

# Board Member Conduct/Conflict of Interest

Spring Assembly 2026

# Disclaimer

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## ***Calgary Roman Catholic Separate School District No. 1 v. O'Malley (2007 Alberta)***

- Board had adopted a governance model
- O'Malley campaigned on basis that too much had been delegated to the administration
- Said he was given an electoral mandate to reform the system

## ***Calgary Roman Catholic Separate School District No. 1 v. O'Malley (2007 Alberta)***

- Director briefed trustees on contract negotiations with union and during break O'Malley spoke to union about that confidential briefing

## ***Calgary Roman Catholic Separate School District No. 1 v. O'Malley (2007 Alberta)***

- Made statement to press that it was time for board to intervene in negotiations
- Board created task force to deal with negotiations and O'Malley was not appointed to it

## ***Calgary Roman Catholic Separate School District No. 1 v. O'Malley (2007 Alberta)***

- Board passed a motion to have legal counsel and outside expert review its governance policies
- O'Malley called reports a whitewash

## ***Calgary Roman Catholic Separate School District No. 1 v. O'Malley (2007 Alberta)***

- O'Malley took out an ad in the paper grading all trustees – he gave everyone a “F”, he gave himself an “A”
- Filed various lawsuits against the board
- Made unauthorized visits to a school with reporters in tow

## ***Calgary Roman Catholic Separate School District No. 1 v. O'Malley (2007 Alberta)***

- O'Malley was provided with copy of confidential legal opinions, was requested to keep them confidential but made them public
- Board had a meeting to discuss suing O'Malley – when asked, he did not declare a conflict of interest and voted on the motion

# Table Discussion (15 Minutes)

1. What is your reaction to O'Malley's conduct?
2. What is your reaction to the board's handling of the matter?
3. Was O'Malley in a conflict of interest?

## ***Calgary Roman Catholic Separate School District No. 1 v. O'Malley (2007 Alberta)***

### **The judge said:**

“I wish to make it clear that it does not matter whether the individual voting on a motion stood to make a profit, whether the amount involved was small or large, or even whether the vote affected the outcome of the motion. As the authorities above make clear, *any* conflict cannot be tolerated...”

“That the only master Mr. O'Malley has served has been himself is reflected in his need to be in the news and to be in the spotlight under the pretext of his perceived mandate of reform and change. Mr. O'Malley placed himself in a glaring conflict of interest, refused to abide by the Board's own code of conduct and policies, improperly disclosed confidential information, neglected his duties and refused to attend school council meetings.”

“Mr. O’Malley had a misguided understanding of to whom his fiduciary duties are owed...Mr. O’Malley wrongly believes that his duties are owed only to the people that voted for him...the fiduciary duties are owed to the corporate body (the Board) which is, in turn, accountable to the Catholic ownership.”

“He has been disloyal to the very organization he was elected to serve and breached numerous fiduciary duties while disrupting the operation of the Board and harming the District's reputation.”

“ In the result, Mr. O'Malley is disqualified from holding office as a trustee of the Board until two general elections have occurred after the date of these Reasons.”

# Fiduciary Duties of Trustees

## Duties set out in Case Law

- Trustees are elected to serve the people in the school division and are legally in a position of trust.
- This means individual board members each have a “fiduciary” duty towards the students, staff and community of the division.

# Fiduciary Duties of Trustees

## Duties set out in Case Law

Fiduciary duty requires board members to:

- ensure that the board's interests are paramount
- act impartially (also known as the duty to maintain an even hand)
- act exclusively for the benefit of the beneficiaries
  - act honestly and in good faith
  - no bias or conflict of interest

# Fiduciary Duties of Trustees

## Duties set out in Case Law

Fiduciary duty requires board members to (cont'd):

- maintain an appropriate level of skill and prudence when carrying out trustee duties
- conduct themselves appropriately
  - follow policies, codes of conduct
  - keep confidentiality
  - act respectfully towards colleagues and public

# Code of Conduct

## School Division Code of Conduct

- often more specific and include consequences

Please review the SSBA Code of Conduct Policy Advisory to adopt or adapt:

[SSBA-Code-of-Conduct-Policy-Advisory.pdf](#)

# General Principles of Bias

“Bias” is a predisposition or a state of mind which sways judgment.

Supreme Court of Canada emphasized there is a distinction between an open mind and empty one.

- does not mean that decision maker must have no prior conceptions, opinions or sensibilities.
- but decision maker must not close their mind to the evidence and issues or raise a reasonable apprehension that they cannot decide the matter fairly and impartially.

