

Commissioners for Oaths, Pecuniary  
Interest & Fiduciary Duty

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# Legislation

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- ***Commissioners For Oaths Act, R.S.A. 2000, c.C-20***
  - ▶ Authority: Section 9 of the Act provides school board trustees with the authority to “administer oaths and take and receive affidavits, declarations and affirmations in or outside Alberta for use in Alberta.”

# Legislation

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- ***Commissioners For Oaths Act, R.S.A. 2000, c.C-20***
  - ▶ Expiry: When no longer a trustee.
  - ▶ Must legibly print or stamp commissioner's name next to commissioner's signature (s.12)
  - ▶ No authority to certify true copies.

# Legislation

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- ***Commissioners For Oaths Act, R.S.A. 2000, c.C-20***
  - ▶ Prohibition: Section 15 provides that no person shall administer an oath, take or receive an affidavit, declaration or affirmation, or hold out or represent to be a commissioner for oaths unless the person is empowered to do so under the Act.
  - ▶ Offence & Penalty: Section 16 – up to \$500

# Legislation

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- ***Criminal Code of Canada***
  - ▶ Section 138 of CCC – purports to have been sworn or declared when has not
    - ◆ Liable to imprisonment for a term not exceeding two years

# Different Instruments

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- **Affidavits**

- ▶ Documents containing statements verified by oath or affirmation
- ▶ Use when authorized by legislation

- **Statutory Declarations**

- ▶ Documents containing statements that are verified by solemn declaration
- ▶ Use when no specific legislative authority for an affidavit

# Procedures

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- **Oath for Affidavit:**

1. Confirm person's identity.
2. Ask person to sign the affidavit or confirm person's signature.
3. Hand the person a Bible or person may swear with uplifted hand.
4. "You swear that the contents of this your affidavit are true. So help you God."

# Procedures

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- **Oath for Affidavit:**
  5. Person responds, “I do.”
  6. Commissioner completes the jurat.

# Procedures

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- **Affirmation for Affidavit**
  - ▶ Person objects to giving an oath:
    - (a) from conscientious scruples, or
    - (b) on the ground of his/her religious belief, or
    - (c) on the ground that the taking of an oath would have no binding effect on his/her conscience

# Procedures

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- **Affirmation for Affidavit**
  - ▶ Person objects to giving an oath:  
The person may instead given an affirmation.

# Procedures

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- **Affirmation for Affidavit**
  1. In the introduction to the affidavit, change “*make oath and say*” to “*solemnly affirm and declare*”.
  2. Confirm person’s identity.
  3. Ask person to sign the affidavit or confirm person’s signature.

# Procedures

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- **Affirmation for Affidavit**

4. Address the person: “Do you solemnly affirm and declare the contents of this your affidavit are true?”
5. The persons responds, “I do.”

# Procedures

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- **Affirmation for Affidavit**

6. Commissioner certifies that the person was entitled to affirm by inserting the following before his/her signature on the jurat:

“I certify that (person’s name) satisfied me that he/she was a person entitled to affirm.”

# Procedures

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- **Affirmation for Affidavit**

7. Commissioner completes the jurat.

# Procedures

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- **Solemn Declaration for Statutory Declaration**
  1. Confirm person's identity.
  2. Ask person to sign the statutory declaration or confirm person's signature.

# Procedures

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- **Solemn Declaration for Statutory Declaration**

3. Address the person:

“Do you make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath?”

# Procedures

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- **Solemn Declaration for Statutory Declaration**
  4. The persons responds, “I do.”
  5. Commissioner completes the jurat.

# Procedures

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- **Alterations and Amendments**

- ▶ Place a check mark at the start and end of each change, then write your initials beside each change:

G.C. ✓fifth✓ ✓February✓ G.C.

I did on the ~~fourth~~-day of ~~March~~, 2010.

# Procedures

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- **Exhibits**

- ▶ The affidavit or statutory declaration may have exhibits attached to them. Each exhibit must be marked on its first page.

# Procedures

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- **Exhibits**

This is Exhibit “\_\_\_” referred to in the affidavit (or statutory declaration) of (name of person) sworn (or affirmed or declared) before me this \_\_\_ day of \_\_\_\_\_, 20\_\_.

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Commissioner for Oaths in and for the Province of Alberta

**[print name of Commissioner, Trustee,  
name of School Board]**

# Procedures

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- **Jurat – Ordinary Form:**

Sworn (or Affirmed or Declared) before  
me at ....., in the Province of Alberta,  
this .... day of ....., 20.... .

