



SPECIAL BOARD PUBLIC MINUTES

Thursday, July 16, 2020

6:00 pm

Zoom Meeting

Trustees Present: Justine Bell, Donna Blackburn, Christine Boothby, Rob Campbell, Chris Ellis, Lyra Evans, Mark Fisher, Wendy Hough, Jennifer Jennekens, Keith Penny, Sandra Schwartz, Lynn Scott

Staff Present: Camille Williams-Taylor (Director of Education), Janice McCoy (Superintendent of Human Resources), Michele Giroux (Executive Officer, Corporate Services), Carolyn Tanner (Human Rights and Equity Advisor), Dorothy Baker (Superintendent of Instruction), Prince Duah (Superintendent of Instruction), Mary Jane Farrish (Superintendent of Instruction), Eric Hardie (Superintendent of Instruction), Shawn Lehman (Superintendent of Instruction), Shannon Smith (Superintendent of Instruction), Peter Symmonds (Superintendent of Learning Support Services), Richard Sinclair (Manager of Legal Services and Labour Relations), Sandy Owens (Manager, Business & Learning Technologies), Diane Pernari-Hergert (Manager of Communications & Information Services), Rebecca Grandis (Senior Board Coordinator), Amanda Pelkola (Board/Committee Coordinator), Nicole Guthrie (Manager of Board Services)

Guests Present: Lynn Harnden (Legal Counsel)

1. Call to Order -- Chair of the Board

Chair Scott called the public meeting to order at 6:04 p.m. She acknowledged that the meeting is taking place on unceded Algonquin Territory and thanked the Algonquin Nations for hosting the meeting on their land.

2. Approval of the Agenda

Moved by Trustee Fisher, seconded by Trustee Schwartz,

THAT the agenda be approved.

An amendment moved by Trustee Ellis, seconded by Trustee Lyra Evans,

THAT "New Business" be added as a new item 4.

Executive Officer Giroux advised that the bylaws for a Special Board meeting, require unanimous consent for the addition of a new item to the agenda.

Trustee Ellis requested a recorded vote on the amendment.

An amendment moved by Trustee Ellis, seconded by Trustee Lyra Evans,

THAT "New Business" be added as a new agenda item 4.

FOR: Trustee Boothby, Hough, Ellis, Jennekens, Penny, Lyra Evans, Bell, Fisher, Schwartz, Campbell, Scott (11)

OPPOSED: Trustee Blackburn (1)

ABSTENTION: Nil (0)

Defeated

Moved by Trustee Fisher, seconded by Trustee Schwartz,

THAT the agenda be approved.

Carried

3. Matters for Action

3.1 Confirmation of Special Board Minutes, 29 June 2020

Moved by Trustee Schwartz, seconded by Trustee Fisher,

Trustee Ellis requested that his comments on page 3 of the minutes, following the presentation of Mr. Lakhani's report, be amended to reflect that he was denied the opportunity to speak by the Chair, he recused himself, and stated "This is just a sham", and promptly left the meeting.

Executive Officer Giroux advised that it is not practice to record minutes verbatim. She noted that staff had reviewed the recording of Trustee Ellis' comments and, as per his request to revise the minutes with an expanded summary of his comments, the revision would be permitted as it was not a verbatim transcript.

Trustee Blackburn commented that she had overall concerns about what was said in the meeting and requested the following amendments:

- On page 3, at the bottom of the page, the last sentence reads "another issue that was inappropriate was when Trustee Blackburn...", it is her contention that this statement was not made by Mr. Lakhani, reflected in the recording at 51:29;
- On page 5, "If Trustee Blackburn was representing herself as a Trustee on Facebook and leveraging her position...", it is her contention that this statement was not made by Mr. Lakhani, reflected in recording at 1:11:28;

- On page 7, starting with the paragraph with Trustee Penny, first sentence, second line, "That Trustee Blackburn diminished the role of a trustee by harassing...", Trustee Blackburn stated the word harassing was not used, it was "questioning", reflected in recording at 1:22:18;
- On page 7, in the paragraph starting with Trustee Jennekens, what has not been reflected is the mention that Trustee Blackburn threatened that SL would not graduate, reflected in recording at 1:25:44; and
- On page 7-8, the comments by Trustee Hough, indicated "As fellow trustees, the emails that we have received, from the public that have extended well beyond the Black community, calling us out for bad behaviour, calling us racist, calling us everything under the sun, because of behaviour of one person on this Board." Trustee Blackburn would like this comment added to the minutes, reflected in recording at 1:31:14.

