

**BOARD (PUBLIC)
Report 20-100**

16 November 2020

Code of Conduct Breach Determination - Justine Bell

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PURPOSE:

1. To consider a complaint under the Code of Conduct against Trustee Justine Bell and determine whether there has been a contravention of the Code; and, if necessary, determine what action, if any, the Board might take.

CONTEXT:

2. The school district has a Board Member Code of Conduct policy which establishes standards of practice and behavior for the Board of Trustees. In September 2020, a complaint was filed alleging Trustee Bell had failed to uphold sections 3.18, 3.28 and 3.29 of the Code. Chair Scott and Vice-Chair Penny reviewed the complaint against the policy and determined that a formal review of the complaint would begin, using a third party investigator. As this incident was closely related to the incident noted in Report 20-099, the same investigator was used and both incidents are addressed in one report to the Board. Under the policy, the investigator must submit a report of the finding of facts which does not include a determination of whether the Code has been breached nor does it provide any recommendations. The Board must review the finding of facts and determine whether the Code has been breached. Should the Board determine that there has been a breach of the Code of Conduct, the Board shall then consider what sanctions, if any, shall be applied.

KEY CONSIDERATIONS:

3. Submission of Code Complaint
On Thursday, August 27, 2020, Trustee Bell reposted a statement regarding a decision of the Board on her Twitter account. Trustee Donna Blackburn filed a formal complaint with the Chair on September 2, 2020. The complaint alleged that Trustee Bell's social media activity was inconsistent with the Civil Behaviour expectation established in section 3.18, and the Upholding Decisions expectation established in sections 3.28 and 3.29 of the Board Member Code of Conduct policy. A copy of the complaint was distributed to trustees in accordance with section 4.19 of the policy (P.073.GOV).

4. Third Party Investigator Retained

An independent third party investigator was retained by the District to investigate the complaint. 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 Budget meetings and relevant Board governance policies. The investigator met with staff and legal counsel and was asked to undertake an investigation in accordance with the provisions of the policy. Under section 4.24 of the 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 absence.*

5. Investigator's Report

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 Blackburn and Bell received the draft report and had an opportunity to provide comments to the investigator.

The investigator submitted the final report to the District on Monday, November 2, 2020. The final report was shared with the Board on Friday, November 13, 2020. A copy of the investigator's report is included in the November 16, 2020 Special Board Meeting agenda. In accordance with section 4.26 of the 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.

6. Process for Determining a Breach

The Board is required to review the report, and as soon as practical, make a decision as to whether the Code has been breached. Under section 4.30, "The Board shall consider only the findings in the final report when voting on the decision and sanction." The Board decision is 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.

7. 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 – through interview or in writing. In addition, both the complainant and the subject of the complaint had the opportunity to review and comment on the investigator's report before the final report was prepared.

The Code of Conduct 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."

Except for the trustee who is alleged to have contravened the Code, all members of the Board may vote on decisions regarding Code of Conduct. 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 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.

8. Factors in Breach Decisions

The Board must consider whether a breach of the Code of Conduct policy has occurred. In making this decision, the Board must focus their deliberation on this particular complaint using the investigator's report as the statement of facts.

Section 4.30 of the 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.*"

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 _____ has breached Sections 3.18, 3.28 and 3.29 of Policy P.073, Board Member Code of Conduct, in relation to

This structure ensures clarity of decision-making whether the motion is carried or fails.

In the event the Board decides 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 20-102.

COMMUNICATION/CONSULTATION ISSUES:

9. There are no communication or consultation issues related to the determination of breach.

RESOURCE IMPLICATIONS:

10. There are three primary areas of cost associated with a Code of Conduct complaint; legal fees, investigation costs, and staff time. The investigation costs and legal fees are funded through the legal services budget and are estimated at \$5,000. In terms of staff time, it is estimated that the administration of this complaint involved approximately 10 hours of work.

SUMMARY:

11. 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 September 2, 2020 and based on the final report of the investigator, did Trustee Bell contravene the Code of Conduct?

RECOMMENDATION:

Upon review of the facts as documented in the investigator's final report dated 2 November 2020 regarding a Code of Conduct complaint filed by Trustee Blackburn in relation to Trustee Bell the Board finds:

THAT Trustee Bell (insert HAS or HAS NOT) has breached Sections 3.18, 3.28 and 3.29 of Policy P.073, Board Member Code of Conduct, in relation to a post made to social media on Thursday, August 27, 2020.

Michele Giroux
Executive Officer, Corporate Services

Camille Williams-Taylor
Director of Education and
Secretary of the Board

Attachments:

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