

February 2, 2021

Chair and Members,
Governance and Policy Committee
Toronto Catholic District School Board
80 Sheppard Avenue East,
Toronto, Ontario, M2N 6E8

Re: Revision of the Trustees Code of Conduct Policy T.04

At its meeting of January 12, 2021, in the course of its discussion on revisions to the Trustees Code of Conduct, the draft documents presented to the Committee were referred back to staff and the Integrity Commissioner along with a series of recommendations.

The purpose of this correspondence is to set out staff's and/or the Integrity Commissioner's proposals and draft text (as applicable), in response to the Committee's recommendations:

1) Create a section of the Trustees Code of Conduct specific to Student Trustees

Though the *Education Act* specifies that student trustees are not members of the Board, the nature of their role, the privileges associated with their position, and their access to confidential information makes it appropriate that they, to a significant extent, be subject to the Trustees Code of Conduct.

Accordingly, it is proposed that Regulation 18 of the draft Code (Implementation) be revised by adding the following provisions:

3. The Trustees Code of Conduct applies to a Student Trustee elected to serve on the Board pursuant to section 55 of the *Education Act* and the regulations made thereunder, provided that:
 - a) In giving broad, liberal interpretation to any provision of the Trustees Code of Conduct any necessary changes shall be inferred given the context and role of a Student Trustee
 - b) Regulation 6, Election Campaigns, does not apply to Student Trustees
 - c) Any complaint regarding whether a Student Trustee has breached the Trustees Code of Conduct shall be administered by the appropriate Board personnel responsible for student discipline and not the Integrity Commissioner, however the Integrity Commissioner may be consulted for guidance on the interpretation and application of the Trustees Code of Conduct.

2) Consider whether the inclusion of Items d) and e) in the definition for Eligible Complainant in the Complaint Protocol should only apply to Municipal Conflict of Interest Act complaints

8) Limit the potential complainants to align with the Education Act, Section 218.3;

Recommendations 2) and 8) of the Committee deal with the same subject matter and so will be treated together here.

The definition for Eligible Complainant in the proposed draft includes the following categories of persons as eligible complainants:

“Eligible Complainant” means:

- a) a Trustee, student, staff member, contractor or service provider of the TCDSB;
- b) a Roman Catholic (Separate School) elector;
- c) an Eastern Rite Catholic;
- d) a representative of an organization demonstrably interested in TCDSB matters; or
- e) such other persons demonstrably interested in TCDSB matters.

The Committee commented on the inclusion of category c), Eastern Rite Catholic. The inclusion of the category follows provisions in the existing Code document, but it may not be necessary to be included on a go-forward basis.

Subsection 218.3 (1) of the *Education Act* provides that Trustees may bring an alleged breach of a code of conduct to the attention of the Board where they have reasonable grounds to believe that a member has breached the code. The Act is silent as to how Trustees are to determine whether reasonable grounds are present.

The Act is likewise silent as to the nature of ‘inquiries’ the Board is to make in light of an alleged breach being brought to the attention of the Board (ss. 218.3 (2)).

The complaint protocol that is being proposed resolves both issues by making it the responsibility of the Integrity Commissioner to receive, triage and investigate complaints so that the Board, when presented with the findings of the Integrity Commissioner, may consider whether a breach of the Code has indeed occurred, and if so, whether a sanction permitted by the Act should be imposed.

When an Integrity Commissioner’s report is placed on a Board agenda, a motion by any Trustee for the report to be considered, or a finding or recommendation endorsed, would be sufficient to satisfy the Act’s requirement that a member of a board bring the alleged breach ‘to the attention of the Board’.

The categories of eligible complainants (subject to the Committee’s recommendations regarding the need to specify Eastern Rite Catholics) represent the likely sources of complaints that might be presented directly to a Trustee were the Board not to have appointed an integrity commissioner. In other words, the list does not represent an expansion of eligible complainants; rather, it recites the likely list of persons who might have cause to bring forward complaints.

Amending the list to exclude any of the listed categories (with the exception, perhaps of Eastern Rite Catholics) will have the result of barring persons who might have legitimate cause to complain to the Board from using the Board's established complaint process. Without access to that process, such persons will be left to bring their complaints through routes of their own making.

3) Consider adding flowcharts for the processes outlined in the Complaint Protocol

Flowcharts will be added once the text of the Protocol is finalized.

4) Add Policy S.S.09 Safe School Code of Conduct in the Cross References section of the Trustee Code of Conduct

The addition will appear in the next draft of the document.

5) In the first paragraph of the General Introduction section of the Code, appearing at page 3 of the document, add reference to the Catholic Faith and the Oath of Office taken by Trustees within the phrase 'understanding that as leaders of the community, they are held to a higher standard of behaviour and conduct'

The addition will appear in the next draft of the document.

6) Following the last paragraph of the General Introduction section of the Code, appearing at page 4 of the document, replace 'Canadian Conference of Catholic Bishops' with the 'Assembly of Catholic Bishops of Ontario (ACBO)'

11) In the last paragraph of the General Introduction section of the Code, appearing at page 4 of the document, include Catholic Values along with the Board's Mission and Vision relating to Faith Community

12) Following the last paragraph of the General Introduction section of the Code, appearing at page 4 of the document, add Archdiocese of Toronto to paragraph c)

Recommendations 6), 11) and 12) of the Committee deal with the same subject matter and so will be treated together here.

The modifications will appear in the next draft of the document.

7) Review Policy S.S.09 to determine if S.S.09 is the overarching Code of Conduct of the TCDSB, serving all potential complainants and all potential situations

Policy S.S.09 is the provincial code of conduct established under section 301(1) of the *Education Act* to govern the behaviour of all persons in schools. The Trustee Code of Conduct is made pursuant to section 218.2 of the Act and is specific to members of the Board, and their broader functions and responsibilities.

9) Comply with the current meta policy format, with all other material being included as an appendix Manual;

The Code of Conduct will be reformatted with a table of contents and clearer pagination, while maintaining the format required by the meta policy format.

10) Consider whether or not a Trustee may fundraise to cover expenses incurred (e.g. legal consultant fees) and, if allowed, what criteria, process and parameters should be established

Specific provisions related to fundraising for legal defence purposes have not yet been included in the draft Code document. If the Board desires that the activity be specifically permitted, it is recommended that Regulation 2, Gifts, Benefits and Hospitality be modified to include the following:

- a) A definition for “Legal Defence Fundraising” to mean fundraising by or on behalf of a Trustee, for the purpose of funding the defence of a matter before a court, tribunal or professional regulatory body, provided that the matter is directly associated with the performance of the Trustee’s duties.
- b) The establishment of the monetary threshold at which each donation (or cumulatively, all donations from a single source in the course of a calendar year) is to be included on a Trustee Information Statement for publication on the Board’s web site
- c) The establishment of the monetary limit at which a donation is no longer allowable
- d) A provision making it improper for the Trustee to directly control or manage any funds raised (in a similar vein to Regulation 3, paragraph 1(f) (Trustee’s Role in Funding Charitable/Community Events)
- e) The addition of commentary speaking to the Trustee’s responsibility to be aware that donations which are received in close proximity to a matter before the Board in which the donor has an interest, may trigger the Trustee’s responsibility to declare the interest and recuse from participation in the matter

We will be in attendance at the Committee’s meeting of February 2, 2021 and will be pleased to address the members questions and comments at that time.