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A Commissioner for Oaths in and for  
The Province of Alberta

**[print name of Commissioner,  
Trustee, name of School Board]**

# Procedures

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- **Jurat – Blind or Illiterate person**
  - ▶ The Commissioner must read the document or cause it to be read out loud to the person and confirm that the person understood what was read out to him/her.

# Procedures

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- **Jurat – Blind or Illiterate person**
- The following must be added to the beginning of ordinary form of jurat:
  - “As (name of person) is blind (or illiterate),
    - (a) This affidavit (or statutory declaration) was read to him/her in my presence,
    - (b) He/she seemed perfectly to understand it, and
    - (c) He/she made his signature (or mark in my presence.”

# Procedures

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- **Jurat – Person who does not understand English**
  - ▶ Get an interpreter - independent.
  - ▶ Interpreter must swear or affirm that he/she understands the language and will interpret the document and the oath.

# Procedures-person does not understand English

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▶ Address the interpreter:

“You swear (solemnly affirm) that you well understand (the language of the person), that you will well and truly interpret the contents of this affidavit (statutory declaration) to (name of person) and that you will well and truly interpret to him/her the oath (or affirmation/solemn declaration) about to be administered to him/her. (So help you God.)”

# Procedures

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- **Jurat – Person who does not understand English**
  - ▶ Administer the oath or affirmation to the person through the interpreter.
  - ▶ Person responds “I do” through the interpreter.
  - ▶ The following must be added to the beginning of ordinary form of jurat:

# Procedures-person who does not understand English

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“As (name of person) does not understand the English language, this affidavit (or statutory declaration) was, in my belief, interpreted to him/her by (name of interpreter) who first swore (or affirmed) that he/she well understands (the language) and that he/she would well and truly interpret the contents of this affidavit (or statutory declaration) and that he/she would well and truly interpret the oath (or affirmation or solemn declaration) about to be administered.”

# Procedures

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- **Jurat – Hearing Impaired (capable of reading)**
  - Person is able to read and understand the document;
  - The following must be added to the beginning of ordinary form of jurat:

# Procedures –Jurat-Hearing Impaired, capable of reading

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“Sworn (or affirmed/declared) before me at the \_\_\_ of \_\_\_ in the Province of Alberta, this \_\_\_ day of \_\_\_\_\_, 20\_\_ by the above-named \_\_\_\_\_, who being hearing and speech impaired, but capable of reading, read over the above written instrument, when he/she appeared perfectly to understand it, and signed his/her name in my presence.”

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A Commissioner for Oaths in and for  
The Province of Alberta

**[print name of Commissioner, Trustee, name of School Board]**

# Procedures

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- **Jurat – Person who is hearing impaired and incapable of reading**
  - ▶ Get an ASL interpreter - independent.
  - ▶ Interpreter must swear or affirm that he/she understands ASL and will interpret the document and the oath.

# Procedures<sub>-hearing impaired, person incapable of reading</sub>

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▶ Address the interpreter:

“You swear (solemnly affirm) that you well understand ASL and that you will well and truly interpret the contents of this affidavit (statutory declaration) to (name of person) and that you will well and truly interpret to him/her the oath (or affirmation/solemn declaration) about to be administered to him/her. (So help you God.)”

# Procedures

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- **Jurat – hearing impaired person, incapable of reading**
  - ▶ Administer the oath or affirmation to the person through the interpreter.
  - ▶ Person responds “I do” through the interpreter.
  - ▶ The following must be added to the beginning of ordinary form of jurat:

# Procedures<sub>-hearing impaired, person incapable of reading</sub>

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“As (name of person) being hearing impaired and incapable of reading, this affidavit (or statutory declaration) was, in my belief, interpreted to him by (name of interpreter) who first swore (or affirmed) that he/she well understands American Sign Language and that he/she would well and truly interpret the contents of this affidavit (or statutory declaration) and that he/she would well and truly interpret the oath (or affirmation or solemn declaration) about to be administered.”

**AFFIDAVIT OF EXECUTION**

CANADA ) I, [name of witness]  
PROVINCE OF ALBERTA ) of \_\_\_\_\_,  
TO WIT: ) in the Province of Alberta

MAKE OATH AND SAY:

1. I was personally present and did see [name of signatory], named in the within [type of document, i.e. contract], who is personally known to me to be the person named therein, duly sign, seal and execute the same for the purposes named therein.
2. THAT THE SAME was executed at \_\_\_\_\_, Alberta, and that I am the subscribing witness thereto.
3. THAT I KNOW the said [name of signatory] and he/she is, in my belief, of the full age of eighteen (18) years.

