



ONTARIO PUBLIC
SCHOOL BOARDS'
ASSOCIATION

Leading Education's Advocates

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OPSBA Overview re: Conflict of Interest Updated Requirements

Background Information:

Bill 68, *Modernizing Ontario's Municipal Legislation Act* was introduced on November 26, 2016 and received Royal Assent on May 30, 2017. New requirements concerning Conflict of Interest become effective March 1, 2019. OPSBA has summarized the trustee and board requirements below and provided recommendations for consideration.

What is Conflict of Interest?

The main purpose of the *Municipal Conflict of Interest Act* (MCIA) is to protect the public interest by ensuring that public officials do not improperly take advantage of their positions of trust to seek personal gain. The *Act* applies to all members of local councils, committees, and boards, including school boards, either elected or appointed. The *Act* also applies to members of advisory committees and other committees established under the *Education Act*. Student trustees are subject to the 2007 Ministry of Education Guideline respecting conflict of interest.

Conflict-of-interest legislation is concerned only with pecuniary, or financial, interests. The MCIA refers to three kinds of pecuniary interest: direct, indirect, and deemed. The following are examples of each:

- A trustee would have a direct interest if the board was considering buying property that the trustee owns.
- A trustee would have an indirect interest if the trustee is a senior officer of a company bidding for a board contract.
- A trustee would have a deemed interest if the trustee's spouse, child, or parent owns a company that is bidding for a board contract.

How do you declare a Conflict of Interest?

A member who identifies a direct, indirect, or deemed conflict of interest in a matter and is present at a meeting of the board or committee of the board at which the matter is the subject of consideration, must declare the conflict before any discussion of the matter begins.

Specifically, the member must follow these steps:

- Publicly declare the conflict of interest, state the general nature of the interest, and have the declaration recorded in the minutes
- Effective March 1, 2019, file a written statement of the interest and its general nature with the secretary of the committee or board
- Do not vote on any question in respect of the matter

- Do not take part in the discussion of the matter
- Do not attempt in any way, whether before, during or after the meeting, to influence the voting on any question in respect of the matter
- When a committee of the board, including a committee of the whole board, is in closed session, leave the room for as long as the matter is under consideration, and have the fact that he or she left the room recorded in the minutes. At the next meeting that is open to the public, the declaration of interest shall be recorded in the minutes but not the general nature of that interest.

If a member is absent from a meeting during which that member would have been placed in a conflict of interest, at the next meeting attended by the member, the member must disclose the interest and otherwise refrain from discussing, influencing, or voting on the matter. **If there are any doubts about a possible conflict of interest, trustees should seek legal advice.**

Effective March 1, 2019

1) **Written Disclosure of Interest**

- At a meeting at which a member discloses a pecuniary interest, the member will be required to file a written statement of the member's interest at the meeting, or as soon as possible afterwards. (new Section 5 MCIA)

OPSBA notes and recommendations:

- Section 5.1 of *Municipal Conflict of Interest Act* states the member has to file a written statement at each meeting where the member has a conflict or as soon as possible afterwards.
- This requirement is for all board meetings (regular/special) and committee meetings.
- The trustee statement could contain the following information:
 - Name of member
 - Type of Meeting
 - Date of meeting matter was considered
 - Subject matter/report title/agenda item
 - General nature of the conflict* (except if it was an in camera or closed meeting)
 - Date of meeting at which Conflict of Interest was declared (this may have been declared at the next meeting because the trustee was absent from the actual meeting)
- The member should sign and date the statement.
- A board could have this form online and members could complete, print, sign and hand in at the meeting.

* General nature would include stating what kind of pecuniary interest is involved (direct, indirect or deemed) and the type of relationship (parent, child, or spouse) connected to the trustee.

2) **Registry**

- Requires school board to establish and maintain a registry of statements and declarations of interests of members. The registry would be made available for public inspection. (new Section 6.1 MCIA)

OPSBA notes and recommendations:

- Section 6 of MCIA states that the declarations of conflict also have to be recorded in the minutes of each meeting.
- The board's registry should then contain the member's signed statement and an excerpt from the minutes of the meeting where the declaration is made.
- The board's registry could be organized by date and type of meeting and the statement and declaration documents filed for each trustee that declares an interest.

Additional Information Effective March 1, 2019

- Conflict of interest applications can be brought by, "An elector, an Integrity Commissioner of a municipality or a person demonstrably acting in the public interest." (new section 8.1 MCIA)
- Where a member has a direct, indirect or deemed pecuniary interest in a matter that is being considered by an officer or employee of the Board, the member shall not use their office in any way to attempt to influence any decision or recommendation that results from the consideration of the matter
- Applications can be brought against a former member of the board, for a breach that may have occurred while they were a member. All applications still have to be brought within six weeks of when the breach comes to the attention of the applicant and that could be up to six years after the breach is alleged to have occurred. (new section 8.1 MCIA)
- Penalties: If a judge determines that a contravention occurred, the judge may:
 - reprimand the member or former member,
 - suspend the member's remuneration for a period up to 90 days,
 - declare the member's seat vacant,
 - disqualify the member or former member during a period of not more than seven years,
 - and/or require the member or former member to make restitution. (new section 9.1 MCIA)

Reference Documents:

- *Municipal Conflict of Interest Act*
- *Education Act*
- Other relevant Board policies/procedures.

This overview is produced by the Ontario Public School Boards' Association. It is based on the law in effect as of March 1, 2018. The information contained in this publication is not intended to be legal advice. It is general information only.

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