



**ONTARIO PUBLIC
SCHOOL BOARDS'
ASSOCIATION**

Leading Education's Advocates

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The Honourable Stephen Lecce
Minister of Education

The Ontario Public School Boards' Association (OPSBA) welcomes this opportunity to provide feedback and comment on an important issue that directly impacts our members – trustee Codes of Conduct. As an Association, we have always believed that a trustee Code of Conduct policy contributes to confidence, and respect for the integrity of local democratically elected trustees in the community.

The last time Codes of Conduct were actively discussed was alongside the introduction of Bill 177, *Student Achievement and School Board Governance Act* in 2009. OPSBA was very much involved in the work and implementation of this legislation, which officially added Code of Conduct to the *Education Act*. In addition, we did significant work responding to a 2012 regulatory proposal that contemplated six components for a possible Code of Conduct regulation. Even though a regulation was not filed, we felt it was imperative to provide our members with the tools to optimize their ability to fulfil their role as trustees. We also note that some member boards had code of ethics policies in place even earlier.

In 2012, OPSBA developed a provincial trustee Code of Conduct and enforcement process template. It was shared with all member boards, the other trustee/school board associations, our national partners at the Canadian School Boards Association, and even a legislative committee at Queen's Park that was looking at a policy for Members of Provincial Parliament. This template was updated in 2019, with the support of legal counsel, to reflect past experiences at our school boards. It has always been used as a tool that could and should be locally adapted. These policies must provide sufficient flexibility to allow school boards to reflect their local communities and board cultures. Most of our member boards used our template to develop their own trustee Code of Conduct and enforcement process. The Association has and continues to recognize the need to reflect on how continually and proactively to best provide services for our members. In turn, these resources also allow us the opportunity to explain the role and responsibilities of a school board trustee.

Over these past 18 months of the pandemic, the role of trustee has not changed, but they have learned to work differently, and with efficiency, to provide a continued high level of education for all students across the province. Their dedication and commitment to public education has been, and continues to be, extraordinary. Now, more than ever, the trustee role is an important amplifier for community voice that helps inform education policy at both the local and provincial level.

As we look ahead to the next Municipal and School Board Elections in October 2022, we feel this is an appropriate time for a coordinated pre-election approach to educating the public about the role of school board trustee for two purposes: encourage members of the public to seek the office of a trustee and increase voter participation in trustee elections. Our Association would like to see more diversity around our board tables. With education remaining the second-largest budget line in the provincial budget, all citizens should be interested and engaged in what is happening at their local school board. They should see their board as a reflection of their community. We have begun our own work on this and have recently completed an Equity, Diversity and Inclusion Audit, the recommendations of which will be reviewed with our members. OPSBA would like to arrange for a series of meetings with your political staff and the ministry's Leadership, Collaboration and Governance Branch to develop a plan for this.

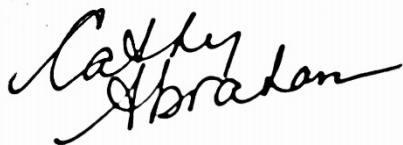
Regarding this current consultation, we do question whether this is the optimal time for this type of consultation, and what prompted the Ministry to do this at a time when school boards and trustees are still managing a variety of additional requirements related to the pandemic. Adding more work and complications to the plate of already overburdened school board staff and trustees is not ideal as we look to continue our support of student and staff success and well-being.

OPSBA's Policy Development Work Team took the lead on preparing the submission to the online survey and current regulatory proposal. This was the same consultative group that was involved in the 2012 template Code of Conduct and enforcement process and the 2019 update of that template. OPSBA also participated in the recent Ministry of Education virtual forum along with other school board/trustee associations. Our representatives included myself, David Green (VP Enrollment, Peel DSB), Elaine Johnston, (Indigenous Trustees' Council Chair/Algoma DSB), and OPSBA senior staff.

It is important to note that many of the new proposed components of a Code of Conduct policy, are already considered in our template document. We have been doing this work amidst the pandemic and have been ensuring our schools continue to be safe places to learn and work.

