

what do school boards do?

"In and for each Province the legislature may exclusively make law as in relation to education."
Constitution Act 1867

The Alberta legislature through the School Act and regulations passed thereunder has delegated some authority for the governance of education to locally elected school boards. School boards are statutory corporations and, as such, have certain obligations to perform and certain powers to carry out their tasks.

The philosophy of school board governance is that government is most effective when it is close to the people being governed. Historically, community residents have elected trustees to boards to act for the legislature in their local schools.

Role of the school board

The school board, as a representative of the people, is a *decision-maker*, one that must integrate the information from all the forces which impact on the board, process that information, evaluate it and make a decision compatible with the system's beliefs, values and knowledge. The board must keep in mind the interests of all students within the school jurisdiction rather than the interests of a few students in a particular school or geographical area.

The school board is responsible for *setting the overall direction for the school system*. This is usually done through an annual strategic planning process whereby the vision, mission, values and beliefs are revisited and strategic priorities or goals are determined. The annual budget also guides the jurisdiction by allocating resources to schools and programs. The school board also provides direction through its policy processes. These include *planning, developing, implementing and evaluating policy*.

The school board must *hold the system accountable* for achieving the results established through its planning process. It does this by establishing roles and responsibilities for the results at various levels throughout the organization, and then by establishing a monitoring and evaluation system whereby reports are made to the board on a regular basis. The board must then report to the public and the province about system and school performance.

Heather Rogers, ASBA Director of Finance and Administration, tallies ballots at the ASBA Spring General Meeting.



The school board has a very significant role in acting as an advocate *for public education* and for the local school system. It has a responsibility to design processes that enable it to hear from its constituents. It regularly provides advice with respect to education to appropriate departments of government and to MLAs, both as an individual board and collectively through the Alberta School Boards Association.

School boards serve *as the students' advocate*. Educational policies are judged first on what is best for the development of the whole individual. While schools cannot usurp the role of the family, board membership means being partners with parents in ensuring that children are provided with the best possible educational opportunities to become productive citizens who contribute to their communities in a meaningful way.

The school board must select *a superintendent of schools, delegate administrative duties to the superintendent and evaluate the superintendent's performance* annually. Expectations must be clearly outlined for the superintendent and the job descriptions must be based on outcomes or accomplishments rather than activities.

While the school board, through legislation, is given the power to engage in a wide range of activities and is mandated to perform certain functions, these can be delegated. It is most common for a board to focus on governance matters such as setting performance targets and making the system accountable for results while delegating the majority of functions to the superintendent. Functions may also be delegated to committees, but care must be taken to ensure the committee does the work of the board as delegated in the committee's terms of reference and not the work of administration. It is critical that the board creates the appropriate policies and procedures to ensure the appropriate conduct of the school system and the limitations of delegated responsibilities or powers. The board is accountable.

About the relationship between the school board and the superintendent

The most important leadership relationship in the school system is the one that exists between the school board and its superintendent. The board and superintendent have different but complementary roles in many responsibility areas. The success of each partner is greatly influenced by the other's success. Both parties must nurture this relationship.

The school board as a corporate entity

The school board is a corporation. When delegated by the board to act on behalf of the board, a trustee may perform specific duties individually, but only as an agent of the board and only as prescribed by the board, by board motion. In other words, the board is responsible for that action. At all other times a trustee acting individually has only the authority and privileges of an ordinary citizen.

What is a trustee personally liable for?

Because a school board is a corporate body, all authority delegated by the province is to the board and not to individual trustees. Actions taken against the board are, in effect, against the corporation and not its members.

There are four exceptions to this rule:

Improper Use of Funds

Where a board uses money acquired for capital expenditures for unauthorized purposes, the trustees of the board at that time are jointly and severally liable for the repayment to the board of the money so applied to the unauthorized use (s.187 School Act).

Non-Performance of Statutory Duties

Trustees who fail or refuse to perform statutory duties imposed by various statutes may be held personally responsible (e.g. s.112 of the Employment Standards Code could hold trustees jointly and severally liable for unpaid wages).

Personal Gain

If a court declares a trustee disqualified from remaining on the board due to his/her personal gain from contracts with the board, the trustee may be ordered to pay to the board any profit so made.

