



**SPECIAL BOARD (PUBLIC)**  
**Report 23-057**

**11 September 2023**

## **Possible Application of Breach Sanctions**

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

### **PURPOSE:**

1. To consider what 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 Kaplan-Myrth

### **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 September 11, 2023, the Board will consider the final report of the investigator relating to an alleged breach of the Board Member Code of Conduct by Trustee Nili Kaplan-Myrth. The details of the complaint and the process for making a decision regarding a breach are outlined in Report 23-056.
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.

Under the applicable 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 accordance with section 4.36 of the applicable policy,

*"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."*

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:

- o "The Board hereby censures Trustee (insert name ) for failing to adhere to sections xx of the Board Member Code of Conduct policy"; or
- o "That Trustee xx be barred from attending the Board meeting (describe meeting or committee) to be held on (September 26, 2023); or
- o "That Trustee xx be barred from sitting on the Audit Committee for a period commencing on (insert date) and ending on (insert date, not to exceed six months from start date);

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

5. Clarification about Warning and 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:

- o "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 compromised 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 Barring from Participation on 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 the applicable 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 that are not otherwise 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.*

12. Third Party Non-binding Opinion

An independent third party legal opinion was also obtained. The opinion is intended to provide guidance only, to the Board, and is non-binding.

## **COMMUNICATION/CONSULTATION ISSUES:**

11. There are no communication/consultation issues related to determination or application of sanctions. As with other matters, the Chair shall be the spokesperson on behalf of the Board, as required.

## **RESOURCE IMPLICATIONS:**

12. There are three primary areas of cost associated with a Code of Conduct complaint; legal and professional fees, investigation costs, and staff time. The costs in relation to this particular matter were detailed in Report 23-056.

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:
- Did the breach or contravention occur notwithstanding the trustee took all reasonable measures to prevent it, or was the breach trivial, or committed through inadvertence, or an error of judgment made in good faith?
  - 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 detailing the proposed sanctions.*

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Michele Giroux  
Executive Officer, Corporate Services

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Dr. Pino Buffone  
Director of Education and  
Secretary of the Board