

### **63 Addressing Alleged Breaches of the Code of Conduct**

- 63.1 The School Act states that the rights, powers, duties, and liabilities of the Board rest only with the legally constituted Board as a whole, not with committees of the Board or with individual Trustees. Members of the Board exercise their privileges and responsibilities as a matter of public trust, and only when the Board is officially in session.
- 63.2 Failure by Trustees to conduct themselves in compliance with Policy 3 Role of the Trustee (the “Code”) may be brought as an allegation by a Trustee or Trustees and may result in the Board imposing sanctions. Matters of conduct may only be brought forward by members of the Board of Education and are addressed as an internal and confidential process.
- 63.3 Disciplinary proceedings concerning Trustees are serious matters that are not undertaken lightly. As Trustees are democratically elected, such proceedings must not be utilized as a response to legitimate policy disagreements.

#### **COMPLAINT PROCESS**

- 63.4 Any Trustee who has reasonable grounds to believe that a Trustee has breached this Code may bring an alleged breach (“Complaint”) to the attention of the Chair of the Board or designate.
- 63.5 Where an allegation is made against the Chair, or where the Chair is the complainant, all other references to Chair in this Policy shall be deemed to read “Vice Chair.”
- 63.6 An allegation of a breach of the Code must be brought to the attention of the Chair within 30 calendar days after the breach happens or the Complainant becomes aware of the alleged breach.
- 63.7 The Board may, by Motion, allow for an extension of the 30-day timeline in exceptional circumstances.
- 63.8 A Complainant may withdraw the Complaint, but if, in the opinion of the Chair, the interests of the Board so require, the Chair may proceed with the consideration of the Complaint in accordance with this Policy, notwithstanding the withdrawal.
- 63.9 The Trustee Conduct Complaint Form (the “Complaint Form”) must be completed and signed by the individual advancing it, and it must contain:
  - (a) the name of the Trustee who is alleged to have breached the Code;
  - (b) the alleged breach or breaches of the Code;
  - (c) when the breach came to the Complainant's attention;
  - (d) the grounds for the belief by the Complainant that a breach of the Code has occurred; and,
  - (e) the names and contact information of any witnesses to the breach or any other persons who have relevant information regarding the alleged breach.

- 63.10 The Chair may first seek resolution through informal resolution measures, whenever possible, including seeking resolution in a cooperative fashion marked by mutual respect and seeking to understand with an openness to growth and improvement.
- 63.11 Informal measures may not be appropriate for reasons which may include the nature of the issue or concern or the way it has come to the Chair's attention.
- 63.12 If the concern is adequately addressed through informal measures, the Chair will report the resolution to Board at the next in camera meeting.
- 63.13 If resolution through informal measures is not achieved, the Formal Complaint Process, outlined below, will be followed.
- 63.14 All serious or reoccurring breaches of the Code by a Trustee should be addressed following the Formal Complaint Process.

## FORMAL COMPLAINT PROCESS

### NOTIFICATION

- 63.15 The Chair will forward the Form to all Trustees, including the impugned ("Respondent") Trustee, as well as the Superintendent and Secretary-Treasurer, and indicate that informal measures were either not successful or inappropriate in the circumstances.
- 63.16 The filing, notification, content and nature of the complaint shall be deemed to be strictly confidential, public disclosure outside of the board shall be deemed to be a violation of the Code.

### RECOMMENDATION AGAINST PROCEEDING

- 63.17 The Chair may recommend not to proceed with the complaint if, in the opinion of the Chair, it is out of time, trivial, frivolous, vexatious or not made in good faith, or if there are no grounds or insufficient grounds to proceed. The Board shall vote on the recommendation in a Closed meeting.

### INVESTIGATION

- 63.18 The Chair must consider whether factual issues are in dispute and if a fact-finding investigation by a Trustee or external investigator is appropriate.
- 63.19 To ensure procedural fairness, the Chair may request the involvement of another Trustee who is not a party to the Complaint or an external investigator to assist in the investigation and reporting process.
- 63.20 The investigator will be asked to conduct an investigation into the allegations in the Complaint which must bear the hallmarks of procedural fairness including gathering all relevant evidence, interviewing witnesses if necessary, and providing the Respondent Trustee an opportunity to respond to the allegations.
- 63.21 The Chair or investigator shall prepare a confidential report regarding the Complaint.

- 63.22 The report must set out the evidence gathered, rationale for credibility assessments and findings of fact and the responses of the Respondent Trustee. All relevant documents must be appended to the report.
- 63.23 Refusal to participate does not constitute a lack of due process.

