

REPORT OF THE ETHICS COMMISSIONER

On 2012-04-25 the Council of Commissioners gave a special mandate to the Ethics Commissioner to review the process for the posting and engagement of the Assistant Director General due to alleged irregularities raised. Precisions to the general allegations of irregularities were added to the resolution of 2012-04-25 as a complement.

The Ethics Commissioner has fulfilled this special mandate and sent the report to the Director General, the Chairman and Vice-Chairman of the Council of Commissioners on 2012-06-11.

The Council accepted the report of the Ethics Commissioner dated 2012-06-11 and that it be included in the written minutes of the meeting.

The Council also mandated the Governance & Ethics Committee to review the recommendations contained in the report and provide an action plan for implementation at the 2012-08-29 meeting of the Council of Commissioners.

The report of the Ethics Commissioner is attached.

LETTERS FROM ACSQ - REPORT

On 2012-05-23, the Director General and the members of the Council of Commissioners received a letter, dated the same day, from the Association des cadres scolaire du Québec (ACSQ) – SWL Chapter expressing concerns of its membership regarding the role of Commissioners in the administration of the Sir Wilfrid Laurier School Board.

On 2012-05-28, the Director General and the Chairman of the Executive Committee received a letter, dated the same day, from the Association des cadres scolaire du Québec (ACSQ) – SWL Chapter expressing issues of concern with respect to events that occurred at the 2012-05-15 Executive Committee meeting.

On 2012-05-29, the Director General received a letter, dated the same day, from the Association des cadres scolaire du Québec (ACSQ) – SWL Chapter expressing issues of concern with respect to events that occurred at the 2012-05-23 Council of Commissioners meeting.

The Director General and the Chairman of the Council of Commissioners met with the President and Vice-President of the Association des cadres scolaire du Québec (ACSQ) – SWL Chapter on 2012-05-29, to discuss the contents of the three (3) letters. Recommendations resulted from these discussions and are included in the report of this meeting.

The Council accepted the report prepared by the Director General and the Chairman of the Council of Commissioners and approved that a copy of this report be given to all members of the Association des cadres scolaire du Québec (ACSQ) – SWL Chapter.

MANDATE TO THE EXECUTIVE COMMITTEE – TIMELINE DG/ADG

The Council wishes to begin the process for the recruitment of the new Assistant Director General and Director General.

The Council mandated the Executive Committee to elaborate a timeline for both the Assistant Director General and the Director General positions and that the Chairman of the Executive Committee presents the recommendations for both timelines at the 2012-08-29 meeting of the Council of Commissioners for consideration.

2012-2013 ORGANIZATIONAL CHART FOR MANAGEMENT

The Council approved in principle the proposed 2012-2013 Organizational Chart for Management and that the Sir Wilfrid Laurier Administrators Association (SWLAA) and the Association des cadres scolaires du Québec – SWL Chapter (ACSQ) be consulted for a maximum of 30-days beginning on 2012-06-12. Feedback received from the said Associations is to be presented to the Council at a meeting to take place after receipt of this feedback.

MANDATES TO THE DIRECTOR GENERAL

DIRECTOR OF COMPLEMENTARY SERVICES

The position of Director of Complementary Services will become vacant on 2012-07-01 requiring that this position be posted and the selection process concluded.

The Council mandated the Director General to proceed with the posting of the position of Director of Complementary Services from 2012-06-12 until 2012-06-26, inclusive, and convene the Selection Committee.

The Council named Commissioners Walter Fogel, Peter MacLaurin and Steve Mitchell to participate in the Selection Committee in accordance with school board policies concerning the working conditions of management staff represented by the Sir Wilfrid Laurier Administrators Association (SWLAA) and the Association des cadres scolaires du Québec (ACSQ). Commissioner Nancy Rupnik was named as an alternate.

The Selection Committee will proceed to the interviews and a recommendation will be brought to the 2012-06-27 meeting of the Council.

DIRECTOR OF INFORMATION TECHNOLOGY

The position of Director of Information Technology is currently vacant and must be posted, applications received and the selection process concluded.

The Council mandated the Director General to proceed with the posting of the position of Director of Information Technology from 2012-08-06 until 2012-08-17, inclusive, and convene the Selection Committee.

The Council named Commissioners Steve Mitchell, Mike Pizzola and Nancy Rupnik to participate in the Selection Committee in accordance with school board policies concerning the working conditions of management staff represented by the Sir Wilfrid Laurier Administrators Association (SWLAA) and the Association des cadres scolaires du Québec (ACSQ).

