis-gendered and heterosexual.

We have considered the issue from the perspective of whether the comment made by Trustee Benoit is consistent with the Code of Conduct, and in particular, her obligation to:

- create a positive environment that is safe, harmonious, comfortable, inclusive and respectful;
- be respectful of other Trustees, the Director of Education, staff, students, all members of the Niagara Catholic community, as well as the public;
- respect and comply with all applicable federal, provincial and municipal laws (which, in our view includes the Ontario Human Rights Code);
- respect and treat others fairly, regardless of, for example, race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, gender, sexual orientation, age, or disability;
- carry out her responsibilities in a manner that assists the board in fulfilling its duties under the *Education Act*... including but not limited to the board’s duties under section 169.1;<sup>33</sup> and

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<sup>33</sup> We note that section 169.1(1) of the *Education Act*, sets out the following:

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

(a) promote student achievement and well-being;



- maintain focus on student achievement and well-being.

As concluded above, Trustee Benoit does not deny making the comment about the Nazi flag, and despite her interpretation to the contrary, we conclude that her comment did, in fact, draw a comparison between the Pride flag and the Nazi flag. In conflating the controversy allegedly associated with the flying of the Pride flag – a symbol of inclusion and support – with the controversy associated with the Nazi flag – a symbol of hate and violence – Trustee Benoit, as a member of the governing body of the Board, did not demonstrate support, inclusion, or an understanding for the experience of the historically marginalized place students from the LGBTQ2SIA+ community (and their families) face in society and within the Catholic school system more specifically. While there is no definition of discrimination in the Code of Conduct or the Ontario *Human Rights Code*, *prima facie* discrimination will be found where:

1. A person or group of people have a characteristic protected from discrimination;
2. They have experienced an adverse impact; and
3. The protected characteristic was a factor in the adverse impact.<sup>34</sup>

The analogy made by Trustee Benoit is offensive on its face and is directed toward persons based on their sexual orientation or gender expression, characteristics explicitly protected from discrimination under the Code of Conduct as well as the Ontario *Human Rights Code*. Trustee Benoit's comment is discriminatory.

In considering this issue, we have also considered the jurisprudence arising out of the *Human Rights Code*, and in particular, its prohibition on the creation of a poisoned environment.

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- (a.1) 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;
  - (a.2) 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,
    - (i) promote the goals referred to in clauses (a) to (c), and
    - (ii) encourage pupils to pursue 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, in meeting,
    - (i) his or her duties under this Act or any policy, guideline or regulation made under this Act, including duties under the plan referred to in clause (f), and
    - (ii) any other duties assigned by the board.

<sup>34</sup> *Moore v British Columbia (Education)*, 2012 SCC 61 cited in *RB v Keewatin-Patricia District School Board*, 2013 HRTO 1436 at paragraph 204.



While a poisoned environment most often arises in the context of employment, the Divisional Court in *City of Toronto v Josephs*, 2018 ONSC 67 ("*Josephs*") made clear that it is possible in a service context to have one egregious incident or a pattern of conduct sufficient for a finding of a poisoned environment.<sup>35</sup> Consistent with human rights legislation, the creation of a poisoned environment can be reflected in comments or conduct, that is likely to offend, hurt, or humiliate a person who differs from others on the basis of a prohibited ground – here sexual orientation and gender expression. This conduct has been described as “an abuse of authority” that “constitutes a profound affront to the dignity of the [persons] forced to endure it.”<sup>36</sup>

While making a specific finding of a poisoned environment is beyond the scope of this investigation, in our view analogizing the symbol of Pride with the Nazi symbol is an affront to the dignity of all persons the Pride flag represents and when communicated by a person with governing authority, it does negatively impact students and/or staff inclusion in the environment in which these persons are supposed to work and learn.

