

# Toronto District School Board

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Governance Procedure PR708

Title: **COMPLAINT PROTOCOL FOR THE BOARD MEMBER CODE OF CONDUCT**

Adopted: June 17, 2015  
Effected: June 17, 2015  
Revised: **November 22, 2017**  
Reviewed: **November 22, 2017**  
Authorization: Board of Trustees

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## 1.0 RATIONALE

The Board has established a Board Member Code of Conduct (“Code of Conduct”) to govern the conduct of its members and to provide transparency, accountability, and public confidence in its governance. This procedure supports the implementation of the Board Member Code of Conduct, particularly as related to the complaints process.

## 2.0 OBJECTIVE

To outline the processes for making, investigating, resolving and reporting on the outcomes of complaints made under the Code of Conduct.

## 3.0 DEFINITIONS

*Board* refers to the Toronto District School Board, which is also referred to as the TDSB.

*Discrimination* means discriminatory behavior as indicated by the TDSB Workplace Violence and Harassment Prevention policy and the *Ontario Human Rights Code*.

*Harassment* means harassing behavior as indicated by the TDSB Workplace Violence and Harassment Prevention policies and the *Ontario Human Rights Code*.

*Inquiry* includes an investigation.

*Integrity Commissioner* means the Integrity Commissioner appointed by the Board of Trustees in accordance with the TDSB Bylaws.

*Members of the Board* (also referred to as Trustees) means Trustees of the Board of Trustees.

*Staff members* means staff members of the Toronto District School Board.

#### **4.0 RESPONSIBILITY**

The Board of Trustees, the TDSB's Integrity Commissioner, and the Director of Education.

#### **5.0 APPLICATION AND SCOPE**

This procedure applies to all members of the Board.

#### **6.0 PROCEDURES**

This Complaint Protocol describes informal and formal ways for members of the public, staff members and members of the Board of Trustees to address complaints concerning the Code of Conduct and members of the Board. The Complaint Protocol provides a number of ways to resolve complaints in addition to the process described in section 218.3(2) of the *Education Act* which permits a member to bring an alleged breach directly to the attention of the Board of Trustees. The Integrity Commissioner may provide advice to members of the Board, information to staff members, and members of the public as well as options for resolving complaints as described in this Complaint Protocol. All of these processes are intended to ensure that there is an opportunity to resolve complaints as expeditiously and meaningfully as possible.

##### **6.1 Informal Complaint Process**

Individuals are encouraged to use informal means first to address conduct prohibited by the Code of Conduct. With the consent of the complaining individual and the member of the Board, the Integrity Commissioner may be a part of any informal process.

Individuals (including staff members of the Board, members of the public, or members of the Board) who have identified or witnessed conduct by a member of the Board that they believe is in contravention of the Code of Conduct may address the prohibited conduct as follows:

- (a) advise the member of the Board that the conduct contravenes the Code of Conduct;
- (b) encourage the member of the Board to stop the prohibited conduct;
- (c) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
- (d) tell someone else (for example, the Integrity Commissioner, a senior staff member or an officer of the organization) about the concerns, the comments to the member of the Board and the response of the member of the Board;

- (e) if applicable, confirm to the member of the Board the satisfaction with the response of the member of the Board; or, if applicable, advise the member of the Board of the dissatisfaction with the response;
- (f) if the parties agree, the Integrity Commissioner can participate in the role of a mediator of the issues relating to the complaint. However, this process is not a precondition or a prerequisite that the complainant must pursue prior to pursuing the formal complaint procedure; and
- (g) consider the need to pursue a formal complaint as described in section 6.2.

An informal complaint must be made within six (6) months of the alleged violation or no action will be taken on the complaint.

Anonymous complaints will not be considered by the Integrity Commissioner.

Where a Trustee subject of an informal complaint, refuses to respond to or cooperate with the Integrity Commissioner, the Integrity Commissioner may submit a report in relation to non-compliance.

***Municipal pre-election period limitation***

If an informal complaint is brought to the attention of the Integrity Commissioner during the pre-election period described in subsection 6.2(e), the Integrity Commissioner shall not participate in the informal process until after a new Board is deemed organized under section 6 of the *Municipal Elections Act*.

**6.2 Formal Complaint and Request for Inquiry Process**

***Requests for Inquiries***

- (a) A request for an inquiry into a complaint that a member of the Board has contravened the Code of Conduct (the “complaint”) may be made to the Integrity Commissioner and if so, shall be made in writing on the prescribed form (sworn affidavit).
- (b) All written complaints shall be signed by an identifiable individual.
- (c) Where a complaint is brought forward by way of a Board decision, 6.2 (a) will not apply.
- (d) A written complaint shall set out reasonable and probable grounds for the allegation that the member has contravened the Code of Conduct. The complaint should include the name of the alleged violator, the provision allegedly contravened, the facts constituting the alleged contravention, the names and

contact information of witnesses, and contact information for the complainant during regular business hours.