The Selection Committee will proceed to the interviews and a recommendation will be brought to the 2012-08-29 meeting of the Council.

SELECTION COMMITTEE – VICE-PRINCIPAL AT TERRY FOX E.S.

On 2012-07-01 the position of Vice-Principal at Terry Fox Elementary School will become vacant.

The position has been posted and closed on 2012-06-07 and interviews will take place on the evening of 2012-06-26.

The Council of Commissioners named Commissioners Nick Milas, Mike Pizzola and the Elementary Parent Commissioner, Roberto Bomba, to participate in the Selection Committee for the position of Vice-Principal at Terry Fox Elementary School in accordance with school board policies concerning the working conditions of management staff represented by the Sir Wilfrid Laurier Administrators Association (SWLAA).

EXTENSION OF MANDATE – ETHICS COMMISSIONER & POSTING OF POSITION

On 2010-09-29 the Council engaged Julie Brunelle, lawyer, as its Ethics Commissioner, and Rossana Piccolino as the Alternate Ethics Commissioner.

The mandates of the Ethics Commissioner and the Alternate Ethics Commissioner conclude on 2012-06-30.

The Council approved the extension of the mandate of the Ethics Commissioner from 2012-07-01 to 2012-11-30 under the same terms and conditions as those established in the agreement expiring on 2012-06-30.

The Council mandated the Director General to post the positions of the Ethics Commissioner and the Alternate Ethics Commissioner in August 2012.

A Selection Committee will be named in the fall of 2012 with a mandate to bring a recommendation to the November 2012 meeting of Council.

INTERBOARD AGREEMENTS

The Council rescinded resolution #CC-120523-ED-0141, concerning requests for Interboard Agreements.

The Sir Wilfrid Laurier School Board, in accordance with section 213 of the Education Act (R.S.Q., Chapter I-13.3), currently authorizes requests for Interboard Agreements for Kindergarten through Secondary V. Given that, a review has recently been conducted on the process for the authorization of Interboard Agreement applications.

The Council approved the following:

- that any applications for an Interboard Agreement for students entering Kindergarten or Secondary 1 be declined for the 2012-2013 school year for those requests received as of 2012-07-01;
- that the Interboard Agreements be maintained for the 2012-2013 school year for students from Kindergarten through Grade 5 and Secondary 1 through 5 who in the 2011-2012 school year were receiving instructional services in another school board;
- that all Interboard Agreement requests as of the 2013-2014 school year, whether new application or a renewal application, be refused in accordance with a procedure to be developed by the Director of School Organization, except for those students that require instructional services that cannot be provided by the Sir Wilfrid Laurier School Board.

COMMUNICATIONS SUB-COMMITTEE

The Council wishes to formalize an effective communication process regarding the operation of the Sir Wilfrid Laurier School Board that reflects a notion of integrity and respect for the positions and inherent responsibilities therefore, it approved that a Communications Sub-Committee comprised of four (4) commissioners, two (2) representatives from each of the following Associations: Sir Wilfrid Laurier Administrators Association (SWLAA) and Association des cadres scolaires du Québec (ACSQ), and the Secretary General.

This sub-committee is to submit a report to the Governance & Ethics Committee that provides recommendations for the modification of by-law BL2009-CA-17: Code of Ethics & Professional Conduct for Commissioners of the Sir Wilfrid Laurier School Board, to incorporate a communication process.

The Governance & Ethics Committee will in turn make its report to the Executive Committee for recommendation to the Council for its approval at its 2012-09-24 meeting.

June 11th 2012

(Corrected version June 18th 2012)

SPECIAL MANDATE

SELECTION PROCESS OF THE ASSISTANT DIRECTOR GENERAL – WINTER 2012

1. THE MANDATE

On April 25, 2012, the Council of Commissioner (herein after called “the Council”) adopted a resolution mandating the undersigned to investigate the process for the posting and engagement of the Assistant Director General. The resolution reads as follows:

CC-120425-CA-0092

WHEREAS *alleged irregularities were raised regarding the process for the posting and engagement of the Assistant Director General;*

WHEREAS *the Council of Commissioners wishes to have a clear, complete and accurate understanding of those alleged irregularities and all circumstances regarding the posting and engagement of the Assistant Director General process;*

Commissioner Edward Turchyniak MOVED THAT the Council of Commissioners of the Sir Wilfrid Laurier School Board request that the entire process regarding the posting and engagement of the Assistant Director General be submitted as a special mandate to the Ethics Commissioner.

