

Appendix E

COMMENTARY ON TRUSTEE CODE OF CONDUCT

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Regulations:

1. Avoidance of Conflicts of Interest

Commentary: Sections 1 – 4 Commentary

Trustees should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and private conflicts of interest, both apparent and real. Trustees shall also not extend in the discharge of their official duties, preferential treatment to Family members, organizations or groups in which they or their Family members have a direct or indirect pecuniary interest.

Trustees have a common understanding that in carrying out their duties as a Trustee, they will not participate in activities that grant, or appear to grant, any special consideration, treatment or advantage to a Family member or an individual which is not available to every other individual.

Trustees may seek conflict of interest or other advice, in writing, from the Integrity Commissioner. Where members choose to seek external legal advice on conflict of interest or other Code of Conduct issues, these fees will not be reimbursed by the TCDSB and cannot be charged to any office account.

When a member, despite the existence of an interest, believes that he or she may still participate in a matter with an open mind, the public interest is best served when the Trustee is able to articulate the interest, and why the interest does not amount to a disqualifying conflict of interest.

Trustees must remain at arm's length when Board staff or the Board is asked to consider a matter involving a Family member or a person or organization with whom the Trustee has a real or apparent conflict of interest.

Sections 5 – 9 Commentary

Trustees should exercise caution if accepting such positions if the organization could be seeking a benefit or preferential treatment from the Board at any time

The legislative obligation is set out in the Municipal Conflict of Interest (MCIA). If the Trustee, or a family member of the Trustee, sits on a body which has a pecuniary interest in a matter before the Board (such as an application for grant, support or other contribution), that Trustee has a

deemed pecuniary interest. The Trustee should disclose the interest and should not participate in or vote on such matter, in compliance with the obligations of s.5, MCIA.

The Trustee Code of Conduct captures the broader common law responsibility and requires members to avoid the appearance of favoring organizations or groups on which the Trustee's family members serve.

Family members of Trustees are not precluded, or even discouraged, from serving on not-for-profit organizations or other bodies. However, where family members of Trustees serve in such a capacity, the Trustee should declare a conflict of interest whenever there is a matter for the Board consideration in which the not-for-profit organization or body has a pecuniary interest.

2. Gifts, Benefits and Hospitality Commentary:

Gifts and benefits are often received by elected officials in the course of their duties and attendance at public functions is expected and is considered part of their role. Business-related entertainment and gift-giving can be a token of respect and admiration for the elected official, but can also be seen as an instrument of influence and manipulation. The object of this regulation is to provide transparency around the receipt of incidental gifts and benefits and to establish a threshold where the total value could be perceived as potentially influencing a decision.

The practical problems that nominal gifts and benefits create require a Trustee Code of Conduct that provides clarity and transparency. Personal integrity and sound business practices require that relationships with developers, vendors, contractors or others doing business with the Board be such that no Trustee is perceived as showing favouritism or bias toward the giver. There will never be a perfect solution.

Each Trustee is individually accountable to the public and is encouraged to keep a list of all gifts and benefits received from individuals, firms or associations, with estimated values, for review by the Integrity Commissioner in the event of a complaint.

Use of real estate or significant assets or facilities (i.e. a vehicle, office, vacation property or club membership) at a reduced rate or at no cost is not an acceptable gift or benefit. The purpose of the Code is not to prohibit Trustees from accepting all invitations to socialize at a vacation property with personal friends who are

in no way associated with the business of the TCDSB.

Proper caution and diligence must however be exercised when a social function occurs within close proximity to the individual having an issue before the Board or staff for approval. It is always prudent to consult with the Integrity Commissioner before accepting or attending at any such engagements. Any doubts about the propriety of a gift should be resolved in favour of not accepting it or not keeping it. It may be helpful to consult with the Integrity Commissioner when a Trustee chooses to decline a gift as well as when a recipient may opt to keep a gift.

An invitation to attend a function with a developer or supplier could be seen as allowing the giver an opportunity to influence the elected official. Such invitations should only be accepted if the invitation is within the scope of permissible gifts and benefits, meaning that Trustees should not consistently accept invitations from the same individual or corporation and should avoid any appearance of favouritism.

An invitation to attend a fund-raising gala, provided the Trustee is not consistently attending such events as a guest of the same individual or corporation, is also part of the responsibilities of holding public office. Where a Trustee is uncertain in regard to whether an invitation is or is not appropriate, it may be prudent to consult with the Integrity Commissioner before attending any such event.

Regular invitations to lunch or dinner with persons who are considered friends of Trustees is acceptable in situations where the Trustee pays their portion of the meal expense and treats it as a personal expense, meaning a claim is not made under the Trustee Services and Expenditures Policy T.17. Proper caution and diligence not to discuss matters before the Board for a decision must be exercised at all times. When in doubt it is prudent to consult with the Integrity Commissioner.

3. Trustee's Role in Funding Charitable/Community Events Commentary:

By virtue of the office, Trustees will be called upon to assist various charities, service clubs and other non-profits as well as community associations, by accepting an honorary role in the organization, lending their name or support to it or assisting in fundraising. Transparency and accountability are best achieved in today's era by encouraging contributors to make donations to such organizations on-line through a website or where that is not possible through a

cheque made payable directly to the organization. Cash should never be accepted.

