



**SPECIAL BOARD (PUBLIC)**  
**Report 23-056**

**September 11, 2023**

## **Determination of Possible Breach**

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

### **PURPOSE:**

1. To provide to the Board for consideration and determination, a matter involving an alleged breach of the Board Member Code of Conduct.

### **CONTEXT:**

2. The Ottawa-Carleton District School Board has a Board Member Code of Conduct policy which establishes standards of practice and behavior for the Board of Trustees. In February 2023, a formal complaint was filed alleging Trustee Kaplan-Myrth had failed to uphold sections 3.17 and 3.18 of the Policy. Chair Lyra Evans and Vice-Chair Bell reviewed the complaint and determined that a formal review of the complaint should be undertaken using a third party investigator. ADR Chambers, one of several integrity advisors selected by the Board through a competitive procurement process in 2021, was engaged. The matter was assigned to one of their principals, Michael Maynard to investigate, within the parameters established within the policy.

### **KEY CONSIDERATIONS:**

3. Submission of Code Complaint  
A formal complaint was submitted to the Chair pursuant to Policy P.073.GOV. The complaint alleged that text messages sent by Trustee Kaplan-Myrth to Trustee Donna Dickson leading up to and during a meeting in November 2022 breached paragraphs 3.17 and 3.18 of the Code of Conduct. A copy of the complaint, including the text messages, was distributed to trustees in accordance with section 4.19 of the policy (P.073.GOV) and is attached as Appendix A. In accordance with the Policy, the matter has remained confidential pending determination by the Board as to whether a breach has occurred.
4. Relevant Policy P.073.GOV

The Board Member Code of Conduct is set out in Policy P.073.GOV, which includes the process for enforcing the code and addressing complaints that the code has been breached. It should be noted that the policy was revised in May 2023, however, for purposes of this complaint, the previous version, dated June 1999 and last revised April 26, 2016, which was in place at the time the complaint was submitted and will hereafter be referred to as “the applicable policy”, continues to govern this matter. A copy of the applicable policy is provided at Appendix B.

5. Third Party Investigation

Michael Maynard, ADR Chambers, an experienced Integrity Commissioner in Ontario, was retained to investigate the complaint within the parameters established by the applicable policy. The investigator was provided with a copy of the Board Member Code of Conduct policy, the complaint, the minutes of the Board and Committee of the Whole meetings from November 2022 and the relevant text message exchanges. Under section 4.24 of the applicable 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 (sic) absence.*

6. Investigator’s Report

The investigation was undertaken between the end of February and the middle of May, 2023. 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 Dickson and Kaplan-Myrth received the draft report and had an opportunity to provide comments to the investigator.

The investigator's final report was shared with the Board on August 29, 2023. A copy of the investigator's report is included in the September 11, 2023 Special Board Meeting agenda. In accordance with section 4.26 of the applicable 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. A copy of the final report is attached here as Appendix C.

7. Process for Determining a Breach

The Board is required to review the investigator's report and the finding of facts set out therein to make a determination as to whether the Code has been breached.

The decision whether there has been a breach of the code of conduct must be 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.

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 (insert name) has breached Sections 3.17 and 3.18 of Policy P.073, Board Member Code of Conduct, dated April 26, 2016 (the applicable policy), in relation to text messages sent by her in November 2023.*

This structure ensures clarity of decision-making whether the motion is carried or fails. If a motion of this nature fails, the Code of Conduct complaint process is complete. If a motion carries, then the Board would move forward with consideration of sanctions.

8. 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. In addition, both the complainant and the respondent trustees had the opportunity to review and comment on the investigator's report before the final report was prepared and submitted.

The applicable 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."*

All members of the Board, with the exception of the trustee who is alleged to have contravened the Code, may vote on decisions regarding the code of conduct matter under consideration. 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 twelve (12) members voting or eligible to vote, eight (8) members must vote in favour in order for a motion to be carried. This is not adjusted for absences - meaning that if only seven (7) members were present, no motion could be carried. Similarly, if all twelve (12) members eligible to vote were present, and three (3) members abstained from voting, no motion could be carried.

9. Factors to Consider in Determination of a Breach

It is up to the Board to determine whether a breach of the Code of Conduct policy has occurred. In making this decision, the Board is required to consider the particular complaint and the investigator's report as the statement of facts.

Section 4.30 of the applicable 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.*"

This means the Board should not consider any other facts than those set out in the report authored by ADR Chambers in determining whether there has been a breach of the code, as alleged in the complaint. Board members may consider the 3rd party opinion prepared by Aird & Berliss, although it is not determinative or binding.

In the event the Board makes a determination that 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 23-057.

11. 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 set out in the applicable policy.

*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:**

10. There are no communication or consultation issues related to the determination of a breach of the Code of Conduct. As in other matters, the Chair will act as spokesperson on behalf of the Board, as required.

## **RESOURCE IMPLICATIONS:**

11. There are three primary areas of cost associated with the Code of Conduct complaint; professional and legal fees, investigation costs and staff time. The investigation costs and professional and legal fees are funded through the legal services budget and are estimated at \$20,000. In terms of staff time, it is estimated that the administration of this complaint involved approximately 20 hours of work.

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:**

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 February 23, 2023, and based on the final report of the investigator, did Trustee Kaplan-Myrth contravene the Code of Conduct?

## **SAMPLE LANGUAGE FOR MAKING DECISION ON A BREACH:**

*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 (insert name) has breached Sections 3.17 and 3.18 of Policy P.073, Board Member Code of Conduct, dated April 26, 2016 (the applicable policy), in relation to (describe).*

---

Michele Giroux  
Executive Officer (Corporate )

---

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

### **Attachments:**

Appendix A: Code of Conduct Complaint

Appendix B: Policy P.073.GOV Board Member Code of Conduct dated April 26, 2016

Appendix C: Formal Review Report - Findings, dated May 29, 2023