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BY-LAW BCAA

CODE OF ETHICS & PROFESSIONAL CONDUCT FOR COMMISSIONERS

Note: The masculine gender is used in this By-Law without any discrimination and for the sole purpose of simplifying the text.

1. REFERENCE

This Code of Ethics is developed in compliance with the following applicable laws and regulations:

- The Education Act (R.S.Q., c. I-13.3, sections 175.1 to 175.4, 176, 177, 177.1, 177.2)
- Act Respecting Elections and Referendums in Municipalities (R.S.Q., c. E 2.2, sections 303 to 312),
- Act Respecting School Elections (R.S.Q., c. E-2.3, section 21),
- Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information (R.S.Q., A-2.1, sections 158 to 164) and
- Civil Code of Quebec (sections 321 to 330 and section 2088).

2. APPLICATION

Unless indicated otherwise, this By-Law applies to every commissioner within the meaning of the Education Act (section 143), during their respective term of office. In terms of section 5.2 of this Code of Ethics, the obligation of confidentiality applies indefinitely.

3. DEFINITIONS

Commissioner: A person elected or appointed pursuant to the Act respecting school elections (chapter E-2.3); commissioners representing the parents' committee, elected under the Education Act; and co-opted commissioners (the persons must meet any selection criteria determined by regulation by the Minister).

Conflict of interest: A situation in which a commissioner may have to choose between his personal interests or those of his close relations, and the interests of the school board. The strict definition of conflict of interest is mentioned in section 175.4 of the Education Act.

In addition to what is specifically provided for by section 175.4 regarding interests he might have in an enterprise, a commissioner will be deemed to be in a situation of conflict of interest if he is in a situation that places or could place his personal interest or those of his close relations in conflict with those of the school board.

Ethics Review Officer: A person or substitute named by the Council of Commissioners, mandated to examine or inquire into alleged or actual conduct that may be contrary to standards of ethics or professional conduct, or charged with determining or imposing appropriate penalties.

4. OBJECTIVE

The objective of this Code of Ethics is to ensure the integrity, objectivity and impartiality of the Council of Commissioners of New Frontiers School Board by establishing standards of professional conduct for its Commissioners.

5. DUTIES AND RESPONSIBILITIES OF COMMISSIONERS'

5.1. General Duties

- 5.1.1. Commissioners must abide by the duties and obligations prescribed in the Education Act, more particularly sections 143 to 178, and the Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information (sections 158 to 164).
- 5.1.2. The commissioner fulfils the obligations of his office with independence, integrity and good faith and in the best interest of the school board and the population served by the school board.
- 5.1.3. Commissioners must abide by the rules of procedure and policies adopted by Council

¹ Commissioners must read and sign the attached appendix

5.1.4. Commissioners must treat the other commissioners as well as the employees of the school board with respect.

5.2. Discretion

A commissioner must demonstrate absolute discretion both during and after his term of office and must respect the confidential nature of:

- 5.2.1. the personal, commercial and scientific information obtained
- 5.2.2. discussions on negotiations in progress;
- 5.2.3. negotiations and information relative to suppliers during the tendering process;
- 5.2.4. confidential information relating to the private lives of commissioners, staff, students and their families;
- 5.2.5. the staff selection process;
- 5.2.6. the ethics complaint process;
- 5.2.7. disciplinary measures;
- 5.2.8. draft documents stamped as “confidential”;
- 5.2.9. any other information disclosed during “in camera” meetings of the Council of Commissioners, the Executive Committee or a Standing Committee.

5.3. Equity

A commissioner must abide by the rules and policies established by the School Board. He must not use his position to obtain for his family or friends, or for himself, services offered by the School Board to which he is not normally entitled.

5.4. Personal Integrity

- 5.4.1. Regarding contracts or agreements to be negotiated or concluded with the School Board, a commissioner shall not use the information obtained in the exercise of his duties to derive a benefit to which he is not entitled or to which his family or friends are not entitled.
- 5.4.2. A commissioner shall disclose any situation that could possibly place his personal interests in conflict with those of the School Board.
- 5.4.3. A commissioner shall refuse, and disclose to the School Board, any offer of services or goods made to his advantage by a person who obtains or seeks to obtain a contract or any other benefit from the School Board.

