



REPORT TO

REGULAR BOARD

REPORT FROM EXECUTIVE GENERAL LEGAL COUNSEL ON MOTION REGARDING TRUSTEE CODE OF CONDUCT REVISIONS

Please use the “New Revised Standard Version Catholic Edition” from <https://www.biblegateway.com/> for Bible quotes.

Drafted

July 20, 2022

Antonella Ceddia, Executive General Legal Counsel

Meeting Date

August 25, 2022

INFORMATION REPORT

Vision: *IN GOD’S IMAGE: Growing in Knowledge, with Justice and Hope.*

Mission: *Nurturing the faith development and academic excellence of our Catholic learning community through the love of God, neighbour, and self.*



MULTI-YEAR STRATEGIC PLAN
2022 - 2025

IN GOD’S IMAGE: Growing in Knowledge, with Justice and Hope



Brendan Browne
Director of Education

Adrian Della Mora
Associate Director of Academic
Affairs & Chief Operating Officer

Derek Boyce
Associate Director of Corporate
Services and Chief Commercial Officer

Ryan Putnam
Chief Financial Officer and Treasurer

A. EXECUTIVE SUMMARY

In 2021, the Board conducted a complete revision of its Trustee Code of Conduct Policy T.04 (“Original Policy”). The Board’s Governance and Policy Committee (“GAP”) conducted the review of the policy and recommended a fully revised Policy to the Board for approval. The Board approved the revised policy at a Special Meeting on April 28, 2021 and that Trustee Code of Conduct Policy T.04 (“New Policy”) has been in effect since that time.

Over a year after the Board approved the New Policy, it held a Special Meeting on July 19, 2022, to consider a motion (attached to this report as Appendix A) resolving that General Counsel report to the Board on whether the Old Policy survives to this day. The motion also asked that General Counsel examine the effects on the Board’s approval of the New Policy resulting from an “information discrepancy.” The “information discrepancy” referred to in the motion relates to the fact that not all of the materials that GAP had before it during the policy review process were provided to the Board. Specifically, the Board did not have before it a document marked Appendix C that was before GAP when GAP commenced its review and revision of the Trustee Code of Conduct. That Appendix C is a copy of the Code of Conduct Policy as it existed on January 2021 – i.e. the Original Policy.

Boards rely on their governance committees to review materials and perform close review and detailed scrutiny of policy matters. In this case, both GAP and the Board performed their proper roles in the revision of the Trustee Code of Conduct Policy. The Board’s resolutions to adopt the New Policy are effective and the New Policy is currently in effect. The Original Policy was in force up to April 28, 2021. On April 28, 2021, the New Policy came into force pursuant to Board motion. In this regard, the Original Policy has not been in force since April 28, 2021.

The cumulative staff time required to prepare this report was 7.5 hours

B. PURPOSE

This report responds to the Board motion passed at the Special Board Meeting of July 19, 2022.

C. BACKGROUND

1. GAP considered proposed revisions to the Trustee Code of Conduct Policy on January 12, 2021, and again on February 2, 2021.
2. At its meeting of January 12, 2021, GAP received a Recommendation Report from Staff, the first draft of a completely revised Trustee Code of Conduct Policy T.O4 (marked as Appendix A), a draft Complaint Protocol (marked as Appendix B) and the then existing Trustee Code of Conduct Policy (marked as “Appendix C”).
3. The draft revision to the Trustee Code of Conduct presented at the January 12, 2021 GAP meeting was intended to, and did, start a conversation between the newly appointed Integrity Commissioner and GAP about the content of a proposed new Trustee Code of Conduct Policy and Complaint Handling Protocol. The proposed Policy was a complete revision and rewrite of the existing policy.
4. At its meeting of January 12, 2021, GAP asked the Board Staff and the Integrity Commissioner to make additional revisions to the draft revised Trustee Code of Conduct and to report back to GAP.
5. The matter of revision of the Trustee Code of Conduct Policy returned to GAP on February 2, 2021. At this meeting, GAP received a Recommendation Report from Staff, a second draft of a completely revised Trustee Code of Conduct Policy (marked as Appendix A), a proposed Complaint Protocol (marked as Appendix B) and a report from Principles Integrity, the Integrity Commissioner to the Board that provided information on proposed changes to the Original Policy (marked as Appendix C).
6. At its meeting on February 2, 2021, GAP approved the proposed draft Trustee Code of Conduct Policy and recommended it be referred to the Board for approval.
7. The matter of revision of the Trustee Code of Conduct Policy was on the agenda of the next Board meeting on February 18, 2021. The Board had before it a Recommendation Report from GAP, the revised draft Trustee Code of Conduct Policy recommended by GAP and the Complaint Protocol. The agenda item was held and not discussed. According to protocol, the item appeared on the Order Paper of the next Board meeting on March 25, 2021.
8. At its Board Meeting of March 25, 2021, the Board had before it the same materials that were before it at the February 18, 2021 meeting. The Board voted to defer the item to a Special Board Meeting for a more fulsome discussion.