#### CODE OF CONDUCT HEARING PROCEDURES

- 63.24 Reasonable notice will be provided to Respondent Trustee that the Board will convene in camera to consider the investigation report, written and oral submissions from the Respondent Trustee, and will deliberate on a potential response. The Notice should indicate the range of potential sanctions which are responsive to the alleged misconduct, as may be advised by legal counsel.
- 63.25 The Respondent Trustee may be represented by counsel or another representative, at their own expense (unless the Board decides, by majority vote after the hearing has concluded, to reimburse the Trustee for the expense), provided that the representative agrees to maintain the confidentiality of the proceedings. The Board may have counsel assist the Board with matters of procedure, law, and in respect of its deliberations.
- 63.26 The Chair must ensure that all members of the Board have the same information and documentation concerning the matter. The agenda package must include:
- (a) The Complaint
  - (b) The investigation report with attached documents
  - (c) Written submissions from the Respondent Trustee
  - (d) Any applicable policies
- 63.27 Prior to beginning the meeting, the Chair will ask Trustees to identify and declare any conflicts of interest.
- 63.28 The Chair introduces the item by referring to investigation report and materials in agenda package and explaining that the purpose of the meeting is to:
- (a) determine if the Respondent Trustee has breached the Code or other Board Policy, and if so,
  - (b) determine what action, if any, the Board should take.
- 63.29 The Respondent Trustee is given an opportunity to respond to the allegations and make submissions on potential sanctions. They may be asked questions of clarification by the Board.
- 63.30 The Board should ask questions of the Respondent Trustee through the Chair. The Respondent Trustee can be excused during a recess for the trustees to consider which questions to ask. Once the Respondent Trustee is invited back into the meeting the questions can be posed by the Chair.
- 63.31 Witnesses will not be called, and cross examination will not be permitted at any meeting concerning a Complaint.

- 63.32 Any Trustees declaring a conflict will be excused from the meeting for Board deliberations. For clarity:
- (a) The Respondent Trustee is always in conflict.
  - (b) Other Trustees may be in conflict if the alleged breach of the Code involves conduct towards them but are not automatically in conflict as a result of making the Complaint.
- 63.33 The Board must determine the following:
- (a) Whether, on a balance of probabilities, the Respondent Trustee breached the Code, and if so;
  - (b) What is the appropriate response.
- 63.34 The Chair prepares a draft letter to the Respondent Trustee, with the assistance of legal counsel if desired, advising of the Board's motions and providing the Board's reasons, and convenes an in camera meeting of the Board to review and adopt the reasons in the letter.
- 63.35 The Board will make reasonable effort to resolve any Complaint within 90 calendar days of receipt of Complaint.
- 63.36 Notwithstanding any clause in this bylaw, the process may be deferred and later resumed if the matter is subject to investigation by the police or under any applicable legislation.

## SANCTIONS

- 63.37 The Board may determine that no sanction be imposed for reasons which may include the following:
- a. although a contravention occurred, the offending Trustee took all reasonable measures to prevent it;
  - b. that the contravention was trivial or committed through inadvertence or an error of judgment made in good faith.
  - c. The offending Trustee has acknowledged the breach and the Board is satisfied the breach will not be repeated.
- 63.38 Where a sanction is to be imposed, the Board will determine, by resolution, the appropriate sanction.
- 63.39 Sanctions for a violation of the Code should be imposed in a remedial and restorative manner, should reflect the seriousness of the breach, and may consider input from the Respondent.

63.40 Sanctions against the offending Trustee may include, but are not limited to:

- a. a letter of apology written by offending Trustee;
- b. participation in a restorative justice process;
- c. participation in specific training, coaching, or counselling as directed by the Board
- d. a letter of censure issued to the offending Trustee;
- e. removal from some or all Board of Education committees or other appointments of the Board, for a period of time:
- f. removal from in camera meetings for a specified period of time during the current Board's term of office; or
- g. other sanctions the Board considers appropriate for the circumstances.

63.41 A Trustee who is barred from attending all or a part of a meeting or meetings of the Board, or a meeting or meetings of a Committee of the Board, is not entitled to receive any materials that relate to that meeting or that part of the meeting that are not available to members of the public.

#### PUBLICATION OF DECISION

63.42 All details of the complaint, discussion and resolution are in camera.

63.43 The Board may, by resolution, issue a statement that may include sanctions or the substance of the Complaint.

63.44 Personal privacy of any affected third party will be protected in accordance with the Freedom of Information and Protection of Privacy Act.

#### PRIVILEGES OF PRESIDING OFFICER PRESERVED

63.45 Nothing in this Policy prevents the Board from exercising its power, pursuant to Section 70 of the School Act, to expel or exclude from any meeting any Trustee who has been guilty of improper conduct at the meeting, without the necessity of a complaint or conducting an investigation or other inquiry, before expulsion or exclusion from a meeting.

#### APPEAL OF DECISION

63.46 Trustees who have been sanctioned or have had other measures imposed upon them by the Board under this Policy may have the right to file a petition for judicial review, at their own expense.

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Last reviewed: