

SPECIAL BOARD

PUBLIC AGENDA

**Monday, June 29, 2020, 7:00 pm
Zoom Meeting**

	Pages
1. Call to Order -- Chair of the Board	
2. Approval of the Agenda	
3. Presentation of Investigator's Report (Mr. Zaheer Lakhani)	
3.1 Investigator's Report dated June 24, 2020	2
4. Matters for Action	
4.1 Report 20-043, Code of Conduct Breach Determination (M. Giroux)	18
4.2 Report 20-060, Code of Conduct - Possible Application of Breach Sanctions (M. Giroux)	36
1. Notice of Motion, Breach Sanctions, Trustee Penny	40
4.3 Notice of Motion, OPSBA Policy Resolution, Trustee Scott	42
5. Adjournment	



Lakhani Campea LLP
EMPLOYMENT LAW & LITIGATION SERVICES

CONFIDENTIAL

Ottawa-Carleton District School Board

FORMAL REVIEW REPORT FINDINGS

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PREPARED BY: ZAHEER LAKHANI

JUNE 24, 2020

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Introduction and Mandate

I was retained by Ottawa-Carleton District School Board (“OCDSB”) to conduct an independent formal review (“review”) as an outside consultant in accordance with section 4.22 and 4.23 of Policy P.073.GOV, Board Member Code of Conduct (“Code of Conduct”). Although I am a lawyer, I did not act as legal counsel for the OCDSB in this matter, only as an independent and neutral consultant.

This review is conducted pursuant to a formal complaint made under the Code of Conduct against Trustee Donna Blackburn (“Trustee Blackburn”). The complaint was lodged by Trustee Christine Boothby (“Trustee Boothby”) and alleges that Trustee Blackburn contravened the Civil Behaviour expectations outlined in sections 3.8, 3.15 and 3.18 of the Code of Conduct. The complaint stems from an incident, described below, that took place on 27 March 2020 at the City of Ottawa (the “City”) park in Barrhaven.

My mandate was to conduct an independent, objective review of the allegations raised, and then make findings of fact. Pursuant to Section 4.26 of the Code of Conduct, my review does *“not contain a recommendation or opinion as to whether the Code of Conduct has been breached.”*

During this process, I conducted necessary interviews with the parties and any relevant witnesses in order to prepare this report.

Legal Framework

This investigation was conducted within the framework of OCDSB’s Code of Conduct as well as with reference to the *Education Act*, R.S.O. 1990, c. E.2.

Relevant excerpts include the following:

P.073.GOV, Board Member Code of Conduct (“Code of Conduct”)

1.0 OBJECTIVE

To establish a standard of conduct and a mechanism for managing inappropriate conduct for Ottawa-Carleton District School Board members in discharging their duties as the legislative officers of the Board entrusted with the duty as fiduciaries to act at all times with the utmost good faith and respect in the best interests of the organization.

Code of Conduct

3.1 The Board believes that the conduct of its members is integral to the quality of work, the reputation and the integrity of the Board of Trustees.

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3.2 All members of the Board shall be governed equally by this code of conduct and are expected to uphold the letter and spirit of this Code of Conduct.

3.3 The Code of Conduct shall apply to members of the Board with respect to issues raised by, and amongst, members of the Board.

Steps of Formal Review

4.24 Regardless of who undertakes the formal review, it shall be undertaken using the following steps:

a) Procedural fairness and the rules of natural justice shall govern the formal review. The formal review will be conducted in private and, to the extent possible, protecting the confidentiality of the parties involved.

4.26 The final report of the investigators shall outline the finding of facts, but not contain a recommendation or opinion as to whether the Code of Conduct has been breached. This will be determined by the Board of Trustees as a whole.

O. Reg. 246/18: MEMBERS OF SCHOOL BOARDS - CODE OF CONDUCT under Education Act, R.S.O. 1990, c. E.2

Code of conduct

1. (1) Every board shall adopt a code of conduct that applies to the members of the board.

Education Act, R.S.O. 1990, c. E.2

Code of conduct

218.2 (1) A board may adopt a code of conduct that applies to the members of the board. 2009, c. 25, s. 25.

218.3 (1) A member of a board who has reasonable grounds to believe that a member of the board has breached the board's code of conduct may bring the alleged breach to the attention of the board. 2009, c. 25, s. 25.

(2) If an alleged breach is brought to the attention of the board under subsection (1), the board shall make inquiries into the matter and shall, based on the results of the inquiries, determine whether the member has breached the board's code of conduct. 2009, c. 25, s. 25.

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Overview of the Investigation

Although the complaint was lodged by Trustee Boothby, the basis for the complaint arises out of an encounter between Trustee Blackburn and Styles Lepage ("SL"), a student at the OCDSB, on Friday, March 27, 2020.

Please note that Section 4.24 of the Code of Conduct requires protecting the confidentiality of the parties involved; however, this incident involving the encounter between SL and Trustee Blackburn has been repeatedly referenced in numerous media reports available to the public at large. As such, I will only identify witnesses, and other involved individuals, by way of their initials unless their identities have been similarly made public in various media reports.

Upon being formally retained by the OCDSB on April 9, 2020 as an outside consultant for the purpose of conducting the review, my first course of action was to formally request to speak to SL, which request I made through his father, Matthew Kedroe, on Monday, April 13, 2020.

My rationale for choosing to speak to SL was to adhere to the principles of procedural fairness and natural justice in accordance with Section 4.24 of the Code of Conduct. Simply put, it was SL, not Trustee Boothby nor the father, Mr. Kedroe, who was present during the encounter with Trustee Blackburn. Therefore, SL would be able to offer from his perspective, a first-hand account of what transpired between him and Trustee Blackburn, which would, in turn, allow me to properly particularize the allegations against Trustee Blackburn.

However, because Trustee Blackburn initiated legal action by way of a Notice of Libel against Mr. Kedroe, both Mr. Kedroe and his son, SL, were delayed in their response back to me as they had elected to seek legal representation. This resulted in my communication to them, and specifically SL, being channeled through their legal counsel, Lawrence Greenspon.

I was, therefore, able to interview SL by way of correspondence through his lawyer which resulted in me being provided with a typed statement from SL via an attachment to an email from Mr. Greenspon on May 8, 2020.

I then particularized the allegations and provided SL's statement through correspondence with Trustee Blackburn's legal counsel, Brenda Hollingsworth. Thereafter, I was able to schedule an interview with Trustee Blackburn, who attended her virtual meeting with me on May 23, 2020. Her legal counsel, Ms. Hollingsworth, also attended this meeting.

I subsequently interviewed Trustee Boothby on May 27, 2020. After meeting with Trustee Boothby, I interviewed, virtually/remotely, the following witnesses whom I deemed to be relevant between May 28, 2020 and June 5, 2020 in addition to receiving some additional relevant information provided to me by the City on June 10, 2020:

- Z.D., a local Imam who Trustee Blackburn called during her encounter with SL.

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- Susan Carkner, Assistant to Councillor Jan Harder, Ward 3 Barrhaven, who Trustee Blackburn called during her encounter with SL. Please note that I have included Susan Carkner's full name as her identity in this matter was also made public by way of press releases related to the incident.
- Robin Browne, a member of the advocacy group 613-819 Black Hub that addresses Anti-Black Racism in Ottawa. Mr. Browne submitted a delegation to the Board with respect to the encounter between Trustee Blackburn and SL. Please note that I have also included Robin Browne's full name as his identity in this matter was also made public by way of his own public blogs related to the incident. As well, he expressed a desire to be included as a witness to this review.

I also reviewed various press releases, emails, messages and other relevant documents, including:

- Statement from Trustee Evans on the events of March 27, 2020 and the OCDSB Response, prepared by Lyra Evans, Trustee for Zone 9
- Letter of support for Trustee Blackburn prepared by Dr. A.S., Principal of a private Muslim elementary school
- Letter of support for Trustee Blackburn dated May 20, 2020 by an individual who fears reprisal and wishes to remain anonymous
- Trustee Blackburn's media release with respect to the events of March 27, 2020
- Blog prepared by Robin Browne, titled "COVID19 brings out the best in all of us (ok, only some of us)" dated June 3, 2020
- City of Ottawa twitter releases regarding the closing of all City facilities and parks, including park playgrounds dated March 27, 2020
- CBC News release titled 'School Trustee Under Investigation After Confronting Teen' by Joanne Chianello, posted April 1, 2020
- Ottawa Sun article titled 'Ottawa Trustee Donna Blackburn Sorry for Post about Teen, but Says She Did Not Discriminate', dated May 25, 2020 by Jacquie A. Miller
- Basketball Buzz article titled 'Ottawa School Trustee Donna Blackburn Bullies Local Basketball Player Forces Hoops Take-Down' by Edilson J. Silva, published March 28, 2020
- Screen shots of Trustee Blackburn's Facebook posts of March 27, 2020 and March 28, 2020, related to her encounter with SL

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- Email from Said Arwo to the Board and copied to various media outlets dated March 28, 2020
- Delegation request by Matthew B. Kedroe, father of SL
- Email communication chain between Susan Carkner and Public Works dated March 27, 2020.

