



Commission scolaire English-Montréal

English Montreal School Board

BY-LAW NO. 3 (2020)

CODE OF ETHICS AND PROFESSIONAL CONDUCT FOR THE MEMBERS OF THE COUNCIL OF COMMISSIONERS

NOTE: The masculine gender, when used in this document, refers to both women and men. No discrimination is intended, it is used solely to simplify the text.

1. OBJECTIVE OF THE BY-LAW

The Code of Ethics and Professional Conduct for the Members of the Council of Commissioners of the English Montreal School Board (hereafter called “Code of Ethics”) provides guidance and sets common ethical standards to promote consistency in behavior across the members of the Council of Commissioners.

The Code of Ethics governs the actions and relationships of the members of the Council of Commissioners between them as well as their dealings with other stakeholders, including the **Administration of the EMSB**, partners of the English Montreal School Board (EMSB) and the public in general.

Unless indicated otherwise, this By-Law applies to all members of the Council of Commissioners, including Parent Commissioners and **Co-opted Commissioners**, during their respective terms of office and with regard to all of their activities at or in the name of the EMSB.

2. LEGAL FRAMEWORK

Provincial Legislation:

- *Education Act* (R.S.Q., c. I-13.3)
- *Act respecting elections and referendums in municipalities* (R.S.Q., c. E-2.2)
- *Act respecting Access to documents held by public bodies and the Protection of personal information* (R.S.Q., c. A-2.1)
- *Act respecting school elections* (R.S.Q., c. E-2.3)
- *Civil Code of Québec* (R.S.Q., c. C-64)
- *Code of Civil Procedure* (R.S.Q., c. C-25.01)
- *Act to facilitate the disclosure of wrongdoings relating to public bodies* (R.S.Q., c. D-11.1)

EMSBS Internal By-Laws:

- By-Law No. 10 - *Delegation of Powers*
- By-Law No. 11 - *Internal Governance*
- By-Law No. 12 - *Internal Rules of Management of the Council of Commissioners and the Executive Committee*

EMSBS Internal Policies:

- DG-26.1: *To facilitate the disclosure of wrongdoings*
- HR-17: *Fair Practices in Hiring and Promoting*

3. DEFINITIONS

In this By-Law, the use of the bold interface identifies the terms defined in this section as follows:

- 3.1 Administration of the EMSB:** For the purposes of the present By-Law, refers to the Director General, the Assistant Directors General, the Secretary General, the Sector Directors and all of the Services/Departments Directors.
- 3.2 Channel of Communication:** The Council of Commissioners is represented by the Chair in its dealings with the **Administration of the EMSB**, Administrators in schools and centres, and any other employee or representatives of the EMSB. The Director General represents the **Administration of the EMSB**, Administrators in schools and centres, and any employee of the EMSB. As such, the formal **Channel of Communication** between the Council of Commissioners and the **Administration of the EMSB**, Administrators in schools and centres, and any other employee, shall be between the chair and the Director General.
- 3.3 Commissioners:** Globally refers to all the members of the Council of Commissioners, including those publicly elected in accordance with the *Act respecting school elections* as well as those elected by the English Montreal School Board Parents' Committee (EMSBC) (Parent Commissioners). For the purpose of this By-Law, the term **Commissioners** refers to both categories, unless clearly specified.

Regardless of the stakeholders they are representing, all **Commissioners** are jointly and severally liable to the entire EMSB community for the decisions taken by the Council of Commissioners. (*See also Co-opted Commissioners*).

- 3.4 Confidential Information:** Refers to the information and documentation remitted to **Commissioners** in the exercise of their functions, which allows them to perform their duties in an informed manner and with full knowledge of the facts, in particular with regard to their participation in deliberations and voting. This information cannot be distributed or made public or used by a **Commissioner** for his personal purposes. The obligations of **Commissioners** in matters of confidentiality remain indefinitely.

3.4.1 Without limiting the generality of the above, the following shall be considered as **Confidential Information**:

- a) Any personal information collected or kept by the EMSB regarding its employees, including administrative and disciplinary measures;
- b) Any personal information collected or kept by the EMSB regarding its students;
- c) Information regarding the investigation and/or the hearing of a complaint under this Code of Ethics;
- d) Discussions on negotiations in progress, including namely legal cases and collective bargaining;
- e) Negotiations and information relative to suppliers during the tendering process;
- f) Documents stamped or identified as “*CONFIDENTIAL*”;
- g) Information disclosed during **Preparatory meetings** of the Council of Commissioners, the Executive Committee;
- h) Any information or documentation identified as confidential by the person who shares it.