5.5. Remuneration

A commissioner shall receive the remuneration determined by the Council in accordance with the law and the regulations. The Council of Commissioners determines, by resolution, the distribution of the remuneration paid to its members for the services they render, in accordance with the maximum annual amount determined by Government regulation. Remuneration may be suspended in cases where the present Code of Ethics and Professional Conduct is breached for any periods where the commissioner is no longer rendering the services for which he receives remuneration.

6. PREVENTIVE MEASURES

- 6.1. Without limiting Commissioners’ obligations under section 175.4 of the Education Act, upon a commissioner's entry into office, he shall identify, in writing, on the form provided by the School Board, situations or relationships which might create a conflict of interest. The School Board requires that this form be completed at least once a year and whenever a change occurs which might create a similar situation.
- 6.2. In any deliberations of Council or “in Committee”, where a commissioner is in conflict of interest, whether actual, potential or perceived, the Commissioner must declare the conflict, withdraw from sitting while the issue is being discussed and/or voted upon, and avoid influencing the discussion in any way.
- 6.3. A situation of conflict of interest is a situation in which a commissioner might have to choose between his personal interest or those of his close relations and the interests of the school board. The term interest implies a direct or indirect interest, financial or not, real, apparent or potential. This interest is distinct from public interest in general and can be perceived as such by a reasonably informed person.(from old def. of COI)
- 6.4. If applicable, the chair of the school board, after having heard, the representations of the commissioners, determines the right of a Commissioner to vote and to be present regarding a particular subject.
- 6.5. The chair of the school board has the power to intervene in order to prevent a commissioner from voting or to oblige this commissioner to leave during the deliberations of the Council of Commissioners.
- 6.6. The decision of the chair is final unless an appeal is lodged and upheld by the majority of the commissioners who are present and have the right to vote according to the Education Act (R.S.Q., Chapter I-13.3). In such a case, the question is immediately remanded to the Governance and Ethics Committee for decision. This decision is not disciplinary in nature but is final and without appeal.

7. ETHICS REVIEW OFFICER

7.1. Naming of Ethics Review Officer

- 7.1.1. In order to implement this by-law, the Council of Commissioners shall name, by resolution, an Ethics Review Officer who will be responsible for dealing with complaints made against a commissioner for a potential breach of the Code of Ethics and Professional Conduct.
- 7.1.2. The Ethics Review Officer must be one of the following:
 - A former commissioner or city councillor who has not held that office for at least four years;
 - A former school or school board administrator who has ceased such function for at least two years;
 - A practicing lawyer experienced in education or public law;
 - An experienced mediator or arbitrator;
 - A former representative of the justice system;
 - A representative of the general public with appropriate experience.
- 7.1.3. The Ethics Review Officer must not be a member of the Council of Commissioners or an employee of the school board, in conformity with section 175.1 of the Education Act.
- 7.1.4. The Council of Commissioners shall also name by resolution a substitute to replace the Ethics Review Officer if he is absent or unable to perform his duties. This substitute must also possess the same qualifications as listed above.
- 7.1.5. The Council of Commissioners must establish by resolution the remuneration of the Ethics Review Officer and his substitute, if required.

7.2. Term of Office

- 7.2.1. The Ethics Review Officer and his substitute are named for the duration of the term of office of the Council of Commissioners or until replaced by resolution.
- 7.2.2. At the end of the term of office of the Council of Commissioners, the Ethics Review Officer and his substitute remain in office until a new Ethics Review Officer and substitute are named by a new Council of Commissioners elected in conformity with the Act Respecting School Elections (R.S.Q., c. E-2.3).