The Complaint

The following are the particulars/summary of the allegations against Trustee Blackburn derived from my review of the evidence provided by SL:

- On March 27, 2020, Trustee Blackburn approached SL “with a smile on her face”, while he was playing basketball by himself at a public park, to inform him of the park’s closure as a result of COVID-19 measures.
- Trustee Blackburn also told SL that he was putting other people at risk. SL believed that this was not the case as he was not playing with anyone else; in fact, he alleged it was Trustee Blackburn that was putting him at risk by approaching him and standing in close proximity during a global pandemic.
- SL then grabbed his phone to assess if what he was being told by Trustee Blackburn was true given that he was not going to “blindly listen to some random lady off the street”.
- When SL could not find anything online that seemed to support what he was being told, he then expressed through his actions, that he wanted to be left alone, i.e. putting on his headphones and continuing to play by himself.
- At that point, Trustee Blackburn stayed near him and made phone calls within earshot of SL.
- After one of her calls, she then proceeded to ask him personal questions such as his name, what school he attended, and which grade he was in.
- Trustee Blackburn disregarded the fact that SL was playing basketball by himself while others were also at the park participating in various activities in groups.
- Upon being asked personal questions, SL volunteered his name and informed her that he was a high school student in Grade 12. He did not feel comfortable offering her more personal details and, as such, told her he attended St. Paul’s school, although he was, in fact, a student at a different school.

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- After Trustee Blackburn asked if he was on the school basketball team, and he confirmed he was, Trustee Blackburn advised him that she would contact his school principal to have him kicked off the team.
- Trustee Blackburn asked him other personal questions such as why he was playing in a park/neighbourhood that was far from his school and where he lived. She also told him that she would be following him home when he refused to share details of where he lived.
- Trustee Blackburn also asked the youth questions regarding his employment status and asked if he worked at a McDonald's.
- Trustee Blackburn informed the youth that people like him end up at Innes (Innes Road Detention Centre).
- Trustee Blackburn also made another phone call within earshot of SL, and advised the person on the other end that she would attend SL's graduation to stop him from graduating and if he did graduate, she would attend the graduation in order to trip him on the stage. As such, according to SL, these comments were not made directly to him.
- Trustee Blackburn also took SL's photo without his permission, posted the photo to her Facebook account and identified herself as a Trustee. The post accompanying the photograph read: "Apparently I have another title Park Patrol. This kid has been playing for over an hour and won't leave. I have called by-law and will stand here until they come. I will follow the kid home if I have to. See why you elected me Trustee, I never give up. I will keep my community safe and this kid needs to learn to follow the rules!! Kid went to St. Paul's."
- Trustee Blackburn breached SL's personal privacy and he felt discriminated against, singled out, and shamed.

Trustee Blackburn's Response

Trustee Blackburn's evidence includes the following derived from her media response:

Statement of Donna Blackburn

On March 27th, 2020 in the early evening, I met SL in Neill-Nesbitt Park in Barrhaven. There has been significant attention given to that meeting. To date, I have not provided my version of events. I have remained silent because the OCDSB has initiated an investigation. I believed that it would be best for the process if I waited for the investigation to run its course before publicly sharing my account of what happened on March 27th.

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However, given the time that has passed and the continued media interest in this story, I no longer believe it is in the interest of the OCDSB and all of its stakeholders, including my fellow trustees, that the version of events that is circulating remain unanswered.

On March 27th, the City announced that because of COVID-19 City parks are closed for all uses, apart from walk throughs. During the late afternoon of March 27th, there were five people playing basketball at Neill-Nesbitt Park. I live across the street from this park. I told the five basketball players that the park was closed. They all left.

A few minutes later, SL arrived at the park and began playing basketball. I approached SL for the same reason I approached the first five people. We were at the beginning of the pandemic. The parks had just been closed. We were expecting a spike in COVID-19 cases and I was genuinely concerned for the wellbeing of the community, including the well-being of SL himself. I also knew that if SL continued to play, others would seek to join him. In fact, this is exactly what happened. While I was speaking to SL, five more people entered the park to play basketball. I spoke to the five other people who showed up while SL and I were in the park. They all agreed to leave. Unfortunately, SL did not leave.

At no time during my conversation with SL was I closer than 10 feet away from him. Physical distancing was always maintained.

During my conversation with SL, he told me that he did not care that there was a pandemic. He did not care that the park was closed. He did not care that he could be fined. I asked him what he would think if I called his basketball coach about his refusal to leave the park. He did not care. Finally, I indicated that I would call By-Law. He told me to go ahead. It was in response to this exchange that I told SL that people who do not care about the rules end up in Innes Road. My point in the moment was simply that choosing to ignore the rules is a slippery slope. However, with the benefit of reflection, I do sincerely regret delivering this message in this way. Of course, I do understand that young black men are disproportionately represented in our criminal justice system. I apologize for using that turn of phrase with SL.

During our interaction, SL told me he attended a Catholic school. I am a public school trustee. There have been comments on social media and the regular media about me threatening to interfere with SL's 'ability to graduate or to walk across the stage at graduation. Those statements are simply not true.

I was taken aback by SL's response to my request and the tone of our exchange. My plan was to talk to his parents. While I did say I was going to follow him home, that was the reason. I wanted to speak to his parents. For the same reason. I told him I was going to post his photo on my Facebook page. He told me to "go ahead." However, I do agree that I should not have made this post. I realized that myself in less than an hour and removed the post. I am sorry for and regret the posting.

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I freely admit that I should have handled my engagement with SL differently in the ways I have outlined. I apologize unreservedly for those errors on my part.

I have been asked why I did not engage with groups of people who were playing soccer and baseball in the park. I did not see anyone playing soccer. I did see people playing baseball. I had considered speaking to the people playing baseball when I first approached SL. However, since I called By-law while speaking to SL, I decided to leave it to them.

I am the mother of a black adult daughter. I am keenly aware of the challenges facing black children and youth growing up in Ottawa. As a member of the LGBTQ+ community, I have firsthand experience dealing with discrimination. It is simply not who I am to discriminate. My record as a Trustee supports this.

All my life I have fought against discrimination and hate and I am a tireless advocate for equity-seeking groups within the OCDSB. Further, I have been recognized for my work to fight child poverty and Islamophobia. I have taken positive steps in education to advance initiatives for the black student community. I have been a leader and a resource for teachers, parents and students dealing with issues of gender and sexual orientation.

I will continue to do this work for as long as I am elected to serve as a trustee.

She also provided me with the following information during our interview:

- That, at that time of the interaction with SL (i.e. the outset of the pandemic), she was very concerned about the safety of the community because of the spread of COVID-19 and, at that time, she already had two personal acquaintances who had tested positive for COVID-19.
- That she did not single out or discriminate against SL as she also spoke to others using the facilities at the park, including those that were “white”.
- That all the other people she spoke to had adhered to her request to vacate the park.
- That she approached SL in a friendly manner and, while speaking with him, always remained a safe distance away.
- That it was only when SL ignored her request to leave the park and told her that he did not care about the pandemic, that she warned him that he could be fined, asked him what he would think if she called his basketball coach and told him that she would call By-Law.
- She confirmed that she told SL that people “who do not care about the rules end up in Innes Road.” She added that she said this because she wanted him to know that choosing to ignore rules and expressing that one does not care about rules would result in a “slippery slope”.

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- She confirmed that she is fully aware that young black men are disproportionately represented in our criminal justice system and she is remorseful for making reference to Innes Road when speaking with SL.
- She denied that she made any comments to SL indicating that she would interfere with his ability to graduate or trip him when he walked across the stage at graduation.
- She admitted that she did tell him that she would be willing to call his basketball coach. She denied saying that she would call his basketball coach to have him removed from the team, and said she only referenced the basketball coach as a way of trying to appeal to him regarding the urgency of the pandemic by discussing his conduct with someone whom she believed he would respect and listen to. Nevertheless, there was no call made to any basketball coach.
- While speaking to SL, two other young boys/men attended the basketball court. She also asked them to leave and when one of them did not to listen, she recognized that they may be youths of a Muslim background and called the local Imam and asked him to speak to them. She said that the Imam did speak to the boys in Arabic and, although she could not understand what was being said, the young men proceeded to leave the park.
- Instead of leaving the basketball court when seeing the other boys leave after their conversation with the Imam, SL chose to remain at the court.
- As SL was still not leaving, she contacted Susan Carkner, assistant to City Councillor Jan Harder and asked if By-Law could attend the park and also remove the hoops.
- She also confirmed that she wanted to talk to SL's parents and that was why she indicated that she would follow him home.
- She also conveyed to SL that she was going to post his photo on her Facebook page and when he replied, "go ahead", that she did post to her Facebook page the comments and image that are described above and shown in various media publications.
- She confirmed that she should not have made this Facebook post and that she is regretful for doing so. She indicated that her intention for posting his image to Facebook was to show that she was concerned for the community in light of the pandemic, that her intention was to speak to his parents and that her reference to calling herself "park patrol" was reflective of her sense of humour.
- She added that her Facebook page is private and confirmed that people who are invited to view her Facebook page are her constituents.

