



AD HOC CODE OF CONDUCT COMMITTEE Report 19-050

23 April 2019

Recommended Revisions to P.073.GOV Board Member Code of Conduct

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PURPOSE:

1. To present draft revisions to P.073.GOV Board Member Code of Conduct responding to issues and questions raised at the 1 April 2019 Ad Hoc Code of Conduct Committee meeting.

CONTEXT:

2. At the meeting of 1 April 2019, the Ad Hoc Code of Conduct Committee reviewed the draft revisions to the Code of Conduct which incorporated the role of an Integrity Commissioner into the process. Staff reviewed key questions and issues raised during the discussion and has made a series of revisions taking into consideration the advice from legal counsel.

KEY CONSIDERATIONS:

3. Summary of Key Revisions or Considerations (Appendix A)

Section	Revision and/or Considerations
3.22	Revised language aligns the language with the preceding articles regarding Civil Behaviour.
4.7	Revised language in 4.7, Identifying a Breach of the Code, intends to motivate the board member who is contemplating the filing of a complaint to consider whether it might be possible to address their concern through a discussion with the other board member. The suggestion of the involvement of the Integrity Commissioner at this stage encourages access the role at an early state of a dispute where the application of problem solving skills may avert the need

	for a formal complaint.
4.8	<p><i>There was discussion about whether this section should be revised to replace “may” with “shall.”</i></p> <p>There is no obligation in the Education Act to require a member to file a complaint under a board’s code of conduct. The governing provision is section 218.3 (1) which provides: “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.”</p> <p>Although intended to impose accountability on fellow Board members, legal counsel has advised against changing the language to “shall,” and thereby imposing a duty to file a complaint, due to the host of procedural and substantive questions which would arise.</p>
4.11 (old 4.13)	<p><i>The committee raised concerns and questions regarding the implication of a decision to use the Informal Review process. In particular, does the decision to use the Informal Review Process pre-determine that there has not been a breach of the Code of Conduct?</i></p> <p>When a complaint regarding a Board member’s behaviour which is handled and resolved through the Informal Review Process it follows that the Board member’s conduct did not represent a breach of the Code of Conduct. A breach of the Code of Conduct will only be found if the complaint is handled through the Formal Review Process and the Board votes in favour of a resolution that the respondent was in breach of the Code (see article 4.26, 4.27).</p> <p>In light of this distinction, the wording of 4.11 (old 4.13) has been revised to avoid the implication that a breach of the Code of Conduct would be handled under the confidential procedures outlined in the Informal Review Process. Instead the implication is that the Board member’s conduct was inappropriate, but reason of such considerations as ‘inadvertence’ or ‘error in judgement made in good faith’, the conduct did not rise to the level of a breach of the Code of Conduct.</p>
4.12 (old 4.11)	<p><i>The committee raised a concern that the article lacks language which addresses the severity of complaints or the considerations that the Integrity Commissioner might have regard for when reviewing a complaint.</i></p> <p>Legal counsel has advised that it would be difficult to distill into a few principles all of the obligations which are enumerated in the Code of Conduct and it is preferable to leave the Integrity Commissioner the task of taking into account the whole Code of</p>