7.3. Powers & Functions of the Ethics Review Officer

- 7.3.1. Any complaint concerning a breach to the present Code of Ethics and Professional Conduct must be filed in writing within 60 days of the reporting of an incident.
- 7.3.2. Complaints must be forwarded in writing to the Secretary General of the school board who will acknowledge receipt, verify conformity and forward a copy to the Ethics Review Officer. The Secretary General will offer support to the Ethics Review Officer and protect the confidentiality of the complaint and associated information.
- 7.3.3. All complaints must be signed by the complainant party who must also provide the information required by the Ethics Review Officer for identification and contact purposes.
- 7.3.4. The commissioner concerned has the right to be made aware of the specifics of the charges against him/her in order that he/she may defend himself. Upon receipt of a complaint, the Ethics Commissioner will also forward a copy of the complaint to the concerned commissioner and inform him/her that he/she may submit, within fifteen (15) days, a written statement duly signed.
- 7.3.5. At the expiration of the delay provided, the Ethics Review Officer will determine the admissibility of the complaint. Should he consider that the complaint is non-admissible or that its nature or importance does not justify an investigation, he will so advise the complainant and the commissioner concerned, indicating the reasons for his decision and forward a summary to the Secretary General indicating that the file is closed. His decision shall constitute final resolution of the matter.
- 7.3.6. If the Ethics Review Officer determines that the complaint is abusive or frivolous or that an investigation is not necessary, it shall so state it in the decision.
- 7.3.7. If the Ethics Review Officer decides that probable cause exists, he shall so inform the Secretary General and proceed with an investigation.
- 7.3.8. The Secretary General shall assist the parties throughout the investigation and act as a resource person to the complainant and the commissioner concerned.
- 7.3.9. If the Ethics Review Officer determines that a hearing is necessary, he shall then set a schedule of proceedings with the input of complainant, defendant and/or their respective legal counsel within ten (10) days of his decision that a hearing is necessary.
- 7.3.10. Should the complainant, defendant or their respective counsel fail to set dates or complete the schedule of proceedings, the Ethics Review Officer shall set and complete the schedule of proceedings, including the hearing date, regardless of the availability of the uncooperative party;

- 7.3.11. The decision shall be rendered by the Ethics Review Officer within ninety (90) days of receiving the complaint. However, the Ethics Review Officer may extend that delay upon valid reason from a party. If the delay exceeds more than thirty (30) days, the Ethics Review Officer must notify the Council of Commissioners and provide the reasons for the delay.
- 7.3.12. Consequently, the schedule of proceedings will be amended and must be signed by all parties.
- 7.3.13. Once the dates have been agreed upon and the schedule has been signed by all parties, the parties will be bound by the dates set.
- In the event that the complainant or his legal counsel demonstrates a lack of cooperation in making himself available for the hearing, then the Ethics Review Officer shall dismiss the complaint. He shall then notify in writing the complainant, the concerned commissioner and/or their respective legal counsels and the Secretary General of his/her decision. His decision shall be final and considered a resolution of the complaint.
 - In the event that the defendant or his legal counsel demonstrates a lack of cooperation in making himself available for the hearing, then the Ethics Review Officer shall proceed to render a decision. He shall then notify in writing, the defendant and/or his respective legal counsel and the Secretary General of his decision. His decision shall be final and considered a resolution of the complaint.
- 7.3.14. The complainant shall have the burden of proof to establish factually, that the defendant has violated any of the provisions in virtue of the Code of Ethics and Professional Conduct.
- 7.3.15. The contents and nature of the complaint, the summoning of witnesses and the investigation shall remain confidential, until a decision is rendered.

