

Conflict Resolution

While the majority of trustees do a wonderful job, and act appropriately, occasionally a trustee acts in a way which is damaging for the board and which can even put the board at risk of legal action being taken against it.

It is often necessary for boards handling sensitive issues, particularly employment ones, to clearly define who has the power to act on behalf of the board. While a trustee may be acting out of a concern for their children, their friends, or simply because they believe that the board is wrong, they must realise that boards are democratic bodies and that actions not approved by the board put the board at risk.

Many boards find it useful to sit down and discuss how each trustee sees their role, responsibilities, and power. This often helps those who have not realised the extent of their responsibilities or are confused about their powers and is addressed at the Trustee Board induction meeting.

Another mechanism to clarify the power trustees and staff have is a delegated authorities policy and schedule. If all the powers of staff and trustees are set out on paper then individuals become acutely aware of the need to only act within the scope given by the board.

In extreme cases where trustees go outside the bounds of acceptable behaviour or outside the scope of their authority the board may discuss the matter directly.

Here are a few options on how to handle such situations:

1. An informal discussion is held about the scope of accepted behaviour. This brings the issue out into the open and helps all trustees understand what is expected of them.
2. A formal motion is put setting out that all trustees have no power outside that recorded as being delegated by the board. This may accompany a general discussion on the topic.
3. A motion is put setting out a topic or topics (e.g. the current personal grievance case) that individual trustees are not to discuss or seek advice on without the board's approval. This puts all trustees on notice.
4. A motion is put expressly removing all power to act on behalf of the board from a particular trustee that has crossed the line. This may also be accompanied by a motion setting out what they are not allowed to do. These motions may be restricted to one problem area (i.e. personnel) or in extreme cases of conflict they may apply to all issues.
5. The board may also censure a trustee. This has no particular effect but is a political tool and is also useful in confirming that the board does not agree with one trustee's actions.

If the area of concern is around a particular topic then the board can decide to delegate all power on that issue to a committee. This is often done when a trustee who has an obvious conflict of interest or ulterior agenda will not acknowledge that they are putting the board at risk.

Bad Faith

Trustees are not usually personally liable for their actions as a board member. The sixth schedule of the Education Act sets out the law on trustee's liability

Trustees not personally liable---No trustee is personally liable for-

1. Any act done or omitted by the Board; or

2. Any loss to the Board arising out of any act done or omitted by the trustee,--- if the act or omission was (so far as the trustee's involvement is concerned) in good faith in pursuance or intended pursuance of the functions of the Board.

This means that trustees acting in a normal fashion are not personally liable.

Trustees that act in "bad faith" could expect to be found liable for their actions. For example a trustee who personally creates an employment problem, through a malicious action, could be expected to pay the board back any money they spend on legal fees or a settlement.

Trustees that operate on behalf of the board without being delegated the power to do so could also be liable. For example if a trustee who hasn't been delegated any powers to deal with employment matters, then tells a staff member that the board will give them a raise they may be liable for the resulting costs of getting out of the promise. Although the trustee may have had good intentions they would not be acting in "good faith" as they knew they had no power to make that decision.

Another common example of bad faith is when a trustee spreads gossip to people in the community breaching the Privacy Act and intruding into employees' privacy.

Trustees' code of behaviour

Refer to Governance Framework Part B, section Trustee Code of Conduct policy.

Legislative compliance

Privacy Act 1993