Please feel free to contact me or OPSBA staff should you have any questions or need clarification of our comments. We look forward to learning more about possible timing for changes to the *Education Act* or the filing of a regulation.

Sincerely,

A handwritten signature in black ink that reads "Cathy Abraham". The signature is written in a cursive, flowing style.

Cathy Abraham
President
Ontario Public School Boards' Association

- cc. Nancy Naylor, Deputy Minister, Education
Patrick Case, Assistant Deputy Minister, Education Equity Secretariat
Dasha Androusenkov, Deputy Director, Stakeholder Relations, Minister's Office
Rachel Osborne, Director, Education Equity Secretariat Initiatives Branch
Jonathan Lear, Director, Leadership, Collaboration and Governance Branch

The Ontario Public School Boards' Association represents English public district school boards and public school authorities across Ontario, which together serve more than 1.3 million public elementary and secondary students. The Association advocates on behalf of the best interests and needs of the public school system in Ontario. OPSBA is seen as the credible voice of public education in Ontario and is routinely called on by the provincial government for input and advice on legislation and the impact of government policy directions.

Survey: Strengthening accountability for school board trustees

1. Please select the category that best applies to you:

The Ontario Public School Boards' Association (OPSBA) represents English public district school boards and public school authorities across Ontario, which together serve more than 1.3 million public elementary and secondary students. The Association advocates on behalf of the best interests and needs of the public school system in Ontario. OPSBA is seen as the credible voice of public education in Ontario and is routinely called on by the provincial government for input and advice on legislation and the impact of government policy directions.

2. Every school board is required to have a code of conduct for trustees. Codes of conduct set out rules of individual conduct and ethical behaviour that trustees agree to follow. Currently, it is up to each school board to determine what to include in its trustee code of conduct.

Do you think all trustee codes of conduct should be required to include consistent provincial standards?

Trustees support boards having a Code of Conduct policy that includes a minimum set of requirements or principles. This would allow for some consistency across the province, but we strongly feel that any Code of Conduct policy be adaptable to fit an individual board's culture and local practices. This is another example of a one-size-does-not-fit-all approach. The vast majority of our membership continues to support and use our 2012 template, which was updated in 2019. Member boards have modified their local policies to suit their needs.

Our current policy template included six overarching principles: Integrity and Dignity of Office; Avoidance of Personal Advantage and Conflict of Interest; Compliance with Legislation; Civil Behaviour; Respect for Confidentiality; and Upholding Decisions. It also included a step-by-step enforcement process for both informal and formal complaint procedures.

The Code of Conduct should apply to all Trustees of the Board, including the Chair of the Board and student trustees. Our student trustees have indicated that they would like any training or professional development to include more about expectations for student trustees.

3. What standards do you think should be included?

As mentioned above, OPSBA's current template contains much of the newly proposed standards with perhaps some slight wording differences.

- **Integrity and dignity of office** – a standard reflecting an expectation for trustees to fulfill their role in a way that inspires public confidence in publicly funded education.

Our members felt strongly that individuals who run for the elected position of a public school board trustee do so with a high level of integrity. This component is included in the OPSBA template with specific details and language included in clauses 5 to 9.

- **Civil and respectful behaviour** – a standard requiring professional and respectful conduct in all interactions and forms of communication including social media.

This component is included in the OPSBA template with specific details and language included in clauses 16-20.

- **Uphold and respect human rights** – a standard prohibiting discriminatory conduct against any person or group based on the protected grounds under the *Ontario Human Rights Code*.

The OPSBA template includes numerous references to respecting individuals, but no direct reference to the Human Rights Code. The inclusion of this was supported by our members and this could certainly be added.

- **Respect for the role of school board staff** – a standard for trustees to respect the role of board staff to advise the whole board and to prohibit trustees from treating board staff disrespectfully.

The OPSBA template includes numerous references to respecting staff, and this can be seen in the details and language in clauses 8, 15, 18, 19, and 20.

- **Responsible use of communication** – a standard requiring trustees to adhere to their board's communications policies and procedures.