AND THAT *the Ethics Commissioner has the full collaboration of the Commissioners and all personnel of the Sir-Wilfrid Laurier School Board concerning this mandate.*

AND THAT *disclosure of all necessary documentation relating to the inquiry be authorized.*

FURTHER THAT *the entire review process be accomplished within the shortest possible time period.*

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Furthermore, on May 2nd, the Council adopted a second resolution to clarify the original mandate:

WHEREAS on April 25, 2012 by resolution #CC-120425-CA-0092, the Council of Commissioners decided to grant the Sir Wilfrid Laurier School Board Ethics Commissioner with a special mandate to report on allegations of irregularities during the conduct of the Assistant Director General posting process:

Commissioner Walter Fogel MOVED THAT the following precisions be added to the general allegations of irregularities as a complement to resolution #CC-120425-CA-0092 adopted on April 25, 2012:

Allegation #1: Did the telephone conversation between the Chairman of the Board and an applicant during the conduct of the Assistant Director General constitute a contravention to the Sir Wilfrid Laurier School Board Code of Ethics?

Allegation #2: Did the existing relationship between the Chairman of the Board and one of the applicants come to taint the fairness of the Assistant Director General selection process?

Allegation #3: Does the exchange of text messages between the Chairman of the Board and one applicant dealing with the conduct of the above mentioned process taint the fairness of the selection committee?

It should be noted that said mandate is related to the application of the general principles contained in the Code of Ethics and Professional Conduct for Commissioners of the Sir Wilfrid Laurier School Board, and as such the process analysis will primarily be carried out from an ethics perspective rather than a human resources perspective which does not fall within a specific field of expertise or competence of the undersigned.

2. PROCESS

The undersigned interviewed the following individuals, either in person or by phone, between May 4 and June 6, 2012:

The Director General

Robert Vallerand

The Secretary General

Marie-Claude Drouin

The commissioners

Steve Bletas

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(members of the Selection Committee)

Robert Dixon

Mario Di Domenico

Angelo Grasso

Nick Milas

Steve Mitchell

Tom Mouhteros

Albina Pace

Mike Pizzola

Edward Turchyniak

All individuals who took part in the investigation were duly sworn by the undersigned before giving their testimony.

In addition, documents were provided either voluntarily by the individuals interviewed or by examining the technological tools, property of the School Board and made available to commissioners and subject to Policy #2000-IT-01: Use of Information and Communication Technology Resources Policy.

It should be noted that it was impossible to verify the content of the Chairman's cellular phone (Blackberry), for elements of which could have been relevant to this mandate, because at the time of the verification it was noted that the phone had been reset (factory reset).

Finally, it is important to underline that the inquiry conducted in the framework of this mandate, like any inquiry resulting from a complaint lodged under the Code of Ethics and Professional Conduct for Commissioners of the Sir Wilfrid Laurier School Board, has inherent limitations. These limitations result namely from the time constraints for the inquiry, the fact that the Ethics Commissioner has no power to compel testimony and that the process is flexible and informal.

3. FACTUAL BACKGROUND

While reviewing all the facts pertaining to the alleged irregularities regarding the process for the posting and engagement of the Assistant Director General, it could be useful to keep in mind certain events that occurred during the months preceding the selection process and that are inextricably linked to it:

September 21, 2011: the former Director General announced her resignation.

September 27, 2011: Robert Vallerand and Cliff Buckland are named respectively Interim Director General and Interim Assistant Director General of the School Board.

On or around January 10, 2012: the Assistant Director General, who was on sick leave, resumed his functions.

January 13, 2012: the Assistant Director General who had resumed his functions announced that he was retiring.

January 25, 2012: the Council of Commissioners adopted resolutions naming the Interim Director General to the position of Director General until December 31, 2012 and extending the mandate of the Interim Assistant Director General to June 30, 2012.

At the February 29, 2012 meeting, the Council adopted a resolution (#CC-120229-HR-0078) mandating the “Director General to proceed with the posting of the position of Assistant Director General from 2012-03-19 until 2012-03-30 inclusive.” This resolution was also mandating the Chairman “to strike a Selection Committee comprised of the Director General and a panel of Commissioners.” which stipulated that “this Selection Committee proceed to the interviews and that a recommendation be brought to the 2012-04-25 meeting of the Council of Commissioners.”

Relevant facts or irregularities observed

Relevant facts: Several contacts by telephone were held during that period between the Chairman and Candidate A, including 9 in November, 17 in December, 5 in January, 3 following the decision of the previous Assistant Director General, 5 in February, 6 in March. The evidence does not allow to conclusively determine the content of these conversations.

