

May 9, 2023

Durham District School Board of Trustees  
400 Taunton Road East  
Whitby, Ontario  
L1R 2K6

Dear Members of the Durham District School Board of Trustees (the “**Board**”),

Subject: Amendment to Bylaw 5.13.15 and its breach of the  
Ontario *Human Rights Code* (the “**Code**”)

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We appreciate your time and consideration towards our concerns.

We are a group of concerned parents. Our group, known as Durham Parents United, was formed less than 2 weeks ago and already consists of over 1700 families. We have new members joining daily. Clearly, we represent a large percentage of stakeholders.

**OVERVIEW:**

Firstly, we want to make clear that our intention or objective is **not** to limit or hinder the *Code* protection of other groups, including the 2SLGBTQ+ community; rather, it is simply to ensure that the Board, in its effort to protect certain communities, does not breach the Code-protected rights of other groups, including protected grounds under Creed and Gender, particularly as it relates to the issue of *competing Human Rights* (2SLGBTQ+ rights on the one hand, and Creed and Gender rights on the other), as well as parents rights over the moral and religious education of their children.

We are writing to you on behalf of concerned parents to discuss the proposed amendment to Bylaw 5.13.15.

As you know, on Monday, April 17, 2023, the Board Trustees discussed a notice of motion on the revised, consolidated bylaw 5.13.15 which provides:

"Questions will also not be entertained if they are contrary to the Board’s commitment to the Ontario Human Rights Code, or the Board’s Human Rights Policy or Indigenous Education Policy and Procedures"

**BREACH OF CODE & PARENTAL RIGHTS**

We are concerned that the proposed amendment is ambiguous, vague, and susceptible to interpretation that would be contrary to the Canadian *Charter of Rights and Freedoms* (the “*Charter*”), and in breach of the *Code* as it related to the issue of competing rights, between 2SLGBTQ+ on the one hand, and Creed and Gender on the other.

For example, the above proposal can be interpreted in a manner so as to deny faith-based groups, pursuant to their Code-protected rights under the ground of Creed, as well as other individuals, on the basis of Gender, from raising concerns or asking questions regarding issues related to, *inter alia*, the following:

- gender identity education in schools;
- sexual orientation education in schools;
- gender neutral washrooms/change rooms;
- mixed gender sports;
- mixed gender washrooms/change rooms;
- sexually explicit books in DDSB libraries;
- age-appropriate literary themes in DDSB libraries; and
- secret gender transitions at DDSB schools.

Under the proposed amendment, concerns and questions related to the above topics may be interpreted as being “contrary to the Board’s commitment to the Ontario Human Rights Code, or the Board’s Human Rights Policy”.

As you know, Ontario is an increasingly diverse society; conflicts can arise where an individual or group tries to exercise a right, interest, or value, pursuant to the *Code*, which happens to conflict with the Code-rights of other individuals or groups. This is not uncommon, and the *Human Rights Tribunal* of Ontario (the “*Tribunal*”) has dealt with many such cases; in so doing, the *Tribunal*, along with the Ontario *Human Rights Commission* (the “*Commission*”), have both provided clear guidelines on how to approach and reconcile issues of competing rights, including human rights, of various stakeholders.

The *Charter*, *Code*, *Commission*, *Tribunal*, and the courts recognize that no rights are absolute, and no *one* right is more important than another right.

On this note, we invite the Board to carefully consider the Commission’s *Policy on Competing Human Rights*, as their proposed amendments seem to disregard the sensitive issue of competing human rights.

In fact, silencing important conversations/questions, as difficult as these conversations may be, in the area of competing human rights would be contrary to the process proposed by the *Tribunal* and *Commission*, regarding how to analyze and reconcile competing rights. Silencing the voices of concerned stakeholders will certainly result in increased litigation.

The Board should have clear policies regarding the issue of competing human rights and conflict, which:

- A. sets out the process to be followed when a competing rights situation arises;

- B. alerts all parties to their rights, roles and responsibilities; and
- C. commits the Board to deal with competing rights matters promptly, efficiently and in a manner consistent with the *Charter* and *Code*.

Moreover, the Board should take steps to avoid exacerbating the issue of competing human rights, which will inevitably arise; failure to do so would increase conflict and tension between various stakeholders. The Board can take these steps by, inter alia, the following:

- A. becoming familiar with the *Code* and with their obligations under it; and
- B. taking steps to educate and train responsible individuals on competing rights situations and the Commission's *Policy on Competing Human Rights*.