The Code of Conduct requires that Trustees “must... respect and treat others fairly, regardless of, for example, ... gender, sexual orientation...”. It also requires Trustees to comply with the *Education Act* and specifically to carry out their responsibilities in a manner that assists the board in fulfilling its duties under section 169.1, which provides, among other things that:

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

(a) promote student achievement and well-being;

(a.1) 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;

(a.2) promote the prevention of bullying;

Having concluded that Trustee Benoit’s comment was discriminatory, we conclude that it violates the Trustee Code of Conduct in that it did not reflect respect for or promote a positive school climate that is inclusive of LGBTQ2SIA+ students and staff of the Niagara Catholic District School Board. It similarly violates the Trustee’s obligation to promote student well-being.

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<sup>35</sup> see *Josephs*, at paragraph 29.

<sup>36</sup> See *Dhanjal v Air Canada*, (1996), 28 CHRR D/367 at p. 49 (CHRT) quoting *Janzen v Platy Enterprises Ltd* [1989], 1 SCR 1252, 1989 CanLII 97 (SCC).

I pause here to note that Trustee Turner acknowledged that there is a point at which the support for the LGBTQ2SIA+ could conflict with the Catholic teachings. While not explicitly stated, it is apparent that Trustee Benoit views the flying of the Pride flag as inconsistent with Catholic education.

It is not a part of this investigation to consider or determine whether supporting LGBTQ2SIA+ persons or the flying of the Pride flag is consistent with the teachings of the Catholic Church. I note, however, that courts have concluded that there is no unfettered authority under section 93 of the *Constitution Act, 1867*, for Catholic School Boards to do “whatever they like on any matter” even if Catholic teachings are implicated.<sup>37</sup>

In the present case it is of note that the Code of Conduct contextualizes the responsibility of Trustees to provide the best possible Catholic education “within the duties prescribed in the *Education Act*, its Regulations, and other applicable legislation...”. Further, on its face the Code of Conduct requires trustees to treat students with respect regardless of their sexual orientation and gender expression, consistent with the language of section 169.1 of the *Education Act* and section 1 of the *Human Rights Code*. Trustee Benoit’s comments violated this responsibility, and in coming to that conclusion it is not necessary for us to address the tension, if any, between the Catholic teachings and the Board’s decisions when it comes to supporting the LGBTQ2SIA+ community.

**B. MISREPRESENTING THE BOARD PROCESS, ENCOURAGING PEOPLE TO REMOVE THEIR KIDS FROM THE CATHOLIC SCHOOL BOARD & SPEAKING ON BEHALF OF THE BOARD**

***a. Trustee Benoit misrepresented the Board’s Process on May 23, 2023***

Trustee Turner alleged that when she made comments on the steps, Trustee Benoit provided wrong information to the people present. In particular, she did not accurately explain the Board’s process and why the motion to vote on her Policy had been deferred to the next meeting. Moreover, Trustee Turner alleges that Trustee Benoit improperly described the Board’s process during the May 23, 2023, meeting as Trustee Benoit and/or her supporters “being railroaded” by the rest of the Trustees who did not agree to vote on the Policy without more time to consider it. According to Trustee Turner the Board’s unwillingness to discuss the Policy was not only consistent with its process set out in the Bylaws but also necessary to afford Trustees the necessary time to process the Policy and discuss it at the next meeting.

Trustee Benoit said that when making comments on the steps outside the Board office, the only thing she said regarding what happened at the meeting on May 23, 2023 was that that Policy Request “was on the agenda for May 23, 2023, but ... that it would be for [the Board

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<sup>37</sup> *Hall (Litigation guardian of) v. Powers*, 2002 CanLII 49475 (ON SC) at paragraph 41.

meeting on] June 20, 2023 to be discussed.”<sup>38</sup> In response to our questions about her comments concerning the Board’s process Trustee Benoit stated that she could not recall much but she acknowledged that she did not explain that the outcome of the meeting was as a result of the Board following its process as set out in the Bylaws.<sup>39</sup> Her evidence is that she addressed the people saying something to the effect that “I just thought it [the Policy] was going to be something to present this evening but that’s not the case, but I need your support so please come out on June 20.” She denied that she said or intimated that she was “railroaded” during the meeting on May 23, 2023, but could not remember if she made any comments about the Board’s process that evening, She said that she was “overwhelmed, and ... trying to do my best but at the same time I was sensing the emotion of people who wanted it to be discussed before June 1 and just encouraging them to come out on June 20.”<sup>40</sup>