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Formation of the Selection Committee

The Commissioner who was Chairman of the Council at that time (hereinafter called the Chairman) formed a Selection Committee composed of the following individuals:

Steve Bletas	Chairman
Carolyn Curiale	Vice-Chairperson
Robert Dixon	Member of the Executive Committee
Albina Pace	Commissioner
Edward Turchyniak	Chairman of the Executive Committee
Mario Di Domenico	Member of the Executive Committee
Nick Milas	Vice-Chairman of the Executive Committee
Mike Pizzola	Commissioner
Angelo Grasso	Parent Commissioner and member of the Executive Committee
Merle Parkinson	Commissioner
Robert Vallerand	Director General

Two members were subsequently replaced: Merle Parkinson and Carolyn Curiale. Two new members were named by the Chairman:

Steve Mitchell	Commissioner
Tom Mouhteros	Commissioner

The evidence collected does not allow to determine when and how one of these two members was selected. However, the evidence shows that one of them, Mr. Steve Mitchell, only received the documentation pertaining to the candidates on April 5th, following an exchange of emails with the Chairman who had previously forwarded to him the written presentation of a candidate, i.e. the candidate that we will be referring to as “Candidate A” to preserve the confidentiality of his identity, but whose application is at the centre of this investigation. It should be noted that the commissioner who had received the documentation had emailed positive comments to the Chairman concerning this

written presentation. It is the day following this communication that he received the official documentation containing the application files of all candidates.

Relevant facts or irregularities observed with respect to the formation of the Selection Committee

Irregularities: The fact that the Chairman forwarded to a member of the Selection Committee a written presentation of a candidate and obtained his comments on said presentation outside the official transmission of the applications of all candidates selected for an interview and before the official documentation concerning all the candidates was forwarded to him.

The Posting Period

A meeting of the Selection Committee was held on February 14 to determine the selection criteria for the position. Subsequently, the posting was prepared by the Director of the Human Resources Department and validated by the members of the Selection Committee. The posting was done as specified by the Council.

Relevant facts or irregularities observed with respect to posting period

Based on the evidence collected, no irregularities were observed for this portion of the selection process.

The period for the reception of applications and the selection of the candidates to be interviewed

The Chairman received all the applications, as specified on the posting. It seems that the transmission of these files was not done in a formal and structured manner. It was done by email, to certain members of the Selection Committee on March 30th and 31st. Certain members of the Selection Committee, not all of them according to the testimonies received, were asked to indicate to the Chairman which of the ten or so applications received would be selected for an interview. Therefore, these members, including the Director General, forwarded their preferences to the Chairman. Other members indicated having only received the list of the candidates that would be interviewed, with their files, the day before the interviews.

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One of the files received is that of Candidate A, who the Chairman knows very well and that other members of the Selection Committee know “socially” one could say, since they had met him on a few occasions at School Board events or activities, such as fundraisers. These facts were not disclosed to the other members of the Selection Committee during that period of time.

In addition, according to the documented evidence obtained by the undersigned, the confidentiality of the application files was seriously compromised by two members of the Selection Committee:

The complete application file of Candidate A was forwarded by the Chairman by email to an employee of the School Board between the end of the posting period and the interviews;

The written presentation of a candidate was forwarded by email to a person who is not part of the School Board personnel, the Selection Committee or the Council of Commissioners to obtain his opinion on the quality of the presentation; exchanges by emails on this matter were held between Commissioner Steve Mitchell and this person before the interviews.

Relevant facts or irregularities observed with respect to the period for the reception of applications and the selection of the candidates to be interviewed

Relevant facts: Multiple communications during this recruiting period between the Chairman and Candidate A by phone, email, text messages.

Irregularities: The fact that the Chairman and other members knew Candidate A or were aware that the Chairman knew Candidate A and that this information was not disclosed to all the members of the Selection Committee.

The fact that the Chairman did not disclose to the members of the Selection Committee that he was communicating with this person, regardless of the nature of these communications, whether personal or professional.

The fact that, based on the evidence collected, the Chairman forwarded to a member of the Selection Committee part of the application file and obtained his comments on it outside the official transmission of the applications of all candidates selected for an interview.

The fact that the application file of Candidate A was forwarded to an employee of the School Board who was not involved in the selection

process.

The fact that the written presentation of Candidate A was forwarded to a person outside the School Board.

The Interviews

Five candidates were interviewed outside the offices of the School Board on April 10th. According to the testimonies received, the day went well and two candidates clearly stood out.