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- She added that posting his image and her comments on Facebook was borne out of frustration, that she did not think it through but quickly removed the post and recognized that it was a mistake.
- She confirmed that one of the reasons why she removed the post was because friends of hers on Facebook told her that it was not the right thing to do and she should take it down.
- Finally, she added that she is very concerned with the plight of marginalized groups in Ottawa, has done much for the Muslim community, Syrian refugees and the LGBTQ+ community and added that she is the first openly gay person elected as a Trustee. She added that she has also been an advocate for Black students at the OCDSB and has advocated for the Black Students' Forum.
- She also informed me that she is the mother of a black adult daughter and is "keenly aware of the challenges facing black children and youth growing up in Ottawa".

Credibility

Given that SL chose not to participate in a virtual live interview, and, as such, I was required to review his version of events only through correspondence via his counsel, my ability to assess his credibility was compromised. Further, SL's statement was not derived from notes made by me during an interview but was, in fact, based on a review of a typewritten statement that SL confirmed was written by him and is identified with the following typewritten heading:

Statement of Events: March 27, 2020

By Styles Lepage

Further, I do consider and appreciate that SL's evidence would reasonably be impacted by the media attention that SL's father, Matthew Kedroe, has brought to the encounter and also by the fact that Mr. Kedroe has been served with a Libel Notice relating to his allegations that Trustee Blackburn is a racist.

As for Trustee Blackburn, it is clear from her evidence that she has made significant admissions adverse to her interests. Further, the witnesses whom Trustee Blackburn called during the encounter did corroborate portions of her version of events. For these reasons, I do find Trustee Blackburn to be credible in her evidence but, as explained below, I do find some of her explanations for her conduct to be disingenuous.

The overall evidence presented by the witnesses appears to be credible and I have no reason to dispute their evidence given that some of these witnesses, especially Susan Carkner and the Iman, would appear to have nothing to gain from participating in this review.

With respect to Robin Browne, I confirm that his evidence as it relates to the event itself would be biased as having been sourced from the narrative offered by Matthew Kedroe, but I do

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accept his evidence related to how certain images and comments are perceived by the Black Community through the lens of anti- Black racism.

Trustee Boothby's evidence also does not offer any relevance or impact as to what transpired at the park on March 27, 2020, but I found her to be forthright and credible as to how certain undisputed facts, detailed below, are perceived by her in her capacity as a Trustee. I also accept her submissions on how the role of Trustee carries a fiduciary responsibility, and, as such, it is essential for trustees to act in a manner that inspires public confidence.

Factual Findings and Concluding Summation

Based on my assessment of the evidence, my conclusions on credibility, and on a balance of probabilities, I make the following findings of fact:

- Trustee Blackburn did not conduct herself only as a concerned citizen during her encounter with SL on March 27, 2020, but that her role and status as a Trustee played a significant part in the encounter for the following reasons:
 - She clearly identified herself as a Trustee in her Facebook post by stating that she was elected as a Trustee because she is not one to give up and that she will keep her community safe.
 - She confirmed that her Facebook page includes her constituents who voted for her as a Trustee. Evidence suggests that Ottawa citizens who are in her zone routinely view and comment on her Facebook posts.
 - A subsequent review of her Facebook page confirms that she does discuss OCDSB matters via this medium.
 - In trying to involve the City/By-Law office in her encounter with SL, she contacted Susan Carkner, assistant to Councillor Jan Harder, with whom she is connected and has knowledge of due to the fact that she is an elected Trustee.
 - The connection between her and the Imam, whom she called during her encounter with SL and the other young men who attended the park, is based on her advocacy on behalf of Muslim students as an elected Trustee.
- Trustee Blackburn was not singling out SL for using the basketball court as the evidence, which includes my assessment of her credibility, suggests that she did discuss the park closures with others who were using the basketball court, including the two Muslim boys and other community members, who she identifies as being "white" or perhaps not appearing to be from a marginalized background.
- Trustee Blackburn did inform SL that she would be willing to contact his basketball coach; although she never did so.

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- Trustee Blackburn told SL “*people who do not care about the rules end up in Innes Road.*” Innes Road is the Ottawa Carleton Detention Centre.
- Trustee Blackburn posted only SL’s image on Facebook that day and she herself confirmed that she has not posted anyone else’s image from the park because it was only SL who would not listen to her request to vacate the park.
- Trustee Blackburn referred to SL on the Facebook post as “this kid needs to learn to follow the rules!!” and she used exclamation points in this phrase for emphasis.
- Trustee Blackburn, at the time of posting the image, was aware that SL was a young black man who attended secondary school.
- Trustee Blackburn, in a subsequent Facebook post following the encounter, stated as follows:
 - *A big shout out to Susan Carkner, Jan’s assistant. She responded to my concerns immediately and the hoops will be removed. Problem solved and I shed my title of park patrol gladly. The pay sucked and I didn’t appreciate having my judgement questioned!*
- Trustee Blackburn knew that SL was not interested in engaging with her. Indeed, she confirmed that SL was playing for over an hour and was refusing to leave. In the post she wrote that she would follow “the kid” home if she had to.
- Trustee Blackburn’s conduct towards SL was lengthy and unwavering as he would not abide by her request to vacate the park. This conclusion is supported by her Facebook posts where Trustee Blackburn confirms that she remained at the park with SL for over an hour.
- Trustee Blackburn admitted that she did ask SL for his personal details, which she subsequently chose to share in her Facebook post while being aware that he was a student or “kid”, albeit with the incorrect name of the school being offered by SL.
- Evidence confirms that the City’s restrictions on using the park and its facilities were implemented as of March 27, 2020, the exact day of the encounter between Trustee Blackburn and SL.
- Evidence also confirms that rules regarding social distancing and addressing COVID-19’s spread were being updated almost on a daily basis at all levels of government and it was reasonable for any citizen to not be fully aware of the current state of restrictions on any given day. The fact that any citizen, let alone a young man or a “kid” was not fully aware of the updated guidelines is reasonable.

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- The City's response to Susan Carkner's request to have the hoops removed in order to enforce COVID-19 social distancing measures, which she made on behalf of Trustee Blackburn, states as follows:
 - *Hi Susan*
Removing hoops have been discussed between a few departments and it's not going to happen. The best we'll get is signage that will be going up next week. (Sorry, not me that makes these decisions). What's missing here is parental control and enforcement. One kid in a park isn't a problem, but when there's a group, all that contributes to is transmission of this virus.
Is there any way to get it across to the residents that their kids can bring the virus back from their friends gathering in a park and into their homes ?
Surely people are in tune to the world's situation, and if they are not, they are contributing to "Natural Selection". This isn't society's issue, it's a parental issue. I believe OPS, Bylaw and OPH will respond to group activities in parks, so 311 may be the way to deal with any continued activity.
Sorry, but that's the best I can do.
Have a good weekend.
JK

Therefore, and after careful consideration of the evidence obtained, I conclude that Trustee Blackburn's conduct in posting an image of a young black man, a "kid" as she referred to him repeatedly in the post (4 times to be exact), and referring to him as someone who needs to learn to follow the rules and whose apparent lack of caring about rules could result in him ending up incarcerated, was racially insensitive given that black persons are routinely over represented in the criminal justice system and face harsher penalties than non-black citizens for trivial or minor infractions.

The racial insensitivity of this comment has since been acknowledged by Trustee Blackburn and she confirmed that she has, as a result, faced severe and increasing media and personal backlash.

However, it should also be noted that this comment is made towards SL, a young black student, for playing basketball by himself, albeit during the park's closure, by an elected official with corresponding fiduciary obligations towards the public. For clarity, elected school trustees are deemed to be fiduciaries according to the common law and, as such, are required to conduct themselves with a very high objective standard of care.¹

¹ *Calgary Roman Catholic Separate School District No. 1 v. O'Malley*, 2007 ABQB 574 (CanLII) at para. 109

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It is also relevant to note that the City, in its response to Susan Carkner's request on behalf of Trustee Blackburn, established that the focus of By-Law and OPS (Ottawa Public Service) was to address large public gatherings and not just one person playing basketball.

Finally, Trustee Blackburn stated that her role was to keep the community safe even if it required her to follow a "kid" home and stated that he needed to learn to follow rules. Trustee Blackburn sought out and divulged personal information about SL, all while confirming her status as an elected Trustee to her constituents who follow her on Facebook.