As noted above, Trustee Benoit confirmed during our interview that she delivered the Policy Request to Chair Danny DiLorenzo on April 25, 2023 *after* the April 2023 Board meeting.<sup>41</sup> She explained that because her request was delivered a month in advance, she thought that it would be presented at the May Board meeting.<sup>42</sup>

During our interview with Trustee Benoit, we reviewed the Board’s Bylaws as they pertain to the consideration of motions. In particular, we looked at Bylaw 21(c), which provides that “[a] Notice of Motion shall not be discussed or seconded at the meeting at which it is initially presented.” She acknowledged that she was unaware of how the Bylaws applied to her request to have the Board consider the Policy at the May 23, 2023 meeting and said during the course of our interview that “I agree that this [section 21(c) of the Bylaw] was something I didn’t see and was a misunderstanding or misstep in my case in terms of understanding how the procedure goes.”<sup>43</sup> According to Trustee Benoit, when she found out that the Policy would be considered at the next Board meeting in June 2023, she asked to suspend the Bylaws temporarily to consider the Policy sooner, which request was rejected by the majority of Trustees. Trustee Benoit’s evidence during our interview was that she understood their rejection to be “because you want to be able to digest things.”<sup>44</sup>

Both Trustee Huibers and Trustee Burkholder provided evidence that they were outside when Trustee Benoit was making comments to a group of people. Both provided evidence that Trustee Benoit agreed with a comment that the Board “railroaded” Trustee Benoit and

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<sup>38</sup> See Appendix A3: Trustee Benoit Statement, page 8

<sup>39</sup> See Appendix A3: Trustee Benoit Statement, page 9


<sup>40</sup> See Appendix A3: Trustee Benoit Statement, page 9

<sup>41</sup> See Appendix F: Email from Trustee Natalia Benoit to Chair DiLorenzo dated April 25, 2023, with Policy Enclosed

<sup>42</sup> See Appendix A3: Trustee Benoit Statement, page 3

<sup>43</sup> See Appendix A3: Trustee Benoit Statement, page 3

<sup>44</sup> See Appendix A3: Trustee Benoit Statement, page 4



the Policy at the meeting.<sup>45</sup> In particular, according to both Trustees, there was someone in the crowd asking questions and making comments to Trustee Benoit, including a comment to the effect that “they were here to railroad you”<sup>46</sup> referring to the Board’s conduct that evening. Trustees Huibers and Burkholder provided evidence that Trustee Benoit agreed with the comment. Director Cipriano did not recall hearing any specific comments made by Trustee Benoit but did go outside out of a concern that Trustee Benoit was making comments in her capacity as a representative of the Board. More is said about that below.

Having considered the fulsome evidence, we conclude that on a balance of probabilities Trustee Benoit did speak to a crowd outside the Board office and did misrepresent what happened at the Board meeting on May 23, 2023.

In coming to this conclusion, we note that Trustee Benoit initially said she did not say “railroaded” and then said that she did not remember saying “railroaded” to describe the events that evening.

On balance, I prefer the evidence of the three other Trustees, two of whom were there. First and foremost, Trustee Turner was cautious in his interview not to exaggerate or overstate Trustee Benoit’s behaviour. He was thoughtful and not only circumspect in his criticism, but conscientious about providing context for *why* he had concerns. With that in mind, I find it more likely than not, that when he reviewed the YouTube video, he heard Trustee Benoit suggest that the Board “railroaded” her and/or the Policy that evening. This is also corroborated by Trustees Huibers and Burkholder who independently provided evidence that they heard Trustee Benoit affirm or endorse a comment from the crowd that they had been railroaded by the Board that evening. We do not find the distinction of whether Trustee Benoit explicitly said the phrase or agreed with the comment from the crowd to be of any meaningful distinction. Of import is that Trustee Benoit did not correct the notion that the Board’s decision that evening to follow its process and consider the Policy at the June meeting, was intentionally obstructive or inappropriate. Trustee Benoit herself acknowledges that she did *not* explain that the Board’s decision to consider the Policy in June ought to have been expected as it was entirely consistent with its Bylaws. This is further consistent with the uncontroverted evidence that she was not aware of the Board’s Bylaws and how they applied to her request to consider the Policy after its submission to Chair DiLorenzo on April 25, 2023.