Breaches of Common Law

Trustees may be held personally liable for such breaches of common law as acting in bad faith, in a discriminatory manner or in abuse of their powers. It must be noted that actions against such breaches are likely to be successful only where the evidence presented is clearly indisputable.

In 2003 the School Act made a good faith defence available to trustees

The School Act was amended in 2003 to provide that trustees, employees of a board, and school council members are not liable for any loss or damage caused by anything said or done or omitted to be done, if done in good faith in the performance or intended performance of their functions, duties or powers under the School Act or any other enactment (s.144.1 School Act).

What is pecuniary interest?

Section 80(1) of the School Act, R.S.A. 2000, c. S-3 defines the pecuniary interests of a trustee as “an interest in a matter that could monetarily affect” the trustee and those individuals for whom the trustee has a deemed pecuniary interest.

A trustee has a deemed pecuniary interest to either a spouse or an adult interdependent partner. The trustee must refrain from discussion of, voting on, and participating in any way in issues that could monetarily affect both the trustee and either a spouse or an adult interdependent partner.

It is important to note that the deemed pecuniary interest of the trustee relates to the pecuniary interest of the trustee's spouse or adult interdependent partner. A person cannot have a spouse and an adult interdependent partner. However, due to the definition of spouse excluding a legally married spouse from whom the trustee is separated, a trustee could be legally married and also have an adult interdependent partner.

The Adult Interdependent Relationships Act addresses such relationships. A "relationship of interdependence" means a relationship outside marriage in which any two persons (i) share one another's lives, (ii) are emotionally committed to one another, and (iii) function as an economic and domestic unit.

Two individuals, who are related by blood, can be in an adult interdependent relationship, though those individuals must enter into a formal Adult Interdependent Partner Agreement before this relationship can result in legal responsibility by one partner toward the other.

An adult interdependent relationship is similar to what used to be referred to as a common-law relationship – the primary difference is that the adult interdependent relationship can be opposite-sex or same-sex, whereas a common-law "marriage" was considered to be only opposite-sex.

What do I do if a pecuniary interest arises?

When a trustee has a pecuniary interest in a matter before the board or any committee of the board or any commission, committee or agency to which the trustee is appointed as a representative of a board, the trustee shall, if present:

- immediately disclose the general nature of the pecuniary interest prior to any discussion of the matter;
- abstain from voting on any question relating to the matter;
- abstain from discussing the matter; and
- leave the room in which the meeting is being held until the discussion and voting on the matter are concluded.

In the event that the trustee was temporarily absent from the meeting when the matter was raised, the trustee shall immediately, upon returning to the meeting or as soon afterwards as the trustee becomes aware that the matter has been considered, disclose the general nature of the trustee's pecuniary interest in the matter. Please see section 83 of the School Act for specifics.

Failure to comply with section 83 can result in the disqualification of the trustee. A trustee who has been disqualified is required to resign in accordance with section 85 of the School Act.

Bona Fide Error

If a court application is filed regarding the disqualification of a trustee for breach of the pecuniary interest provisions, a judge has the power to declare a person to be qualified as a trustee if he/she is of the opinion that the disqualification arose inadvertently or by reason of a *bona fide* error in judgment. This permits discretion in applying the literal and technical provisions of the Act in situations where a trustee innocently and in good faith does something for which he/she could be disqualified.

Mandatory Disclosure of Personal Interests

Each trustee is required to complete a disclosure of personal interest form.

This form consists of a statement showing:

- the full name of the trustee, the trustee's spouse or Adult Interdependent Partner and all of the trustee's children (whether over or under the age of 18);
- the place of employment of all persons listed in the first bullet;
- the name of all corporations, partnerships, firms, governments or persons in which the trustee has a pecuniary interest; and
- the name of all corporations, partnerships, firms, governments or persons in which any of the following persons have a pecuniary interest: the trustee's spouse or Adult Interdependent Partner, or any of the trustee's minor children (i.e. under the age of 18).

The board's secretary must then compile a list of all the names reported on the statements and provide a copy of this list to all trustees of the board, and the officials and employees of the board that the board directs shall receive a copy.

Remember "pecuniary" means "monetary" – so the last two bullets refer to the need for a trustee to name any of these entities in which he/she or the named family members have a monetary interest. This would include non-employment contracts with those various entities, as well as ownership interests.

