

Module 17 – Trustee Code of Conduct

[Overview]

The most fundamental leadership role of the elected Board of Trustees is to set the conditions for a high-performing organization.

An effective board is proactive and strategic, is clear about its core priorities, and is focused on the present while working towards an improved future.

A successful board, in all its actions, instills public confidence in the publicly funded school system.

A crucial factor in this regard is how well the board governs itself, how well it models collaboration and cooperation.

One of the key tools the board has at its disposal is an effective Code of Conduct.

A Code of Conduct makes it possible to build a collective board where there is strong mutual respect and shared understanding of the roles of an individual trustee, of the board as a whole, and of the director of education and board staff.

This leads to effective decision-making around the board table and to the best possible outcomes for students and for the entire school system.

[Panel discussion]

[Why school boards need a Code of Conduct]

A Code of Conduct helps trustees contribute personal input around the board table while working towards collaborative decisions that are good for students and for communities.

[Michael Barrett, President, OPSBA] – An individual trustee can't make a decision but collectively they can make a decision. So it is vitally important that you have a set of rules of engagement and standards of behaviour that you will be able to utilize to make sure that you make good collective decisions, because certainly the public is very well aware and demands excellence in being able to have their school board make decisions that represent their communities and their constituents. So therefore a Code of Conduct allows you to have the ability to understand exactly what is expected and the expectations of behaviour that would lend itself for being able to ensure that there are effective decisions.

[Jennifer McIntyre, OPSBA] – I think a Code of Conduct leads to increased public confidence. I think that it outlines what is acceptable and what is respectable behaviour amongst colleagues when they are doing their work supporting public education.

Good Governance for School Boards: Trustee Professional Development Program
Module 17 – Trustee Code of Conduct

[The need for a Code of Conduct is recognized in the *Education Act*]

[Sheila MacKinnon, Shibley Wrighton LLP] – So when the Ministry, the government, decided to amend the *Education Act* to deal with governance generally, they decided to make it clear that school boards could have a Code of Conduct for trustees. We have Codes of Conduct for schools, for pupils, staff basically, and now specifically for a Board of Trustees.

[What an effective Code of Conduct offers]

An effective Code of Conduct will define respectful behaviour. It is a framework for professional conduct and civil engagement. It clarifies expectations for the office of the elected trustee and for the board as a whole.

[Michael Barrett] – It was probably six primary things that we'll be looking for, that will be included in the Code of Conduct and I'll just talk about a couple of them. One is certainly — as Jennifer has already mentioned — with regards to the public requesting and demanding transparency in decisions that are being made. So certainly the dignity of the office and integrity of the office is very important. With trustees in a public trust that collectively (as a group of individuals) are making decisions, when you are talking about the integrity and dignity of the office, you are being able to make those decisions and interrelate with the public in a professional manner. The second piece I would say is about being able to avoid personal advantage and conflict of interest. This is certainly of great interest to any constituent or stakeholder that is looking for individuals that will make decisions based upon a standard of conduct and transparency, in order to be able to make decisions that indeed represent the whole community and will not have personal bias or personal gain as part of that. So the influence of being able to do a job is about being able to do it for the community, not for personal interest or pecuniary gain.

[Jennifer McIntyre] – I guess the next one would be compliance with the *Education Act* and all the other regulations that trustees have to abide by. So they are too numerous to list, but there are number of regulations that fall within the *Education Act* that trustees would have to be responsible for being up to date on and making sure that they abide by those as well. I guess the other one would be civil behaviour. Talking about what's respectable, what's acceptable, and how you conduct yourself at a meeting — but also how you conduct yourself outside the school setting, and not just in the meeting hall itself. I guess you are elected representatives of the community and you'll be seen as such. So how you engage and how you act in public would be another key component.

[Sheila MacKinnon] – And I would say the next one would be respect for confidentiality. So as trustees understand, committees can only go into what you call closed sessions or in-camera meetings in certain circumstances. But once they do go in-camera they are obligated and required to then keep all of that information and discussion confidential unless otherwise required by law (you are subpoenaed in some kind of legal case) or authorized by the Board of Trustees to release such information.

Good Governance for School Boards: Trustee Professional Development Program
Module 17 – Trustee Code of Conduct

So even when you go in-camera and then rise and you know there may be a motion that reports out briefly what has taken place, all of the discussions still must remain confidential. So you need to make sure that, that concept is in a code, because it should be the Board of Trustees who in effect police themselves.

[Michael Barrett] – As we said earlier there is a collective responsibility being able to make decisions. So therefore once a decision has been made, as a group of trustees, there is an obligation from both the government’s morality and ethics standpoints to be able to support that decision that was made. So both publicly and privately being able to uphold the collective decision making process. As an individual you debated, but as a group you supported.

[Enforcing a Code of Conduct]

A vital goal in enforcing a Code of Conduct is finding a good resolution to the issue that has caused one member of the board to complain about the conduct of another. This includes making sure the process is fair.