3.5 **Conflict of Interest (or appearance thereof)**: Refers to a situation in which a **Commissioner** may have to choose between his private and/or personal interests and the interests of the EMSB. 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.

3.5.1 Without limiting the generality of the above, a **Commissioner** is in a **Conflict of Interest** when:

- a) He accepts or fails to disclose to the Chair any offer of services or goods made to him by a person in order to obtain a contract or any other benefit from the EMSB;
- b) He directly or indirectly offers, solicits or accepts a favor or an undue advantage for himself or another person;
- c) He uses or attempts to use his influence to obtain, for another person, enterprise or for himself, a benefit, employment or service offered by the EMSB to which he, or that other person or enterprise is not normally entitled.

3.6 **Co-opted Commissioners**: Individuals appointed by the Council of Commissioners after consultation with the groups most representative of the social, cultural, business and labour sectors in the EMSB’s region, which competence and qualifications are complementary to those of the Council of Commissioners or useful for the **Administration of the EMSB**.

Co-opted Commissioners shall have the same rights, powers and obligations as those prescribed for the other **Commissioners**. However, the **Co-opted Commissioners** are not entitled to vote at meetings of the Council of Commissioners or of the Executive Committee, or to be appointed Vice-Chair of the Council of Commissioners.

3.7 **Ethics Commissioner**: One or more than one individual appointed and mandated by the Council of Commissioners to examine or inquire into alleged or actual conduct that may be contrary to standards of ethics or professional conduct set forth in this By-Law and to impose appropriate sanctions when the By-Law has been contravened.

3.8 Observer: Refers to an individual whom is permitted to attend and participate in meetings of the Council of Commissioners, one of its committees or any EMSB committees and to receive all information provided to **Commissioners** or the members of the Committee, but who is not allowed to vote. During the meeting, an **observer** cannot participate in the discussion, unless specifically authorized by the Chair presiding the meeting.

3.9 Preparatory Meeting: Closed meeting of the **Commissioners** convened by the Chair in order to conduct a thorough and in-depth review of the dossiers on the agenda of the next meeting of the Council of Commissioners. The Chair presides over these meetings during which no decisions can be taken. The term **Preparatory Meeting** also includes in camera meeting and caucus meeting.

4. DUTIES AND OBLIGATIONS OF COMMISSIONERS

This section shall be read in conjunction with section 7.2 of the By-Law No. 11 (*Internal Governance*). It identifies the individual responsibilities of the **Commissioners** within the scope of the roles and responsibilities of the Council of Commissioners as an entity.

4.1 All Commissioners

4.1.1 Commissioners have the following duties and obligations:

- a) The Commissioner shall abide by the duties and obligations prescribed by the *Education Act* and any other legislation referred to in section 2 of the present By-Law, including the EMSB Internal By-Laws and Policies.
- b) As such, the **Commissioner** shall act within the scope of the functions and powers conferred by the *Education Act* with due regard for everyone's roles and responsibilities.
- c) The **Commissioner** shall maintain a good attendance record in carrying out the duties of office. He may not be absent from sittings of the Council of Commissioners, including its committees, without a valid reason.

In the event of an absence, the **Commissioner** shall inform the Secretary General and the Chair of the Council of Commissioners of the reason for the absence and its expected duration.

- d) The **Commissioner** fulfills his office with independence, integrity and good faith in the best interests of the EMSB and its population.
- e) The **Commissioner** acts with prudence, diligence, honesty, loyalty and assiduity as would a reasonable and responsible person in similar circumstances.
- f) The **Commissioner** shall avoid tarnishing the reputation of others and treat the other **Commissioners** as well as the Director General, the employees of the EMSB, parents' representatives and the public with the highest level of professionalism and respect.

- g) At all times, the **Commissioner** shall adopt a style of behavior and communication that is dignified and compatible with his office in order to protect and promote the image and credibility of the EMSB.
- h) The **Commissioner** shall disclose any illegal or irregular situation against the EMSB that he is aware of. In cases regarding a violation of the present Code of Ethics, a **Commissioner** may alternatively decide to submit a complaint to the **Ethics Commissioner** as per the present By-Law.

4.1.2 Obligation to Attend Mandatory Professional Development

4.1.2.1 As per section 7.2.2 of By-Law No. 11 on *Internal Governance*, **Commissioners** shall accumulate at least eight (8) hours of relevant professional development per school year. As examples, professional development regarding fundamentals of governance, liability of administrators of public bodies, leadership and public administration are deemed relevant to the duties of **Commissioners**.