It should be noted that all testimonies corroborate the fact that during the various meetings of the Selection Committee, it was never mentioned that the Chairman knew one of the candidates, and that he knew him more than other candidates who were interviewed and known by all the members of the Committee because they work for the School Board. It was even noted that the Chairman greeted Candidate A and introduced himself the same way he did with the other candidates who he had never met before.

Some of the witnesses who were members of the Selection Committee had noticed that Candidate A answered some especially difficult questions with extreme ease, using precise and specific terms used in the text of the question, before the end of the said question.

The statements made concerning the discussions held immediately after the end of the interviews vary in part depending on the member of the Selection Committee giving the statement. However, they converge to the following elements:

- The majority of the Committee members favoured Candidate A while some preferred another candidate;
- Consequently, the Director General was mandated to verify the references of the two candidates still in contention;

- There was a disagreement on the decision to request that only one or both candidates undergo a psychometric tests, but the evidence heard clearly indicates that the decision taken at the end of the day was to ask both candidates to undergo psychometric tests.

A social event linked to the School Board was held the night of the interviews and was attended by some of the members of the Selection Committee. Discussions were held, very intense at times, between those who believe the psychometric tests should be administrated to only one candidate and those who thought both candidates should undergo the evaluation.

Relevant facts or irregularities observed with respect to day of the interviews

Relevant facts: The links between the Chairman and Candidate A were not disclosed during the interviews, or the previous or subsequent meetings.

Irregularities: The fact that the Chairman and other members knew Candidate A or were aware that the Chairman knew Candidate A and that this information was not disclosed to all the members of the Selection Committee.

The fact that the Chairman did not disclose to the members of the Selection Committee that he was communicating with this person, regardless of the nature of these communications, whether personal or professional.

The fact that Candidate A and the members of the Selection Committee who were aware of this did not disclose the fact that the School Board had dealt in 2006 with a business where Candidate A is a majority stakeholder and the only member on the Board of Directors, according to the Registre des entreprises du Québec, which was consulted for the purpose of this mandate.

The period following the interviews

The Director General verified the references of the two candidates still in contention, either personally or via the Director of the Human Resources Department. The information obtained was not conclusive or convincing with regard to the capacity of the two candidates to hold the position of Assistant Director

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General, and the Director General quickly relayed this information to the Chairman and other commissioners, in the Chairman’s office. In the next few days, intense discussions back and forth were held between the Director General and the Chairman on the qualities of the references and the way they were verified.

On April 16th, Candidate A withdrew his application by email to the Chairman, giving personal reasons to justify his decision.

On April 25th, confronted with unquestionable material evidence, the Chairman finally admitted knowing Candidate A and having being in contact with him during the selection process.

Relevant facts or irregularities observed with respect to the period following the interviews

Relevant facts: Several text messages, the content of which is not revealed by the evidence, were exchanged by the Chairman and Candidate A in the days following the interviews, including 8 the next day and 2 two days later.

Irregularities: The fact that the Chairman did not admit sooner, when confronted with the facts, that he knew Candidate A and that he had contacts with him during the selection process.

4. ANALYSIS

Transparency

The main arguments used to justify that the relationship was not disclosed by the Chairman and the witnesses that support him are the following:

- It was a personal relationship that had nothing to do with the selection process;
- Everybody was somewhat aware that the Chairman knew Candidate A;
- There are no School Board policies to guide elected officials in this type of situation.

The undersigned does not believe that these arguments are valid and should be used to explain or justify ex post facto the lack of transparency.

Therefore, the fact that the relationship between the Chairman and the candidate was personal does not lessen his obligation of disclosure. On the contrary, based on the evidence, it would be a relation of friendship which would explain the frequent communications between them. The intensity of their relationship should reinforce even more the necessity to disclose it since the objectivity of the Chairman's judgment on the candidate could be compromised. Furthermore, the members of the Selection Committee have the right to be made aware of any kind of links in order to make an informed judgment using all the elements that may affect the work of the Committee. However, this is not the case here. Most of the witnesses were surprised, some stunned by the disclosures made at the April 25th Council meeting concerning the relationship between the Chairman and Candidate A, some were deeply offended to have participated in good faith to a process that was vitiated from the start without their knowledge.

It would be an illusion to believe that prior discussions between the members of a Selection Committee and possible candidates would never occur. The fact to have such discussions is not reprehensible in itself, since any administrator or director will sooner or later try to recruit candidates deemed valuable for certain positions. However, the fact that the members of the Selection Committee involved in the process do not have on hand all relevant information and all determining factors does create a

problem.¹

In addition, several members of the Selection Committee were not aware or had not been informed that Candidate A was a majority stakeholder in a business that dealt with the School Board in 2006. This was not disclosed by the members of the Selection Committee who were aware or by Candidate A.

