

Board of Trustees
Toronto Catholic District School Board
80 Sheppard Avenue East
Toronto Ontario
M2N 6E8

Complaint Dispositions

The purpose of this report is to update the Board on the disposition of complaint investigations arising from matters being brought to the attention of the integrity commissioner.

‘Disposition’ is the term we use when a complaint has been resolved without there having been a finding of a breach of either the Trustees Code Of Conduct or the *Municipal Conflict Of Interest Act*. Most dispositions are made privately through a communication to the complaining party, with a courtesy summary being provided to the respondent trustee. Dispositions are also typically referred to in a general way in a periodic report to the Board.

This public report contains additional detail beyond what would typically be provided due to the public nature of the complaints addressed, the fact that a new Code of Conduct complaint protocol has not yet been adopted by the Board, and the opportunity to provide pro-active advice to prevent problematic occurrences in the future. In one case the Disposition is being made in order to allow us to move forward on an existing complaint tied to the same underlying circumstances.

Matters Covered by this Report:

The following matters are covered by this report:

1. Complaints regarding communications by Trustee Marcus De Domenico (email and social media). See Appendix 1
2. Compliance with Residency Requirements by Trustee Maria Rizzo. See Appendix 2
3. Disposition of a Trustee’s complaints for refusal to participate in an interview.

Preliminary Matters:

We would be remiss if we failed to note that the Board has only recently put in place a broadly-scoped integrity commissioner (previous ‘integrity commissioners’ having served only as complaint investigators), and that recommended revisions to the Code of Conduct and to the accompanying complaint protocol have not yet been formally adopted. In this interim period we have been guided by established practices for municipal integrity commissioners and have been transparent with the Board as to how complaint administration will be modified from past practice. The Board’s direction to report publicly on findings of Code breaches informs the public nature of this report.

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It should also be noted that the proper role of an integrity commissioner is to serve the public interest by not only making findings on allegations that the Trustees Code of Conduct or the *Municipal Conflict of Interest Act* have been breached; it is primarily to seek out solutions to ethical concerns through education, advice, and where necessary, the independent investigation of complaints. We maintain a solutions-oriented perspective on every element of our responsibilities.

Dispositions:

1. Disposition of Complaints regarding Trustee De Domenico

The Disposition set out at Appendix 1 to this report brings to a close the investigation of three complaints regarding Trustee Marcus De Domenico. Because of the thematic similarity to the three matters, the complaints were consolidated into one investigation.

Each of the three complainants alleged that Trustee De Domenico had engaged in communications with them that they found to be in tone and substance in breach of the Trustee's obligation to use appropriate language and professionalism in communications with constituents.

Two of the complaints had been previously dismissed by the Board as being 'without merit', however no basis for that determination was ever provided to the complainants. The Board's previous integrity commissioner subsequently declined to investigate the matters.

It merits note that the Board's now outdated 'Formal Complaints Process Chart' which guided past investigations, provided that in order for complaints to be found to be either 'frivolous', 'vexatious' or 'without merit':

- The formal rationale for dismissing the complaint is to be recorded; and
- The Chair of the Board will advise the complainant of the outcome of the Board's review and reasons

In the course of our review of the matters we were unable to determine the rationale for the Board's dismissal of the complaints as being without merit.

With the Board's *reconsideration* of the disposition of a complaint involving Trustee Del Grande the two complainants sought to have their complaint re-opened on a similar basis. Noting that in the Del Grande matter there was not cause to reopen the underlying investigation, we exercised our discretion and undertook to review the two previous complaints on a partially re-opened basis because the facts alleged aligned with a third complaint.

As noted in the Disposition, though we did find some of the communications complained of to have fallen short of the Trustee's standard of behaviour, his acknowledgement of the

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transgressions and his willingness to course correct led us to conclude that no sanctions ought to be recommended to be imposed.

Our conclusion, in part, was informed by the absence of guidance for Trustees in their use of social media, particularly when blocking constituents from discussions which take place on open platforms. We recommend that the Board consider the adoption of such guidance, informed by the following discussion.