4.1.2.2 When a **Commissioner** is in breach of his obligations with regard to training, the Governance and Ethics Committee may recommend appropriate sanctions to be imposed on the **Commissioner**, which could notably include restrictions to vote or to sit on the Council of Commissioners or its committees until the **Commissioner** fulfills his obligations.

4.1.2.3 As specified in By-Law No. 11, the Council of Commissioners may decide not to award the sanction recommended by the Governance and Ethics Committee.

4.1.2.4 An ethics complaint may also be filed against the **Commissioner** in default by the Chair of the Governance and Ethics Committee.

4.1.3 Decisional Authority

4.1.3.1 The **Commissioner** does not have powers or authority in his own right regarding the EMSB's activities. His powers and authority are exercised through duly convened structures of the EMSB and with due regard for everyone's role and responsibilities.

4.1.3.2 The **Commissioner** shall act democratically, in a spirit of cooperation, and shall not present himself as having sole authority over the actions of the EMSB.

4.1.3.3 The **Commissioner** shall act in a manner that reflects and respects the decisions of the Council of Commissioners. To that effect, once a decision has been taken by the **Administration of the EMSB** or by the Council of Commissioners, every **Commissioner** shall act in a manner that reflects and respects said decision.

4.1.3.4 The **Commissioner** shall base his decisions on the available information and his independent judgment. He shall not allow his decisions to be dictated by any other individual or special interest group.

- a) The **Commissioner** shall have independence of mind, which is the state of mind that permits a **Commissioner** to perform an honest service without being affected by influences that compromise judgment, thereby allowing a **Commissioner** to act with integrity, exercise objectivity, to think, speak and act independently with confidence and courage.
- b) Upon his entry into office, within ten (10) days of being sworn in, the **Commissioner** shall submit a signed Declaration of Independence, on the form provided by the office of the Secretary General.

4.1.4 Use of Confidential Information

- 4.1.4.1 The **Commissioner** shall act with absolute discretion, both during and after his term of office, and shall respect the confidential nature of personal, commercial or scientific information obtained in the performance of his duties, particularly the information disclosed during “In camera” sessions of meetings and in particular during **Preparatory Meetings**.
- 4.1.4.2 Without limiting the generality of the above, the **Commissioner** shall not divulge nor use, to his profit or to the profit of another person, **Confidential Information** obtained in the performance of his duties.
- 4.1.4.3 The **Commissioner** shall take all necessary measures to ensure the protection of such **Confidential Information** against any unauthorized access.
- 4.1.4.4 As soon as the **Commissioner** becomes aware of a situation where **Confidential Information** was divulged, he shall inform the Chair of the Council of Commissioners, who in turn will inform the Director General.
- 4.1.4.5 Upon his entry into office, within ten (10) days of being sworn in, the **Commissioner** shall submit a signed Solemn Affirmation to Respect Confidentiality on the form provided by the office of the Secretary General.

4.1.5 Conflict of Interest

- 4.1.5.1 The **Commissioner** shall avoid any situation of **Conflict of Interest**, or any appearance thereof, as provided by the *Education Act*, the Internal EMSB By-Laws and Policies.
- 4.1.5.2 In addition to what is specifically provided for by section 175.4 of the *Education Act* regarding the interests he might have in an enterprise, the **Commissioner** shall disclose any situation that places or could place, directly or indirectly, his private and/or personal interests in conflict with those of the EMSB.
- 4.1.5.3 Upon his entry into office, within ten (10) days of being sworn in, the **Commissioner** shall disclose any situation or relationship which might create a **Conflict of Interest** or an appearance of **Conflict of Interest** on the form provided by the office of the Secretary General.

Thereafter, this form shall be completed every year on July 1st, and at any moment when a change occurs that could create such a **Conflict of Interest** or an appearance of **Conflict of Interest** under the *Education Act*, the EMSB Internal By-Laws and Policies.

4.1.5.4 The **Commissioner** shall, among other things, disclose:

- a) Any personal or monetary interest which, in the eyes of a reasonably informed **observer**, would likely influence or impact the person's function and affect the impartiality of his opinions or decisions;
- b) Any situation that places or could place, directly or indirectly, his personal interests or those of another person in conflict with those of the EMSB;
- c) Any interest he has in an enterprise doing business or having done business with the EMSB and disclose, if such is the case, any real, potential or apparent situation of **Conflict of Interest** that might concern him.