4. Confidential Information Commentary:

Confidential Information includes information in the possession of, or received in confidence by, the TCDSB that the TCDSB is either prohibited from disclosing, or is required to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act (“MFIPPA”), or any other legislation.

MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege.

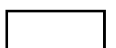
The Education Act allows information that concerns personnel, labour relations, litigation, property acquisitions and security of the property of the Board, and matters authorized in other legislation including MFIPPA, to remain confidential. For the purposes of the Trustee Code of Conduct, “confidential information” includes this type of information.

As elected officials, Trustees will receive highly sensitive and confidential information concerning residents who need their assistance. This is consistent with the nature of the Trustees’ duties Constituency records that are at all times under the control of the Trustee and are not subject to MFIPPA.

Where it is clear that a communication was not made in a confidential manner (i.e. copied to others, or made in the presence of others) or the manner of communication undermines the validity of labelling it “Confidential”, such communication will not be given any higher level of confidentiality than any other communication. The words “Privileged”, “Confidential” or “Private” will not be understood to preclude the appropriate sharing of the communication for the limited purpose of reviewing, responding or looking into the subject-matter of the communication.

5. Use of Board Resources Commentary:

Trustees, by virtue of their position, have access to a wide variety of property, equipment, services and supplies to assist them in the conduct of



their Board duties as public officials.

Trustees are held to a higher standard of behaviour and conduct and therefore should not use TCDSB property for any purpose other than for carrying out their official duties. For clarity, this Regulation is intended to prohibit the use of Board resources for purposes such as running a home business. It is not intended to prohibit occasional personal use, but it should be subject to practical limitations.

Careful attention should be given to the provisions of the Board's Trustee Services and Expenditures Policy T.17 which identifies allowable expenses. During election campaigns, the provisions of Regulations 6 and 7 will apply.

6. Election Campaigns Commentary:

Staff should not interpret or provide advice to Trustees regarding the requirements placed on candidates for municipal office.

Trustees should not authorize any event that could be perceived as the TCDSB providing them with an advantage over other candidates. It is the personal responsibility of Trustees to ensure that any use of facilities or the services of staff are carried out in accordance with applicable legislation. Staff are not responsible for monitoring and advising Trustees or any other candidates, in this regard.

7. Improper Use of Influence Commentary:

Examples of prohibited conduct are the use of one's status as a Trustee to improperly influence the decision of another person to the private advantage of oneself, or one's Family member, or friends. This would include attempts to secure preferential treatment beyond activities in which Trustees normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of a future advantage through a Trustee's supposed influence within the Board in return for present actions or inaction.

Contact with members of tribunals appointed by the Board on any case might be viewed as attempts to intimidate the tribunal member. Generally, Trustees should not take part in the proceedings of any other tribunal where the Board is a party unless such participation is approved by the Integrity Commissioner.

8. Business Relations Commentary:

No Commentary

9. Trustee Conduct

Commentary: Section 1 – 25

As leaders in the community, Trustees are held to a higher standard of behaviour and conduct, and accordingly their behaviour should be exemplary.

A Trustee must not encourage disobedience of a Board decision or by-law in responding to a member of the public, as this undermines confidence in the Board and in the Rules of Law.

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Trustees are required to observe the policies and procedures established by the Board at all times, and are directed to pay special attention to, and comply strictly with, the Board's Operating By-law and Trustee Services and Expenditures Policy

T.17. In exceptional circumstances, a Trustee may request the Board grant an exemption from any policy.

Section 6 - 9

Trustees recognize the importance of cooperation and strive to create an atmosphere during Board and committee meetings that is conducive to solving the issues before the Board, listening to various points of view and using respectful language and behaviour in relation to all of those in attendance.

Various statutes, the Board's Operating By-law and decisions by courts and quasi-judicial tribunals and the Information and Privacy Commission, establish when the Board can discuss issues in closed session. Transparency requires that the Board apply these regulations narrowly so as to best ensure that decisions are held in public session as often as possible.

Unless prohibited by law, Trustees should clearly identify to the public how a decision was reached and the rationale for so doing.

Section 3

Individual Trustees are appointed to committees, agencies, boards and commissions based on their various backgrounds and their ability to contribute to matters before them, bringing their expertise and experience. Trustees should not be absent from the Board or committee meetings, or from those of agencies, boards and commissions to which they are appointed without reasonable justification (for example, illness of the Trustee, family circumstance, or other Board business) for more than three consecutive scheduled meetings or on a regular basis.

Section 4

10. Media Communications Commentary:

A Trustee may state that he/she did not support a decision, or voted against the decision. A Trustee should refrain from making disparaging comments about other Trustees or about the Board's processes and decisions.

When communicating with the media, a Trustee should at all times refrain from speculating or reflecting upon the motives of other Trustees in respect of their actions as a Trustee.

While openness in government is critical, governments also must respect confidentiality when a matter must remain, at least for a period of time, confidential. Breaches of confidentiality by Trustees erodes public confidence.