Blocking constituents on open platforms:

As elected officials Trustees will often engage with constituents through social media and will maintain their own social media presence to support that effort. Through no fault of a Trustee, other social media users of the Trustee's platform will from time to time post in a way that is objectively problematic. This is to be distinguished from legitimate positions which, though contrary to the Trustee's opinion on a matter, are neither hateful, disparaging, defamatory, discriminatory, or off topic.

It is also the case that while Trustees are obliged to adhere to a high standard of behaviour as required by their code of conduct, their constituents are not under a similar obligation.¹

Why Is Blocking A Constituent on Twitter A Relevant Consideration?

In traditional terms, social media can be perceived in many respects as an electronic version of the 'town square'. It is a place where opinions and ideas are shared, contentious matters are addressed, and where people come together just to come together. In its best light, social media represents a democratization of communications between citizens and their elected officials. Regrettably, social media is not always a platform for healthy discussion. At times it attracts unconstructive negativism, and even hate.

The potential for unconstructive and even offensive communication over social media has resulted in the development of certain tools through which participants can control their accounts. One of the tools available on Twitter is the ability to 'block' another registered Twitter user from interacting with the user.

A person who is blocked by their elected official may feel concerned that their Trustees treatment of them prevents them from listening to, and responding to, comments made about public interest issues in the 'town square' by:

- The Trustee
- The Trustee's followers who 'like', 'reply', or 'retweet' the Trustee's posts
- Other direct communications like direct messaging

¹ It should be recognized that aside from Trustees no other members of the TCDSB school community are subject to the jurisdiction of the integrity commissioner and so it is possible that Trustees may find it frustrating to have to take a higher ground approach when responding to pointed social media postings.

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If blocked, a person does not learn that they have been blocked unless they visit the Twitter user's account page. Without checking, they would be unaware of the fact that they cannot participate in the conversations facilitated directly through the Trustee's Twitter account.

If they are aware of the blocking, the constituent can log out of their account and visit the 'town square' but will not be able to join the conversation on the matter under discussion unless they create a new account.

We draw a distinction between open Twitter accounts, which permit any Twitter user the ability to follow the account, and Twitter accounts which require that permission be given before another Twitter user can follow the account.

For open accounts (where anyone can visit without asking for permission to 'follow' the account), anyone can follow the account unless they are prevented by blocking. Accounts which are not 'open' (ones which require permission to follow the account) are by their very nature unlike the 'town square' because they do not provide unrestricted access.

The effect of blocking a person on Twitter from accessing an open account is to deny the person the ability to see the user's tweets unless they log out from their own account, effectively denying them the ability to participate in a discussion in the Town Square. Many users argue that blocking is a form of censorship, particularly because it is invisible and arbitrary.

Arbitrary blocking of criticism on an open Twitter account hosted by a Trustee, through which the business of the Board is discussed with constituents, should be recognized as contrary to the provisions and principles embodied in the Trustees Code of Conduct. That said, codes of conduct typically articulate little proactive guidance on the point.

Accordingly we recommend that the Board develop a policy framework for when and how Members of the Board may block constituents from their open social media accounts, including on Twitter.

Why 'Blocking' on Twitter constitutes a contravention of the Code of Conduct

There is no obligation for elected officials to utilize social media, however, a growing number of politicians are active on social media as a means of keeping their constituents and the public informed. Social media also enables elected officials to 'take the temperature' of the communities they serve. As noted, there is a 'public town square' aspect to social media which differs from one-way communications vehicles such as email distributions or newsletters.

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Blocking is a means of preventing a participant from adding or otherwise providing input to a Twitter post.²

Although at times blocking a person from a forum may be appropriate (or even required, as in the case of removing hate speech), blocking a constituent merely because there is disagreement on a policy or political perspective, or because the person was being critical, is not appropriate.

American case law has determined that social media, facilitated by an elected official, could be characterized as a ‘public forum’, and that removal or constraint on participation in that public forum could constitute an unreasonable constraint on free speech rights.