4.1.5.5 The **Commissioner** who is in a situation of **Conflict of Interest** or appearance of **Conflict of Interest** with regard to a subject treated by the Council of Commissioners shall disclose it and withdraw from the meeting of the Council of Commissioners in order to allow the deliberations and the vote on this subject to take place without him.

4.1.6 Undue Advantage

4.1.6.1 The **Commissioner** shall not directly or indirectly award, solicit or accept a favor or an undue advantage for himself or another person, in exchange for speaking or taking a certain position on any issue, including one that may be brought forward to the Council of Commissioners or any of its Committee.

4.1.6.2 Without limiting the generality of the above, the **Commissioner** shall not accept any gift, proof of hospitality or advantage from any person or entity that has dealings with the EMSB other than those that are common within the functions and shall be only of modest value.

4.1.6.3 In any event, no **Commissioner** shall accept a gift if a reasonable person might conclude that the gift could influence the member when performing his duties to the EMSB.

4.1.6.4 The **Commissioner** shall refuse and disclose to the Chair, who will in turn inform the Director General, any offer of service or goods made to him by a person in order to obtain a contract or any other benefit from the EMSB.

4.1.6.5 The **Commissioner** shall not use and/or attempt to use his title or his position in order to obtain for another person, enterprise or for himself services offered by the EMSB to which he or that other person or enterprise are not normally entitled.

4.2 Chair and Vice-Chair of the EMSB

4.2.1 In virtue of the *Education Act* (sections 155 & 158), the Chair and the Vice-Chair, when acting as the Chair, have been entrusted with additional responsibilities in comparison with other **Commissioners**.

As such, it is legitimate that the Chair and the Vice-Chair when acting as the Chair, have greater duties and obligations than the other **Commissioners**, the whole with regards to ethics and professional conduct.

4.2.2 Namely, and without limiting the generality of the above, the Chair and the Vice Chair when acting as the Chair have the additional following duties and obligations:

- a) As soon as the Chair and the Vice-Chair become aware of a situation described in sections 3.5, 3.5.1 and 4.1.5 (**Conflict of Interest**) of the present By-Law, the Chair shall inform the Director General.
- b) The Chair and the Vice-Chair shall undertake in writing to abstain, for as long as the situation is not regularized, from discussing with employees of the EMSB or other **Commissioners**, even privately, any dossier even remotely connected to the interest concerned, not to exert or attempt to exert, directly or indirectly, any influence in relation to such a dossier and to withdraw from any meeting while such a dossier is being discussed.
- c) The Chair and the Vice-Chair shall also expressly direct the Director General or any other employee of the EMSB never to bring to his attention any information concerning a situation where he could be in a **Conflict of Interest** or appearance thereof, but rather to refer such information to the Council of Commissioners.
- d) The Chair and the Vice-Chair shall use the formal **Channel of Communication** and not contact directly the **Administration of the EMSB** or any other employee of the EMSB and shall ensure that all **Commissioners** respect the formal **Channel of Communication**.

5. BREACH TO THE CODE OF ETHICS

5.1 The **Commissioner** shall be considered to be in breach of the Code of Ethics if he, namely but not limited to the following:

- a) Acts in bad faith in the context of an ethics complaint or a complaint involving an employee of the EMSB, namely by filing a complaint that is abusive or based on frivolous grounds.
- b) Refuses or fails to respond within a reasonable delay to a written request of the **Ethics Commissioner**.
- c) Refuses or fails to provide within a reasonable delay information or a document the **Ethics Commissioner** has required.
- d) Misleads or attempts to mislead the **Ethics Commissioner** in the exercise of his functions.
- e) In any way hinders the **Ethics Commissioner** in the exercise of his functions.
- f) When informed of the filing of an ethics complaint regarding him or an investigation related to such ethics complaint, by a person other than a **Commissioner**, communicates,

directly or indirectly, with the person who is the source of the investigation or who filed the complaint, unless he has the prior written permission of the **Ethics Commissioner**. The **Ethics Commissioner** determines in what cases and on what conditions communication is permitted.

- g) Intimidates a person, retaliates or threatens to retaliate against a person because the person participated or cooperated or intends to participate or cooperate in such an investigation or complaint, reported or intends to report a conduct contrary to the Code of Ethics.
- h) When found guilty of having breached the Code of Ethics by the **Ethics Commissioner**, refuses and/or neglects to abide by any and all aspects of the sanctions mentioned in section 8.8.3 of the Code of Ethics.