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<sup>45</sup> See Appendix A5: Trustee Huibers Statement, page 8 and Appendix A6: Trustee Burkholder Statement, page 4

<sup>46</sup> See Appendix A6: Trustee Burkholder Statement, page 4

***b. Trustee Benoit did Support Parents Removing their Children from the Catholic Church***

Trustee Turner's evidence is that he recalls, both during the meeting and on the YouTube video of Trustee Benoit's comments, hearing parents say something to the effect of "we're taking the kids out of this school board." Trustee Turner's evidence is that on the video, Trustee Benoit replied affirmatively, saying something like "ya, do that."<sup>47</sup>

Trustee Benoit does not deny that she responded supportively in response to a parent who asked "should I be taking my child out of the school... I don't believe in what they are doing...".<sup>48</sup> It is clear from the context, that what the Board was doing related – at least in part - to its decision to fly the Pride flag. In replying "ya, ya" Trustee Benoit explained that she was supporting the parent's right to take care that suitable Catholic education is provided to their child. Trustee Benoit's evidence is that:

It wasn't to take away what our [School] Board is but to confirm her [the parent's] rights under the teachings of the Catholic Church. Of course, I'm supportive of every student but this was just a question seeking an affirmation that she [the parent] would be doing the right thing if she took her student out. This is her right as a parent and consistent with the teachings in the Catholic Church. I was just affirming her right of choice. I was not saying that I'm not supportive of or taking into account every student, even LGBTQ+ students. If I had a question about supporting, all students I would have supported all students. In that case, I was supporting her in affirming her beliefs in being a Catholic.

Trustees Huibers and Burkholder also provided evidence that Trustee Benoit was saying to pull kids from the school Board.<sup>49</sup> As noted above, Director Cipriano did not recall any of the specific comments made by Trustee Benoit while he was outside with her.

While Trustee Benoit did not concede any impropriety in her behaviour, she acknowledged that she replied "ya, ya" in response to a question from a parent as to whether they should remove children from the Board. While the specific language used by Trustee Benoit cannot be determined, we conclude that Trustee Benoit was supportive of the members of the crowd suggesting they should remove their children from the Board due to the Board's support of flying the Pride flag.

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<sup>47</sup> See Appendix A2: Trustee Turner Statement, page 9

<sup>48</sup> See Appendix A3: Trustee Benoit Statement, page 9

<sup>49</sup> See Appendix A5: Trustee Huibers Statement, page 7 and Appendix A6: Trustee Burkholder Statement, page 7

***c. Trustee Benoit was Speaking About Board Decisions in her Capacity as Trustee of the Niagara Catholic District School Board Without Authorization***

Trustee Turner stated that Trustee Benoit should not have been making comments about the Board's process or decision, as that is the role of the Chairperson or the Director of Education. Trustee Turner emphasized that the Board is supposed to be unified in its message, meaning that "Trustees are supposed to work together regardless of how they vote and if you vote against [a matter] you are still part of an entity...".<sup>50</sup> Trustee Turner's evidence is that Trustee Benoit spoke out in a public setting and that she "supported the group [of people outside the Board office] in every way when speaking to [them], she was giving them what they wanted to hear and maybe what she [personally] believed, but it was inappropriate."<sup>51</sup>

Trustee Benoit denied that she was speaking for the Board, reiterating that she was just telling the people outside the Board's office to come out on June 20 and responding, on behalf of herself, when asked questions from parents. Trustee Benoit acknowledged that at one point Director Cipriano and Trustees Burkholder and Huibers asked to speak with her but said that she did not "know what they wanted to talk to me about, not really...".<sup>52</sup> She explained that she was not comfortable going with them on her own, so she did not.