7.4. Decision & Sanctions:

- 7.4.1. Following the investigation, the Ethics Review Officer will decide whether or not the Code of Ethics and Professional Conduct was breached. If so, he will select one sanction from the following:
- a request for an apology – public or private (to be determined by the Ethics Review Officer);
 - a public reprimand: written reprimand read at a public meeting of Commissioners (to remain in file for the rest of the term in office);
 - a withdrawal, for a maximum of six (6) months, of the School Board services and privileges normally given to Commissioners;
 - a suspension, for a maximum of six (6) months, of part or all of the attributions and functions of a commissioner, except the right to participate and vote in the public meetings of the Council of Commissioners;
 - a suspension of the commissioner's remuneration for any or all committee services;
 - a recommendation to the Council of Commissioners that an action to declare the commissioner disqualified be taken in accordance with section 308 of the Act Respecting Elections and Referendums in Municipalities.
- 7.4.2. This is applied for the period in which the commissioner was no longer rendering the services for which he received remuneration.
- 7.4.3. If the Ethics Review Officer considers that the commissioner did not breach the Code of Ethics and Professional Conduct, he will so inform the complainant and the commissioner concerned. His decision will be sent to the Secretary General indicating that the file is closed. All such decisions shall be deposited with the Council of Commissioners.
- 7.4.4. All decisions of the Ethics Review Officer must specify whether or not the Commissioner performed in good faith in the discharge of his functions in regard to the complaint received.
- 7.4.5. If the Ethics Review Officer concludes that the Code of Ethics and Professional Conduct was breached, the decision rendered is public. The Ethics Review Officer shall decide on the means of publicizing the decision and the sanction. The Council of Commissioners will be informed of the decision and the sanction prior to its publication.
- 7.4.6. The decisions rendered under the present section must be in written form.
- 7.4.7. The Ethics Review Officer must present a report to the Council of Commissioners no later than September 30th for the school year which ended the previous June 30th for the purpose of 7.5 below.

7.5. Annual Report to the Council of Commissioners

In its annual report, the Council of Commissioners must provide the number of cases dealt with and the follow-up thereon, set out any breaches determined during the year, the determination thereof, and any penalties imposed by the Ethics Review Officer as well as the names of any commissioners divested of office by a court during the year.

The enforcement mechanisms contemplated in this by-law are disciplinary in nature and do not prohibit the school board from taking legal action to obtain compensation for damages sustained.



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Annex A**

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SOLEMN AFFIRMATION TO RESPECT CONFIDENTIALITY

The Council of Commissioners, hereinafter referred to as “the Council” is charged, by law, with the responsibility of administering (section 143 of the Education Act) the New Frontiers School Board. This is a heavy responsibility but one that is shared and conducted as a group, not as individuals. In order to carry out this role, the Council has created a number of working committees. In the course of conducting its affairs, the Council members are privy to a wide range of information and documentation, often shared in a confidential and private (non-public) setting.

Each commissioner of the Council shares the same access to, and responsibility for, confidential and nominative information which is necessary to oversee the operations, actions, and personnel under the day-to-day control of the Board management.

If the majority of members of the Council believe that an individual commissioner has failed to respect confidentiality, then the Council can take appropriate disciplinary measures, such as are included in the Code of Ethics and Professional Conduct by Commissioners By-Law (BCAA). As well, the entire Board is governed by Act respecting Access to Documents held by Public Bodies and the Protection of Personal Information. Legal action can be taken against any individual should such protection be breached.

Within this context, the members of the Council solemnly affirm their commitment to confidentiality, following both the spirit and the letter of the law, but also out of respect for their peers.

I, _____, the undersigned Commissioner, solemnly affirm that I will not divulge any confidential information such as:

- Discussions in caucus or the non-public parts of workshops, committees or other meetings which I attend in the course of my role as Commissioner;
- Confidential information (so identified) provided as part of, or appended to, meeting agendas, kits or packages of documentation;
- Any discussion, any document, or any personal, student or personnel information relating to affairs of the NFSB that must not be disclosed by virtue of the provisions of the Act Respecting Access to Documents held by Public Bodies and the Protection of Personal Information.

If not certain about the level of confidentiality of specific information or documentation that is protected by legislation, I will verify same with the Secretary General **and** with the Chairman or the Director General of the School Board.

If I am uncertain about the consequence of public disclosure of any information shared among the members of the Council in confidence, I shall verify with the Chairman of the Board the appropriateness of such disclosure. If the disclosure is deliberate and has, in the view of the Council, a negative impact, I understand that the Council can impose disciplinary measures as recommended by the Ethics Review Officer.

Signature: _____

Date: _____