In one 2019 decision³, which involved a lengthy analysis of jurisprudence, it was generally determined that when an elected official uses social media to communicate with constituents, and invites comment, the social media page takes on the attributes of a public forum; banning participants from that public discourse arbitrarily, or merely because their comments represent an unwelcome perspective, may constitute an infringement of their constitutional free speech rights (amounting to ‘viewpoint discrimination’).

It is not necessary to look to the U.S. for guidance on the question of whether blocking a constituent expressing criticism that does not contain objectively offensive or objectionable content on social media may be contrary to the standards (openness, transparency, listening to one’s constituents, undue influence, keeping an open mind) required of elected officials under a code of conduct.

Being blocked precludes a user from reading other tweets unless logged out of their own Twitter account, blocks them from engaging with the elected official on Twitter, and prevents them from commenting directly on posts, retweeting posts, or making comments which can be seen by others who follow the account. The blocked user is, for all intents and purposes, censored on the Member’s social media account.

Codes of conduct typically contain only general provisions regarding communication: conveying information on matters in an open and transparent manner, allowing the public to view the rationale for decisions, and to treating members of the public with respect and without abuse. These requirements are engaged in any complaint that an elected official has blocked a person from a public account without warranted excuse.

² Blocking removes the ability of the participant to see the Twitter account, whereas another Twitter tool, ‘muting’ allows viewing but prevents the muted person’s posts from showing on the account holder’s time line (the posts would however appear on the muted person’s own timeline).

³ Davison v. Randall, No. 17-2002 (4th Cir. 2019)

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Codes of conduct are policy documents and should be regarded as guides to proper ethical behaviour. The best guidance can be provided through clearly articulated policy, to prevent problematic and non-compliant action by trustees.

The Board should adopt a policy which clarifies that Trustees who utilize open social media platforms for communicating with their constituents should not *unreasonably* or *arbitrarily* block participants. Blocking constituents because they express an alternate or opposing perspective on an issue, or who are constructively critical of a position taken by an elected official, is not appropriate.

We recognize that given the recent and rapid evolution of social media as a means of communicating with constituents, codes of conduct have not kept pace in providing appropriate guidance for elected officials.

As noted in our disposition, we do not believe that the three complaints that were reviewed in the course of our investigation warranted the imposition of a sanction given the Trustee's acknowledgment of the lesson learned and the changes in his behaviour which were noted in our monitoring period.

We hasten to add that that our perspective does not mean that Trustees are disabled from engaging in impassioned debate on public interest matters. It is not a breach of the Code or any standard of public service to disagree with the position of another person. It is, however, essential that elected officials demonstrate a high standard in communications, that they do not simply 'erase' disagreement, and that they refrain from engaging in disrespectful and unprofessional communications.

We therefore commend the Board to adopt a policy that provides guidance to Trustees on their use of social media, and that the policy include guidance on the preconditions that should be established before blocking a person on an open social media account, such as:

- Providing notice to the offending constituent of the reasons why the blocking is to be implemented
- Specifying the time period (proportional to the nature of the offending behaviour) during which the blocking is to remain in effect

2. Disposition of Complaint Filed by Joe Volpe and Corriere Canadese respecting Trustee Rizzo's Eligibility to Hold Office

The Disposition set out at Appendix 2 to this report brings to a close the investigation of a complaint based in an assertion that Trustee Rizzo is not eligible to hold office on the basis that she did not and does not reside within the geographic area of the TCDSB, and further that she is not a separate school elector.

The Disposition contains a full recitation of the matters at issue, our findings, and our reasoning.

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We concluded that the Trustee has at all relevant times maintained her residence within the geographic area covered by the Board, notwithstanding the Trustee's occasional use of a property outside of the geographic area of the Board, which use was complicated by the Trustee taking necessary and appropriate steps in the face of the COVID-19 pandemic. Further, we determined that the Trustee is as required noted on the Preliminary List of Electors as a separate school supporter.

The Trustee's residency and school support being found to be in compliance with both the *Education Act* and the *Municipal Elections Act*, we found that the Trustee was in compliance with her code of conduct obligation to adhere to applicable legislation, and that there was no evidence to support that she was not eligible to hold office.