6. REMUNERATION

- 6.1 The **Commissioner**, as per section 175 of the *Education Act*, receives the remuneration determined by the Council of Commissioners in accordance with the maximum annual amount determined by the applicable law and regulation. The **Commissioner** is not entitled to any other remuneration.
- 6.2 Upon recommendation of the Governance and Ethics Committee, the Council of Commissioners may decide to reduce a **Commissioner's** remuneration due to his unjustified absences at the Council of Commissioners' meetings or at the meetings of its committees.
- 6.3 Such proposal shall be presented to the Council of Commissioners by the Chair of the Governance and Ethics Committee and requires a vote of at least 2/3 of the members sitting on the Council of Commissioners.
- 6.4 The **Commissioner** concerned by the proposed reduction shall not be part of the deliberations regarding the vote but shall address the Council of Commissioners before the vote is held.

7. PROTECTION AGAINST CERTAIN FINANCIAL LOSSES

This section replaces the *Guidelines with regard to assumption of reasonable defence* adopted via resolution of the Council of Commissioners #14-06-18-17.1.2.

- 7.1 In accordance with section 177.2 of the *Education Act*, the EMSB shall assume the defense of any **Commissioner** who is the object of a complaint under this Code of Ethics and/or civil actions, penal or criminal proceedings by any third party for an act done in the exercise of his functions.
- 7.2 The **Commissioner** who wishes to exercise this right shall inform the Council of Commissioners in writing. The Secretary General is responsible for the application of the present section of the By-Law.
- 7.3 The EMSB will provide the appropriate services to ensure the **Commissioner's** defense in all cases where the request is deemed compliant with section 177.2 of the *Education Act*.

- 7.4** In the event where a **Commissioner** chooses to hire a legal counsel independently, the EMSB will only reimburse the costs equal to what the EMSB would have reasonably incurred for his defense in providing the services according to paragraph 7.3;
- 7.5** The **Commissioner** who chooses to hire a legal counsel independently and requests the reimbursement of the legal fees incurred to the EMSB shall observe the principle of proportionality and ensure that his actions, his pleadings, and the means of proof he uses are proportionate, in terms of the cost and time involved, to the nature and complexity of the ethics complaint that concerns him.
- 7.6** Before submitting his indemnification claims for legal fees to the Secretary General, the **Commissioner** shall ensure that:
- a) The legal fees invoiced are reasonable given the circumstances;
 - b) The hourly rate of his legal counsel is within the prescribed hourly rate set by resolution of the Council of Commissioners, upon recommendation by the Governance and Ethics Committee;
 - c) The invoices submitted are detailed and include the date and description of the services rendered, the number of hours and the name of the individuals who rendered the services as well as their individual hourly rate and their year of admission to the *Barreau du Québec*;
 - d) The invoices are produced no later than forty-five (45) days after the services have been rendered;
 - e) The claim for reimbursement is submitted within thirty (30) days from the date he received said invoices.
- 7.7** In the event that the **Ethics Commissioner** concludes that the **Commissioner** is found guilty to have acted in bad faith in the context of an Ethics complaint, the Council of Commissioners may decide to request repayment of the legal fees incurred by the concerned **Commissioner** in the context of the ethics complaint.

8. ENFORCEMENT MECHANISM

8.1 Ethics Commissioner

- 8.1.1** In order to implement this By-Law, the Council of Commissioners shall, upon recommendation by the Governance and Ethics Committee, appoint by resolution one or more **Ethics Commissioner(s)**, who will be responsible for dealing with complaints made against a **Commissioner** for a potential breach of the Code of Ethics.
- 8.1.2** The **Ethics Commissioners** shall be jurists, with a minimum of ten (10) years of relevant experience and duly qualified in ethics and deontology.

8.1.3 The **Ethics Commissioners** shall not be members of the Council of Commissioners or employees of the EMSB, in conformity with section 175.1 of the *Education Act*.

8.1.4 The Governance and Ethics Committee, in collaboration with the Secretary General, manages all aspects of the appointment of the **Ethics Commissioners**, their remuneration, the negotiation of their contracts, the evaluation of their professional services, the renewal of their appointments.

8.2 Term of Mandate of the Ethics Commissioners

8.2.1 The term of the mandate of the **Ethics Commissioners** is determined by the Council of Commissioners, upon recommendation of the Governance and Ethics Committee. The term of the mandate is renewable.

8.2.2 At the end of the term of their mandate, the **Ethics Commissioners** remain in office until new **Ethics Commissioners** are appointed by the Council of Commissioners. After this date, the **Ethics Commissioners** designated by the Council of Commissioners remain seized of an ethics complaint already assigned to them until a final decision is rendered.