Trustee Huibers said that when he walked out and saw Trustee Benoit address the crowd, she was "holding court talking about things we [Trustees] are not allowed to... about things in her role as a trustee...".<sup>53</sup> Trustee Huibers said that as trustees, there are two options if you disagree with a decision that has been made by the Board "- say nothing or resign." Trustee Benoit - after a decision of the majority of the Board had been made - "was speaking as the elected official in her capacity as a Trustee of the School Board... [and making comments] around *not* supporting the decisions the Board has made in the past and [she was suggesting that] by not allowing this to happen - her motion - we [the other Trustees] were somehow not fulfilling our duties."<sup>54</sup>

Trustee Burkholder described Trustee Benoit's conduct as "grandstanding" and addressing a crowd in a manner that turned the conversation "into an us against them and [Trustee

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<sup>50</sup> See Appendix A2: Trustee Turner Statement, page 9

<sup>51</sup> See Appendix A2: Trustee Turner Statement, page 9

<sup>52</sup> See Appendix A3: Trustee Benoit Statement, page 12

<sup>53</sup> See Appendix A5: Trustee Huibers Statement, page 6

<sup>54</sup> See Appendix A5: Trustee Huibers Statement, page 6

Benoit] was saying the Board wasn't complying with a motion she felt she had put forward."<sup>55</sup>

Director Cipriano explained that he did not hear Trustee Benoit speak outside until he went out to speak with her about making comments on behalf of the Board. His evidence is that he may have heard her speak after he went outside but did not listen as a lot of people were yelling and his attention was divided.<sup>56</sup>

As noted above, we do not have the video recording of Trustee Benoit's comments to the crowd outside of the Board's office. The YouTube video referred to us by Trustee Burkholder does show Director Cipriano, with Trustees Burkholder and Huibers nearby, trying to speak to Trustee Benoit and records him advising her that the Bylaws only allow for the Chair of the Board to speak on its behalf. He can be heard saying, in part, "Natalia, I just want to be clear that our Bylaws only allow the Chair to speak on behalf of the Board. I just wanted to let you know that."<sup>57</sup>

Having considered the fulsome evidence, we conclude that a reasonable observer would not have considered Trustee Benoit to be speaking as an individual, but would have understood her to be commenting on the Board's decisions that evening in her capacity as a Trustee and representative of the Board.

Trustee Benoit acknowledges that she exited the Board's office, after a Board meeting, as a Trustee that members of the public were aware had put forward the Policy to purportedly be considered that evening. In that capacity she addressed the crowd to make comments about the Board's decision not to consider the Policy that evening, and its decision to discuss the Policy at the June meeting. We conclude that in addressing the Board's decision with the crowd outside the Board's office following the Board meeting, she was acting in her capacity as Trustee Natalia Benoit, a representative of the Niagara Catholic District School Board.

#### ***d. Trustee Benoit Violated the Code of Conduct***

In considering whether Trustee Benoit's behaviour complied with the Code of Conduct, we have considered that Trustees have the following responsibilities:

- To carry out the Board's responsibilities in a manner that assists the board in fulfilling its duties under the *Education Act*, the regulations and the guidelines issued under this *Education Act*, including but not limited to the board's duties under section 169.1.

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<sup>55</sup> See Appendix A6: Trustee Burkholder Statement, page 7

<sup>56</sup> See Appendix A4: Director Cipriano Statement, page 5

<sup>57</sup> See <https://www.youtube.com/watch?v=9kMT33kC IE> at around 30 seconds into the video.



- To uphold the implementation of any Board resolution after it is passed by the Board.
- To avoid expressing comments, disagreement or speculation on the motives of a Trustee, a group of Trustees, or Board staff.
- To ensure that all information they communicate in the course of their duties is accurate and complete.
- To understand their role as a corporate body and the expectation that they may deliberate with many voices but must act as one.
- To accept that authority rests with the Board and that they have no individual authority other than that delegated by the Board.
- To refrain from speaking on behalf of the Board unless authorized to do so by the Board. The only official spokespersons for the Board are the Chair of the Board and the Director of Education.