3. Disposition of Complaints Filed by Trustee as Vexatious or made in Bad Faith

Four separate complaints were filed by a Trustee in late February, claiming that three other Trustees were in violation of the Code of Conduct for the reasons recited in the complaints.

The Trustee Complainant was immediately requested to make themselves available for a telephone or zoom interview to discuss the complaints, and we indicated our availability for that purpose, including evenings as might be convenient.

Requests to schedule interviews were made on

- February 22, 2021
- February 23, 2021
- February 24, 2021
- March 18, 2021 and
- March 22, 2021

The Trustee Complainant took the position that we should be able to conduct our investigations without interviewing them, and that an exchange of email would be sufficient.

We explained that as the independent party with the responsibility to respond to allegations that the Trustees Code of Conduct has been breached it was our responsibility to shape our investigations in a manner which best suited the public interest.

The Trustee's response was that they were not comfortable having 'a verbal conversation' regarding the complaints.

On March 22 the Trustee Complainant, maintaining their refusal to be interviewed, indicated that they would be consulting their legal counsel for next steps. We indicated that that was an excellent idea and indicated our willingness to discuss with the lawyer they retained the Trustee Complainant's participation in interviews. We have not heard back from the Trustee Complainant or legal counsel in that regard. Instead, on March 29, the Trustee Complainant

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indicated that an accommodation was required in the form of an email interview, without providing any substantiating reasons.

An interview is an important step in our investigation process. It allows us to seek pertinent information, pursue lines of questioning as they develop, narrow or focus elements of a complaint, canvass appropriate outcomes and informal resolution as may be relevant, and to assess credibility. Except in the most clear-cut circumstances (a well-articulated complaint, narrowly defined issues and clear documentary evidence) it is our practice to conduct an interview, primarily through Zoom in the past year, with every complainant, the respondent, and most witnesses. We consider this to be an important part of our investigative process.

The facts alleged by the Trustee Complainant in each of the complaints raise issues which require, in our view, a direct interview. When requested, interview subjects are able to be supported by legal counsel or another person of their choosing.

The Trustee Complainant's refusal to cooperate with an investigation by making themselves available in response to our repeated requests for an interview leaves us with no choice but to conclude that the complaints have either been filed for a purpose other than to have an allegation of a code transgression properly investigated (which we would consider to be vexatious), or that they have been made in bad faith.

One of the complaints involves circumstances which have already been made the subject of a complaint by another complainant. It is not possible for one complaint to move forward while another based on the same underlying facts remains in abeyance. We therefore are taking this opportunity to advise the Board that we are disposing of all four complaints filed by the Trustee Complainant who is refusing to cooperate with us, without investigation, so that we may move forward with a same scenario complaint already filed by a different Trustee.

All of which is respectfully submitted,

Sincerely,

Principles *Integrity*
Integrity Commissioner for
the Toronto Catholic District School Board



[addresses redacted as necessary]

Joint Disposition
Code of Conduct Complaints Respecting Trustee Markus de Domenico

We have concluded our investigation into three complaints filed in respect of allegations that Trustee Markus de Domenico breached the Trustees Code of Conduct for the TCDSB through his use of social media communications and at times through email. We are writing to advise you of our conclusions.

This Disposition deals with three separate complaints.

Two of the referenced complaints were in respect of matters that had already been considered by the Board of Trustees for the Toronto Catholic District School Board (the 'Board') and were dismissed 'without merit'. No reasons for the decisions, however, were provided to those respective complainants, and the complainants therein sought to have the matters reinvestigated.

A third complaint was received that had not been previously investigated.