Keep the Adult Interdependent Relationships Act in mind

The board secretary should ensure that all new trustees are aware of the obligations under the Adult Interdependent Relationships Act before completing the personal interest disclosure. If there are any questions about whether a trustee might be in an interdependent partnership, the secretary would be well-advised to go through the definitions in some detail, and to seek legal assistance if required. Furthermore, the board secretary should ensure all new trustees are aware of this disclosure obligation soon after the election and, if possible, seek to have the disclosure forms completed and returned to the secretary at the time of the taking of the official oath of office.

Who should receive copies of the disclosure forms?

Regarding the decision about the employees and officials, other than trustees, who will receive copies of these disclosure forms, those staff members who routinely attend board meetings ought to receive copies of the trustee disclosure forms. While it is true that the decision about pecuniary interest is ultimately a personal decision by the trustee, it is also true that the board as a whole and the advisors to the board can and should work as a team to help ensure each individual trustee makes the best decisions. Board advisors can do a better job as team members if they have full information, and ensuring that all trustees and select advisors have full information appears to be the intent behind this provision in the School Act.

Trustees with spouses or adult interdependent partners who are teachers

With the September 2004 proclamation of the School Trustee Statutes Amendment Act the only deemed interest of a trustee will be those of a spouse or interdependent adult. These issues have been considered by the courts and resulted in disqualification of trustees in certain cases.

Voting on collective agreements

In Ontario, two trustees were disqualified for voting on a teacher collective agreement. Both trustees had wives who were teachers and covered by different collective agreements with the board. The trustees participated in meetings and discussions and voted on the secondary teachers' collective agreement. Their wives were covered by the elementary teachers' collective agreement.

Justice Robbins of the Ontario Supreme Court stated:

"The obvious purpose of the Act is to prohibit members of councils and local Boards from engaging in the decision-making process in respect of matters in which they have a personal economic interest. The scope of the Act is not limited by exception or proviso but applies to all situations in which the member has or is deemed to have any direct or indirect pecuniary interest. There is no need to find corruption on his part or actual loss on the part of the council or Board. So long as the member fails to honour the standard of conduct prescribed by the statute, then regardless of his good faith or the propriety of his motive, he is in contravention of the statute."

In that case, a historical relationship was found to exist between settlements of the two collective agreements. The cases have consistently held that a collective bargaining agreement with one class of teachers will invariably affect a subsequent agreement with another class of teachers. The agreement is used as a negotiating lever likely to influence financial and other terms and collective bargaining agreements (*Benn v. Lozinski*). Such findings have placed trustees in a conflict of interest position by reason of being in the employment of a body that has an interest in a contract reasonably likely to be affected by a decision of the local board.

Voting on the board budget

Questions are also raised as to whether a trustee is in a position to vote on a budget for the board when the trustee's spouse or adult interdependent partner works for another board. While one Ontario case upheld the ability for a trustee in such circumstances to vote on a budget, the court found that the trustee had a pecuniary interest in the matter, but that he was not in a conflict of interest position as the collective bargaining negotiations had been concluded for the school year in question. Accordingly, trustees are cautioned that both their participation in the negotiation process and voting on a budget can, in those circumstances where the collective agreement negotiations with the teachers have not been concluded, place them in a conflict of interest position, given the large salary component of any board of education budget. Likewise, voting on increases in budgetary matters in the event of a strike in the above-described circumstances has been found to place a trustee in a conflict of interest position. (See *Margolis v. Brown*).

An Alberta example

Closer to home, we have the 2006 Alberta court decision of *Cheryl Howell v. The Board of Trustees of Grande Yellowhead Regional Division No. 35*. In this case, Ms. Howell was a trustee whose adult interdependent partner was a teacher employed by the school board. Her partner was eligible to participate in a retirement incentive program that came before the board for consideration. Ms. Howell voted on board motions regarding this program and argued she did not have a pecuniary interest in the matter because her partner did not plan to take advantage of the retirement incentive program. The court found that Ms. Howell failed to follow the disclosure obligations under section 83 of the School Act thereby entitling the board to pass a motion disqualifying her. The court confirmed the importance of pecuniary interest legislation stating, "the Courts set a high standard of public trust. The public interest must be served with high moral standards. Not only must public officials not benefit from their decisions, they must not be perceived to benefit from their decisions."