SWORN before me at )  
[municipality], Alberta )  
on [date], 2008. )  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
Commissioner for Oaths in  
and for the Province of Alberta

\_\_\_\_\_  
[name of witness]

# Remember:

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- Power only to administer oaths, declarations and affirmations
- Adopt Standard Procedure
- Use Independent Translators
- Keep Handbook handy

# Pecuniary Interest – Definition

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- “Pecuniary Interest” with respect to a person, is an interest in a matter that could monetarily affect the person (s.80(1)(b) *School Act*).
- The pecuniary interests of the spouse or adult interdependent partner of a person that are known to the person or of which the person reasonably should know are deemed to be the pecuniary interest of the person. (S.80(2) *School Act*)

# Pecuniary Interest - Purpose

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- “The purpose of conflict of interest legislation is to maintain the integrity of the governing body by prohibiting potential personal financial gains or losses from affecting decisions to be made for the benefit of the public good.”

# Pecuniary Interest – Disclosure Rules

- (a) disclose the general nature of the pecuniary interest prior to any discussion of the matter;
- (b) abstain from voting on any question relating to the matter;
- (c) abstain from discussing the matter;
- (d) leave the room until discussion and voting are concluded.

# Pecuniary Interest – Disclosure Rules

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- A trustee who breaches these disclosure rules is disqualified from remaining as a trustee of the board (s.83(7) *School Act*).
- If a person is disqualified under section .. 83 ..., the person shall forthwith resign (s.85 *School Act*).

# Pecuniary Interest – Case Study

- Trustee H had an adult interdependent partner who was a teacher employed by the school board she was elected to. The board was to vote on a Retirement Incentive Program for which her partner qualified. Trustee H discussed the program with her partner and he advised her that he did not intend to retire that year. If he participated in the retirement incentive program, he could receive a benefit of approximately \$20,000.00. Trustee H voted in favour of the program.

# Pecuniary Interest – Case Study

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- Does Trustee H have a pecuniary interest in the Retirement Incentive Program to be considered by the board?

# Pecuniary Interest – Case Study

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- Does the fact that her partner did not intend to apply for the incentive program have any impact on whether Trustee H has a pecuniary interest in the matter?

# Pecuniary Interest – Case Study

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- Does the fact that Trustee H voted on a Retirement Incentive Program the year before without being questioned or challenged at the time have any impact?

# Pecuniary Interest – Case Study

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- Does the fact that the board voted unanimously in favour of the program have any impact?

# Pecuniary Interest – Case Study

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- If the monetary interest in the incentive plan was only \$300 instead of \$20,000.00 would it have made a difference?

# Pecuniary Interest – Case Study

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- Trustee H:
  - ▶ was a former Mayor of a village;
  - ▶ had participated in an orientation regarding trusteeship that included discussions on pecuniary interest,
  - ▶ was questioned by other trustees about whether she had a pecuniary interest in matter.
- Are these facts relevant?

# Pecuniary Interest – Case Study

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The case involving Trustee H is a real life Alberta case:

*Howell v. Grande Yellowhead Regional Division* No.35 [2006] A.J. No. 619

# FIDUCIARY RELATIONSHIPS

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- Teacher/Student
- Doctor/Patient
- Solicitor/Client
- Executor -Executrix/Estate
- Director/Corporation
- Trustee/School Board

# *Peoples Department Stores Inc. (Trustee of) v. Wise*

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They must respect the trust and confidence that have been reposed in them to manage the assets of the corporation in pursuit of the realization of the objects of the corporation. They must avoid conflicts of interest with the corporation. They must avoid abusing their position to gain personal benefit. They must maintain the confidentiality of information they acquire by virtue of their position. Directors and officers must serve the corporation selflessly, honestly and loyally.

# Elements of Fiduciary Duty

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- to use your best judgment
- to act in the utmost good faith in the corporation's interests
- to protect the interests of the corporation
- to put the beneficiary's interest ahead of personal interest

# Elements of Fiduciary Duty

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- to avoid or disclose conflicts of interest (pecuniary and non-pecuniary)
- to maintain the confidentiality of all matters received in confidence
- obey the corporation's governing documents and corporate decisions

# Elements of Fiduciary Duty

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- Duration of duty
  - ▶ Resignation or electoral defeat will not relieve all obligations such as:
    - ◆ information provided to members of Board of Trustees in confidence
    - ◆ information governed by privacy law
    - ◆ confidential business plans of school board not yet implemented
    - ◆ personal information *Freedom of Information and Protection of Privacy Act*