All three complaints involved a common theme in that they alleged that Trustee de Domenico:

- Showed a lack of professionalism in his dealings through social media
- Blocked complainants inappropriately in social media
- At times responded through email or social media in a way that was described variously as intimidating, slanderous, aggressive, threatening, demeaning, discriminatory, misogynistic or bullying (described as 'cyber-bullying')

We undertook a review of the previously decided complaints (decided prior to our appointment as integrity commissioner for the TCDSB) at the request of the complainants, on the basis that no reasons for the Board's decision to dismiss the complaints had been provided. Though it is generally not in the public interest to re-investigate matters that have already been brought to conclusion, in this instance given the commonality of themes the circumstances underlying those complaints were brought forward for examination in the context of the third complaint. The presence of the third complaint provided an opportunity to review all three matters, dealing as they did with similar allegations of behaviour, in order to determine an appropriate outcome.

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The role of the integrity commissioner in these instances:

Integrity commissioners carry out a range of functions. They assist in the development of an elected body's ethical framework, for example by suggesting content or commentary for codes of conduct. They conduct education and training for elected officials. One of the most important functions is the provision of advice and guidance to members to help sort out ethical grey areas or to confirm activities that support compliance. And finally, but not principally, they investigate allegations that a person has fallen short of compliance with the elected body's ethical framework and where appropriate they submit public reports on their findings, and make recommendations, including recommending sanctions which the Board may consider imposing in giving consideration to that report.

It is important that the integrity commissioner's broad range of functions be mentioned at the outset of disposition letter. Our role differs from other 'adjudicators' whose responsibilities generally focus, to state it colloquially, on making findings of fact and fault, or to determine which of two parties in litigation is 'most right'.

While is a necessary component in concluding an investigation to make findings of fact and fault, that is not the only component. We take a solutions-oriented approach and make recommendations which we believe best serve the public interest.

The tenets of procedural fairness govern how we undertake investigations and also require us to provide reasons for our conclusions and recommendations, which is the purpose of this correspondence.

We have assessed the evidence we gathered in a fair, independent and neutral manner. We have interviewed all necessary parties and considered relevant documents and records.

What we do not do is make judgments on policy or political perspectives being considered or decided by the Board. We recognized that underlying the behaviour which gave rise to the complaints were strong differences of opinion on matters of board business. Our concern lay with whether the Trustee carried himself in compliance with the code of conduct, and we make no comment with respect to the political perspectives of the participants.

Findings:

The tone and content of the Trustees communications at times reflected (unfortunately) the tone and style often found in social media exchanges, and as a result he fell below the standard expected of Trustees. For example the Trustees Code of Conduct provides:

In performing their duties as trustees, and in all matters of communication including email, telephone and face-to-face meetings with staff, parents and other stakeholders, appropriate language and professionalism are expected. Trustees must adhere to all pertinent Board policies.

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The Trustee has acknowledged that some of the communications he authored could not be said to be professional. That said, the more serious allegations in the complaints of misogyny and cyber-bullying were not founded.

We also found that the Trustee on occasion would ‘block’ people on social media which in and of itself can give rise to code of conduct concerns. We recognize however the limited opportunity Trustees have had to consider the ethical ramifications of blocking and so we will be using this opportunity to provide guidance to the Board.

Matters Influencing the Decision Not to Sanction:

Though we did make findings that in some instances the manner in which Trustee de Domenico engaged in communications with his constituents fell below the standard expected of him, he acknowledged his transgressions and undertook not to repeat them.

Without the Trustee’s knowledge we audited his publicly available postings to see if we could detect any continuance of the previous offending methods of communication. We did not observe any further instances of communications of the nature originally complained of.

The course correction which was achieved met our solutions-oriented objective and we conclude this matter without recommendation for sanction. We do however note that it would be appropriate that the Board receive better policy guidance on social media use, particularly the use of blocking tools, and will be advising the Board of our suggestions in that regard when we present a summary of this disposition to them.

A version of this disposition will be provided to the respondent, Trustee de Domenico, and to the Board for information on an anonymized basis.

We appreciate the time and effort each of the complainants took to bring these matters to our attention, and for the cooperation we received from all parties throughout the investigation.