Furthermore, it is incorrect to claim that commissioners have no guidelines in this respect. Although there is no specific policy on the engagement of senior executives, the Code of Ethics and Professional Conduct for Commissioners of the Sir Wilfrid Laurier School Board applies to commissioners and contains provisions that are very relevant to the present situation. These provisions should guide and influence their actions. For example:

2.0 OBJECTIVES

Unless otherwise indicated, this by-law applies to every commissioner of the Sir Wilfrid Laurier School Board, including the parent commissioners. The intent of this by-law is to:

2.1 Provide transparency;

2.2 Prevent potential or real conflicts of interest;

2.3 Promote respectful and collegial interactions amongst commissioners and employees of the school board.

4.3 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 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.

¹ In this respect, the undersigned would like to make an analogy with the principles stated by the honorable Pierre C. Gagnon in the case of *Boyle v English Montreal School Board* (2003) Superior Court, July 15, 2003, paragraphs 194 to 196:

[194] Although the evidence is contradictory on this subject, the Court holds in respect of the likelihood that the real debates were held at meetings of the Committee of the Whole (Committee of the Whole) or during breaks during the sessions publiques. Similarly, the Court defers to the rules of probability to conclude that the quasi-ritual meetings of some commissioners in local restaurants served more to decision making than walk to talk about rain and fine weather.

[195] Section 167 of the Public Education Act makes the following rules:

"167. The meetings of the board of commissioners are public. However, the council may go into closed session to consider any matter which may cause injury to a person."

"According to the Lemieux⁸¹ and Issalys analysis, the public nature of meetings is an essential formality as it seeks to protect rights of citizens against decisions made without prejudice and without explanation that politicians supporting such decisions are accountable.

[196] The rule laid down by Article 167 of the Act in this respect is more stringent than the common law that allows for a few minutes to postpone a public meeting to privately discuss a delicate matter.

Although the public character does not apply here because the debate is not taking place before the Council of commissioners, the notion of transparency does apply and the Selection Committee, just like the Council in the Boyle case, has the right to be made aware of factors that may have influenced the position of either one commissioner.

Finally, the fact that “everybody was aware” that the Chairman knew Candidate A does not justify the fact that this relation was not disclosed because the evidence does not confirm this statement, and even if it did, a commissioner is obligated to clearly and officially inform the Selection Committee of any such relation. The underlying principle is that the Selection Committee must carry out the selection process and make recommendations in full knowledge of the facts.

Respect of Confidentiality

This investigation revealed that the confidentiality of the application files was breached several times during the process. As mentioned above, the evidence demonstrates that the application documents of Candidate A were forwarded to a School Board employee who was not involved in the selection process. The evidence also shows that another commissioner, Steve Mitchell, forwarded documents pertaining to the application of another candidate to a person who is not part of the School Board personnel, the Selection Committee or the Council of Commissioners ~~or any other body of the School Board.~~

The rather informal transmission of applications, by email, contributes to this type of breaches or at least makes them possible. Recommendations will be presented further in this report in an attempt to limit as much as possible such breaches.

As for the verification of the references of the candidates, certain members of the Selection Committee that were met raised concerns about the fact that the Director General ask the Director of Human Resources to make some of the calls instead of doing it himself, and had conversations regarding Candidate A with individuals who were not on the list of references provided by Candidate A. The undersigned does not believe that having the Director of Human Resources verify references, even for an ADG position, is unethical. It is part of the usual functions associated with this position to deal with confidential information concerning the files of all the employees of the School Board, including the files of superior officers. In addition, the verification done by the Director of Human Resources was with her counterparts. Furthermore, the fact that the Director General informally verifies the qualifications of a candidate with his professional contacts rather than using only the references provided by a candidate does not constitute a fault, but rather shows a desire to ensure as objectively as possible that the candidate is qualified.

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However, since the undersigned is not an expert in human resources, it will be suggested further in this document to call upon experts in this field to ensure that the best practices are implemented.

Integrity of the process

On May 2nd, the Council of Commissioners clarified the mandate given to the undersigned by formulating specific questions that we will now answer:

Allegation #1: *Did the telephone conversation between the Chairman of the Board and an applicant during the conduct of the Assistant Director General constitute a contravention to the Sir Wilfrid Laurier School Board Code of Ethics?*

ANSWER: It is not necessarily the existence, which was not denied by the Chairman, of multiple communications between himself and Candidate A that constitutes a breach of the *Code of Ethics and Professional Conduct for Commissioners of the Sir Wilfrid Laurier School Board* but the fact that this was not disclosed to the Selection Committee, and to have let the Committee work, in good faith, unaware of an important element that could influence the process.

