

School District No. 61 (Greater Victoria)
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Chair: Ryan Painter Vice-Chair: Tom Ferris

Trustees: Nicole Duncan, Angie Hentze, Elaine Leonard,
Diane McNally, Rob Paynter, Jordan Watters, Ann Whiteaker

February 23, 2022

Open Letter to Rightsholders and Stakeholders

RE: Censure and Suspension of Two Trustees

The purpose of this letter is to provide further information regarding the basis on which the Board acted to censure and suspend two school trustees from attendance and participation in public and private meetings of the Board.

The Board has the authority and responsibility to operate in accordance with the law and its policies. It has an obligation under the *Workers Compensation Act* to protect employees from bullying and harassing behavior. Under Board Bylaw 9221, the Board has an obligation to provide adequate safeguards for the Superintendent and other personnel so that they may perform their proper functions on a professional basis.

While individual school trustees are elected, each trustee has a fiduciary responsibility to ensure that the school board functions and to act in its best interests. The authority of the school board is derived from its ability to act as a whole.

Canadian courts have recognized that public bodies have an inherent power to regulate misconduct involving interactions between elected officials and staff. In *Barnett v. Cariboo Regional District* (bccourts.ca), the court found as follows:

I take no issue with the submission that conduct issues between a Director and a regional district's staff could potentially impede a Board's purpose to provide good government. As such, there must be a process in which such conduct issues can be addressed. A review of the broad statutory scheme does not suggest that the jurisdiction to address these issues has been removed from a Board such as the respondent in this case. Rather, a broad and purposive approach suggests the opposite.

[28] Thus, I do not accept that the Regional District "has no jurisdiction" to govern the (mis)conduct of Directors. The weight of the statutory and judicial authority suggests that a Regional Board has the ability to determine its own internal procedures, which surely must include the ability to control misconduct by a Director. (2009 BCSC 471).

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The Board is committed to transparency in its decision making processes, and acknowledges the significant public interest in its decision. The Board has received numerous FIPPA requests and will respond to these requests in due course. To support greater transparency, the Board will seek the consent of the trustees involved to release the records related to this matter, and will release as much information as possible, consistent with our privacy obligations under the FIPPA, which must be balanced against the public interest in full disclosure.

The purpose of this letter is to provide some additional context for the Board's decision and its decision making processes, in advance of a more formal release of records under FIPPA. The Board is able to provide this description of the context of its decision because so much of the conduct in issue took place in public, during the performance of public duties or has been reported publicly in compliance with the provisions of the *School Act*.

The Board did not undertake disciplinary measures against Trustees McNally and Paynter lightly. The suspensions follow years of attempts to work with all trustees to ensure that the duties of the Board are exercised in a respectful and dignified manner, consistent with our values and our obligations under the *Workers Compensation Act*, and *Freedom of Information and Protection of Privacy Act*. The fundamental principles governing the Board's actions were as follows:

- The Board has an obligation under the *Workers Compensation Act* to take all reasonable steps to prevent workplace bullying and harassment.
- The Board does not publicly humiliate or embarrass its employees. In the event a trustee has concerns regarding the actions or statements of senior staff, they have every right to raise these concerns, but must do so privately, in a respectful and dignified manner.
- The Board acts as a whole. Individual trustees have fiduciary obligations not to undermine the Board or expose it to liability by making unauthorized and potentially consequential statements about employees which do not reflect the views of the majority.

The actions taken by the Board included careful consideration of its legal obligations, and were undertaken in the context of a prior history of bullying and harassment concerns in connection with trustee behavior.

The issue of trustee/staff interactions has been present since shortly after the last election in late 2018. Trustees have spent considerable time working with external facilitators to achieve a shared understanding of the obligations of trustees, the relationship between trustees, and the relationship between trustee and staff. These measures include:

Name	Date	Topic
Megan Dykeman	January, 2019	Good Governance, Robert's Rules of Order, Effective Meetings, Role of Chair
Lee Southern	March, 2019	Role of the Trustee, Governance
Julie MacRae	April, 2019	Strategic Plan, Role of Trustee, Governance

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Name	Date	Topic
Paul Godin	November, 2019	Mediation
Mike McKay	October, 2020	Role of Trustee and Superintendent (from recommendations in Superintendent's evaluation)
Teresa Rezansoff	March, 2021	Governance, Role of Trustee, Board Meeting/Committee Structure
Raj Dhasi	April, 2021	Coaching & Trustee Conduct

In the Spring of 2019, an investigation was undertaken by experienced and independent legal counsel who concluded that certain trustees had:

... engaged in a pattern of conduct, including persistent and irrelevant questioning, repeated requests for information that were not forwarded through proper channels, blaming staff for “mistakes”, that demonstrated a lack of respect for staff, and a failure to support or protect Staff. Staff carry out the will of the Board and are answerable to the Board for the information they provide and the recommendations they make. The Board is entitled to expect high quality work from the Staff and to question them about the work produced. If the Board is disappointed in the work or finds it lacking there are many appropriate ways in which the Board can remedy the situation. It is not acceptable to attempt to “expose” the failings of the District by publicly humiliating Staff.