Sincerely,

signed

Principles *Integrity*
Integrity Commissioner for the
Toronto Catholic District School Board

Corriere Canadese
287 Bridgeland Ave.,
Toronto, ON M6A 1Z6
Attention: Joe Volpe, Publisher and President
Sent via Email: volpej@corriere.com

Disposition of Complaint
Trustee Maria Rizzo's Non-compliance with Eligibility Requirements
Residency and School Support

The Complaint

We have concluded our investigation into your complaint that Trustee Maria Rizzo is not eligible to hold office on the Board of the Toronto Catholic District School Board (TCDSB). The matter having originally been brought to the Board's attention, it was referred to the office of the integrity commissioner for an independent examination of the allegations submitted. If proved true, the allegations would not only demonstrate ineligibility for the Trustee's elected office, they would also lead to a finding of non-compliance with the Trustees Code of Conduct which requires:

3. Civil Behaviour

...

Among other things, Trustees should:

- respect and comply with all applicable federal, provincial and municipal laws;

4. Complying with Legislation

All Trustees will comply with the letter and spirit of all laws of Canada and the Province of Ontario and any contractual obligations of the Board in conducting the business of the Board.

You have alleged that Maria Rizzo is not qualified to hold her office as a Trustee on the basis that her residence is outside the area of jurisdiction of the TCDSB, and that she is not a separate school supporter. You have asked that the TCDSB remove Trustee Rizzo from her post and take steps to have her replaced forthwith.

The stated basis for your complaint is that Trustee Rizzo has disqualified herself as follows:

1. The last three addresses in which she lives or has lived are all listed as being owned by an EP (English Public School) supporter. They include an address in Springwater, Ontario, purchased in 2016 and co-owned with her husband. This property is not in the electoral jurisdiction of the TCDSB.
2. The address which she listed as her home address prior to, and including the election year, 2018, is not owned by her but by someone with a Rizzo last name.

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The owner was also in the past registered as a Public School supporter. You rely in part on the absence of a registered rental agreement attesting to the Trustee's status as a Catholic School supporter.

3. The *Municipal Elections Act* requires that candidates who meet the qualifying criteria to run for office must, if elected, remain qualified for the duration of the term, and it is your position that the Trustee has not maintained her eligibility requirements.

Process Followed for the Investigation

In conducting our investigation, Principles *Integrity* applied the principles of procedural fairness. This fair and balanced process includes the following elements:

- Reviewing the Complaint to determine whether it is within scope and jurisdiction and in the public interest to pursue, including giving consideration to whether the Complaint should be restated or narrowed, where this better reflects the public interest
- Notifying the Respondent of the Complaint and seeking her response
- Reviewing the *Trustees Code of Conduct*, the *Education Act 1990*, the *Municipal Elections Act, 1996* and other relevant legislation
- Reviewing relevant documentation and municipal records
- Interviewing relevant witnesses

In the course of our investigation, it was necessary that we become aware of sensitive personal and personal health information of the Trustee. Though that information figured prominently in our coming to the conclusions we arrived at, we must protect the confidentiality of the information and have refrained from disclosing it in this report. To validate our work, we engaged the services of an experienced investigator to participate in relevant interviews and review our conclusions.

Relevant Legislation

For ease of reference, we have set out the legislative provisions most relevant to the determinations we have made in the course of our investigation:

Education Act

Section 1, Interpretation and Other Matters:.

Entitlement to vote based on residence

(8) Despite any provision of this Act, except subsection (9), or of any other Act, including clause 17 (2) (a) of the *Municipal Elections Act, 1996*, for the purposes of regular elections and by- elections, a person is not qualified to

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vote for a member of a board for an area unless the person resides in the area on voting day.

Exception

(9) Subsection (8) does not apply to a person who is an owner or tenant of residential property in the area referred to in subsection (8), or who is a spouse of that person.

Entitlement to vote in the area of jurisdiction of a board

(10) For the purposes of sections 50.1, 54, 58.8 and 58.9, a person is entitled to vote in the area of jurisdiction of a board if, on voting day, he or she,

- a. resides in the area or is a person to whom subsection (9) applies;
- b. is a Canadian citizen;
- c. is at least 18 years of age; and
- d. is not a person referred to in clause 17 (2) (d) of the Municipal Elections Act, 1996. (referencing categories of persons prohibited from voting, not relevant to this investigation)

Interpretation

(11) For the purposes of subsections (8) and (10), “resides” has the same meaning as in section 17 of the Municipal Elections Act, 1996.