- (e) In a municipal election year, a Code of Conduct complaint respecting a member who is seeking re-election will not be received by the Integrity Commissioner and any open complaint investigation shall be suspended during the period starting on Civic Monday and ending when a new Board is deemed organized under section 6 of the *Municipal Elections Act*.
- (f) A formal complaint must be made within six (6) months of the alleged violation or no action will be taken on the complaint.

### **6.3 Classification of Complaints by the Integrity Commissioner**

- (a) The original written complaint shall be filed with the Integrity Commissioner for initial classification to determine if the matter is a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other policies.
- (b) If the complaint is not a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Board policy, the Integrity Commissioner shall advise the complainant in writing as follows:
  - i. if the complaint is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police force;
  - ii. if the complaint is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel;
  - iii. if the complaint is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be referred to the Governance and Board Services department;
  - iv. if the complaint is with respect to non-compliance with a specific Board policy with a separate complaint procedure, the complainant shall be advised to pursue the complaint under that procedure; and
  - v. in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to consider, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

- (c) If the Integrity Commissioner is of the opinion that the formal complaint and request for an inquiry is frivolous, vexatious, or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not initiate an investigation, or, where that becomes apparent in the course of an investigation the Integrity Commissioner shall terminate the investigation.

#### **6.4 Reports from the Integrity Commissioner: No Jurisdiction or Inquiry**

- (a) The Integrity Commissioner may report to the Board of Trustees that a specific complaint is not within the jurisdiction of the Integrity Commissioner.
- (b) The Integrity Commissioner shall report annually to the Board of Trustees on complaints not within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.
- (c) Other than in exceptional circumstances, the Integrity Commissioner will not report to the Board of Trustees on any complaint described in subsection 6.3 except as part of an annual or other periodic report.

#### **6.5 Formal Complaint Inquiries by the Integrity Commissioner**

- (a) If a complaint has been classified as being within the Integrity Commissioner's jurisdiction, the Commissioner shall proceed with an investigation as follows;
  - i. Serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation be provided within ten days; and
  - ii. Provide a copy of the response provided upon the complainant with a request for a written reply within ten days.
- (b) If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, access and examine any of the information, documents or electronic materials and may enter any Board work location relevant to the complaint for the purposes of investigation and settlement.

#### **6.6 Reports to the Board of Trustees**

- (a) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the receipt of the Complaint Form/Affidavit of the complaint. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report to the Board and will advise the parties of the anticipated date that the report will be available.

- (b) The Integrity Commissioner shall not issue a final report to the Board in which there is a finding of a violation of the Code of Conduct on the part of any member of the Board unless the member has had reasonable notice of the basis for the proposed finding and any recommended sanction and an opportunity either in person or in writing to comment on the proposed finding and any recommended sanction, that the Integrity Commissioner may take into consideration in the final report submitted to the Board.
- (c) The Integrity Commissioner may make interim reports to the Board of Trustees where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.
- (d) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to the Board of Trustees outlining the findings, the terms of any settlement, or recommended corrective action or sanction.
- (e) Report of a formal complaint investigation by the Integrity Commissioner will be considered by the Board of Trustees in a public meeting, subject to the following exceptions:

In accordance with section 207(2) of the *Education Act*, a report of a formal complaint investigation may be considered in a meeting closed to the public when the subject matter under consideration involves:

- the security of the property of the board;
  - the disclosure of intimate, personal or financial information in respect of a member of the board or Committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian;
  - the acquisition or disposal of a school site;
  - decisions in respect of negotiations with employees of the board; or
  - litigation or any potential litigation affecting the Board.
- (f) Where the complaint is dismissed, the Integrity Commissioner shall not report to the Board of Trustees other than in an annual or periodic report or in exceptional circumstances.
  - (g) Any recommended corrective action must be permitted in law or policy and shall be designed to ensure that the inappropriate conduct does not continue.
  - (h) Where the Integrity Commissioner determines that a contravention of the Code of Conduct occurred although the member of the Board took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgment made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.

- (i) The Integrity Commissioner shall give a copy of the report to the complainant and the member of the Board whose conduct is concerned.
- (j) The Integrity Commissioner shall bring the report before the next available meeting of the Board of Trustees.

