



COMMITTEE OF THE WHOLE (PUBLIC)
Report No. 19-013

19 February 2019

Review of Policy P.073.GOV Board Member Code of Conduct

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PURPOSE:

1. To review Board Policy P.073.GOV Board Member Code of Conduct, as required by Ontario Regulation 246/18.

CONTEXT:

2. Ontario Regulation 246/18, Members of School Boards – Code of Conduct came into force under the *Education Act* on 12 April 2018. The Regulation requires every school board to adopt a code of conduct that applies to the members of the Board, and to review the code on or before 15 May 2019 and on or before May 15 in every fourth year thereafter.

The Regulation further states that when reviewing its code of conduct, the board shall determine whether any changes are required and, if so, to make the required changes. If no changes are required, a board is required to confirm the existing code of conduct by resolution of the board.

KEY CONSIDERATIONS:

3. P.073.GOV Board Member Code of Conduct
On 28 April, 2015, the Board established an Ad Hoc Committee to draft a Board Member Code of Conduct policy. The Ad Hoc Committee held four meetings and used various tools and resources during its deliberations, including the Ontario Public School Boards Associations' (OPSBA) working draft template, dated 29 November 2011. Most of the substantive pieces of the OPSBA template were incorporated into the draft Code of Conduct and the Ad Hoc Committee made every effort to align its draft Code with legislative parameters and the OCDSB's By-laws and Standing Rules. The Ad Hoc Committee's recommended Code of Conduct was reviewed extensively by legal counsel and received Board approval on 26 April 2016 (Appendix A).

Since the policy was approved, seven complaints have been filed under the Code of Conduct. Six complaints were resolved through the informal complaints resolution process and one complaint resulted in a formal sanction by the Board. To date, all complaints filed have pertained to sections 3.15-3.21, Civil Behaviour.

4. OPSBA Code of Conduct Template

As noted above, the OCDSB's code of conduct relied heavily on a template developed by OPSBA for its members in 2012. On 31 January, OPSBA released an update to this template (Appendix B). Significant changes include:

OPSBA Section	P.073.GOV Section	Change
43	4.20	<p>Removing the discretion of the Chair and Vice chair to refuse to conduct a formal inquiry.</p> <p>Instead, in the case that the Chair and Vice chair are of the opinion that the complaint is out of time, trivial, frivolous, vexatious, not made in good faith, or that there are no grounds or insufficient grounds for a formal inquiry, the Chair and Vice Chair shall prepare a confidential report stating their opinion and rationale for their recommendation that a formal inquiry not be conducted. The recommendation is then voted on by the board of trustees (excluding the member who is alleged to have breached the Code).</p>
52	4.24 a)	Adding a time provision of 90 calendar days to the completion of a formal inquiry. If a longer period of time is required to complete the inquiry, the reason for the extension shall be explained in the final report to the Board.
54	4.25	<p>The 2012 template includes a section whereby the investigators shall provide a confidential draft copy of their report and the finding of fact to the Board member who is alleged to have breached the Code and the Board member who brought the complaint for their written comment and to ensure that no errors or omissions are contained within.</p> <p>The OPSBA template removes this clause in its entirety.</p>
55	4.26	OPSBA recommends that the final report contain both the finding of facts <i>and</i> a recommendation or opinion as to whether the Code of Conduct has been breached.

5. Integrity Commissioners

Legislative Authority

Bill 68, *Modernizing Ontario's Municipal Election Act, 2017*, comes into force March 1, 2019. Bill 68 requires municipalities to establish codes of conduct for their respective members of council. Additionally, it will be mandatory for municipalities to appoint an Integrity Commissioner; this requirement does not extend to local school boards.

As set out in Bill 68, an Integrity Commissioner is an impartial and independent position which reports to council and is responsible for performing in an independent manner the advisory, investigative and educational functions assigned by the municipality with respect to any or all of the following:

1. The application of the code of conduct for members of council and the code of conduct for members of local boards.
2. The application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards.
3. The application of sections 5, 5.1 and 5.2 of the *Municipal Conflict of Interest Act* to members of council and of local boards.
4. Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
5. Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
6. Requests from members of council and of local boards for advice respecting their obligations under the *Municipal Conflict of Interest Act*.
7. The provision of educational information to members of council, members of local boards, the municipality and the public about the municipality's codes of conduct for members of council and members of local boards and about the *Municipal Conflict of Interest Act, 2017*, c. 10, Sched. 1, s. 19 (1).

The powers of an Integrity Commissioner will expand under Bill 68 such that Integrity Commissioners will be able to conduct independent inquiries, as per the Public Inquiries Act, into allegations of conflict of interest against council members under the *Municipal Conflict of Interest Act* and, when appropriate, bring proceedings before a court.