Section 54, Residents other than supporters entitled to vote:

s. 54 (1) Despite the provisions of this or any other Act but subject to subsection (2), a Roman Catholic who is not a supporter of any board, who is a person entitled under subsection 1 (10) to vote in the area of jurisdiction of a Roman Catholic board and who wishes to be an elector for the Roman Catholic board at an election is entitled,

- (a) to cause his or her name to be entered on the preliminary list for the voting subdivision in which he or she resides, as an elector for the Roman Catholic board; and
- (b) to be enumerated as an elector for the Roman Catholic board.

Section 58.9, Entitlement to vote: general:

s.58.9(1) The members of a district school board to be elected for a geographic area established under section 58.1 shall be elected by general vote of the electors qualified to vote in the geographic area for the members of that district school board.

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Section 58.9, Entitlement to vote: English-language separate district school boards:

s. 58.9(3) The members of an English-language separate district school board shall be elected by persons entitled under subsection 1(10) to vote in the area of jurisdiction of the board who,

(a) are not qualified under subsection 58.8(1) to be electors for a French-language district school board; and

(b) are separate school supports or persons entered on a preliminary list under section 54.

Section 219, Qualifications of Members:

219 (1) A person is qualified to be elected as a member of a district school board or school authority if the person is qualified to vote for members of that district school board or that school authority and is resident in its area of jurisdiction.

(2) A person who is qualified under subsection (1) to be elected as a member of a district school board or school authority is qualified to be elected as a member of that district school board or school authority for any geographic area in the district school board's or school authority's area of jurisdiction, regardless of which positions on that district school board or school authority the person may be qualified to vote for.

(3) A member of a district school board or school authority is eligible for re-election if otherwise qualified.

Section 219, Disqualifications:

(4) Despite subsection (1), a person is not qualified to be elected or to act as a member of a district school board or school authority if the person is,

...

(e) otherwise ineligible or disqualified under this or any other Act.

Section 219, Qualification to act as a member:

(9) A person is not qualified to act as a member of a district school board or school authority if the person ceases to hold the qualifications required to be elected as a member of the district school board or the school authority.

Section 219, Vacancy where member disqualified:

(11) The seat of a member of a district school board or school authority who is not qualified or entitled to act as a member of that district school board or that school authority is vacated.

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Municipal Elections Act, 1996:

Section 2, Residence:

2 (1) For the purposes of this Act, a person's residence is the permanent lodging place to which, whenever absent, he or she intends to return.

(2) The following rules apply in determining a person's residence:

1. A person may only have one residence at a time.
2. The place where a person's family resides is also his or her residence, unless he or she moves elsewhere with the intention of changing his or her permanent lodging place.
3. If a person has no other permanent lodging place, the place where he or she occupies a room or part of a room as a regular lodger or to which he or she habitually returns is his or her residence.

Section 17, Qualifications:

(2) A person is entitled to be an elector at an election held in a local municipality if, on voting day, he or she,

- (a) resides in the local municipality or is the owner or tenant of land there, or the spouse of such owner or tenant;
- (b) is a Canadian citizen;
- (c) is at least 18 years old; and
- (d) is not prohibited from voting under subsection (3) or otherwise by law.
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Section 17, Persons prohibited from voting:

(3) The following are prohibited from voting:

1. A person who is serving a sentence of imprisonment in a penal or correctional institution.
2. A corporation.
3. A person acting as executor or trustee or in any other representative capacity, except as a voting proxy in accordance with section 44.
4. A person who was convicted of the corrupt practice described in subsection 90 (3), if voting day in the current election is less than five years after voting day in the election in respect of which he or she was convicted.