It is also clear from the evidence that Trustee Blackburn is not lacking in self-awareness as she acknowledges that her reference to Innes Road and her initial Facebook post were improper. In fact, Trustee Blackburn confirmed that she has, since this incident, engaged in training related to racial sensitivity.

On a final note, I was in receipt of compelling evidence that Trustee Blackburn has done much for marginalized communities in Ottawa, including OCDSB students, such as promoting prayers for Muslim students in OCDSB schools. I was further informed by the Imam, in relation to the other two boys who attended the park during her encounter with SL, that he regarded Trustee Blackburn's conduct as a form of positive community engagement. As the Imam confirmed, she had called him in order to alleviate the need for the authorities to attend and fine the Muslim boys over using a closed park facility.

Unfortunately, the findings set out above with respect to her encounter with SL, do not support a conclusion of positive community engagement.

Respectfully,
Lakhani Campea LLP



Zaheer Lakhani



BOARD (PUBLIC)
Report 20-043

29 June 2020

Code of Conduct Breach Determination

Key Contact: Michele Giroux, Executive Officer, Corporate Services, (613) 596-8211 ext. 8310

PURPOSE:

1. To consider a complaint under the Code of Conduct against Trustee Donna Blackburn and determine whether there has been a contravention of the Code; and, if necessary, determine what action, if any, the Board might take.

CONTEXT:

2. The school district has a Board Member Code of Conduct policy which establishes standards of practice and behavior for the Board of Trustees. In April 2020, a complaint was filed alleging Trustee Blackburn had failed to comply with the civil behavior sections of the Code. Chair Scott and Vice-Chair Penny reviewed the complaint against the policy and determined that a formal review of the complaint would begin, using a third party investigator. An investigator was retained and has completed the review and submitted a report to the Board. Under the policy, the investigator must submit a report of the finding of facts which does not include a determination of whether the Code has been breached nor does it provide any recommendations. The Board must review the finding of facts and determine whether the Code has been breached. Should the Board determine that there has been a breach of the Code of Conduct, the Board shall then consider what sanctions, if any, shall be applied.

KEY CONSIDERATIONS:

3. Public Delegation and Submission of Code Complaint
On March 31, 2020 two delegations addressed the Board of Trustees at a public Board meeting to express concerns about an incident which occurred in a city park on March 27, 2020 between a Black youth and Trustee Donna Blackburn. Reports about the incident were posted on social media, including the Trustee's social media account. Trustee Christine Boothby filed a formal complaint with the Chair on April 1, 2020. The complaint alleged that Trustee Blackburn's behavior related to the alleged incident was inconsistent with the Civil Behaviour expectations established in sections 3.8, 3.15 and 3.18 of the Board Member Code of Conduct policy. A copy of the complaint was distributed to trustees in accordance with section 4.19 of the policy (P.073.GOV).

4. Third Party Investigator Retained

An independent third party investigator was retained by the District to investigate the complaint. The investigator was provided with a copy of the Board Member Code of Conduct policy, the complaint, and the written submissions of the delegations, media reports and relevant Board governance policies. The investigator met with staff and legal counsel and was asked to undertake an investigation in accordance with the provisions of the policy. Under section 4.24 of the policy, the investigation shall be undertaken using the following steps:

- a. *Procedural fairness and the rules of natural justice shall govern the formal review. The formal review will be conducted in private and, to the extent possible, protecting the confidentiality of the parties involved.*
- b. *The formal review may involve both written and oral statements by any witnesses, the trustee bringing the complaint and the trustee who is alleged to have breached the Code of Conduct.*
- c. *The trustee who is alleged to have breached the Code of Conduct shall receive details of the allegation and have an opportunity to respond to the allegations both in a private meeting with the person(s) undertaking the formal review and in writing.*
- d. *It is expected that the formal review will be conducted within a reasonable period of time which will depend on the circumstances of the case. The trustee who is alleged to have breached the Code of Conduct shall provide a written response to the allegations within 10 days of receiving the written allegation, or such extended period of time as the investigators deem appropriate in the circumstance.*
- e. *If the trustee who is alleged to have breached the Code of Conduct refuses to participate in the formal review, the formal review will continue in his/her absence.*

5. Investigator's Report

The policy requires the investigator to provide a confidential draft copy of the report to the trustee who filed the complaint and the trustee who is alleged to have breached the Code. Both Trustees Boothby and Blackburn received the draft report and had an opportunity to provide comment to the investigator.

The investigator submitted the final report to the District on Thursday, June 25, 2020. The final report was shared with the Board on Friday, June 26, 2020. A copy of the investigator's report is attached as Appendix A to this report. In accordance with section 4.26 of the policy, the final report of the investigator is a finding of facts and does not contain a recommendation or opinion as to whether the Code of Conduct has been breached.

6. Process for Determining a Breach

The Board is required to review the report, and as soon as practical, make a decision as to whether the Code has been breached. Under section 4.30, "The Board shall consider only the findings in the final report when voting on the

decision and sanction.” The Board decision is made by way of resolution of the Board at a public meeting of the Board.

Staff and legal counsel will be in attendance at the meeting to assist the Board in understanding its administrative and legislative responsibilities in this regard.

7. Participation in Decision-making

In terms of participation in the process, all parties to the complaint had equal opportunity to provide facts to the investigator – through interview or in writing. In addition, both the complainant and the subject of the complaint had the opportunity to review and comment on the investigator’s report before the final report was prepared.

The Code of Conduct policy, section 4.33, provides the following restrictions on participation in the decision-making:

“The trustee who is alleged to have breached the Code of Conduct:

- a) may be present during the deliberations;*
- b) shall not participate in the deliberations;*
- c) shall not be required to answer any questions at that meeting; and*
- d) shall not vote on a resolution to determine whether or not there is a breach or the imposition of a sanction.”*

The trustee who is alleged to have breached the Code shall not, in any way, after the final report is completed, influence the vote on the decision of breach or sanction, except to appeal after the decisions have been made.”

Except for the trustee who is alleged to have contravened the Code, all members of the Board may vote on decisions regarding Code of Conduct. The trustee who filed the complaint is entitled to vote.

Decisions made under the Code of Conduct policy require a vote of at least 2/3 of the Trustees of the Board elected or appointed. At the OCDSB this means that of the 11 members voting, 8 members must vote in favour in order for a motion to be carried. This is not adjusted for absences - meaning that if only 7 members were present, no motion could be carried. Similarly, if all 11 members eligible to vote were present, and 3 members abstained from voting, no motion could be carried.

8. Factors in Breach Decisions

The Board must consider whether a breach of the Code of Conduct policy has occurred. In making this decision, the Board must focus their deliberation on this particular complaint using the investigator’s report as the statement of facts.

Section 4.30 of the policy provides that *“The Board shall consider only the findings in the final report when voting on the decision and sanction. No trustee shall undertake his/her own investigation of the matter.”*

In order to ensure clarity in decision-making, any motion put forward regarding a breach should be structured as follows:

Upon review of the facts as documented in the investigator's final report dated (insert date) regarding a Code of Conduct complaint filed by (insert name) in relation to (insert name), the Board finds:

THAT Trustee _____ has breached Sections 3.8, 3.15 and 3.18 of Policy P.073, Board Member Code of Conduct, in relation to

This structure ensures clarity of decision-making whether the motion is carried or fails.

In the event the Board decides the Code has been breached, it must then determine what sanctions, if any, shall be imposed. That is a separate decision making process which is detailed in Report 20-060.

COMMUNICATION/CONSULTATION ISSUES:

9. There has been considerable public discussion on this incident which has included an online petition, numerous email and letters to the Board, concerns filed with the Minister of Education, multiple media stories/coverage and social media campaigns. The community has clearly expressed frustration and concern with the process, the length of the investigation and the need for the Board to take action.
10. The Board heard from two delegations prior to the submission of the formal complaint. Once the complaint was filed, the Board continued to receive requests for delegations to Board meetings on this matter. While the Board did not hear additional delegations, one of the individuals who submitted a delegation request was interviewed by the investigator.

RESOURCE IMPLICATIONS:

11. There are three primary areas of cost associated with a Code of Conduct complaint; legal fees, investigation costs, and staff time. The costs and time associated with this complaint are higher than what would usually be expected in a code of conduct complaint. This can be attributed to several factors including the sensitivity of the subject matter, the fact that several parties had engaged legal representation, and the amount of community interest which generated a number of additional discussions with legal counsel.

The investigation costs and legal fees are funded through the legal services budget and are estimated to be between \$20,000 and \$50,000. In terms of staff time, it is estimated that the administration of this complaint and related community concerns involved between 50 and 100 hours of work.

SUMMARY:

12. The Board must consider the finding of facts and make decisions based on the following questions:
- With respect to the Code of Conduct complaint dated April 1, 2020 and based on the final report of the investigator, did Trustee Blackburn contravene the Code of Conduct?