8.3 Coordination by the Secretary General

8.3.1 The Secretary General acts as coordinator and assists the **Ethics Commissioners** in their functions under the present Code of Ethics.

8.3.2 As such, the Secretary General receives the ethics complaint, transmits it to the designated **Ethics Commissioner** in the manner provided in section 8.4 of the present By-Law, and offers him the necessary and required support in the handling of such complaints.

8.3.3 The Secretary General will protect the confidentiality of the investigation and of the hearing of the ethics complaint.

8.3.4 Without restricting the generality of the above, the Secretary General is responsible of informing the Governance and Ethics Committee of the status of the ethics complaints, of any decision rendered by the **Ethics Commissioners** and of any other situations that requires the attention of the Governance and Ethics Committee.

8.3.5 In particular, the Secretary General is responsible for ensuring that the delays mentioned in section 8.7 of the present By-Law are strictly abided to by the **Ethics Commissioners**.

8.3.6 In the event that an **Ethics Commissioner** would fail to respect the delays mentioned in section 8.7 of the Code of Ethics, the Secretary General will report the situation to the Governance and Ethics Committee for appropriate action, according to the terms and conditions of the agreement for professional services entered into with the **Ethics Commissioners**.

8.4 Assignment of an Ethics Complaint

8.4.1 The **Ethics Commissioners** are responsible for applying the present Code.

8.4.2 The Secretary General will ensure that the assignment of an ethics complaint is done on a rotation basis between the **Ethics Commissioners** appointed by the Council of Commissioners.

8.4.3 Upon receipt of a complaint, the **Ethics Commissioner** will inform the Secretary General if he will take on the case and be able to provide his final decision within ninety (90) days of receiving the complaint.

8.4.4 If the **Ethics Commissioner** deems that he is unable to render his final decision within ninety (90) days of receiving the complaint, he shall refuse to take on the case.

8.4.5 Should an **Ethics Commissioner** be unable and/or refuse to take on a case, the Secretary General will assign the complaint to the following **Ethics Commissioner** on the list.

8.5 Filing of an Ethics Complaint

8.5.1 An ethics complaint shall be related to a breach of one or more of the provisions of the Code of Ethics and shall present specific facts in support of the alleged breaches.

8.5.2 The ethics complaint shall be submitted in writing, duly signed and may be filed by any person aware of a breach of the Code of Ethics.

8.5.3 The ethics complaint shall be addressed to the Secretary General who will forward it to one of the **Ethics Commissioner**, as per the terms of the Code of Ethics.

8.5.4 The ethics complaint shall identify the other persons involved in the alleged breach of the Code of Ethics and/or any witnesses.

8.5.5 The ethics complaint shall be accompanied at the time of its filing by any and all documentation or evidence regarding the alleged breach of the Code of Ethics.

8.6 General Powers and Functions of the Ethics Commissioner

8.6.1 If the **Ethics Commissioner** determines that the complaint is abusive or frivolous or that an investigation is not necessary, he shall state it in his decision.

8.6.2 If the **Ethics Commissioner** decides that probable cause exists, he shall inform the Secretary General and proceed with an investigation, the whole according to the timeline stated in section 8.7.

8.6.3 In the event that the complainant or his legal counsel demonstrates a lack of cooperation in making himself available for the investigation and/or the hearing of a complaint, then the **Ethics Commissioner** shall dismiss the complaint. He shall then notify in writing the complainant, the **Commissioner** identified as the defendant (hereinafter the defendant) and/or their respective legal counsels and the Secretary General of his decision. This decision is final.

8.6.4 In the event that the defendant or his legal counsel demonstrates a lack of cooperation in making himself available for the investigation and/or the hearing, then the **Ethics Commissioner** shall proceed to render a decision by default. He shall then notify in writing, the complainant, the defendant and/or their respective legal counsels and the Secretary General of his decision. This decision is final.

8.6.5 The complainant shall have the burden of proof to establish factually that the defendant has violated any of the provisions of the Code of Ethics.

8.6.6 The investigation and/or the hearing process of an ethics complaint shall remain confidential, until a final decision is rendered.