Executive Officer Giroux stated that staff would take these edits under advisement and noted that the minutes are not a verbatim transcript but a summary of the discussion. Staff will review the points raised and will provide a revised set of minutes.

Trustee Campbell commented on Trustee Blackburn's suggested edits and stated that trustees' comments are intended to be statements of their own understanding or interpretation. Whether the statements were in the report or not, may be irrelevant if those were the trustees' interpretations.

Chair Scott requested an amendment to page 2 of the minutes preceding Trustee Ellis' comments about his recusal, to reflect that the Chair noted that trustees have the opportunity to ask questions of clarification of the investigator and that there would be opportunities for trustees to make statements later in the meeting.

Trustee Ellis requested that the 29 June 2020 minutes not be approved at this time, given that the suggested edits will be reviewed by staff and the minutes may be revised at a later date.

Chair Scott confirmed the minutes would be submitted for approval at a future Board meeting.

3.2 Report 20-064, Code of Conduct- Appeal of Breach and Sanctions Decisions (M. Giroux)

The Board had before it Report 20-064, Code of Conduct - Appeal of Breach and Sanctions Decisions. Executive Officer Giroux provided an overview of the report and the steps undertaken in the process. The

assistance of external legal counsel Lynn Harnden, Manager Sinclair and Manager Guthrie, was acknowledged.

This report is a follow up to the 29 June 2020 Special Board meeting, where trustees met to consider a complaint under the code of conduct, at which the Board received the report from an independent third-party investigator. After deliberation, the Board determined that Trustee Blackburn breached the code of conduct under sections 3.8, 3.15 and 3.18. Following the decision on the breach, the Board chose to apply sanctions. Under the code, it is the trustee's right to file an appeal and an appeal was filed with the secretary on 8 July 2020. The purpose of this meeting is to consider this appeal, and for the Board to either confirm or revoke the decision on whether or not there was a breach of the code. If the Board confirms there was a breach, then it must be considered whether to confirm, vary or revoke the sanctions.

Executive Officer Giroux noted that the appeal cites a number of grounds for appeal. The Board must consider whether the decision-making process adhered to the Board's policy and that of the *Education Act* and whether it arrived at a decision, based on the facts provided by the investigator. If the Board believes that a decision was made without a reasonable apprehension of bias, then the Board has met its duty of procedural fairness. The Board will consider either a one or two part motion, first on the determination of the breach and secondly on the question of the two sanctions, unless the Board chooses to revoke the sanctions.

Executive Officer Giroux invited legal counsel to provide additional introductory remarks.

Mr. Harnden provided general comments on the nature of the process and its function. He stated that while this exercise is noted as an appeal, it is more of a form of review, as an appeal suggests new facts are to be considered. This process is intended to examine the submissions made in the appeal file, to reflect on those submissions and to make a decision on whether or not trustees are inclined to 1) reconsider and vary the finding of a violation of the code of conduct and/or 2) reconsider the imposition of sanctions.

Mr. Harnden explained that much of the procedural protections in the code of conduct, are protections for the trustee during the process of the investigation. Most importantly in the context of this meeting, there is an opportunity for the trustee who is the subject of the complaint, to review a draft of the investigator's report and provide submissions on the accuracy of the report. This is to ensure that, as much as possible, the investigator makes findings based on facts, based on information available.