While Trustees are encouraged to actively participate in vigorous debate, Trustees should understand that they are part of a democratically elected representative body and should not engage in social media as if they are outsiders. In this regard, caution should be exercised when blogging, posting, tweeting, re-posting and linking to posts using social media, whether the member is using a personal account or a Board account.

Trustees who post blogs should recognize that the Canadian Association of Journalists has identified the ethical conflict faced by journalists holding elected public office. It is recognized that there may be an irreconcilable conflict in carrying out both roles at the same time.

While social media can be an excellent tool for communicating quickly with constituents and sharing ideas and obtaining input, social media can breed incivility that generally is avoided in face-to-face interactions. In a world where a transitory comment can become part of the permanent record, Trustees should

exercise restraint in reacting too quickly, or promoting the social media posts of others whose views may be disparaging of the Board's decisions or another Trustee's perspectives.

11. ~~Respect for Board By-laws and Policies~~ Commentary:

~~*A Trustee must not encourage disobedience of a Board decision or by law in responding to a member of the public, as this undermines confidence in the Board and in the Rules of Law.*~~

11. 12. Respectful Workplace Commentary:

It is the policy of Board of Trustees that all persons be treated fairly in the workplace in an environment free of discrimination or personal and sexual harassment.

The Board's Harassment and Discrimination Policy H.M.14 ensures a safe and respectful workplace environment and provides for the appropriate management of any occurrences of harassment and discrimination as those terms are defined in the policy.

The Board's Harassment and Discrimination Policy H.M.14 applies equally to members of staff and Trustees. It will provide guidance to the Integrity Commissioner when a complaint is received involving a Trustee.

12. 13. Conduct Respecting Staff Commentary:

Under the direction of the Director of Education, staff serve the Board as a whole, and the combined interests of all Trustees as evidenced through the decisions of the Board. Only the Board as a whole has the authority to approve budget, policy, committee processes and other matters.

Accordingly, Trustees shall direct requests outside of the Board-approved budget, process or policy, to the Director of Education or directly to the Board.

In practical terms, there are distinct and specialized roles carried out by the Board as a whole and by the Trustees when performing their other roles. The key requirements of these roles include dealing with constituents and the general public, participating as committee members and as chairs of committees, and participating as Board representatives on agencies, boards,

commissions and other bodies. Similarly, there are distinct and specialized roles expected of Board staff in both the carrying out of their responsibilities and in dealing with the Board. Staff are expected to provide information to Trustees that they are entitled to.

Board staff are accountable to the Director of Education who is accountable to the Board. Sometimes the line between staff duties and activities that are political in nature is not clear. Trustees must respect the difference between the two in making requests of staff.

Trustees should expect a high quality of advice from staff based on political neutrality and objectivity irrespective of party politics, the loyalty of persons in power, or their personal opinions.

the Board's Harassment and Discrimination Policy H.M.14 , Code of Conduct Policy S.S.09 applies to Trustees. Staff and Trustees are entitled to be treated with respect and dignity in the workplace.

It is inappropriate for a Trustee to attempt to influence staff to circumvent normal processes, or overlook deficiencies in an operational matter. It is also inappropriate for Trustees to involve themselves in matters of administration or departmental management which fall within the jurisdiction of the Director of Education. Any such attempts may be reported to the Integrity Commissioner.

13. 14. Employment of a Trustee's ~~Relatives~~ Family Members and Acquaintances Commentary:

If a Family member of a Trustee is an applicant for employment with the Board or is a candidate for promotion or transfer, the Family member will proceed through the usual selection process pursuant to the Board's hiring policies, with no special consideration.

14. 15. Not Undermine, Work Against the Board's Decisions Commentary: Section 1

The role of elected officials, once a Board decision is made, is to support the implementation of that decision, not to work against its implementation, publicly or behind the scenes. the Board decisions are arrived at following discussion and debate, reflecting the democratic process. Trustees are expected to engage in debate with their fellow the Board members through the democratic process of government. However, once the Board has made its decision, Trustees must

recognize that decision as the duly considered decision of the Board. As members of that body, Trustees who do not agree with the decision - are not to engage in activities that seek to challenge or undermine that decision.

Trustees can express disagreement with the Board's decisions, but it is contrary to the ethical behaviour of Trustees to actively seek to undermine, challenge or work against the Board's decisions.

Section 2

When members are allowed to participate in activities to challenge the Board's properly considered decisions, such as legal challenges or other forms of litigation, this is contrary to the interests of the TCDSB as determined by the decision of the democratically elected governing body, the Board. Formal advocacy can create challenges to staff as to when and how much information can be provided to the Board (legal advice for example) because of the potential for a legal challenge, which may benefit an involved Trustee who would have 'insider knowledge'.

15. ~~16.~~ Reprisals and Obstruction Commentary:

No Commentary

16. ~~17.~~ Acting on Advice of Integrity Commissioner Commentary:

No Commentary

17. ~~18.~~ Implementation Commentary:

Trustees are expected to understand the obligations an elected official set out in this Trustee Code of Conduct and are encouraged to contact the Integrity Commissioner for any clarification required. A Trustee Code of Conduct component will be included as part of the orientation for each new term of the Board.