Allegation #2: *Did the existing relationship between the Chairman of the Board and one of the applicants come to taint the fairness of the Assistant Director General selection process?*

ANSWER: Based on the evidence, both with respect to the number of communications between the Chairman and Candidate A and the frequency during the process, we conclude that this relation did affect the integrity of the process. Other elements support this conclusion. Certain elements of Candidate A's application file were forwarded to a member of the Selection Committee outside the official process, which brings concerns about what actually motivated this particular commissioner to sit on the Selection Committee. These elements were also forwarded by the Chairman to an employee of the School Board during the process.

Allegation #3: *Does the exchange of text messages between the Chairman of the Board and one applicant dealing with the conduct of the above mentioned process taint the fairness of the selection committee?*

ANSWER: For the same reasons as those specified in the previous answer, we believe that an affirmative answer is required here.

Furthermore, it seems important to underline that the Code of Ethics and Professional Conduct for Commissioners of the Sir Wilfrid Laurier School Board gives a specific role to the Chairman with respect to conflicts of interest.

8.0 DECISION UPON A CONFLICT OF INTEREST

8.1 *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.

- 8.2 *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. (...)*

The Chairman of the School Board plays a major role in the management of conflicts of interest. Therefore, the expectations for him with respect to integrity, transparency and conflicts of interest are higher. Consequently, of all people, he should disclose any information that could bring these values into question.

Finally, it should be noted that the definition of conflict of interest provided for in the Code of Ethics and Professional Conduct for Commissioners of the Sir Wilfrid Laurier School Board is broader than the one found in the Education Act². The definition of the School Board reads as follows and includes all forms of interest, not only financial interest:

4.3 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 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.*

The notion of reasonably informed individual is also important when analysing this situation, since in the first instance the members of a Selection Committee mandated by the Council of Commissioners to select one of the future leaders of the School Board should have on hand all relevant information in order to make recommendations that will be in the best interest of the School Board³.

² **Section 175.4 of the Education Act:** “Any member of the council of commissioners who has a direct or indirect interest in any enterprise which places the member's personal interest in conflict with the interest of the school board must, on pain of forfeiture of office, disclose the interest in writing to the director general of the school board, abstain from voting on any matter concerning the enterprise and avoid influencing the decision relating to it. The member must, in addition, withdraw from a sitting while the matter is discussed or voted on.

A disclosure under the first paragraph must be made at the first sitting of the council

(1) after a person having such an interest becomes a member of the council;
(2) after a member of the council acquires such an interest;
(3) during which the matter is dealt with.

Forfeiture of office incurred under this section shall subsist for five years after the date on which the judgment in which the forfeiture is declared acquires the authority of *res judicata*.

³ For information purposes, the Supreme Court has stated the following in a judgement on the notion of conflict of interest: “Where such an interest is found, both at common law and by statute, a member of Council is disqualified if the interest is so related to the exercise of public duty that a reasonably well-informed person would conclude that the interest might influence the exercise of that duty. This is commonly referred to as a conflict of interest.” *Old St. Boniface Association of Residents Inc., c. Winnipeg (City)* (1990) 3 R.C.S.

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However, most of the members of the Selection Committee mentioned to the undersigned that they were surprised and astonished when they found out the links between the Chairman and Candidate A at the Council of Commissioners meeting held on April 25th, and they still believe that, in one way or another, the process was not unblemished.

1170, stated in *Éthique et gouvernance municipale, Guide de prévention des conflits d'intérêts*, Mes Jean Héту et Alain R Roy, Éditions CCH, page 26.

5. RECOMMENDATIONS

In light of the facts presented above and of the analysis, the undersigned believes that the following elements could help prevent a similar situation in the future:

A. To adopt a policy outlining these practices

It is clear that the adoption of a policy establishing as clearly as possible the process for each step of the senior executive recruiting process would greatly contribute to make the process healthier.

Therefore, we believe that the following elements should be included in any future policy:

- Composition of the Selection Committee;
- Detailed mandate of the Committee;
- Content of the call for applications;
- Various steps of the selection process: initial screening of candidates eligible for an interview (who, criteria, terms, etc.)
- Procedure for the verification of the candidates references (how, who, etc.)

B. To adopt practices to ensure confidentiality throughout the process

The purpose of these practices should be to ensure that no element pertaining to an application circulates freely and be distributed strictly within the framework of formal meetings of the Selection Committee, and that no copies can be kept by the members outside the location and the period of time scheduled for the meetings of the Committee.