Section 169.1 of the *Education Act* sets out a series of responsibilities a school board “shall” fulfill, which support a safe, inclusive, and effective learning environment for all students. For example, the *Education Act* requires school boards to promote student achievement and well-being, to promote a positive school climate that is inclusive and accepting of all pupils, to promote the prevention of bullying, to ensure effective stewardship of the board’s resources and to deliver effective and appropriate education programs.<sup>58</sup> The Board’s Code of Conduct requires each Trustee to work in support of these legislated responsibilities and makes clear that the support and promotion of Catholic education are to be fulfilled *within* the trustees’ duties under the *Education Act*.

Having concluded that Trustee Benoit spoke outside the Board’s office in her official capacity as a Trustee, we now consider whether her comments violated her duties under the Code of Conduct.


Trustee Benoit acknowledged that she did not explain the Board’s decision on May 23, 2023 as being consistent with its process under the Bylaws. We also find that she at minimum agreed with the characterization of the Board’s decision as having “railroaded” Trustee Benoit and her Policy. In failing to properly explain the propriety of the Board’s decision, and in affirming or supporting the notion that the Board acted improperly Trustee Benoit violated her duties:

- To avoid expressing comments, disagreement or speculation on the motives of a Trustee, a group of Trustees, or Board staff; and
- To ensure that all information they communicate in the course of their duties is accurate and complete.

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<sup>58</sup> see sections 169.1(1)(a)-(c).





Trustee Benoit did not accurately describe the Board's process which resulted in its decision to vote on the Policy at its June 2023 meeting. Trustee Benoit similarly did not explain that *had* it voted on the Policy at the May 23, 2023 meeting, the Board would have had to suspend the application of its Bylaws. Moreover, in failing supporting the notion that the Board acted improperly on May 23, 2023, Trustee Benoit clearly expressed her disagreement with the Board's decision to discuss her Policy at the June 2023 meeting.

Trustee Benoit encouraged a parent to remove their child from the Board, and in doing so did not comply with her responsibilities under the *Education Act*. In particular, she was not working towards building and promoting an inclusive and effective learning environment for all students. Rather, she was signalling to - if not agreeing with - the persons in front of her that the Board was not a suitable place for their children. In addressing a parent in her capacity as a Trustee, we consider whether Trustee Benoit violated her obligations under the Code of Conduct to support the Board, its learning environment, and its programs, and we conclude that she did.

Having concluded that, in addressing the Board's decision with the crowd outside the Board's office following the Board meeting, she was acting in her capacity as Trustee Natalia Benoit, a representative of the Niagara Catholic District School Board, we conclude that Trustee Benoit violated the following responsibilities of a trustee:

- To understand their role as a corporate body and the expectation that they may deliberate with many voices but must act as one.
- To accept that authority rests with the Board and that they have no individual authority other than that delegated by the Board.
- To refrain from speaking on behalf of the Board unless authorized to do so by the Board. The only official spokespersons for the Board are the Chair of the Board and the Director of Education.

Trustee Benoit did not seek, and did not receive, and authorization to address the crowd outside the Board office on May 23, 2023. We therefore conclude that Trustee Benoit violated the Code of Conduct when she spoke about the Board's deliberations, expressed her disagreement with the decision of the Board vis-à-vis her Policy, and failed to communicate accurate and complete information about the Board's process without authorization to do so.

## C. CREATING A CHAOTIC ATMOSPHERE THAT COULD PUT PEOPLE AT RISK

### a. *Trustee Benoit did not Create Chaos*

Trustee Turner's evidence regarding the creation of chaos relates largely to events that post-date the Complaint, delivered on June 6, 2023. Specifically, he highlights the crowds present at the special meeting of the Board on June 7, 2023, and at the Board meeting on June 20, 2023. We have limited our investigation to the chaos purportedly caused as of the date of Trustee Turner's Complaint. In that regard, Trustee Turner's evidence is that the meeting on May 23, 2023, was attended by a large group of people vested in the Policy being adopted to prevent the Pride flag from being flown. Trustee Turner's evidence is that people attending the Board meeting on May 23, 2023, were organized and not respectful. He said that he – and others – received spiteful comments to the effect that “you're going to Hell,” “your life is a joke,” “quit your job,” and “you shouldn't be a trustee.” According to Trustee Turner, members of the public were frustrated that evening, but he could not recall any of them acting out in a manner that led to them being asked to leave the meeting.<sup>59</sup>