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Analysis:

To summarize the applicable legislation noted above, for Trustee Rizzo to be qualified to be elected to her role on the Board and to maintain her seat, she was required to:

- be qualified as an elector to vote for members of the TCDSB by:
 - residing within the geographic area served by the Board (the City of Toronto), or be the owner or tenant of residential property within the geographic area served by the Board, or be the spouse of the person owning such residential property
 - being a Canadian Citizen
 - being at least 18 years old
 - being not otherwise disqualified under section 17(d) of the *Municipal Elections Act* (the grounds cited there not being relevant to this investigation)
 - being entitled to be enumerated and listed as a Roman Catholic elector on the Preliminary List of Electors produced by MPAC; and
- be qualified as a person eligible to be elected to serve on the TCDSB by being:
 - qualified to vote (as above)
 - residing in the area of the Board's jurisdiction.

It merits note that neither property ownership nor the registration of a rental agreement is required by the legislative scheme to support a person's eligibility to vote or to stand for office as a catholic school Trustee.

In the context of the facts alleged and the requirements of the legislation we conducted an independent investigation to determine if Trustee Rizzo is qualified to hold her office on the basis of her residency and her school support pursuant to the *Education Act, 1990* and the *Municipal Elections Act, 1996*.

Specifically, we found it necessary to determine whether Trustee Rizzo resided at the property identified in municipal election records for the last municipal election as her residence (the "Toronto Property"), and continues to reside there. In carrying out this investigation, we communicated with City election officials and we reviewed documents and records from the Municipal Property Assessment Corporation ("MPAC").

We also conducted interviews with a variety of people who would had direct knowledge of where the Trustee resides, including:

- individuals who currently provide and/or have provided professional services to Trustee Rizzo and her mother at the Toronto Property
- individuals who have visited Trustee Rizzo at the Toronto Property
- individuals who have regularly observed Trustee Rizzo at the Toronto Property
- Friends and neighbours
- individuals who have attended at the Toronto Property to make deliveries to Trustee Rizzo, or to conduct business, including Board business.

Principles *Integrity*

Without exception the individuals we interviewed confirmed to us that Trustee Rizzo lives at and has lived at the Toronto Property at all times relevant to our investigation, and that she maintains a bedroom and office in the house.

Other Members of Trustee Rizzo's immediate family also live at the Toronto Property.

The Municipal Property Assessment Corporation (MPAC) is legislatively responsible for collecting occupant information (name, date of birth, citizenship and school support) for municipal, District Social Services Administration Boards and school board elections across Ontario, and for keeping up-to-date population figures for every municipality in Ontario.

MPAC uses the occupant information to create a Preliminary List of Electors, used by municipalities to produce the final Voters' List for municipal and school board elections, as well as population reporting for various municipal and school board planning purposes.

The information obtained from MPAC shows that Trustee Rizzo is listed as a "boarder" at the Toronto Property, that she lives in the Unit, and that she is an English separate school supporter. The status of "boarder" is distinct from a person who either owns a property or pays rent or other compensation to an owner in order to obtain permission to reside at a property. Trustee Rizzo's residency is tied to her status as a family member of the owner of the property and so 'boarder' is the most apt description for the nature of her occupancy.

We are also aware that Trustee Rizzo had an interest in another Toronto property up to 2017. Around the time of sale of that property, another property was purchased in Springwater Ontario. Though the Springwater property was not the Trustee's primary residence, greater use of the property was made during 2020 than in previous years because of her need to minimize exposure to family members during the COVID-19 pandemic. Notwithstanding her frequent attendance there, we heard consistent evidence from the persons we interviewed that the Trustee was also in regular attendance at the Toronto Property.

Summary of Findings:

We find that Trustee Rizzo's residence is the Toronto Property and was so for the purpose of the 2018 municipal and school board elections. Trustee Rizzo is listed on the MPAC records as a boarder and an English Separate School supporter at that location. The Toronto Property being within the geographic area served by the TCDSB, and otherwise being eligible as an elector, she was and remains qualified to be elected and serve as a member of the Board.

Accordingly we find that the Trustee has complied with all applicable law with respect to her eligibility to be elected to and serve on the Toronto Catholic District School Board, and so is in that respect in compliance with the applicable provisions of the Trustees Code of Conduct.