Integrity Commissioners – School Districts

Although there is no similar legislative requirement for school boards to appoint an Integrity Commissioner, at least four Ontario district school boards have done so (Toronto District School Board, York Region District School Board, Durham District School Board, and Peel District School Board).

In the absence of legislative guidance, school boards have considerable discretion in how they structure the role and responsibilities of an Integrity Commissioner. However, the functions assigned to the role of Integrity Commissioner by boards of education generally follow the model reflected in the following description of the role developed by the Toronto District School Board (TDSB):

Advisory functions for individual members

The Integrity Commissioner provides confidential written and oral advice to individual Board Trustees in respect to situations they face in the exercise of their official duties, applicable to the Code of Conduct (which is required by the regulations related to the Education Act) and other by-laws and policies governing ethical behavior, including general comments about the Municipal Conflict of Interest Act. Such advice can be sought in a preventative manner in order to avoid the appearance of a conflict of interest, or to avoid engaging in activities which may amount to a conflict.

Advisory functions more broadly

Upon request by the Chair of the Board, the Integrity Commissioner provides opinions and reports to the Board on general issues of ethics and integrity and Board policies that may intersect with the application of Code of Conduct rules.

Investigative functions

Individuals who have complaints about potential breaches of the Codes of Conduct must forward the complaints to the Integrity Commissioner pursuant to the Board-approved Complaint Protocol for the Board Member Code of Conduct. Complaints can be dealt with through a formal or informal process. When carrying out a formal complaint investigation, the Commissioner can summon evidence and examine under oath.

Educational

The Integrity Commissioner provides educational programs to Board Trustees which include Board Trustee training sessions, one-on-one meetings, annual reporting and posting of directives, guidelines and best practices on the TDSB webpage of the Office of the Integrity Commissioner.

Term and Status

The appointment model is more varied and includes:

- school boards which have chosen to appoint an Integrity Commissioner for a five-year, non-renewable term;
- boards which have elected to engage an Integrity Commissioner as an employee (e.g., the York District School Board enacted a by-laws providing for the Integrity Commissioner to be hired in a hiring process overseen by a selection Committee appointed by the Board and led by the Chair of the Board or designate); and

- boards which have opted for the engagement of a contractor who is retained on an 'as required' basis to perform functions assigned to the role of Integrity Commissioner.

Integrity Commissioners do not hold a formal professional designation as such, but normally have at least ten years of senior-level management, legal or quasi-judicial experience.

Should the Board decide to undertake further consideration of the appointment of an Integrity Commissioner, a detailed examination of the role of the IC in other school districts would include the following:

- Scope of the role;
- Reporting relationship;
- Term;
- Costs; and
- Other considerations as directed by the board.

6. Managing the Review Process and Timeline

Based on the discussion and debate at the Committee of the Whole on 19 February, we anticipate two possible scenarios:

- A. If minor revisions are required to P.073.GOV prior to confirmation, staff will present these at the Committee of the Whole on 2 April 2019 for further discussion and recommendation to the Board for final approval at the meeting of 23 April.
- B. If it is the will of the Committee of the Whole to undertake major revisions to P.073.GOV, including the possibility of appointing an Integrity Commissioner, staff recommends reconvening the Governance Task Force to undertake the work of revising the policy (Appendix C). Given the time constraints, it will be necessary to hold a nomination/appointment process at the meeting on 26 February.

RESOURCE IMPLICATIONS:

7. Any costs associated with a review of the Board Member Code of Conduct policy will be managed within existing departmental budgets.

The total cost incurred associated with the Code of Conduct legal interpretation and facilitation supporting the resolution of complaints since 2016 is approximately \$70,000.

COMMUNICATION/CONSULTATION ISSUES:

8. The scope of the review will determine the nature of any public communication or consultation.

STRATEGIC LINKS:

9. The review and confirmation of the Board's policy on Board Member Code of Conduct is a legal responsibility and connects to the stewardship objectives outlined in the current strategic plan.

GUIDING QUESTIONS:

10. The following questions are provided to support the discussion of this item by the Board:
- Does the current policy reflect the Board's duty to establish a standard of conduct and a mechanism for managing inappropriate conduct for Board members in discharging their duties?
 - Are any changes required to the policy? Would the Board like to continue to align its Code of Conduct with the OPSBA recommendations?
 - Is the appointment of an Integrity Commissioner an appropriate measure for the needs of this Board?
 - What process, if any, does the Board want to use to undertake a review?

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APPENDICES

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

Appendix B: OPSBA School Board Member Code of Conduct Template with Revisions

Appendix C: OCDSB Governance Task Force Mandate