OPSBA would support this addition and note many members have separate policies regarding the appropriate use of communications and thus OPSBA's template at clause 27 requires Trustees to comply with all Board policies.

- **Avoidance of personal advantage, improper use of influence and conflict of interest** – a standard prohibiting improper use of the trustee office in situations that are not already covered by the *Municipal Conflict of Interest Act*.

This component is included in the OPSBA template with specific details and language in clauses 10-12.

- **Fiscal accountability and transparency** – a standard ensuring effective stewardship of the board's resources.

The OPSBA template does not have this a standalone component, but it is referenced in clause 6.

- **Respect for confidentiality** – a standard requiring trustees to keep information that they obtain through their role as trustees confidential (unless they are otherwise authorized).

This component is included in the OPSBA template with specific details and language in clauses 21-23.

- **Upholding decisions** – a standard requiring trustees to comply with board by-laws, policies, procedures etc., and uphold implementation of board decisions regardless of personal opinions.

This component is included in the OPSBA template with specific details and language in clauses 24-28.

- **Use of board assets and services** – a standard prohibiting the use of board assets or services for personal matters or for election purposes.

The OPSBA template does not have this a standalone component, but this could be added. In 2018, OPSBA created a Draft Template re: Policy for Use of School Board Resources during the Municipal and School Board Election Campaign.

4. School boards enforce codes of conduct locally. Do you think the current process is effective? If not, how can the process be improved to strengthen the integrity of the complaint and investigation process?

OPSBA most definitely supports allowing boards to make local decisions as to how to enforce Code breaches. Board cultures are different, and this must be respected. The OPSBA template is incredibly detailed to ensure procedural fairness as it provides a step-by-step enforcement process for both informal and formal complaint procedures.

OPSBA and its member boards would support more mandated and funded orientation and training for new trustees at the beginning of their term. We would also like to see more embedded professional development (PD) opportunities for all trustees during their entire term of office. This should include more incentive to attend and participate in PD sessions, modules, and be a mix of individual and group activities. We believe consideration should be given for more training for school board chairs.

In terms of supporting trustees, it would be sensible for more supports to be delivered prior to elections so that potential candidates are made more aware of what the role and responsibilities are for a school board trustee. This would be part of a broader pre-election communication strategy.

5. Boards can hire a third-party (for example, an integrity commissioner) to:

- **provide education and advice to trustees on their ethical obligations and responsibilities**
- **review complaints made under the board's code of conduct to determine if a breach has been made**
- **make recommendations to the board about appropriate consequences, sanctions, or next steps**

How can we support integrity commissioners to effectively perform their duties?

OPSBA and its Policy Development Work Team have spent considerable time discussing the concept of Integrity Commissioners (IC). Two OPSBA Member Boards that have an IC were

directed to hire one by a government review and a small handful of others have decided to hire an IC with differing/varying results.

We believe there is no need for mandatory ICs, either to be hired at individual boards or shared by multiple boards. Some trustees felt this would be an extra and unnecessary layer, but others felt it would be good to remove trustees from a likely sensitive issue and allow a neutral third party to step in and provide advice. This needs to remain a local individual board decision. However, it should be pointed out that ICs are not required by the Education Act and any compensation is the responsibility of that individual board.

At the virtual forum, it was discussed that if the Ministry of Education were to offer boards access to a roster of ICs, that this would have to be done with a set of standard qualifications, consistent advice, and rules to follow. There would have to be some sort of oversight to ensure ICs retain independence and neutrality.

Another interesting point is that many of the IC board reports indicate that the inquiries of the IC are not Code-related and they re-direct those inquiries to the appropriate Board staff or Board Policy for guidance. Very few complaints they receive from the public are about an actual breach of a trustee Code of Conduct. They receive very few inquiries from Trustees or the public about the application of the Code and even fewer actual formal complaints.

Finally, we have concern about the wording of this particular question. It is correct that an IC would review complaints but they are not to “determine if a breach has been made.” Any investigator (committee, third party or IC) is tasked with preparing a report containing the findings of fact and to give an opinion as to whether the code has been breached. This report is given to the Board and in accordance with the Education Act, ultimately it is the Board of Trustees that decides whether the code has been breached.