Trustee Benoit denied that the atmosphere was chaotic at all. She acknowledged that people were yelling “so it required you to raise your voice” but she did not “recall anyone saying anything out of line.... it wasn't pitchforks and stuff like that, it was people coming to pray in peace to that we don't have these symbols coming in June.”<sup>60</sup> She said that she could sense the emotion of people who wanted the Policy to be discussed before June 1 and thought there was 10-15 people around her at the most. According to Trustee Benoit they were expressing disappointment at the Board but did not make anyone feel threatened.<sup>61</sup> Trustee Benoit's evidence was that Director Cipriano advised her that there were people outside and that she could “go talk to them if [she] want[ed]...”<sup>62</sup>

Trustees Huibers and Burkholder agreed that the Board meeting was well attended on May 23, 2023, which was unusual unless people are making a presentation or getting an award.

Trustee Huibers said the people in attendance were “very much against flying the Pride flag” and that they held up signs suggesting that “this was grooming youth, pedophiles, and some really unpleasant things.” According to Trustee Huibers, “there was some disorderly conduct that wouldn't necessarily match what you would assume in a civil school board meeting – some comments and outbursts.”<sup>63</sup> Outside, Trustee Huibers thought there were maybe 50-100 people present, with 30-40 in Trustee Benoit's immediate vicinity. Trustee Huibers stated that when Director Cipriano arrived, he “started to get shouted down...” so they decided to retreat because they thought “[t]he best course of action was to stop fanning the

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<sup>59</sup> See Appendix A2: Trustee Turner Statement, page 4

<sup>60</sup> See Appendix A3: Trustee Benoit Statement, page 12

<sup>61</sup> See Appendix A3: Trustee Benoit Statement, pages 9 and 12

<sup>62</sup> See Appendix A3: Trustee Benoit Statement, page 11

<sup>63</sup> See Appendix A5: Trustee Huibers Statement, page 3

fire and we were the tinder... [the crowd] continued to do the chanting, ranting and carrying on etc.”<sup>64</sup>

According to Trustee Burkholder – who chaired the meeting on May 23, 2023 - it was “a fairly full gallery and people were heckling in some sense” though she could not remember a specific word.<sup>65</sup> She did not remember anyone being violent or swearing but described them as “animated.” During the meeting, Trustee Burkholder’s evidence is that Trustee Benoit did not say anything to contribute to the emotion – it was the people in the gallery. Trustee Burkholder said that you could “feel the tension... everything felt heightened, everyone seemed a bit more anxious” but she did not feel threatened. Once outside, Trustee Burkholder said there was a smaller crowd than in the gallery, “maybe 20 left and now they knew they had an audience so everyone had something to say.”<sup>66</sup> According to Trustee Burkholder, there were about 40-50 people in the gallery during the meeting. Trustee Burkholder described the crowd as more “agitated” outside than they were inside, saying “it felt like an us and them... they were clearly upset and it’s clear that they were shouting and they wanted answers.”<sup>67</sup> She declined to describe the crowd or their presence as chaotic but said there were emotions which were directed toward the Trustees and the Director.

Director Cipriano denied advising Trustee Benoit that there was a group of people outside she could speak with. According to Director Cipriano, there was a large group in the gallery during the meeting and “it is common sense that they were going to make their way outside [after the meeting] because that is where the parking lot is.”<sup>68</sup> Director Cipriano described the group as “not happy...and they were going to talk about it.”<sup>69</sup> Director Cipriano agreed that there were about 50 people in the gallery, a majority of whom did not go directly to their cars after the meeting. When Director Cipriano took Trustee Benoit aside to speak to her outside, he thought there may have been 6-10 people around her. Director Cipriano characterized the atmosphere as hostile, saying they had expressed their disappointment at the decision concerning the Policy during the Board meeting and many were shouting at him outside when he walked out.<sup>70</sup>