Following this investigation, all trustees were fully aware of their obligation to refrain from the public humiliation of our staff. Indeed, following that investigation the Board issued a public apology to affected members of staff who were publicly criticized by trustees on social media and other public forums.

On the eve of an informal meeting of trustees called for the purpose of addressing trustee/staff relations, a copy of the above-referenced investigation report was released to a member of the media. On March 9, 2020, the Board reported that:

VICTORIA, BC – On March 2, 2020, the Board of Education for School District No. 61 (Greater Victoria) voted to formally censure Trustee Diane McNally for her unauthorized disclosure of a confidential report, contrary to Board Policy #6215 (Trustee Code of Conduct), and Regulation #4304 (Bullying and Harassment).

In addition, Trustee McNally has been suspended from participation in in-camera meetings for a period of one (1) year, with subsequent reinstatement conditional on receipt of a satisfactory written commitment from Trustee McNally to respect the policies of the Board.

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The Board takes seriously the need to ensure a respectful work environment for all staff and students. As this matter involves confidential personnel matters, no further comment will be made beyond this statement.

Again, in May of 2021, concerns were raised regarding the continued use of public forums by trustees (including tweets by Trustees McNally and Paynter) to disparage employees, including the Superintendent. The Superintendent's employment was ended by mutual agreement, in part as a result of these comments, and a letter of apology to her was read into the public record:

On behalf of the Board, I am writing to formally apologize for the circumstances which have led to your departure from the District. The Board deeply regrets that statements impugning your competence and integrity have been made publicly in social media posts, and in public and private meetings of the Board. These comments were unfair and were not reflective of the views of the Board. You have performed your duties faithfully, and with integrity.

As an employer, our goal is to ensure that all Board employees are treated with dignity and respect. We regret that this has not been your experience, and apologize for the impact this has had on you professionally and personally. I would like to thank you for your significant contributions to the District, including its students, employees, and the school community as a whole.

Despite this history, again, in July of 2021, a complaint of bullying and harassment was brought forward by the Secretary Treasurer arising, again, from disparaging social media posts made by Trustees Paynter and McNally. This was followed shortly by another complaint from a member of staff. Consistent with its obligation to investigate complaints of bullying and harassment, an experienced, external investigator, Marcia McNeil was retained to investigate these allegations and report to the Board.

Ms. McNeil's findings included this statement:

Use of Social Media

My conclusions, set out below, reflect that the majority of inappropriate comments occurred not in public meetings, but on Twitter. This conclusion is perhaps consistent with the observation that discourse is generally more respectful when the person being criticized is present and their reaction to the comment or criticism is observable. In each of the instances where I conclude that a comment or criticism was made contrary to the Board's by-laws, the individual making the criticism had not taken an opportunity to address their concern with Ms. Morris directly and had not given Ms. Morris an opportunity to respond.

I find that the use of a social media platform to criticize Ms. Morris is even more concerning in the present circumstance as Ms. Morris is constrained from responding in the same forum and adding her own perspective to a conversation. I am aware that on one occasion she did communicate privately with the trustee who misstated information in a tweet but I am not aware of whether the trustee made any further effort to correct the earlier misstatement.

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It is alarming that public figures, who have a public platform to inform their constituents, would also use that platform as a "bully-pulpit" to shame and embarrass staff members including Ms. Morris who are unable to meaningfully respond.

...

Ms. McNeil concluded that both Trustees Paynter and McNally had engaged in bullying and harassing behaviors.

In dealing with these issues at the Board table, a fair process was followed. Trustees McNally and Paynter were provided with an un-redacted copy of Ms. McNeil's report and an opportunity to respond to it and to speak to the proposed sanction before the Board's decision was made.. All trustees, other than those in conflict (Trustees Paynter and McNally) were invited to attend and participate in these meetings. Two trustees attended a portion of one meeting, but declined to vote on the issue of sanctions, and did not attend other meetings on this topic.

Public denigration of Board staff undermines the functioning of the School District, breaches its obligations as an employer, and exposes the Board to potential severance costs arising from constructive dismissal, and damages for defamation. The Board is required to protect its staff and protect the School District from liability, including where this exposure arises from trustee breaches of their fiduciary duties. This action is particularly important in cases like the present, where impugned behaviors have continued despite multiple previous attempts to educate, correct and address the concerning conduct.

After considering all of the above, the Board determined that it had little choice other than to exercise its inherent powers to deprive the suspended trustees, to the fullest extent possible, of their ability to undermine the School District's reputation, expose it to liability, and deprive it of its ability to function in accordance with its legal obligations.

We fully understand and appreciate that this action has caused our community partners concern. The Board continues to operate with seven (7) active trustees, which exceeds its quorum of five (5) trustees. The Board deeply regrets that the necessity of the sanctions which have been imposed, but believes its actions are necessary to protect the integrity and proper functioning of the Board and its employees.

Sincerely,



Ryan Painter
Chair, Board of Education

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