6. Currently, only a trustee can bring forward a complaint against another trustee. Who else should be able to bring forward a code of conduct complaint against a trustee?

The role of trustees is an elected position that carries with it the understanding that the electorate will decide at election time its support for the effectiveness of a trustee. This consultation is about a Trustee Code of Conduct and therefore, complaints should be brought by fellow board members.

The intent is for trustees to self-govern and not to have members of the public be able to bring allegations of a breach of a trustee Code of Conduct by a trustee. School boards have policies, procedures, and protocols for members of the public and staff to bring forward complaints/concerns.

While we note that with our municipal counterparts, allegations of a breach of a municipal code of conduct can be brought to an IC by a member of the public, this is predominantly because municipalities are engaged in many “lines of business” that can result in more ethical issues, whereas school boards have one line of business: the delivery of public education. This does not involve many commercial business dealings which can result in conflicts of interest or ethical issues around procurements. The Education Act provides many safe guards for the students by way of appeals of suspensions; expulsions; exclusions; special education identification and placements; etc.

In addition, we note the Ontario Ombudsman's oversight includes school boards to ensure procedural and administrative fairness.

7. Currently, the *Education Act* allows a school board to impose one, or more (or none) of the following consequences or sanctions for a breach of a code of conduct:

- **censure or publicly reprimand the trustee**
- **bar the trustee from attending all or part of a meeting of the board or a meeting of a committee of the board**
- **bar the trustee from sitting on one or more committees of the board for a period specified by the board**

If you think the *Education Act* should allow for additional consequences or sanctions, please select those that you feel should be available to boards.

The OPSBA template included a broader range of sanctions and has always stressed the use of remedial solutions and PD as the best course of action. As mentioned above, school boards should have the ability to add requirements that match their board culture. Tied to this, is the concept of restorative justice and the rehabilitation of offenders. This often delivers a much more productive and successful outcome.

Also, as noted in our template, "School Boards that have First Nation Trustees appointed to their board should have regard for Ontario Regulation 462/97 First Nations Representation on Boards. This Regulation provides that appointed First Nation Trustees are deemed to be elected members of the board. While this means that a Trustee Code of Conduct and the Enforcement provisions would apply equally to First Nation Trustees, school boards should have regard for the fact that the Regulation expressly provides that First Nation Trustees represent the interests of the First Nation students at that school board. School boards should consider taking this fact into consideration when imposing any sanction for a breach of the Code of Conduct by a First Nation's Trustee."

Any changes could consider the Teachings of the Seven Grandfathers and how these principles could guide our interactions with one another.

8. Under what circumstances could additional or stronger consequences or sanctions be appropriate for a code of conduct breach?

As stated above, individual boards should decide this locally. OPSBA has always supported the saying, "the punishment should match the crime." As well, trustees support the concept of progressive discipline as seen in the public education sector, where appropriate consequences and/or supports are provided to help improve behaviour, while considering individual circumstances.

One of the discussion items at the Ministry of Education's virtual forum was about including "removal from office" as a possible sanction. All four associations reacted strongly to this suggestion. They were unanimous in that they were very much against this option as this does not apply to any other elected official – municipal, provincial, or federal. The electorate should decide.

9. Is there any other feedback that you would like to share?

The OPSBA template includes a component entitled, Compliance with Legislation, and in addition to fulfilling duties addressed in the Education Act, it includes compliance with the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). Does the Ministry of Education believe this is included somewhere else?

We would also ask that there be consideration about overall respect for the role of a school board trustee, and this should be supported with appropriate compensation. Connected is the fact that many trustees are responsible for budgets that far surpass their municipal counterparts as well as overall number of constituents.

OPSBA invites you to review the following resources:

- *our revised [School Board Code of Conduct Template](#) (policy and enforcement)*
- *the [OESC Module 17 — Trustee Code of Conduct](#)*
- *the [OPSBA Draft Template Re: Use of School Board Resources During the Municipal and School Board Election Campaign](#)*