Moreover, we would draw your attention to s.13 of the Human Rights Code:

13 (1) A right under Part I is infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem, or other similar representation that indicates the intention of the person to infringe a right under Part I or that is intended by the person to incite the infringement of a right under Part I. R.S.O. 1990, c. H.19, s. 13 (1).

Opinion

(2) **Subsection (1) shall not interfere with freedom of expression of opinion.** R.S.O. 1990, c. H.19, s. 13 (2).

It is abundantly clear that the *Code* specifically aims to protect and exempt freedom of expression and opinion from the ambit of the Human Rights Code. To the extent that your policies in any way restrict stakeholders' rights to express opinions, including sincerely held religious beliefs, the Board would be acting contrary to the *Code*, the Commission's *Policy on Competing Human Rights*, and (as the Board is part of local government) contrary to both the free speech rights contained in s.2(b) and section 15 of the Charter of Rights and Freedoms.

We would respectfully request that the Board remove the issue of the amendment of the By-Law 5.13.15 from their agenda so as to avoid or create unnecessary conflict in the community, particularly between stakeholders with competing protected human rights and grounds under the Code, as well as parents' general right over the moral and religious education of their children.

We would respectfully request that as we navigate present issues, the Board not overreact to other people's beliefs, including religious beliefs, or concerns but to try to understand them.

In addition to the above concern about competing human rights (i.e., on the basis of Creed and Gender), the current wording of the amendment could also be interpreted in a way that may potentially limit or deny parents the opportunity to provide input or share their concerns

regarding their children's education, if it is deemed “contrary” to the Board's Human Rights Policy and Procedures or Indigenous Education Policy and Procedures.

Parents are seeking a conversation about how to balance parental rights, and creed-based rights (i.e., to be exempt from content due to sincere religious held beliefs) with the Board's perceived mandate.

This process would be best served by not amending the bylaw but by instead keeping the status quo and allowing *more* discussions and meetings with stakeholders, *not less*. Perhaps consider engaging a third-party mediator or moderator to help navigate such complex issues. Show the community that you will listen to people you may disagree with.

With the aforementioned amendment to bylaw 5.13.15, we are concerned that it may unintentionally infringe upon the rights and responsibilities of parents and guardians, who are legally responsible for their children's education and well-being, as well as their Creed and Gender based human rights. While it is important to maintain an environment that promotes equality, diversity, and inclusion, it is also essential to keep an open mind about how best to do that, while also respecting others’ rights, including the rights of faith-based communities and parents and guardians to express their concerns, opinions, and beliefs.

The Board's policies and/or interpretation of these policies may actually be inconsistent with s.13 of the Code (the proposed amendment clearly is) but more importantly it stifles meaningful dialogue on matters concerning their children's education.

We see this on the news in other jurisdictions. We feel we can do better.

### **HEALTH AND SAFETY**

Finally, the proposed amendment would also prevent community members from raising certain good-faith concerns related to health and safety, including concerns of sexual harassment/assault, if the Board, in its arbitrary interpretation, considers such questions/conversations as “contrary to the Board’s commitment to the Ontario Human Rights Code, or the Board’s Human Rights Policy”.

As you know, the Education Act obligates school boards to create schools in Ontario that are “safe”, and “prevent inappropriate behaviour, including bullying and sexual assault...”

Some of the above-noted questions/concerns (i.e., gender neutral washrooms/change rooms, mixed gender sports, mixed gender washrooms/change rooms etc.) are related to issues of health and safety. Stifling important questions/concerns and conversations from taking place could result in the Board failing to take steps to prevent very serious health and safety incidents, including sexual harassment/assault; this will certainly expose the Board to increased liability.

## CONCLUSION

It is our hope to resolve this issue in an amicable manner without resorting to lengthy and costly litigation.

To address this concern, we respectfully request the Board:

- a. to review and remove the wording of the amendment to Bylaw 5.13.15, ensuring that it does not inadvertently contravene parents' rights over the moral and religious education of their children, the free speech protections in the *Charter*, and the rights of faith-based communities pursuant to the *Code*.
- b. become familiar with the Ontario *Human Rights Code* and with their obligations under it, specifically as it relates to the issue of competing human rights.
- c. Take steps to educate and train responsible individuals and stakeholders on the issue of competing human rights and the Ontario Human Rights Commission's *Policy on Competing Human Rights*.

It is vital to strike the correct balance with the above-mentioned concerns.

We hope that subsequent Board meetings can be conducted in a manner where all stakeholders feel heard.

Thank you for your time and consideration. We trust that the Board will give this matter its due attention and work towards a solution that respects and upholds the rights of *all* stakeholders within the Durham District School Board community.

Sincerely,

Durham Parents United