Director Cipriano’s account was largely consistent with Trustees Burkholder and Huibers. Trustee Huibers perceived there to be many more people in attendance but Director Cipriano’s description of about 8-10 being in Trustee Benoit’s vicinity by the time Director Cipriano came outside with the Trustees is corroborated by the YouTube video of that part

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<sup>64</sup> See Appendix A5: Trustee Huibers Statement, page 10

<sup>65</sup> See Appendix A6: Trustee Burkholder Statement, page 3


<sup>66</sup> See Appendix A6: Trustee Burkholder Statement, page 5

<sup>67</sup> See Appendix A6: Trustee Burkholder Statement, page 6

<sup>68</sup> See Appendix A4: Director Cipriano Statement, page 3

<sup>69</sup> See Appendix A4: Director Cipriano Statement, page 3

<sup>70</sup> Appendix K: Email thread between Director Camilo Cipriano and Cenobar Parker re Follow-Up Question dated September 14, 2023



of the incident.<sup>71</sup> In addition to the voice of the individual taking the recording, you can hear Trustee Benoit, and her an individual named Jason who we believe to be Trustee Benoit's husband, and you can see a few others around them though the recording does not directly pan the audience to know if that is the extent of the crowd at the time. Moreover, voices are elevated, shouting, and it is clear that the crowd was disappointed in the Board's decision and were expressing as much to Director Cipriano primarily, but Trustee Burkholder as well. When Director Cipriano asks for people to leave, the recording suggests that they did.

Having considered the evidence together, including the video recording of the interaction between Director Cipriano and Trustee Benoit on the steps outside of the Board's office, we conclude that on a balance of probabilities Trustee Benoit did not – as of June 6, 2023 - create an atmosphere that was chaotic or could have put people at risk.

Everyone agreed that the crowd of people were disappointed and expressing the same by shouting and in some cases making negative comments to the Trustees and Director Cipriano. However, no one suggested that the crowd was threatening on May 23, 2023. Trustee Burkholder explicitly declined to describe the crowd as chaotic, and neither Trustee Huibers nor Director Cipriano described the situation in a manner that suggested they feared for themselves or others during the incidents. The people were emotional, however there is no evidence that they were out of control or that there was an imminent fear that they would get out of control. I say this with caution understanding that all the witnesses interviewed expressed a belief that the crowd *could have* escalated to that point and we understand that the tension did escalate leading to and during the June 20, 2023, meeting. On the evidence we do have of the atmosphere on May 23, 2023, we cannot conclude on a balance of probabilities that Trustee Benoit created a chaotic atmosphere at or after the Board meeting. Moreover, when it seems apparent that there were no more productive conversations to have that evening, Director Cipriano asked the crowd to disperse, and they did.

With the above in mind, we cannot conclude that Trustee Benoit's words or actions on May 23, 2023, created a chaotic atmosphere or that she knew or ought to have known that her words or actions put people at risk that evening. Given our conclusion in respect of this allegation, we do not consider whether creating a chaotic atmosphere or one which could have possibly put some individuals at risk would violate the Code of Conduct.

## **IX. CONCLUSION**

With the foregoing in mind, we conclude that Trustee Benoit did violate the Code of Conduct when she:

- Compared the flying of the Pride flag to flying the Nazi flag after the Board meeting on May 23, 2023;

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<sup>71</sup> <https://youtu.be/9kMT33kC IE>.

- Mischaracterized the events at the Board meeting on May 23, 2023, failed to acknowledge that the Board's decision was consistent with its process as set out in the Bylaws and implied that the Board acted improperly in waiting to vote on the Policy until June 2023;
- Supported a parent's comment that children should be removed from the Niagara Catholic District School Board; and
- Spoke publicly in a manner that could have been understood as speaking on behalf of the Board.

We have declined to find, on a balance of probabilities, that Trustee Benoit created a chaotic atmosphere or one that could have possibly put some individuals at risk at or immediately after the Board meeting, on May 23, 2023.

Thank you again for entrusting us with this important investigation.

Yours truly,



**Cenobar Parker**

Parker Sim LLP