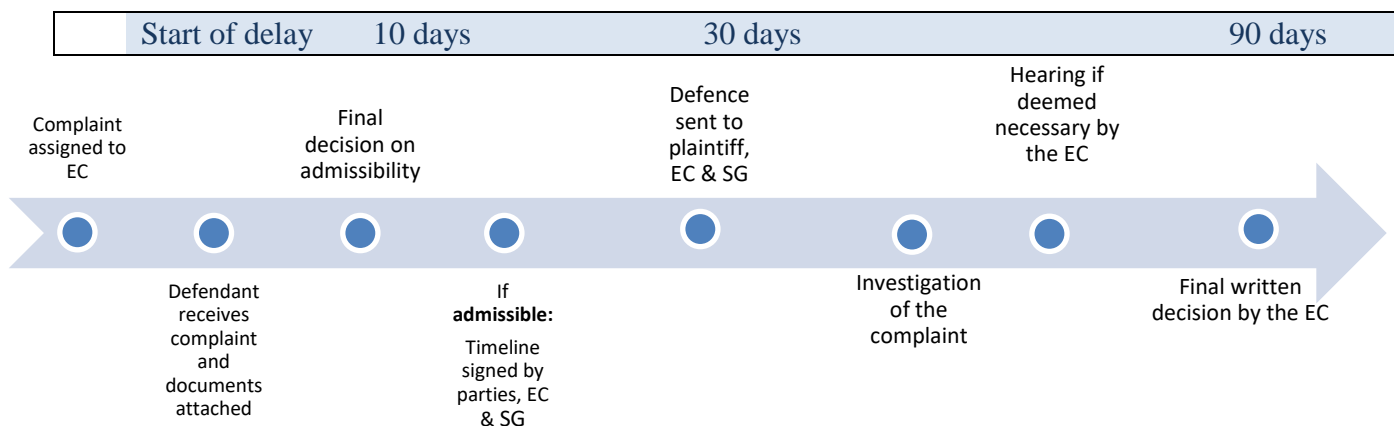
8.6.7 No judicial proceedings may be brought against an **Ethics Commissioner** for any act done in good faith in the exercise of the functions of office.

8.6.8 Except on a question of jurisdiction, no application for judicial review under the *Code of Civil Procedure* may be brought nor any injunction granted against an **Ethics Commissioner** in the exercise of the functions of office.

8.7 Process of an Ethics Complaint

8.7.1 The **Ethics Commissioner** ensures that the delays are respected by all parties and that his final decision is rendered within ninety (90) days of the date the complaint was assigned to him.

8.7.2 The process of an ethics complaint shall follow the timeline below:



8.7.3 Request for Extensions

8.7.3.1 Following the establishment of the timeline, if either party, for exceptional circumstances, needs to request an extension of any delay, said request shall be done in writing to the **Ethics Commissioner** with a copy to the other party and to the Secretary General.

8.7.3.2 Following the receipt of a request for an extension of delay, the **Ethics Commissioner** shall hold a conference call between both parties, the Secretary General and himself after which he shall render his decision on the request for extension of the delay. This decision is final.

8.7.4 Deliberation of the Ethics Commissioner

8.7.4.1 Following the conclusion of the investigation, the **Ethics Commissioner** will take the affair under deliberation and will render his decision no later than ninety (90) days following the day the file was assigned to him, unless expressly authorized to render his decision at a later date by the Governance and Ethics Committee.

8.7.4.2 The **Ethics Commissioner** shall present to the Governance and Ethics Committee a written request containing the reasons for the extension of the delay for rendering his decision to the Governance and Ethics Committee.

8.7.4.3 If the Governance and Ethics Committee does not grant the request for extension it shall inform the Council of Commissioners, who can take any measures it deems appropriate given the circumstances and according to the terms and conditions of the agreement for professional services entered into with the **Ethics Commissioners**.

8.8 Decision and Sanctions

8.8.1 Following his investigation, the **Ethics Commissioner** shall decide whether or not the Code of Ethics was breached. He may take into consideration any judgment regarding an ethics complaint involving the **Commissioner**.

8.8.2 If the **Ethics Commissioner** considers that the **Commissioner** did not breach the Code of Ethics, he will so inform the complainant and the defendant. His decision will be sent to the Secretary General indicating that the file is closed.

8.8.3 If the **Ethics Commissioner** considers that the **Commissioner** did breach the Code of Ethics, he may consider any of the following sanctions or decide to impose more than one sanction concurrently:

- a) a call to order to be read by the Chair of the Governance and Ethics Committee during the public session of the meeting of the Council of Commissioners;
- b) a public apology to be read by the defendant during a public session of a meeting of the Council of Commissioners;
- c) a written reprimand to be read by the Chair of the Governance and Ethics Committee during a public session of a meeting of the Council of Commissioners;
- d) the reimbursement by the defendant of any unlawful profit;
- e) a withdrawal, for a maximum of six (6) months, of the EMSB's services and privileges normally given to **Commissioners**.