**6.7 Duty of the Board of Trustees**

- (a) The Board of Trustees shall consider and respond to the Integrity Commissioner's report within 90 days after the day the report is placed on a Board agenda.
- (b) In responding to a report from the Integrity Commissioner, the Board of Trustees may accept, reject or amend the Integrity Commissioner's recommendation to impose a sanction or it may refer the recommendation back to the Integrity Commissioner.

**6.8 Payment of Costs**

- (a) Subject to subsection 6.8(e), a member of the Board who is a respondent to a complaint under this procedure shall be reimbursed for actual and reasonable legal and related expenses up to a maximum of \$5,000.
- (b) In the case of an application under the *Judicial Review Procedure Act* for judicial review of actions taken on a complaint against a member of the Board by the Integrity Commissioner,
  - i. where a member of the Board made the judicial review application, the member is eligible for reimbursement of legal costs, including additional legal costs in a successful application, that are not covered by the costs awarded by the court, up to a maximum of \$20,000.
  - ii. a member of the Board may apply for reimbursement of the legal costs of intervention in a judicial review application where the member's interests are at stake, up to a maximum of \$20,000.
- (c) The Board may consider the reimbursement of costs above the limit in subsections 6.8(b)i. and 6.8(b)ii. on a case by case basis.
- (d) The Board may consider an advance payment to a Trustee for legal expenses prior to completion of an investigation for a maximum amount of \$5,000. While the Trustee must return to the Board all unused funds upon completion of an investigation, the Trustee will not be required to reimburse the spent funds if, upon completion of the investigation, either subsection 6.8(e)i or 6.8(e)ii below applies. Otherwise, all advanced funds must be returned to the Board immediately upon conclusion of the investigation.

- (e) Costs shall only be reimbursed under this section to the member of the Board:
  - i. if the Integrity Commissioner concludes that there has been no contravention of the Code of Conduct by the member or that the member is not blameworthy, and the Integrity Commissioner's conclusion is not overturned on judicial review; or
  - ii. where the Board of Trustees receives the Integrity Commissioner's report on a violation and determines that it should not take any action.
- (f) Any award of costs under subsection 6.8(e) shall be contingent on a report to the Board of Trustees from the General Counsel

### **6.9 Confidentiality and Formal Complaints**

A formal complaint will be processed as follows:

- (a) The Integrity Commissioner and every person acting under her or his instructions shall preserve confidentiality with respect to all matters that come to his or her knowledge in the course of any investigation except as required by law in a criminal proceeding or in accordance with the provisions of the Code of Conduct and this related procedure concerning reporting to the Board of Trustees.
- (b) All reports from the Integrity Commissioner to the Board of Trustees will be made available to the public.
- (c) Any references by the Integrity Commissioner in an annual or other periodic report to a complaint or an investigation shall not disclose confidential information that could identify a person concerned.
- (d) The Integrity Commissioner in a report to the Board of Trustees on whether a member of the Board has violated the Code of Conduct shall only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.

### **7.0 EVALUATION**

This procedure is to be reviewed and updated as required but at a minimum every four (4) years.

### **8.0 APPENDICES**

Appendix A: Complaint Form (Form 708A)

### **9.0 REFERENCE DOCUMENTS**



Policies and Procedures:

- P016 Employee and Trustee Expenses Policy
- P075 Board Member Code of Conduct
- TDSB Bylaws

Legislative Acts and Regulations:

- *Judicial Review Procedure Act*
- *Municipal Elections Act*
- *Ontario Human Rights Code*

**Appendix A: Complaint Form  
(Form 708A)**

**Formal Complaint to the Integrity Commissioner  
Toronto District School Board  
(Complaint Protocol for the Board Member Code of Conduct)**

COMPLAINT OF

\_\_\_\_\_ [full name]

I, \_\_\_\_\_ [full name], of the [City,  
Town, etc of] \_\_\_\_\_ [municipality of  
residence] in the Province of Ontario

STATE THE FOLLOWING:

1. I have personal knowledge of the facts described in this complaint because

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ [insert reasons e.g. I work for . . . I attended the meeting at  
which . . . etc].

2. I have reasonable and probable grounds to believe that a member/Trustee of the Toronto District School Board, \_\_\_\_\_ [name of member], has contravened section(s) \_\_\_\_\_ [specify section(s)] of the Board Member Code of Conduct (the “Code of Conduct”).

3. The particulars are as follows:

[Set out the description of the complaint in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space, please attach additional sheets of paper. If you wish to include copies of documents to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this complaint form or attach links if they are in electronic form.]

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DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at the [City, Town, etc  
of] \_\_\_\_\_ in  
the Province of Ontario.

\_\_\_\_\_  
[Signature of person making the complaint]