Mr. Harnden noted there is one exception to the principle of only considering the facts from the investigator's report, and that exception

relates to any allegations of a breach, a breach of the principle of fairness, or a breach of the principles of natural justice. These allegations must be based on facts over and above the facts found in the investigator report. It is a trustee's responsibility to consider facts cited in the appeal that raise issues with fairness and natural justice, even if these were not addressed by the investigator. As the appeal document is reviewed, there are allegations of fairness, breaches of natural justice. Trustees should reflect on these allegations and the facts noted to cite them and make a decision with consideration of these facts.

In response to an inquiry, Mr. Harnden highlighted that the two trustees that recused themselves initially, did so on the basis that comments were made either on social media or elsewhere on the validity of the complaint, and trustees may feel that they had made a predetermination that would prevent fairness if they had participated in the initial proceeding. Given this recognition of the initial recusal, it would cause a risk to the Board if they were to participate in the appeal proceeding. Mr. Harnden noted it is their right to participate, but as legal counsel, he emphasized that this could pose a risk, as it could be perceived that the Board's decision was detrimentally affected by the participation of these trustees who had previously recused themselves and therefore was unfair.

Chair Scott inquired if the two recused trustees can ask questions of staff on the report or the process.

Mr. Harnden responded by stating that questions from these trustees would create only a modest amount of risk.

Chair Scott reconfirmed that if the Board deals with Report 20-064, before discussing deliberations about confirming or revoking previous findings, then questions from the identified trustees would be allowed but their participation would be ill advised.

Mr. Harnden clarified that asking questions of clarification is acceptable, but participation would appear as an effort to influence the opinions of members of the Board and could be cause for concern.

Trustee Ellis stated that he would like to take exception with Mr. Harnden's speculation of his thought process when he recused himself. However, Trustee Ellis stated he would recuse himself for this meeting.

Moved by Trustee Penny, seconded by Trustee Schwartz,

Whereas, on 29 June 2020, the Board of Trustees considered a complaint under the Board Member Code of Conduct and made a determination that Trustee Blackburn had breached sections of the Code of Conduct; and

Whereas, on 29 June 2020, the Board of Trustees determined that, in light of the breach of sections of the Code of Conduct by Trustee Blackburn, the Board should impose sanctions; and

Whereas, an appeal of the Board decisions was filed by Trustee Blackburn on 8 July 2020 and, in accordance with Policy P.073, Board Member Code of Conduct, the Board must decide:

- i. whether to confirm or revoke the decision regarding breaches of the Code of Conduct; and
- ii. whether to confirm, vary or revoke the decision regarding imposition of sanctions for such breaches; and

Whereas, the Board is satisfied that the process set out in the Code of Conduct was followed; that the third party investigator gave Trustee Blackburn sufficient information to know the case against her and to respond to the evidence; that the decision of the Board was free from bias or a reasonable apprehension of bias; and that the sanctions imposed on Trustee Blackburn were proportional to the findings of fact.

Therefore be it resolved:

- A. THAT the Board confirms the determination made on 29 June 2020 that Trustee Blackburn breached Policy P.073, Board Member Code of Conduct; and
- B. THAT the Board confirms its decision regarding the sanctions imposed on Trustee Blackburn at the Special Board Meeting of 29 June 2020.

Trustee Penny stated that the power to impose sanctions and findings is contained in the code of conduct and *Education Act*. He expressed the opinion that the Board complied fully with the code of conduct policy with regard to procedural fairness, and that Trustee Blackburn had an adequate opportunity to review and respond. Trustee Penny stated that he did not consider facts outside of the report on breach, and the severity of sanctions, and that the sanctions are proportional and appropriate for the breach of the code.

Trustee Bell inquired if the resource implications identified in the memo referring to staff time and legal costs of the appeal process, could be quantified.

Director Williams-Taylor noted that in the last report, there was a range of costs and time identified to date, which have continued to accrue.

Executive Officer Giroux stated that the external costs and the cost of the initial report was estimated to be \$30,000-50,000. This estimate will likely exceed \$50,000 due to external fees. In terms of staff time, there has been significant time investment in every step of the process. The time

staff spent preparing for the appeal since 8 July, was likely the equivalent of 2 full-time days.