- f) a suspension, for a maximum of six (6) months, of part or all of the attributions and functions of a **Commissioner** including sitting on advisory committees, except the right to participate and vote in the public meetings of the Council of Commissioners;
- g) a suspension of the defendant remuneration as a **Commissioner**. This is applied for the period in which the member was no longer rendering the services for which he received remuneration;
- h) a penalty of a specific amount up to a maximum of \$1,000.00;
- i) a recommendation to the Council of Commissioners to request the reimbursement by the defendant of the legal fees assumed by the EMSB for its defense in the said ethics complaint, but only if the **Ethics Commissioner** concludes that the **Commissioner** has acted in bad faith;
- j) a recommendation to the Council of Commissioners that an action to declare the defendant disqualified as a **Commissioner** be taken in accordance with section 329 of the *Civil Code of Québec*.

8.8.4 If the defendant failed to comply with any and all aspects of the sanctions mentioned in section 8.8.3, the Secretary General informs the **Ethics Commissioner** of the situation. The **Ethics Commissioner** shall impose one or more subsequent and more severe sanction(s) to the **Commissioner** who neglected and/or refused to comply with the decision.

8.8.5 If the **Ethics Commissioner** concludes that a request for an inquiry instituted by a **Commissioner** was made in bad faith, for personal reasons or with an intent to harm, the **Ethics Commissioner** may recommend in the report on the matter that one or more of the sanctions provided for in section 8.8.3 be imposed to that **Commissioner**.

8.8.6 All decisions of the **Ethics Commissioner** shall specify whether or not the defendant performed in good faith in the discharge of his functions with regard to the complaint received.

8.8.7 All decisions rendered by the **Ethics Commissioner** are public. The **Ethics Commissioner** shall forward his decision and the sanction(s) to the Council of Commissioners. The decision and the sanction(s) shall be recorded in the minutes of the Council of Commissioners.

8.8.8 The decisions of the **Ethics Commissioner** shall state the grounds on which they are based and be rendered in writing.

8.8.9 The **Ethics Commissioner** shall present a report to the Council of Commissioners no later than September 15th for the purpose of section 10 of the present By-Law.

9. PROTECTION AND CONSERVATION OF DOCUMENTS

- 9.1** Any document received, created or collected by the **Ethics Commissioner** in the context of an ethics complaint shall be deposited and kept with the Secretary General Office.
- 9.2** Once a decision is reached with regard to an ethics complaint, the **Ethics Commissioner** shall remit to the Secretary General, under sealed envelope, all documentation relating to the ethics complaint, including namely the complaint, the defence, the transcription of the testimonials as well as his personal notes.
- 9.3** Except for the public decisions, the Secretary General shall protect the confidentiality and refuse access to all documents relating to the ethics complaint and investigation in accordance with the *Act respecting Access to documents held by public bodies and the Protection of personal information*, (RSQ, c. A-2.1).
- 9.4** The Secretary General keeps a Registry of all Ethics Complaints and Decisions. Any other documents related to an ethics complaint are destroyed according to the Retention Schedule applicable at the EMSB, unless legal proceedings are in progress.

10. ANNUAL REPORT

The EMSB shall publish the Code of Ethics in its annual report. The annual report shall provide the number of cases dealt by the **Ethics Commissioners**, the decisions rendered and the sanctions imposed by the **Ethics Commissioners** or any competent authorities as well as the names of any **Commissioner** sanctioned during the school year.

11. ACKNOWLEDGEMENT OF RECEIPT OF CODE OF ETHICS

Upon his entry into office, within ten (10) days of being sworn in, all **Commissioners** shall receive a copy of the Code of Ethics and submit an Acknowledgement of receipt and confirmation of reading of said Code of Ethics, under the form provided by the office of the Secretary General. Such acknowledgement shall be signed upon each revision of the Code of Ethics.

12. COMING INTO FORCE

The present By-Law replaces all previous versions, including By-Law No. 3 (2019) adopted on June 12, 2019 by Resolution #19-06-12-11.2.

The present By-Law comes into force on the day of the publication of a public notice that it has been adopted by the Council of Commissioners or on any later date indicated in the notice and will be reviewed if required.

The Code of Ethics is applicable to an ongoing ethics complaint as it retroactively changes the Code of Ethics that existed on the day of its alleged breach. Ongoing ethics complaints may therefore be governed by this By-Law.