

# Code of Conduct for Trustees

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# Legislative History

- Bill 177, the *Student Achievement and School Board Governance Act, 2009* became law on **December 15, 2009**

## As a result

- School Boards may adopt a code of conduct that applies to trustees (s. 218.2)
- The Minister of Education may make regulations *requiring* a School Board to adopt a code of conduct and stipulating matters to be included in the code of conduct
- As of **May 15, 2019** Ontario Reg. 246/18 *requires* school boards to adopt a Code of Conduct and review it on or before May 15 in every fourth year thereafter – a motion should be passed confirming the Code as is or any changes if needed



## Legislative History

- Included enforcement of code of conduct (s. 218.3)
- Trustees have a duty to comply with a Code of Conduct (s. 218.1(8))
- **June 8, 2010** the Minister of the day indicated that a regulation was being contemplated and sought input from various stakeholders on a consultation paper regarding the proposed provincial provisions for a Trustee code of conduct
- It was contemplated that the provincial provisions would be *minimum requirements* for every trustee code of conduct and
- School Boards could add their own local provisions
- Codes of Conduct that I recommend include those minimum requirements even though the regulation was never passed



# Purpose of the Code of Conduct

- Codes of Conduct contribute to confidence in education and respect for the integrity of the trustees in the community
- A Trustee position is an elected position which carries with it the understanding that the electorate will decide at election time its support for the effectiveness of a Trustee
- At the same time, it is important to recognize the public trust and responsibility the collective body carries and that this trust and responsibility is honoured through determining and enforcing norms of acceptable behaviour
- Code of Conduct deals with acceptable and respectful behaviours
- Most boards have always had these types of policies in place (Codes of Conduct or Ethics) that demonstrate what is acceptable, what is not and how to deal with breaches



# Suggested Minimum Provisions

- Ministry of Education's consultation document regarding Code of Conduct included the following six principles:
  1. Integrity and dignity of office
  2. Avoidance of personal advantage and conflict of interest
  3. Compliance with legislation
  4. Civil behaviour
  5. Respect for confidentiality
  6. Upholding decisions
- Each principle was followed by examples of related trustee responsibilities



# Integrity and Dignity of Office

- Discharge one's duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board
- Recognize that the expenditure of school board funds is a public trust and endeavour to see that the funds are expended efficiently, in the best interests of the students



# Avoidance of Personal Advantage and Conflict of Interests

- Refrain from accepting a gift from any person or entity that has dealings with the Board if a reasonable person might conclude that the gift could influence the member when performing his or her duties to the Board
- Refrain from using the office to advance the member's interests or the interests of any family member or person or organization with whom or with which the member is associated
- Refrain from using the office to obtain employment with the Board for the member or a family member



# Compliance with Legislation

- Discharge duties in accordance with the *Education Act* and comply with the *Municipal Conflict of Interest Act*
- I don't recommend including comply with the *Municipal Conflict of Interest Act* because a breach of that Act already has its own enforcement provisions and an investigation of a breach could prejudice the trustee in a subsequent application under that Act
- A trustee can be warned by the Chair and other trustees that they may be have a conflict but it is up to the individual trustee to declare a conflict
- Uphold the letter and spirit of the code of conduct





# Civil Behaviour

- Refrain from engaging in conduct during meetings of the Board and at all other times that would discredit or compromise the integrity of the Board
- Refrain from advancing allegations of misconduct that are frivolous, vexatious or vindictive in nature against another member of the Board



# Respect for Confidentiality

- Keep confidential any information disclosed or discussed at a meeting of the Board, or part of a meeting of the Board, that was closed to the public, unless required to divulge such information by law
- Refrain from using confidential information for either personal gain or to the detriment of the Board



# Upholding Decisions

- Accept that authority rests with the Board and that a trustee has 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 Board policies and procedures
- Refrain from speaking on behalf of the Board unless authorized to do so



# Enforcement of Code of Conduct

- A member of a board - *no one else*
  - Who has *reasonable* grounds to believe
  - That a member of the board – *not a member of another board*
  - Has breached the Board's Code of Conduct
  - May bring the alleged breach to the attention of the board
- Need a process for how this is done



# Enforcement of Code of Conduct (*cont'd*)

- The Board shall make inquiries into the matter
  - *Need a process to do this in order to ensure procedural fairness for the accused member*
- Based on the results of the inquiry, the Board determines whether the member has breached the code
- The *SPPA* does not apply
- The vote by trustees as to whether or not a member breached the code must be done at a public meeting
- The accused member cannot vote



## Enforcement of the Code of Conduct (cont'd)

- *Education Act* does not mandate a process for the inquiry
- Boards develop their own process for inquiring into a breach of their Code
- Suggestion is to have an Informal Process and a Formal Process



## Informal Process

- The concept is not to *weaponize* the Code
- Meant to be remedial and correct behaviour
- Breaches may occur that are trivial; inadvertent; or an error of judgment made in good faith
- Purpose is to bring the breach to the attention of the Trustee alleged to have breached the Code and to assist them in understanding their role and therefore their obligations under the Code



## **Informal Process (cont'd)**

- Chair on own initiative or at the request of another member have an informal discussion with the trustee
- Only if the matter cannot be resolved should it progress to a Formal Investigation





## Formal Process

- Concept of Procedural Fairness informs the investigation process
- Basic steps:
  - form of complaint
  - Providing complaint to accused Trustee with opportunity to respond in writing
  - Decide who investigates – recommend external independent third party
  - Threshold issues – out of time; trivial; frivolous; vexatious; bad faith; no grounds



## Formal Process (cont'd)

- Timeliness of investigation
- Final Report of findings of fact and a recommendation as to whether a breach or not
- Decision of the Board given to accused trustee in writing together with written reasons and the sanction, if any
- If finding of breach of Code then also advise accused trustee of right to reconsideration



# Enforcement of Code of Conduct (*cont'd*)

## Sanctions for Breach of the Code

- Censure the member
- Bar the member from attending all or part of a meeting of the Board or committee of the Board
- Bar the member from sitting on one or more committees of the Board, for the period of time specified by the Board
- Board cannot cause seat to be vacated
- If the member is barred from attending all or part of a meeting of the Board or committee of the Board, he or she is not entitled to receive any materials that relate to that meeting that are not available to members of the public
- If barred from a meeting, the member is deemed to be authorized to be absent from the meeting
- The vote to impose the sanction must be done at a public meeting and the accused cannot vote



# Enforcement of Code of Conduct (*cont'd*)

**Upon the Board determining that a member has breached the code and any sanction to be imposed,**

- The Board to give the member written notice of determination and sanction
- Provide the member with at least 14 days to make written submissions to the Board regarding either the determination or sanction
- After considering the submissions, the Board shall confirm or revoke a determination within 14 days of receiving the submissions
- If the determination is revoked, the sanction is revoked
- If the determination is confirmed, the Board shall confirm, vary or revoke the sanction



# Enforcement of Code of Conduct (*cont'd*)

- A vote of the Board to confirm or revoke a determination must be held in the public and the accused member may not vote
  - Consideration of the matter before the vote may be done *in camera* when the breach or alleged breach involves any of the matters to which a Committee of the Board is permitted to hold a meeting *in camera* (see s. 207 (2)(a) to (e))
- A vote to confirm, vary or revoke a sanction must be held in the public and the accused member cannot vote