RECOMMENDATION:

Upon review of the facts as documented in the investigator's final report dated June 25, 2020 regarding a Code of Conduct complaint filed by Trustee Boothby in relation to Trustee Blackburn, the Board finds:

THAT Trustee Blackburn *(insert HAS or HAS NOT)* breached Sections 3.8, 3.15 and 3.18 of Policy P.073, Board Member Code of Conduct, in relation to an incident which occurred on March 27, 2020.

Michele Giroux
Executive Officer, Corporate Services

Camille Williams-Taylor
Director of Education and
Secretary of the Board

Attachments:

Appendix A: Policy P.073.GOV Board Member Code of Conduct

Appendix A to Report 20-043

**POLICY P.073.GOV****TITLE: BOARD MEMBER CODE OF CONDUCT**

Date issued: June 1999
Revised: 26 April 2016
Authorization: Board 10 May 1999

1.0 OBJECTIVE

To establish a standard of conduct and a mechanism for managing inappropriate conduct for Ottawa-Carleton District School Board members in discharging their duties as the legislative officers of the Board entrusted with the duty as fiduciaries to act at all times with the utmost good faith and respect in the best interests of the organization.

2.0 DEFINITION

In this policy,

- 2.1 **Board** means the Board of Trustees of the Ottawa-Carleton District School Board.
- 2.2 **Conflict of interest** exists when the decisions and/or actions of a trustee during the course of exercising his/her duties are affected by or perceived by another party or person to be affected by the trustee's personal, financial or business interest or the personal, financial or business interests of a relative, friend, and/or business associate of the trustee.
- 2.3 **District** means the Ottawa-Carleton District School Board.
- 2.4 **Fiduciary duty** means legal responsibility for what belongs to another, that is, trusteeship.
- 2.5 **Formal Review Process** means the process whereby a written, signed complaint of an alleged breach is formally investigated and a written response has been provided to the Board.
- 2.6 **Informal Review Process** means the process whereby the Chair of the Board meets with a trustee informally, and in private, to discuss an alleged breach and any remedial measures to correct the offending behaviour.
- 2.7 **Respect** means honouring oneself and others through words and actions, supporting diversity of beliefs, and treating the world and everything in it with dignity.

- 2.8 **Trustee** means a member of the Board elected or appointed in accordance with the *Municipal Elections Act* and the *Education Act*, and includes student trustees who are elected by the Student Senate and Students' President Council to represent the interests of students on the Board.

3.0 POLICY

Code of Conduct

- 3.1 The Board believes that the conduct of its members is integral to the quality of work, the reputation and the integrity of the Board of Trustees.
- 3.2 All members of the Board shall be governed equally by this code of conduct and are expected to uphold the letter and spirit of this Code of Conduct.
- 3.3 The Code of Conduct shall apply to members of the Board with respect to issues raised by, and amongst, members of the Board.

Compliance with Legislation

- 3.4 Board members shall discharge their duties in accordance with the *Education Act* and any regulations, directives or guidelines thereunder, and comply with the *Municipal Freedom of Information and Protection of Privacy Act*, and any other relevant legislation.
- 3.5 Board members shall recognize that they are not immune from liability for illegal or negligent actions or for statements which may be considered libel or slander made in the course of a meeting or published (including publication by electronic means).

Integrity and Dignity of Office

- 3.6 Board members shall discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board.
- 3.7 Board members shall recognize that the expenditure of school board funds is a public trust and endeavour to see that the funds are expended efficiently, in the best interests of the students of the entire District.
- 3.8 Trustees, as leaders of the Board, must uphold the dignity of the office and conduct themselves in a professional manner, especially when representing the Board, attending Board events, or while on Board property.
- 3.9 Trustees shall ensure that their comments are issue-based and not personal, demeaning or disparaging with regard to Board staff or fellow Board members.

Avoidance of Personal Advantage and Conflict of Interest

- 3.10 Board members shall declare any direct or indirect pecuniary interest in a matter before the Board.
- 3.11 Board members shall not accept a gift, hospitality or benefits from any person or entity that has dealings with the Board if a reasonable person might conclude that the gift,

hospitality or benefit could influence the member when performing his or her duties to the Board.

- a) Notwithstanding the above, in limited circumstances where it would be impolite or otherwise socially inappropriate to refuse a gift of obvious value, the gift may be accepted on behalf of the Board and reported to the Chair or Vice-Chair, but may not be taken home for the trustee's home or personal use or enjoyment.
 - b) Acceptable gifts include holiday gifts such as fruit baskets or candy, inexpensive advertising and promotional materials such as pens or key chains, inexpensive awards to recognize service and accomplishment in civic, charitable, educational or religious organizations such as nominal gift certificates to book stores.
- 3.12 Board members shall not use the office of trustee or the resources of the District for personal gain, or to advance their interests or the interests of any family member or person or organization with whom or with which the member is associated.
- 3.13 Board members shall not use their office to obtain employment with the District for themselves or a family member.
- 3.14 Board members shall not use their office or any benefits derived therefrom for the purpose of seeking election or re-election to office.

Civil Behaviour

- 3.15 Board members shall not engage in conduct that would discredit or compromise the integrity of the Board during meetings of the Board or at any other time.
- 3.16 Board members shall not make allegations of misconduct and/or a breach of this Code of Conduct that are trivial, frivolous, vexatious, in bad faith or vindictive in nature against another member of the Board.
- 3.17 When expressing individual views, Board members shall respect the differing points of view of other Board members, staff, students and the public.
- 3.18 Board members shall, at all times, act with decorum and shall be respectful of other Board members, staff, students and the public.
- 3.19 All Board members shall endeavour to work with other Board members and staff of the Board in a spirit of respect, openness, courtesy, and co-operation.
- 3.20 All Board members shall have regard for, and model, the behavioral expectations referenced in Policy P.012.GOV, Board Governance, Policy P.125.SCO, School Board Code of Conduct, and Policy P.009.HS: Respectful Workplace (Harassment Prevention).
- 3.21 All members of the Board shall understand their responsibility for contributing to a respectful workplace, and make every reasonable effort to resolve issues arising as a result of friction, conflict or disagreement in a respectful and professional manner that contributes to a healthy and productive workplace.

Respect for Confidentiality

- 3.22 Board members shall maintain the confidentiality of privileged information discussed in closed sessions.
- 3.23 Board members shall not use/disclose confidential information for any purpose, including for personal gain or to the detriment of the Board.
- 3.24 Board members shall not divulge confidential information, including personal information about an identifiable individual or information subject to solicitor-client privilege that a Board member becomes aware of because of his or her position, except when required by law or authorized by the Board to do so.
- 3.25 Board members shall ensure that any personal information collected, used or disclosed by him or her is done in accordance with the *Municipal Freedom of Information and Protection of Privacy Act*.
- 3.26 A Board member's duty of confidentiality with respect to private and confidential financial, business and/or commercial information, personnel information, student information, and legal matters and opinions extends beyond their term as a trustee. Inappropriate use of confidential information may constitute a criminal breach of trust contrary to section 122 of the Criminal Code (Canada).

Upholding Decisions

- 3.27 All Board members shall accept that authority rests with the Board, and that a Trustee has no individual authority other than that delegated by the Board.
- 3.28 Each Trustee shall uphold the implementation of any Board resolution after it is passed by the Board. A proper motion for reconsideration or rescission, if permitted by the Board's By-Laws and Standing Rules, can be brought by a Trustee.
- 3.29 A Trustee should be able to explain the rationale for a resolution passed by the Board. A Trustee may respectfully state his or her position on a resolution provided it does not in any way undermine the implementation of the resolution.
- 3.30 Each Trustee shall comply with Board policies, procedures, By-Laws and Standing Rules.
- 3.31 The Chair of the Board is the spokesperson to the public on behalf of the Board, unless otherwise determined by the Board. No other Trustee shall speak on behalf of the Board unless expressly authorized by the Chair of the Board or Board to do so. When individual Trustees express their opinions in public, they must make it clear that they are not speaking on behalf of the Board.

4.0 SPECIFIC DIRECTIVESRole of the Chair/Presiding Officer

- 4.1 The Code of Conduct applies equally to all Board members including the Chair of the Board. In the case of an allegation of a breach of the Code by the Chair, wherever a process requires action by the Chair, it shall be modified to read Vice-Chair.