	Conduct when making a determination under article 4.12 (old 4.11).
4.14	<p><i>This article empowers the Integrity Commissioner to determine whether a complaint is to be processed under the Informal Review Process or the Formal Review Process. The committee raised a concern whether the Code of Conduct should contain direction to the Integrity Commissioner regarding what principles should be applied in determining which process to follow in the review of a complaint.</i></p> <p>There are types of behaviour which are inappropriate but can be remedied or addressed without a formal review. There are types of behaviour so egregious they cannot be remedied by an apology or other remedial measure. However, it is a matter of judgement and each instance must be reviewed on its own merit and then a determination must be made. It is inherent in the decisions of the Board to delegate such judgement calls to an Integrity Commissioner that the Board of Trustees trusts the individual in the role to make their decision in conformity with the principles of integrity as well as the provisions of the Code of Conduct.</p> <p>Legal counsel advised that such a determination is squarely within the expertise that the Integrity Commissioner has been appointed to bring to the process. Such expertise will have been acquired from dispute resolution roles such as arbitration, mediation or independent investigation.</p>
4.24	Language added to provide for the inclusion of a recommendation regarding a sanction, if necessary, in the Integrity Commissioner's final report.
4.26	In light of 4.24, revised language clarifies that the Board may be informed in its decision-making by the finding of facts and recommendations of the Integrity Commissioner, and that the Board must make its own decision regarding whether there was a breach and what sanction should be imposed.
4.33	<p><i>The committee raised a question regarding adding additional language to include other forms of remedial measures, including restorative practices.</i></p> <p>As outlined in Section 218.3(3), the Education Act gives direction to boards in term of the sanctions which may be imposed for a breach of a code of conduct. These include:</p> <ol style="list-style-type: none"> 1. Censure of the member; 2. Barring the member from attending all or part of a meeting of the board or a meeting of a committee of the Board. 3. Barring the member from sitting on one or more committees of the board, for the period of time specified by the board. <p>It may be argued that the provision confines the Board to the</p>

	<p>enumerated sanctions; however on the advice of legal counsel, it is unlikely that the Act would be interpreted in such a restricted fashion so long as the sanction which was chosen was less onerous than the sanctions enumerated in the Act. This is contemplated by the wording of Article 4.3, which affords the Board the discretion to choose an alternative sanction.</p> <p>Rather than attempting to enumerate such alternatives, legal counsel recommends that such alternatives be developed on a case-by-case basis and imposed pursuant to the discretion afforded by the current wording of Article 4.34.</p>
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For clarity of reference, Appendix B is a clean copy of the draft policy in which all changes have been accepted.

4. Timeline and next steps

If the Ad Hoc committee decides to approve the draft included as Appendix A, the recommendation will move forward to the Committee of the Whole meeting scheduled for 7 May 2019 for consideration. A Special Board Meeting has also been scheduled on 7 May 2019 so that the Board can meet the 15 May 2019 deadline to review its Code of Conduct as required by Ontario Regulation 246/18.

The wording of the recommendation herein on page 5 provides that the changes to P.073.GOV be approved, effective immediately following the appointment of an Integrity Commissioner.

Appointment of an Integrity Commissioner

If the Board approves the changes to P.073.GOV *Board Member Code of Conduct*, as indicated in Appendix A, staff will develop a draft policy authorizing the appointment of an integrity commissioner, which could also address such issues as:

- The amount of support required among Board Members for the approval of a candidate for appointment, the term of office, the extension of a term, and the removal of office;
- The nature of the selection process; and
- The role and responsibilities of the Integrity commissioner which might include advisory and educational functions in addition to dealing with breaches of the Code of Conduct.

RESOURCE IMPLICATIONS:

5. The model provided by other school boards indicates that integrity commissioners are remunerated by way of an annual retainer of \$25,000 for 20 hours per month averaged over a 12-month period. Hours exceeding the 20 hours per month are remunerated at \$200/hour.

COMMUNICATION/CONSULTATION ISSUES:

6. Members of the public and the board's advisory committees will have an opportunity to review and make any recommendations the proposed changes when the report and recommendation from the Ad Hoc Committee on Code of Conduct is posted to the Committee of the Whole for 7 May. Given the legislative complexities of these policy changes, staff does not believe that a broader public consultation process on this policy would generate much public input.

STRATEGIC LINKS

7. 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.

RECOMMENDATION

THAT the revisions to P.073.GOV, attached as Appendix A to Report 19-050, be approved, effective immediately following the appointment of an Integrity Commissioner.

Michele Giroux
Executive Officer, Corporate Services

Camille Williams-Taylor
Director of Education

APPENDICES

- Appendix A Draft P.073.GOV Board Member Code of Conduct (All revisions indicated using track changes)
- Appendix B Draft P.073.GOV Board Member Code of Conduct (Clean copy for reference).