Disqualification and Voting

For some topics, there is an overlap between matters that cause automatic disqualification from trusteeship and matters that regulate voting. For example, a trustee is unable to vote on any matter in which he or she has a pecuniary interest whether indirect or direct.

If the trustee is a party to a subsisting contract for the construction, maintenance or repair of real property over which the board has administration other than a contract for the provision of goods and services in an emergency, there is an automatic disqualification from trusteeship.

Disqualification reasons

Section 82(1) of the School Act details the matters which cause a trustee of a board to be disqualified. A trustee is disqualified from remaining as a trustee of the board if that person:

- ceases to be qualified for nomination as a trustee under the Local Authorities Election Act;
- is an auditor or employee of the board for which he is a trustee;
- is a party to a subsisting contract for the construction, maintenance or repair of real property over which the board has administration other than a contract for the provision of goods or services in an emergency;
- beneficially owns more than 10 per cent of the issued shares of a corporation that has a pecuniary interest in a subsisting contract for the construction, maintenance or repair of real property over which the board has administration other than a contract for the provision of goods or services in an emergency;
- has a pecuniary interest in a contract with the board other than:
 - 1 a contract for the provision of goods or services in an emergency,
 - 2 a contract for the sale of goods or services to the board at competitive prices by a dealer in those goods or services incidental to and in the ordinary course of his business,
 - 3 a contract of employment with the trustee's spouse or adult interdependent partner, child, parent or spouse's parent or adult interdependent partner's parent, or
 - 4 a contract approved by the board pursuant to disclosure;
- uses information gained through his position as a trustee of the board to gain a pecuniary benefit in respect of any matter in which he has a pecuniary interest;
- is a judge of a court or a member of the Senate or House of Commons of Canada or of the Legislative Assembly of Alberta;
- absents himself or herself, without being authorized by a resolution of the board to do so, from three consecutive regular meetings of the board, unless his absence is due to illness and he or she provides evidence of that illness in the form of a medical certificate respecting the period of his or her absence;
- is convicted of:
 - 1 an indictable offence punishable by imprisonment for five or more years, or
 - 2 an offence under section 123 of the Criminal Code (Canada) for which an absolute discharge or pardon has not been granted.

Fiduciary Relationship

The Supreme Court of Canada has defined fiduciary duty in relation to a corporation as a duty to act honestly and in good faith with a view to the best interests of the corporation: *Peoples Department Stores Inc. (Trustee of) v. Wise*. In that case, the Court articulated the requirements of “fiduciary duty” in the following manner:

... fiduciary duty requires directors and officers to act honestly and in good faith vis-à-vis the corporation. 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.

The concept of a trustee's fiduciary duty to the school board was recently examined in Alberta by Justice P.M. Clark in *The Board of Trustees of Calgary Roman Catholic Separate School District No. 1 v. Michael O'Malley*. The court confirmed that “the fiduciary duties are owed to the corporate body (the board) which is in turn, accountable to the Catholic ownership.” Mr. O'Malley was of the view that his duties were only to those who voted for him. As reported by the court, Mr. O'Malley, without board authorization: attended and interfered in a ministerial student expulsion review hearing; interfered with ongoing labour negotiations; disclosed confidential information involving talks with the Alberta Teachers' Association to the detriment of the district; refused to keep confidential information such as legal opinions confidential; labeled trustee orientation sessions as “indoctrination sessions” and school council meetings as “shams” and commenced legal proceedings against his own school board on four separate occasions. In reviewing Mr. O'Malley's actions and disqualifying Mr. O'Malley from office, the court stated:

“Mr. O'Malley thinks he can do what he wants, when he wants and how he wants, without regard to his colleagues or his fiduciary duties. His breaches of his fiduciary duties are numerous and his conduct cannot be described as anything but egregious. ...he has neglected his duties, he has breached his fiduciary duties and he has placed himself in an intractable conflict of interest by suing his own board four times.”

Consequently, it is important to not view as mere dissent, the disloyalty demonstrated by a blatant refusal to follow basic rules, and to abide by considered decisions made by a majority vote.