Trustee Lyra Evans recused herself for the same reasons previously identified.

Trustee Fisher requested clarification on the appeal document provided to the Board regarding the allegation that Trustee Blackburn was denied access to the in-camera portion of the meeting on 29 June 2020.

Mr. Harnden advised that there is tension between the right of the trustee who is the subject of the complaint, to be privy to all the merits of the complaint and the right of trustees to acquire legal advice about the proper nature of proceeding. If the trustees had discussed the merits of the complaint in-camera, which was not able to be observed by Trustee Blackburn, that would be improper. However, if the purpose of the in-camera meeting was confined to seeking guidance to determine if a trustee should recuse themselves, that is a proper use of in-camera, and it is appropriate to receive confidential legal counsel without the participation of Trustee Blackburn.

Trustee Fisher inquired if it was believed that the investigator maintained the parameters of the complaint and the remit provided to him.

Mr. Harnden highlighted that although trustees were not privy to the full process undertaken by the investigator, he had the guidance of the procedures outlined in the code of conduct, which ensure procedural fairness is accorded to the trustee subject to the complaint. His report provided insights into his approach, his thoroughness and the manner in which he made his judgements. Given this, Mr. Harnden is satisfied, based on the facts he reviewed, that the investigator did not act in conflict with the direction provided under the code of conduct.

Trustee Fisher inquired if the trustee in question is able to request and receive all information and interviews on the complaint or if they are limited to reviewing their own events in the draft report.

Mr. Harnden advised that there is no provision in the code of conduct nor is there a principle of natural justice and fairness, that the investigator be expected to share every factual matter with the trustee that he found in the investigation. His obligation is to disclose all the facts he will include in his report and to provide the trustee the ability to comment and for the investigator to weigh these comments and amend his report accordingly. That does not suggest that the outcome of the report will reflect what the trustee finds an appropriate finding of fact. What is important is that the trustee has the opportunity to review the report and provide an argument in an attempt to persuade the investigator to alter his findings.

Trustee Penny urged fellow trustees to approve his motion and thanked staff for preparing the materials and for Mr. Harnden's work.

Moved by Trustee Penny, seconded by Trustee Schwartz,

Whereas, on 29 June 2020, the Board of Trustees considered a complaint under the Board Member Code of Conduct and made a determination that Trustee Blackburn had breached sections of the Code of Conduct; and

Whereas, on 29 June 2020, the Board of Trustees determined that, in light of the breach of sections of the Code of Conduct by Trustee Blackburn, the Board should impose sanctions; and

Whereas, an appeal of the Board decisions was filed by Trustee Blackburn on 8 July 2020 and, in accordance with Policy P.073, Board Member Code of Conduct, the Board must decide:

iii. whether to confirm or revoke the decision regarding breaches of the Code of Conduct; and

iv. whether to confirm, vary or revoke the decision regarding imposition of sanctions for such breaches; and

Whereas, the Board is satisfied that the process set out in the Code of Conduct was followed; that the third party investigator gave Trustee Blackburn sufficient information to know the case against her and to respond to the evidence; that the decision of the Board was free from bias or a reasonable apprehension of bias; and that the sanctions imposed on Trustee Blackburn were proportional to the findings of fact.

Therefore be it resolved:

C. THAT the Board confirms the determination made on 29 June 2020 that Trustee Blackburn breached Policy P.073, Board Member Code of Conduct; and

D. THAT the Board confirms its decision regarding the sanctions imposed on Trustee Blackburn at the Special Board Meeting of 29 June 2020.

Carried

A recorded vote was held and the motion was carried unanimously by those present:

FOR: Trustee Boothby, Hough, Campbell, Jennekens, Penny, Bell, Fisher, Schwartz, Scott (9)

AGAINST: Nil (0)

ABSTENTION: Nil (0)

3.3 Supplemental Information

There was no supplemental information.

4. Adjournment

The meeting adjourned at 6:58 pm.

Lynn Scott, Chair of the Board