

Notice of Motion: Trustee Maria Rizzo Re: Confidential Information

Whereas confidential information is at risk of inadvertent or intentional exposure, and sensitive corporate confidential information is increasingly difficult to protect; and

Whereas the Education Act has no express Code of Conduct or ethical guidelines nor has powers for Boards to deal with disclosure of confidential information directly; and

Whereas the trustees' legal obligations with respect to confidentiality are not well articulated, and confidential Board information is unique in the corporate context; and

Whereas trustees collectively and individually have a public duty to carry out their responsibilities and the work of the Board in good faith and with reasonable diligence; and

Whereas trustees need not be of like mind; may hold strong conflicting views; may debate with vigour and there is no rule requiring trustees to like each other; and

Whereas confidential, sensitive information of boardroom discussions that have both personal and business elements and implications must be respected and protected; and

Whereas in order for Boards to function effectively, trustees must feel comfortable expressing their views in the boardroom on confidential corporate matters honestly and freely, without concern that their conversations will be made public; and

Whereas when sensitive board information is deliberately exposed by a Trustee, Boards may struggle to respond effectively, as the remedies available are limited, particularly since trustees cannot require another member to resign; and

Whereas teleconferencing is often used by trustees to participate in confidential meetings and teleconferencing is not secure; and

Whereas unauthorized disclosures of confidential and/or proprietary information could compromise the Board; and

Whereas improper disclosures can lead to civil liability in certain circumstances; and

Whereas sensitive Board information, includes information to which a trustee is privy by virtue of his or her membership on the Board; and

Whereas there is a risk of harm to the Board when any confidential information is leaked and there is certain harm to the functioning of the Board when its sensitive deliberations are publicly disclosed; and

Whereas a breach of confidentiality, or an ongoing flow of sensitive information outside the boardroom can have a harmful effect on Board deliberations; and

Whereas meetings are likely to become contentious, and the Board may become incapable of timely decision-making and leaked information may exacerbate any existing Board dysfunction; and

Whereas having a detailed Board wide confidentiality policy will serve both to advise trustees as to their obligations with respect to sensitive Board information and to create a Board culture that views improper disclosure of confidential information as unacceptable and dishonourable behaviour.

Therefore be it resolved that “confidential information” be defined in the policy as described in the Board of Trustees’ *Code of Conduct*; and

Further be it resolved that Board counsel will specifically remind trustees of their confidentiality obligations when contentious or sensitive situations are before the Board; and

Further be it resolved that on a majority vote of the members present, a trustee may be expelled or excluded from the meeting if he/she is responsible for unauthorized disclosure

of confidential matters (or the threat to disclose), and this shall be recorded in the minutes; and

Further be it resolved that when a trustee is alleged to have breached the *Respect for Confidentiality* clauses in the *Code of Conduct* an inquiry will be initiated within 48 hours; and

Further be it resolved that following the unauthorized disclosure of confidential information by an anonymous trustee, an inquiry will be initiated by the Chair of the Board within 48 hours and external legal counsel will conduct the investigation; and

Further be it resolved that external counsel will report findings of the investigation and possible sanctions to the Board of trustees for action (including legal proceedings); and

Further be it resolved that trustees attend in camera meetings of the Board in person and that teleconferencing will no longer be provided for confidential meetings.