[Sheila MacKinnon] – Once you have a Code of Conduct, and that’s a policy of the board, you then need to have a mechanism for enforcing it. So the *Education Act* basically states that in order to enforce the Code, it is a trustee of that board, and only a trustee of that board — not a ratepayer, not a parent, not a staff person — it is a trustee of the board who may bring to the attention of the board, if that trustee has a reasonable belief that the Code of Conduct has been breached by another trustee of that board. So in making inquiries into the matter you’ve got to have a process. How does it get to the attention of the board? Who is going to look into what we would call an investigation of the matter? What does that look like? What are the steps? When does the complaint get brought? How long before a response can be made? And in doing so you must always ensure what we lawyers call “procedural fairness”. Either the Chair or the Vice-Chair would be the persons that investigate — or a committee of the board, or an outside investigator.

[Jennifer McIntyre] – The template that we are recommending would give two streams to go through an enforcement process: an informal procedure and a formal procedure. And the informal procedure is something that we would highly recommend because there could be instances where a trustee has mistakenly given something confidential (in error). They haven’t followed the rules because they are a new trustee. There are some reasons why, and so we have asked that if a Chair or a committee is investigating, they kind of give that route the first and foremost preference. Because we want to make sure that if a trustee has made a mistake in error, they are given professional development opportunities as a first way out. This could be a learning opportunity; it is not something that you may want to grandstand; there could have been an honest mistake made. So that is why, when we ask the Chair, the Vice-Chair or the investigator to make those inquiries, we are asking them to look a little deeper about what happened. Why? What was the background reason for that? So we would always err on the side of caution by asking to go the informal route first and foremost, to correct some of those mistaken behaviours.

Good Governance for School Boards: Trustee Professional Development Program
Module 17 – Trustee Code of Conduct

[Sheila MacKinnon] – So in order to distinguish between the formal and the informal, what you should make known into your Board of Trustees — and they should understand it when they read the enforcement provisions — is that instead of coming with a written complaint right off the bat, that they consider what it is that's at issue and their reason for raising it. And we're suggesting that they then go to the Chair of the board informally. You just approach the Chair and indicate: "I, Trustee, believe the Code has been breached for the following reasons." And generally it should be something that won't be the first instance. That trustee might be frustrated that another trustee is constantly interrupting or not allowing the board to complete the business of the board. For example, you would just approach the Chair and indicate that, and then the Chair would have an informal discussion with the trustee who is alleged to have breached the Code. We say that because you don't want to get into a whole grandstanding, as Jennifer has indicated. It is about remedial measures. You're trying to build capacity within your fellow trustees. They won't know all of the rules of procedural fairness; they won't know all of the rules of parliamentary procedure. What's confidential? What's not? They won't know that just starting off. So there are going to be some issues and it is almost like mentoring each other. So we are trying to indicate to people that they should be looking at this as not a "I gotcha", but as a way to build trust. It is very important. And therefore you reserve going what we call the "formal route" only as a last resort. You just think there is no other way to get this dealt with and to get the trustee who is accused of breaching to listen. And therefore there is then a whole process where you bring a written complaint to the board, because the *Education Act* does say, once it comes right before the Board of Trustees, that the board must make inquiries into it. If you have gone the formal route, once an investigation is complete, a formal written report is done, that basically sets out what are the allegations and what are the findings of fact that the investigator has made. They may or may not have been asked to make recommendations as to whether or not that breached the Code. But if they do make recommendations it is simply that. Because at the end of the day, it is the Board of Trustees for that board that ultimately makes the decision as to whether or not one of their colleagues have breached the Code of Conduct.

[Jennifer McIntyre] – The final report that would come to the Board of Trustees is the report that considers all the facts that were dealt with during the investigation. And it is up to that Board of Trustees to determine if their fellow trustee did in fact breach the Code of Conduct. And at the end of the day there are only three sanctions that could really apply to a breach of a Code of Conduct. They are censure of the trustee, so that's when someone is told that they have broken the board's Code of Conduct in public, in a public meeting. The trustee could be barred from attending all or part of a board or committee meeting. The third possible sanction would be barring the trustee from sitting on one of the committees of the board for a specific amount of time.

[Sheila MacKinnon] – After the decision of the board has been made and provided to the trustee who is alleged to have breached the Code of Conduct, that trustee then has the right to respond in writing to that final decision and to the sanction that has been imposed. The board then looks at that and decides if they are going to uphold their decision or not. If it is upheld, then they may also look at whether or not they are going to vary the sanction or continue with the sanction that they originally imposed. If the board decides that they are not going to uphold the decision, the sanction is removed.

Good Governance for School Boards: Trustee Professional Development Program
Module 17 – Trustee Code of Conduct

[Wrap-up]

There has been a lot of research that talks about what makes an effective board. And certainly the research has indicated time and time again that a Code of Conduct is foundational to ensure you have an effective board. A Code of Conduct is not put into place to be able to create punishment. What it does is to create a series of understandings to be able to ensure that the board reaches the very best that they can be. It promotes effectiveness, good decision making, and transparency. So a Code of Conduct is central to help the trustees truly fulfill their mandate in representing their community in education.