...trustees collectively and individually owe a public duty to carry out their responsibilities and the work of the Board in good faith and with reasonable diligence. They are elected for that purpose. They need not be of like mind. They may hold strong conflicting views. They may debate with vigour, and occasionally with rancour. There is no rule requiring trustees to like each other. But they do have one overarching responsibility — a shared public duty to advance the work of the Board to which they had the privilege of being elected.

*Calgary Roman Catholic Separate School District No. 1 v. O'Malley (2007 Alberta)*

# Conflict of Interest

- Bias and conflict of interest are closely interrelated
- Conflict of interest arises when the personal interest of an individual in the outcome of a matter could reasonably be perceived as affecting the person's decision on that matter

# Liabilities of Board Members

## Case Law:

Board members may be held personally liable for:

- breach of fiduciary duties
- breach of statutory duties
- permitting corporation to act outside its authority
- torts they commit individually – ex. defamation, harassment, etc.

# Liabilities of Board Members

## Liabilities under legislation

Board members can be held personally liable:

- if willfully refuse to fulfill a contract made by the board unless member can show they made reasonable efforts to have the board carry out the contract

*(School Division Administration Regulations s. 26)*

- if willfully votes for any illegal action

*(School Division Administration Regulations s. 27)*

# Liabilities of Board Members

## Liabilities under legislation

Board members must be removed from office if:

- miss 3 consecutive meetings without approval
- commit an indictable offense while in office
- no longer qualify as a candidate (e.g. move out of the school division)
- If violate statutory conflict of interest provisions

*(School Division Administration Regulations section 10 and 11(2))*

# Liabilities of Board Members

## Liabilities under legislation

Board member may be removed from office by court order if:

- contravened conflict of interest section
- gross neglect of duty
- wilfully contravened the Act or regulations; or
- is unfit for any reason to act as a board member

*(section 12 School Division Administration Regulations)*

# Liabilities of Board Members

## Liabilities under legislation

Board member may be removed from office by order of the Lieutenant Governor in Council if the Lieutenant Governor in Council considers it “in the public interest” to do so.

*(School Division Administration Regulations section 13)*

# Liabilities of Board Members

## Liabilities under legislation

It is an offence to wilfully disturb, interrupt or disquiet:

- the proceedings of a school meeting
- any school by rude or indecent behaviour or by loitering, within the school, on school premises or so near as to disturb the orderly operation of the school  
*(The Education Act, 1995 s. 367)*
- Offence under section 367 could lead to possible fine of up to \$1,000 that would apply to members of public as well as staff and board members

# Liabilities of Board Members

## Requirement to act in Good Faith

- Board members are protected from liability through actions or inaction in the exercise of their duties when performed in good faith

*(The Education Act, 1995 s. 117(2))*

- Board members may be individually liable (must pay legal fees and damages) if the member:
  - acted in a way that would be considered so unreasonable that no one would expect a board member to act in that way; or
  - knew, or ought to have known, that the action was clearly wrong

# Identifying Conflict of Interest

## 1. Peers Standard Test

- Is the behaviour ok in sector?
- Would the community approve?

## 2. Public Disclosure – “The Smell Test”

- How would people react if activity was public?
- What impact would it have on credibility of organization?

# Identifying Conflict of Interest

## 3. The Reasonable Person Test

- What would a reasonable person do?

## 4. The Best Interests Test

- Is board member acting honestly in best interests of the board?

# Identifying Conflict of Interest

## Examples:

- Board member or close family, business partner could benefit from position
- Use of resources for personal benefit
- Accepting benefit from a supplier etc.
- Getting preferential treatment

# Conflict of Interest?

Decision rests with the individual board member

- if in doubt can discuss with other members
- must abstain from discussion and voting

# What to do if there is a Conflict?

**DECLARE** your interest

**DISCLOSE** general nature about your interest (does not need to provide details)

**DEPART** from the room until discussion ends (have departure noted in the minutes)

**DON'T DISCUSS** the issue before, during, or after the meeting.

*(Adapted from SUMA 2016 presentation document)*

# If member fails to declare Conflict?

## **Before Meeting:**

- if possible, Chair and Vice Chair can discuss with board member
- member can get legal advice (at their own cost)
- postpone question if possible and practical

## **During Meeting:**

- can go into closed session and discuss with entire board
- if trustee refuses to declare, other members can ask for recorded vote with names
- all members should keep notes
- board can seek legal advice if necessary

# Questions?

# Key Takeaways

- **Code of Conduct Policy** – have one, review and follow it
- **Conflict of Interest** - Declare/Disclose/Depart/Don't Discuss
- **Fiduciary Duty** – a board member must act in the best interests of the “corporation”
- **Transparency & Accountability** – you should be able to defend and speak to board decisions collectively (the best PR is good governance, good work and good decisions )

# Thank You!

Safe Travels – Take Care