- 4.2 Each year, the Board shall appoint two trustees to serve as alternate trustees to be used when the circumstances warrant that one or both trustees are needed in place of the Chair and/or Vice-Chair of the Board to carry out any of the duties required under this Code of Conduct.
- 4.3 In no circumstance shall the trustee(s) who brought the complaint of a breach of the Code of Conduct or the trustee who is alleged to have breached the Code be involved in the management or administration of the review of the complaint.
- 4.4 Nothing in this Code prevents the Chair or Presiding Officer of any meeting of the Board or committee of the Board from exercising their power pursuant to s. 207(3) of the *Education Act* to expel or exclude from any meeting any person who has been guilty of improper conduct at the meeting. For greater certainty, this may be done at the sole discretion of the Chair or Presiding Officer, as the case may be, and without the necessity of a complaint or conducting an inquiry before an expulsion or exclusion from a meeting. The rationale for this provision is that a Chair or Presiding Officer must have the ability to control a meeting. Any Trustee who does not abide by a reasonable expulsion or exclusion from a meeting is deemed to have breached this Code.
- 4.5 Any trustee who does not abide by a reasonable expulsion or exclusion from a meeting shall be deemed to have breached this Code.
- 4.6 The Chair of the Board or Presiding Officer of any meeting of the Board or committee of the Board shall exercise his/her powers in a fair and impartial manner having due regard for every trustee's opinion or views.
- 4.7 The Chair of the Board or Presiding Officer shall follow the Board's By-Laws and Standing Rules. A breach of a rule of order should be dealt with at the meeting in question by a Trustee rising to a point of order or appealing a ruling of the Chair in accordance with any applicable rule of order. Once such a motion is dealt with by the Board of Trustees, all Trustees shall abide by that decision and no further action shall be undertaken pursuant to the enforcement of the Code of Conduct, except for persistent improper use of the applicable rules of order by the Chair or Presiding Officer.
- 4.8 Persistent improper use of the rules of order by the Chair or Presiding Officer is deemed to be a breach of this Code.
- 4.9 A Board member who believes that another Board member's behavior has been egregious, shall raise his or her concern with that Board member.
- 4.10 Where a conflict arises between Board members, opportunities for resolution should be sought, or may be presented, by the parties to the conflict in order to resolve the matter.

Identifying a Breach of the Code

- 4.11 A Board member who has reasonable grounds to believe that another Board member has breached the Board's Code of Conduct may bring the alleged breach to the attention of the Board through the Chair of the Board.

- 4.12 Any allegation of a breach of the Code must be brought to the attention of the Chair of the Board no later than six (6) weeks after the alleged breach comes to the knowledge of the trustee reporting the alleged breach. Notwithstanding the foregoing, in no circumstance shall a review of an alleged breach of the Code be initiated after the expiration of six (6) months from the time the contravention is alleged to have occurred.
- 4.13 There are two methods for conducting an investigation of an allegation of a breach of the Code of Conduct:
- i. Informal Review Process; or
 - ii. Formal Review Process.
- 4.14 It is expected that whenever possible, allegations of a breach of the Code of Conduct by a trustee shall be investigated using the Informal Review Process. It is recognized that from time to time a contravention of the Code may occur that is trivial, or committed through inadvertence, or an error of judgment made in good faith. In the spirit of collegiality and the best interests of the Board, the first purpose of alerting a trustee to a breach of the Code is to assist the trustee in understanding his/her obligations under the Code. Only serious and/or recurring breaches of the Code by a trustee should be investigated following the Formal Review Process.

Informal Review Process

- 4.15 The Chair of the Board, on his/her own initiative, or at the request of a trustee of the Board (without the necessity of providing a formal written complaint) who alleges a breach of the Code has occurred, may meet informally with a trustee of the Board who is alleged to have breached the Code, to discuss the alleged breach. The purpose of the meeting is to bring the allegation of the breach to the attention of the trustee and to discuss possible remedial measures to correct the offending behaviour. The informal review process is conducted in private.
- 4.16 As a remedy, the parties may agree to a remedial measure that is appropriate to the nature of alleged breach, for example, an apology.
- 4.17 If the Chair of the Board and the trustee alleged to have breached this Code cannot agree on a remedy, a formal complaint may be brought against the trustee alleged to have breached this Code and that complaint will be dealt with in accordance with the Formal Review Process below.

Formal Review Process

- 4.18 A Trustee who has reasonable grounds to believe that another trustee of the Board has breached the Board's Code of Conduct may bring the breach to the attention of the Board by first providing to the Chair of the Board, a written, signed complaint setting out the following:
- a) the name of the trustee who is alleged to have breached the Code;
 - b) a statement of fact about the alleged breach of the Code;
 - c) information as to when the breach came to the trustee's attention;
 - d) the grounds for the belief by the trustee 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.

If a written complaint is filed with the Chair of the Board then a Formal Review shall be undertaken, unless the complainant subsequently withdraws the complaint or agrees that the complaint may be dealt with in accordance with the Informal Review Process.

- 4.19 The Chair of the Board shall provide to all trustees of the Board a confidential copy of the complaint within ten (10) days of receiving it. The complaint, any response to the complaint and the investigation of the complaint shall be confidential until it is before the Board of Trustees for a decision as to whether or not the Trustee has breached this Code.

Refusal to Conduct Formal Review

- 4.20 If the Chair and Vice-Chair of the Board are of the opinion that the complaint is:
- a) out of time;
 - b) trivial, frivolous, vexatious;
 - c) not made in good faith; or
 - d) there are no grounds or insufficient grounds for a formal review, a formal review shall not be conducted.

A confidential report stating the reasons for not conducting a formal review shall be provided to all trustees of the Board.

If the Chair and Vice-Chair of the Board cannot agree on the above then a full formal review shall be conducted.

- 4.21 If an allegation of a breach of the Code of Conduct, on its face, is with respect to the non-compliance of a Board policy with a separate and more specific complaints resolution procedure, the allegation shall be processed under that procedure.

Steps of Formal Review

- 4.22 If a formal review of an allegation of a breach of the Code of Conduct is undertaken, it shall be done by:
- a) The Chair and Vice-Chair of the Board, if appropriate (see Section 4.1); or
 - b) Any two of the Chair, Vice-Chair and the alternate trustees (see Sections 4.2 and 4.3); or
 - c) An outside consultant chosen by the Chair and Vice-Chair.
- 4.23 The Chair and Vice-Chair shall determine if the formal review will be undertaken by an outside consultant.
- 4.24 Regardless of who undertakes the formal review, it shall be undertaken using the following steps:
- a) Procedural fairness and the rules of natural justice shall govern the formal review. The formal review will be conducted in private and, to the extent possible, protecting the confidentiality of the parties involved.

- b) The formal review may involve both written and oral statements by any witnesses, the trustee bringing the complaint and the trustee who is alleged to have breached the Code of Conduct.
 - c) The trustee who is alleged to have breached the Code of Conduct shall receive details of the allegation and have an opportunity to respond to the allegations both in a private meeting with the person(s) undertaking the formal review and in writing.
 - d) It is expected that the formal review will be conducted within a reasonable period of time which will depend on the circumstances of the case. The trustee who is alleged to have breached the Code of Conduct shall provide a written response to the allegations within 10 days of receiving the written allegation, or such extended period of time as the investigators deem appropriate in the circumstance.
 - e) If the trustee who is alleged to have breached the Code of Conduct refuses to participate in the formal review, the formal review will continue in his/her absence.
- 4.25 Once the formal review is complete, the investigators shall provide a confidential draft copy of their report containing the findings of fact to the trustee who is alleged to have breached the Code of Conduct and the trustee who brought the complaint for their written comment to the investigator(s). The purpose of providing the draft report to the parties is to ensure no errors of fact are contained in it. The two trustees shall have up to ten (10) days (or such greater period of time as deemed appropriate by the investigators) from the receipt of the draft report to provide a written response.
- 4.26 The final report of the investigators shall outline the finding of facts, but not contain a recommendation or opinion as to whether the Code of Conduct has been breached. This will be determined by the Board of Trustees as a whole.
- 4.27 If the Chair and Vice-Chair of the Board when conducting the formal review cannot agree on the final finding of facts, it shall be referred to an outside investigator to complete the formal review.

Suspension of Formal Review

- 4.28 If the investigators, when conducting the formal review, discover that the subject-matter of the formal inquiry is being investigated by police, that a charge has been laid, or is being dealt with in accordance with a procedure established under another *Act*, the formal review shall be suspended until the police investigation, charge or matter under another *Act* has been finally disposed of. This shall be reported to the rest of the Board of trustees.

Decision

- 4.29 The final report shall be delivered to the Board of Trustees, and a decision by the Board of Trustees shall be made as soon as practical after receipt of the final report by the Board.
- 4.30 The Board shall consider only the findings in the final report when voting on the decision and sanction. No trustee shall undertake his/her own investigation of the matter.