C. To formalize the process

As for previous recommendations, it is suggested to establish in general a process as formal as possible in order to avoid that decisive discussions and steps relevant to this process take place outside the meetings of the Committee.

D. Establish a mechanism for the disclosure of communications associated with the selection

In order to ensure that the members of the Selection Committee have on hand all relevant information and determining factors when they participate in the process, it could be relevant to

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develop a form that would force the members of the Selection Committee to disclose any discussion held with potential candidates. As well, candidates could also be required to report the procedure they have followed as well as any relation, whether personal or professional, that they may have with a member of the Selection Committee or the School Board.

6. CONCLUSION

The undersigned has attempted, within the mandate given to her by the Council of Commissioners, to make light on all the circumstances surrounding the process for the posting and engagement of an Assistant Director General. The evidence collected confirms, as stipulated in this report, that irregularities effectively occurred and had a definite impact on the entire selection process as well as the fact that Candidate A became the preferred candidate.

This conclusion does not entail that said irregularities, actions or omissions were committed in bad faith or with the intent of misleading the Selection Committee. However, whether these actions were done with the intent of misleading or not the Selection Committee, does not change the fact that it is not up to the individual who has such links with a candidate to determine whether or not these links have an impact on the process and consequently to abstain from disclosing them. He must disclose them⁴.

Finally, it seems obvious to the undersigned that an eventual sanction by virtue of the Code of Ethics and Professional Conduct for Commissioners of the Sir Wilfrid Laurier School Board would not be sufficient to prevent similar events from reoccurring if commissioners do not develop some ethical reflexes, namely with respect to transparency. The ethicist René Villemure makes the following comment on this topic:

« (...) Au-delà des « codes d'éthique », des « comités d'éthique » ou des « manques d'éthique » dont nous entendons parler régulièrement dans les médias, qu'en est-il réellement de l'éthique? »

Dans le monde actuel, où les seules constantes sont celles du changement et de l'accroissement de la complexité qui s'ensuit, l'Institut québécois d'éthique appliquée soutient ceci : la connaissance des règles prescrites est essentielle dans un secteur particulier. Cependant, en cas d'incertitude, elle peut parfois être insuffisante et ne pas permettre de décider avec justesse.

- *Quoi faire pour Bien Faire lorsqu'il n'y a pas de lois, de règles ou de directives?*
- *Quoi faire pour Bien Faire lorsque ces lois, règles ou directives sont muettes sur le cas qui vous concerne?*
- *Quoi faire pour Bien Faire lorsque plusieurs lois, règles ou directives sont en contradiction?*

⁴ In this respect, the following extract was taken from : "La face cache des élus, Engagement, responsabilité et comportement éthique", Yves Boisvert, Presses de l'université du québec: « (...) Pour ces derniers (les politiciens) les amis personnels deviennent des fréquentations politiques, qui deviennent alors très souvent des partenaires ou des vis-à-vis avec qui le gouvernement travaille. Quelques-uns nous ont dit que ce phénomène est amplifié dans des petites « sociétés » comme le Québec, puisque les élites sont toujours dans une logique de proximité qui n'est pas toujours saine pour le développement des standards éthiques. C'est souvent dans un tel contexte de proximité naturelle qu'un ministre peut se faire prendre inconsciemment dans le jeu des conflits d'intérêts. Il tombe alors dans le piège de ce dernier, non pas par malveillance et planification, mais plutôt parce qu'il a négligé d'établir des distinctions entre les types de relations. » Page 51.

C'est à ce moment que la réflexion éthique s'impose.

La réflexion éthique concerne particulièrement les raisons d'agir et la finalité de l'action.⁵

And he adds in another newsletter:

« (...) Il faut avant tout comprendre que l'éthique ne saurait être réduite à une fonction de « surveillance et de punition ». L'éthique est une réflexion qui vise à décider avec justesse dans l'incertitude; l'éthique se situe en amont d'une décision. Après la décision, s'il y a une plainte et que la personne visée est assujettie à un code de déontologie, c'est alors le déontologue qui devra enquêter et évaluer si la conduite de la personne était conforme aux règles contenues dans le code. En cas d'infraction, le déontologue appliquera la sanction prévue dans le code de déontologie. »⁶



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June 11th 2012

⁵ Extract from the Institut québécois d'éthique appliquée website <http://www.ethique.net/> page « Qui sommes-nous ».

⁶ Extract from the Institut québécois d'éthique appliquée website <http://www.ethique.net/> and the Bulletin réflexif published on April 25, 2012.