9. That discussion occurred at a Special Board Meeting on April 28, 2021. The materials before the Board at the Special Meeting were the Recommendation Report from GAP, the revised draft Trustee Code of Conduct Policy recommended by GAP and the Complaint Protocol. The Board approved the New Policy as recommended by GAP with minor edits.
10. Since April 28, 2021 the New Policy has been in effect.
11. The resolution in the Board motion of July 19, 2022 refers to “Appendix C of the old code of conduct.” To clarify, there is no “Appendix C of the old code of conduct.” General Counsel understands the motion’s reference to “Appendix C of the old code of conduct” to refer to the document marked as Appendix C – the Original Policy - that was before GAP at its meeting of January 12, 2021.

D. EVIDENCE/RESEARCH/ANALYSIS

Currently all school boards are required to have a publicly available code of conduct for trustees and review their code of conduct on a regular basis generally after each municipal and school board election. All school boards in Ontario were required to adopt a publicly available code of conduct on or before May 15, 2019. See Ontario Regulation 246/18.

Section 171(1) 1. of the *Education Act* provides Boards with the power to establish committees to make recommendations to the Board. It provides that a board may “establish committees composed of members of the board to make recommendations to the board in respect of education, finance, personnel and property”. Section 171(1) is permissive and does not establish any specific procedures which must be followed in establishing such committees and/or considering their recommendations.

Among other things, the *Education Act* provides that every school board shall develop and maintain policies and organizational structures that promote the board’s goals and encourage pupils to pursue their educational goals. The Act also provides that school boards shall monitor and evaluate the effectiveness of policies developed by the board in achieving the board’s goals and the efficiency of implementation of those policies.

Committees provide school boards the opportunity to have specific issues of the board researched and discussed by a small body, with recommendations presented to the board for decision (See pg 53, Good Governance: Guide for Trustees, School Boards, Directors of Education and Communities published by Ontario Catholic School Trustees Association).

Most boards have a structure for their committees that contributes to efficient and effective board meetings and effective decision making. Committees can gather information, involve members of the community, and hear delegations from the public without using limited board time. (See Good Governance: Guide for Trustees, School Boards, Directors of Education and Communities, page 53, published by Ont. Catholic School Trustees Association).

GAP is a Standing Committee of the Board established to consider policy issues for the Board of Trustees (see Article 5.2 of the Board's Operating By-Law). Membership on GAP must include 5 members of the Board (see Article 5.3, Board's Operating By-Law). GAP has Terms of Reference, as provided in Article 5.4 of the Board By-law. The Terms of Reference establish that GAP, as its name indicates, is responsible for policy formation and review.

Standing committees, such as GAP, deal with ongoing or recurring matters, such as those specific in the legislation and are an integral part of the board structure.

The objective to Board Standing Committees, such as GAP, is to make recommendations to the Board of Trustees. It is the role of GAP to undertake the close review on behalf of the Board and then make recommendations to the Board.

Consistent with its defined responsibilities and role, GAP reviewed the drafts of the proposed Trustee Code of Conduct Policy on behalf of the Board. After its policy review, it approved a revised draft Trustee Code of Conduct Policy and recommended it for Board Approval. That Policy was reviewed by the Board at a Special Meeting with full opportunity for Board members to discuss and ask questions related to the item. The Board approved the Revised Trustee Code of Conduct recommended by GAP, with minor amendments.

The New Policy was passed by the Board of Trustees at its meeting on April 28, 2021. By that approval, it took effect and replaced the Original Policy. The Original Policy has no application or effect today.

The Old Policy was always available to the Board and the public on the Board's website, along with other Board policies. It was not a private document. As well, the Agenda packages for the GAP meetings are available on the Board's website, as a matter of course.

As described above, the purpose and role of the GAP is to oversee policy revision and framework on behalf of the Board. By definition, in accordance with the Board's By-Law and reflected in the Terms of Reference, it performs the close scrutiny and detailed review for the Board on policies. Boards rely on their governance committees to review extensive materials before they make recommendations to their board.

Both GAP and the Board performed their proper roles in the revision of the Trustee Code of Conduct Policy. The Board's resolutions to adopt the New Policy are effective and the New Policy is currently in effect. The Original Policy was in force up to April 28, 2021. On April 28, 2021, the New Policy came into force pursuant to Board motion. In this regard, the Original Policy has not been in force since April 28, 2021.

E. CONCLUDING STATEMENT

This report is for the information of the Board.