- 4.31 The determination of a breach of the Code of Conduct and the imposition of a sanction must be done by resolution of the Board at a meeting of the Board, and the vote on the resolution shall be open to the public. The resolution and the reasons for the decision shall be recorded in the minutes of the meeting. Both resolutions shall be decided by a vote of at least 2/3 of the Trustees of the Board elected or appointed.
- 4.32 Despite s. 207 (1) of the *Education Act*, the part of the meeting of the Board during which a breach or alleged breach of the Board's Code of Conduct is considered may be closed to the public when the breach or alleged breach involves any of the matters described in clauses 207(2) (a) to (e) being:
- a) the security of the property of the Board;
 - b) the disclosure of intimate, personal or financial information in respect of a member of the Board or committee, an employee or prospective employee of the Board or a pupil or his or her parent or guardian;
 - c) the acquisition or disposal of a school site;
 - d) decisions in respect of negotiations with employees of the Board; or
 - e) litigation affecting the Board.
- 4.33 The trustee who is alleged to have breached the Code of Conduct:
- a) may be present during the deliberations;
 - b) shall not participate in the deliberations;
 - c) shall not be required to answer any questions at that meeting; and
 - d) shall not vote on a resolution to determine whether or not there is a breach or the imposition of a sanction.
- 4.34 The trustee who filed the complaint may vote on the resolution to determine whether or not there is a breach and/or the imposition of a sanction.
- 4.35 The trustee who is alleged to have breached the Code shall not, in any way, after the final report is completed, influence the vote on the decision of breach or sanction, except to appeal after the decisions have been made.

Sanctions

- 4.36 If the Board determines that there has been no breach of the Code of Conduct or that a contravention occurred, although the trustee took all reasonable measures to prevent it, or that a contravention occurred that was trivial, or committed through inadvertence, or an error of judgment made in good faith, no sanction shall be imposed.
- 4.37 If the Board determines that a Board member has breached this Code of Conduct, the Board may impose one or more of the following sanctions:
- a) censure of the Board member;
 - b) barring the Board member from attending all or part of a meeting of the Board or a meeting of a committee of the Board; or
 - c) barring the Board member from sitting on one or more committees of the Board, for the period of time specified by the Board, not to exceed six months.

- 4.38 The Board shall not impose a sanction that is more onerous than the above but may impose one that is less onerous such as a warning. The Board has no power to declare the trustee's seat vacant.
- 4.39 A Board member who is barred from attending all or part of a meeting of the Board or a meeting of a committee of the Board is not entitled to receive any materials that relate to that meeting or that part of the meeting and that are not available to the members of the public.
- 4.40 A sanction barring a trustee from attending all or part of a meeting shall be deemed to be authorization for the trustee to be absent from the meeting, and therefore, not in violation of the *Education Act* regarding absences from meetings.

Appeal

- 4.41 If a Board determines that a Board member has breached this Code of Conduct, the Board shall:
- a) give the Board member written notice of the determination and of any sanction imposed by the Board;
 - b) the notice shall inform the Board member that he or she may make written submissions to the Board in respect of the determination or sanction by the date specified in the notice that is at least 14 days after the notice has been received by the Board member; and
 - c) consider any submissions made by the Board member and shall confirm or revoke the determination within 14 days after the submissions are received from the Board member.
- 4.42 If the Board revokes a determination any sanction imposed by the Board is also revoked.
- 4.43 If the Board confirms a determination that a Board member has breached this Code of Conduct, the Board shall, within the 14 days above, confirm, vary or revoke the sanction(s) imposed by the Board.
- 4.44 If a sanction is varied or revoked, the variation or revocation shall be deemed to be effective as of the date the original determination was made by the Board.
- 4.45 The Board decisions to confirm or revoke a determination or confirm, vary or revoke a sanction shall be done by resolution at a meeting of the Board and the vote on the resolution shall be open to the public. Both resolutions shall be decided by a vote of at least 2/3 of the Board members elected or appointed.
- 4.46 The Board shall provide to the Trustee alleged to have breached the Code of Conduct written notice of the decision to confirm or revoke the determination together with reasons for the decision and written notice of any decision to confirm, vary or revoke a sanction. The Board member alleged to have breached the Code of Conduct shall not vote on those resolutions. The Board member who brought the complaint may vote.

- 4.47 The Board member who is alleged to have breached the Code of Conduct may be present during the deliberations regarding the above but may not participate in the deliberations and shall not be required to answer any questions at that meeting.
- 4.48 If appropriate, the original sanction may be stayed pending consideration of the appeal by the Board of the determination or sanction.

Administrative Matters

- 4.49 The Board shall do the following things by resolution at a meeting of the Board, and the vote on the resolution shall be open to the public:
- a) Make a determination that a Board member has breached this Code of Conduct;
 - b) Impose a sanction on a Board member for a breach of this Code of Conduct;
 - c) Confirm or revoke a determination regarding a Board member's breach of this Code of Conduct; and
 - d) Confirm, vary or revoke a sanction after confirming or revoking a determination regarding a Board member's breach of this Code of Conduct.
- 4.50 The meeting may be closed to the public if the breach or alleged breach involves:
- a) The security of the property of the Board;
 - b) The disclosure of intimate, personal or financial information in respect of a member of the Board or committee, an employee or prospective employee of the Board or a pupil or his or her parent or guardian;
 - c) The acquisition or disposal of a school site;
 - d) Decisions in respect of negotiations with employees of the Board; or
 - e) Litigation affecting the Board.
- 4.51 A Board member who is alleged to have breached this Code of Conduct shall not vote on any of the resolutions listed above with regard to the alleged breach(s).
- 4.52 In an election year, a Code of Conduct complaint respecting a trustee who is seeking re-election shall not be initiated during the period 1 September and ending after the first Board meeting following the election. If the trustee who is the subject of the complaint is not re-elected, no review shall be undertaken. The limitation period for bringing a complaint shall be extended as necessary.
- 4.53 The Statutory Powers Procedure Act does not apply to any of the enforcement provisions under section 218.3 of the *Education Act*. No formal trial-type hearing will be conducted.
- 4.54 Nothing in this Code of Conduct prevents a Board member's breach of the *Municipal Conflict of Interest Act* from being dealt with in accordance with that Act.

5.0 REFERENCE DOCUMENTS

The *Education Act* of Ontario and Regulations under the *Education Act*
Municipal Conflict of Interest Act, 1996

Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M56

School Board Handbook, Ontario Public School Boards' Association (OPSBA), 1998

OCDSB By-laws and Standing Rules,

Board Policy P.012.GOV: Board Governance

Board Policy P.025.GOV: Board Member Conflict of Interest

Board Policy P.125.SCO, School Board Code of Conduct

P.009.HS: Respectful Workplace (Harassment Prevention)

Board Procedure PR.625.HR: Corporate Code of Conduct for Business Relationships



BOARD (PUBLIC)
Report 20-060

29 June 2020

Code of Conduct – Possible Application of Sanctions

Key Contact: Michele Giroux, Executive Officer, Corporate Services, (613) 596-8211 ext. 8310

PURPOSE:

1. To consider whether sanctions, if any, should be applied in the event that the Board of Trustees renders a decision that there has been a breach of the Board Member Code of Conduct in relation to a complaint filed against Trustee Donna Blackburn.

CONTEXT:

2. The Board Member Code of Conduct policy establishes standards of practice and behavior for the Board of Trustees. Under the policy, when dealing with formal complaints, the Board must make a decision as to whether the Code has been breached. Should the Board determine that there has been a breach of the Code, the Board shall then consider what sanctions, if any, shall be applied.

KEY CONSIDERATIONS:

3. Decision Regarding Breach
On June 29, 2020 the Board will consider the final report of the investigator relating to an alleged breach of the Board Member Code of Conduct by Trustee Donna Blackburn. The details of the complaint and the process for making a decision regarding a breach are outlined in Report 20-043.
4. Application of Sanctions
If the Board determines that there has been a breach of the Code of Conduct, it must then determine whether a sanction shall be imposed. "No sanction shall be imposed where the Board decides the trustee took all reasonable measures to prevent the breach; the contravention was trivial or committed through inadvertence; or an error of judgment was made in good faith."

Under the policy, the sanctions available to the Board are:

- censure of the Board member;
- bar the Board member from attending all or part of a meeting of the Board or a meeting of a committee of the Board; or
- bar the Board member from sitting on one or more committees of the Board, for the period of time specified by the Board, not to exceed six months.

The Board shall not impose a sanction that is more onerous than the above but may impose one that is less onerous, such as a warning. The Board has no power to declare the trustee's seat vacant.

In making decisions with respect to sanctions, the Board is encouraged to be clear and specific, referencing the type of sanction to be imposed and the names/dates/time period for any sanctions relating to committees. For example:

- "The Board hereby censures Trustee (insert name) for failing to adhere to sections xx of the Board Member Code of Conduct policy"; or
- "Bars Trustee xx from attending all or part of a meeting of (describe meeting) to be held on (insert date); or
- "Bars Trustee xx from sitting on the (insert name) Committee for a period commencing on (insert date) and ending on (insert date);

Decisions with respect to sanctions require a 2/3 majority vote.