# Potential Result of a Breach

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- No legal ramification
- Challenge by an elector or the Board
- Personal liability
- Breach of confidence or privacy law
- Motion of censure
- Accounting for profits
- Loss of candidate eligibility
- Negative impact on corporate decisions
- Public embarrassment

# Potential Result of a Breach

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- No legal ramification
  - ▶ Loss of public confidence in the individual
  - ▶ Loss of public confidence in the Board of Trustees
  - ▶ Loss of confidence by the department responsible for provincial education
  - ▶ Creating a climate of distrust among Board of Trustees' members
  - ▶ Tarnish personal reputation

# Potential Result of a Breach

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- Challenge by an Elector or Board
  - ▶ Failing to declare a pecuniary interest
    - ◆ Defined under statute
  - ▶ Breach of confidence
    - ◆ Disclosure of confidential information
      - ◆ Financial plans of the Board
        - Collective Bargaining
      - ◆ Personal information
        - Information regarding students or employees obtained in confidence

# Potential Result of a Breach

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*Margolis vs Brown* ...it is needful to keep in mind that a school trustee, as an elected official, is a fiduciary, a person in a position of trust. ...The law requires of him a high objective standard of good faith. A trustee well-versed not only in the statutory conflict of interest provisions but in their rationale, is not permitted the luxuries of recklessness or wilful blindness.

# Potential Result of a Breach

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- Application to have an individual removed from the Board or Statement of Claim
  - ▶ Public venue
  - ▶ Costly
  - ▶ Can be a lengthy process
  - ▶ Takes the focus off of education
- *Baillargeon v. Carroll* [2009] O.J. No. 502

# Potential Result of a Breach

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- Breach of confidence or privacy law
  - ▶ Disclosing information provided to the Board of Trustees in confidence
    - ◆ Wage negotiations / Land acquisitions
  - ▶ Disclosing personal information
    - ◆ Motion of censure
    - ◆ Violation of privacy laws
      - ◆ Can result in a fine to both Board or the individual
      - ◆ Some provinces provide for a cause of action breach of privacy

# Potential Result of a Breach

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- Motion of Censure
  - ▶ Largely symbolic
  - ▶ Can be done in the public forum
  - ▶ Can result in removal from committees
  - ▶ Chair of the Board may refuse to recognize trustee until the censure is purged
  - ▶ Public reprimand by the Board of one of its members
  - ▶ Possible modifications under new *Education Act*.

*Hearst (Town) v. District School Board Ontario  
North East*

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In answer to the vexing problem, that the trustee has limited powers of dissent if she disagrees with actions of the majority, the simple answer is that she should resign if she wishes to participate in litigation against the Board. ...

# Case Study

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- *Calgary Roman Catholic Separate School District No. 1 v. O'Malley* - prior to election, trustee critical of Board and Superintendent of Schools
  - ▶ Delegation of excessive authority
  - ▶ Restricted members of the Board of Trustees' role in governance
  - ▶ Views continued to be expressed upon election as a member of the Board of Trustees

# Case Study

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- Views at odds with majority of the members of the Board of Trustees
- Repeatedly expressed those views during Board meetings
- Majority of Trustees did not agree with Trustee O'Malley
- Debate did not resolve the issue
- What options existed?

# Case Study

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- Majority passed a censure motion
- Issue was unresolved; dissenting trustee expressed same views on repeated occasions
- Majority of members of the Board of Trustees pass another censure motion
- Trustee O'Malley decided to take legal action to impose his views

# Case Study

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- The *Act* is not a complete codification of the common law as to disqualification of a trustee.  
...
- At common law, disqualification may occur for both pecuniary and non-pecuniary reasons.
- To disqualify at common law, an interest must be more than some interest held in common with other persons of like opinion.

# Case Study

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- To disqualify at common law, an interest must be personal and substantial such that a reasonably well-informed person would conclude that it might influence the exercise of the public duty owed by that person.

# Case Study

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The 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 may hold strong and 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.

# Summary

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- At common law, both pecuniary and non-pecuniary interest may form the basis for a finding of breach of fiduciary duty and/or disqualification of an elected official.
- Fiduciary duty exists for all decisions, from the less significant to the more significant.

# Summary

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- It is an individual and collective responsibility of members of a Board of Directors to carry out the work of the statutory corporation in good faith and with reasonable diligence.
- Members of the Board of Trustees may hold strong and conflicting views, and may debate with vigour.

# Summary

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- Fiduciary duty IS an individual duty, and relates to the shared public duty to advance the work of the statutory corporation.
- Debate with vigour before the vote;
- Support the decision after the vote.