5. Clarification about Censure

A "censure" is a public expression of disapproval. The Board has some discretion on the severity of the censure, for example a "warning" is less onerous than a "censure". The form of a censure could include a strong statement which draws on the language of the Code of Conduct. For example:

- "The Board hereby censures Trustee (insert name) for failing to adhere to sections xx of the Board Member Code of Conduct policy and hereby acknowledges that Trustee (insert name) discredited and comprised the integrity of the Board".

A review of motions to censure by other school districts demonstrates that there is some discretion to the Board in determining the nature and severity of a motion to censure.

6. Clarification about Barring Attendance at all or Part of a Meeting

The Board may bar a trustee from attendance at a specified meeting of the Board or a committee of the Board. Based on the advice of legal counsel, the Board has the discretion to apply this sanction to a meeting of the Board or any committee of the Board which would include Committee of the Whole and Committee of the Whole, Budget. The use of the term "a meeting" implies that a trustee could only be barred from a single meeting for any or all of the specific meetings noted in the motion.

7. Clarification about Banning from Committees

The Board may also bar a trustee from sitting on one or more committees of the Board for a specified period of time. This could apply to any Board Standing, Ad Hoc, Advisory, or Special Purpose committee. The duration of this sanction would be determined by the Board. In accordance with OCDSB policy, the sanction may not exceed six months.

A Board member who is barred from attending all or part of a meeting of the Board or a meeting of a committee of the Board is not entitled to receive any materials that relate to that meeting or that part of the meeting and that are not available to the members of the public.

8. Process for Determining Sanctions

The Board is required to make decisions about sanctions by way of a resolution at a public meeting of the Board. Staff and legal counsel will be in attendance at the meeting to assist the Board in understanding its administrative and legislative responsibilities in this regard.

9. Participation in Decision-making

Participation in the decision making process regarding sanctions is similar to the process for determining a breach.

“The trustee who is alleged to have breached the Code of Conduct:

a) may be present during the deliberations;

b) shall not participate in the deliberations;

c) shall not be required to answer any questions at that meeting; and

d) shall not vote on a resolution to determine whether or not there is a breach or the imposition of a sanction.”

The trustee who is alleged to have breached the Code shall not, in any way, after the final report is completed, influence the vote on the decision of breach or sanction, except to appeal after the decisions have been made.”

Except for the trustee who is alleged to have contravened the Code, all members of the Board may vote on decisions regarding sanctions, including the trustee who filed the complaint.

Decisions made under the Code of Conduct policy require a vote of at least 2/3 of the Trustees of the Board elected or appointed. At the OCDSB this means that of the 11 members voting, 8 members must vote in favour in order for a motion to be carried. This is not adjusted for absences - meaning that if only 7 members were present, no motion could be carried. Similarly, if all 11 members eligible to vote were present, and 3 members abstained from voting, no motion could be carried.

10. Notice and Appeal Mechanisms

Should a member be deemed to have breached the Code, the member is entitled to notice and there is an established appeal process.

If a Board determines that a Board member has breached this Code of Conduct, the Board shall:

a. give the Board member written notice of the determination and of any sanction imposed by the Board;

b. the notice shall inform the Board member that he or she may make written submissions to the Board in respect of the determination or

- sanction by the date specified in the notice that is at least 14 days after the notice has been received by the Board member; and*
- c. consider any submissions made by the Board member and shall confirm or revoke the determination within 14 days after the submissions are received from the Board member.*

COMMUNICATION/CONSULTATION ISSUES:

11. There has been considerable public discussion on the matter and the community has expressed its frustration with the process as a result it will be important for the community to be made aware of the Board's decision as expeditiously as possible.

RESOURCE IMPLICATIONS:

12. There are three primary areas of cost associated with a Code of Conduct complaint; legal fees, investigation costs, and staff time. The costs in relation to this particular matter were detailed in Report 20-043.

It should be noted that there is an appeal mechanism under the policy and an appeal or any type of legal action will generate additional costs to the organization.

SUMMARY:

13. Should the Board determine there was a breach, the Board must then consider:
- Does the Board wish to apply a sanction?
 - If the Board wishes to apply a sanction, which sanction and what are the specific provisions of that sanction?

RECOMMENDATION:

Note: Should the Board determine the Code of Conduct has been breached and that sanctions should be applied, a member may put forward a motion.

Michele Giroux
Executive Officer, Corporate Services

Camille Williams-Taylor
Director of Education and
Secretary of the Board



TO: Special Board

DATE: 29 June 2020

RE: Code of Conduct – Application of Sanctions

Whereas, the Ottawa-Carleton District School Board has a strong commitment to the human rights and equitable treatment of all persons;

Whereas, the Ottawa-Carleton District School Board recognizes the importance of good governance and the responsibilities of trustees to provide leadership and to govern to benefit public education, being mindful of the impact of decisions and actions on individual communities and society at large, as provided in the Board Governance Policy P.012;

Whereas, the Ottawa-Carleton District School Board has investigated a complaint under the Board Member Code of Conduct and has determined that Trustee Donna Blackburn has breached the Code of Conduct sections 3.8, 3.15 and 3.18 and the fiduciary expectations for civil behavior for School Trustees; and

Whereas, the Board believes that Trustee Blackburn exploited her privilege and the privilege of elected office; failed to prioritize the dignity of other persons; and engaged in conduct which discredited the Board and undermined the Board's commitment to create a culture of caring and social responsibility; and expressed regret for her actions only well after the presentation of the Code of Conduct complaint;

THEREFORE BE IT RESOLVED,

- A. That, in accordance with Section 4.37(a) of Policy P.073.GOV, the Board censure Trustee Blackburn for behavior which was disrespectful to the individuals directly involved, disrespectful to the Black community as a whole, and which used language which is known to be offensive and more specifically is a form of anti-Black racism; and further,
 - i. That the Board condemn the behavior of Trustee Blackburn which is not representative of the values and beliefs of the Board of Trustees; and
 - ii. That the Board stand with the community in strongly recommending that Trustee Blackburn immediately offer her resignation from the office of OCDSB Trustee, Zone 3, Barrhaven/Knoxdale-Merivale;
- B. That, in accordance with Sections 4.37(b) and 4.39 of Policy P.073.GOV, Trustee Blackburn be barred from attending the Board meeting at which the Board will consider the approval of the 2020-2021 Annual Budget;
- C. That, in accordance with Section 4.37(c) of Policy P.073.GOV, Trustee Blackburn be barred from sitting on the following committees of the Board for the six-month period between July 1, 2020 and December 31, 2020:
 - Committee of the Whole,
 - Committee of the Whole (Budget),
 - Parent Involvement Committee,
 - Audit Committee,

Any Advisory Committee designated under Section 9.5(c) of the OCDSB By-Laws,
Appeals Hearing Panels,
Expulsion Hearing Panels, and
Any Ad Hoc Committee established by the Board; and further,

- D. That, in accordance with Section 4.38 of Policy P.073.GOV, the Board encourage Trustee Blackburn to immediately undertake and complete an Anti-racism program to be recommended by the Board's Human Rights and Equity Advisor;
- E. That, in accordance with Section 4.38 of Policy P.073.GOV, the Board encourage Trustee Blackburn to immediately undertake and complete a review of the *Good Governance for School Boards, Trustee Professional Development Program* and provide a copy of the Certificate of Completion to the Board.
- F. That the Board refrain from appointing Trustee Blackburn to any representative position or role on behalf of the Board for a period of six months from July 1, 2020 to December 31, 2020.



TO: Special Board

DATE: 29 June 2020

RE: OCDSB Motion for OPSBA Annual General Meeting Consideration

Trustee Lynn Scott has given notice that she will move the following motion at the Special Board Meeting of 29 June 2020.

Whereas, through their board member code of conduct policies, a number of school boards across the province have now gained experience in applying the provisions of Section 218 of the Education Act regarding conduct of members of school boards, which was introduced with Bill 177 in 2009;

Whereas, addressing matters of inappropriate conduct by board members in the most effective ways has sometimes been problematic in light of legal and other constraints associated with the process as outlined in Section 218 of the Education Act;

Whereas, the provincial government has provided minimal additional guidance to school boards in O. Reg. 246/18; and

Whereas, a review of the effectiveness of school boards' board member code of conduct policies, based on input from school districts regarding their experience, could provide useful suggestions for changes to Section 218 of the Education Act and O. Reg. 246/18;

THEREFORE BE IT RESOLVED,

THAT OPSBA advocate for improvements to Section 218 of the Education Act and O. Reg. 246/18 to enhance school boards' ability and authority to address unacceptable or inappropriate behaviour by board members.

Camille Williams-Taylor
Director of Education and
Secretary of the Board

Michèle Giroux
Executive Officer
Corporate Services

Signatures on this Notice of Motion confirm that the Notice was submitted in accordance with Section 12.9 of the Board's By-laws and Standing Rules.