



COUNCIL OF COMMISSIONERS
RESOLUTION

CC 2021 – 008

**SUBJECT: Governance Framework and Terms of Reference
for a Governance Committee of the Cree School
Board**

PROPOSED BY:

Stella Lameboy

WHEREAS Section 16 of the *James Bay and Northern Québec Agreement* (“JBNQA”) treaty provides that the Cree School Board has exclusive jurisdiction and responsibility for elementary and secondary education and for adult education in the Cree communities;

WHEREAS the Cree School Board carries out this responsibility in accordance with its treaty and legislative framework, Strategic Action Plan, vision and orientations;

ACTION:

Carried unanimously

WHEREAS it is appropriate to adopt a Governance Framework for the Cree School Board in compliance with its treaty and legal framework;

WHEREAS it is appropriate for the Cree School Board to mandate the establishment of a Governance Committee and the development of governance and orientation tools for the Council of Commissioners and senior management regarding their respective roles, responsibilities and functions, all in compliance with the treaty and legal framework of the Cree School Board, and having due regard to relevant governance models;

CERTIFIED COPY OF THE
RESOLUTION ADOPTED ON:

March 10, 2021

WHEREAS a Governance Framework and Terms of Reference for a Governance Committee of the Cree School Board have been submitted to, and reviewed by, this meeting of the Council of Commissioners;

WHEREAS it is appropriate to approve such Governance Framework and Terms of Reference for a Governance Committee of the Cree School Board.

RESOLVED:

Doreen Blackned
SECRETARY GENERAL

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COUNCIL OF COMMISSIONERS
RESOLUTION

CC 2021 – 008
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**SUBJECT: Governance Framework and Terms of Reference
for a Governance Committee of the Cree School
Board**

PROPOSED BY:

Stella Lameboy

THAT the Governance Framework and Terms of Reference for a Governance Committee of the Cree School Board, copies of which, identified for reference purposes “2021.03.10”, have been submitted to, and reviewed by, this meeting of the Council of Commissioners, be and they are hereby approved as attached hereto as **Schedule “D”**;

ACTION:

Carried unanimously

THAT the Director General (Interim) be and is hereby authorized and directed, in close consultation with the Chairperson, to do such things and to execute such documents as may be necessary or useful to give effect to this resolution.

CERTIFIED COPY OF THE
RESOLUTION ADOPTED ON:

March 10, 2021

Doreen Blackned
SECRETARY GENERAL

2021.03.01

CREE SCHOOL BOARD

COUNCIL OF COMMISSIONERS

GOVERNANCE FRAMEWORK

MARCH 10, 2021

I. INTRODUCTION

1. Section 16 of the *James Bay and Northern Québec Agreement* (“**JBNQA**”) treaty provides that the Cree School Board has exclusive jurisdiction and responsibility for elementary and secondary education and for adult education in the Cree communities. The Cree School Board carries out this responsibility in accordance with its treaty and legislative framework, Strategic Action Plan, vision and orientations.
2. By Resolution No. • of March 10, 2021, the Council of Commissioners (“**Council**”) of the Cree School Board mandated the establishment of a Governance Committee and the development of governance and orientation tools for the Council and senior management, regarding their respective roles, responsibilities and functions, all in compliance with the treaty and legal framework of the Cree School Board, and having due regard to relevant governance models.
3. In this context, the Council has mandated the Governance Committee (“**Committee**”) to develop a governance framework in compliance with the treaty and legal framework of the Cree School Board.
4. This document outlines a governance framework for consideration by the Committee with a view to making recommendations to the Council regarding the adoption, implementation and further development of the framework.
5. This governance framework is intended to:
 - (a) build upon the work of the Cree School Board regarding governance and related matters;
 - (b) provide a framework for effective governance that enables the members of the Council to identify and perform their roles and responsibilities as Commissioners in compliance with the treaty and legal framework of the Cree School Board;
 - (c) ensure an appropriate balance of roles, responsibilities, functions and powers between the Council, the Executive Committee and senior management;
 - (d) ensure accountability to
 - (i) the Cree Nation and the students and parents served by the Cree School Board in respect of education services and the use of public funds,

- (ii) the Governments of Quebec and Canada for the use of public funds;
 - (iii) other relevant stakeholders;
- (e) facilitate its accessibility, implementation and further development by the Council.

II. TREATY AND LEGAL FRAMEWORK

6. The governance framework outlined in this document is based on the treaty and legal framework of the Cree School Board, and other relevant sources, including:
- (a) the *James Bay and Northern Québec Agreement*, including Section 16;
 - (b) the *Education Act for Cree, Inuit and Naskapi Native Persons*¹ (*Education Act*) and related regulations;
 - (c) Cree values, practices, customs and traditional approaches in education and learning;
 - (d) other laws and regulations of Québec relating to education and the governance of public bodies;
 - (e) the by-laws, policies, procedures and guidelines of the Cree School Board, with special reference to:
 - (i) *Consolidated General By-law No. 1*;
 - (ii) *Functions and Delegation of Powers By-law No. 7*;
 - (f) the *Strategic Action Plan* of the Cree School Board;
 - (g) the *Budgetary Rules of the Cree School Board* concluded with the Government of Québec as represented by the ministère de l'Éducation et de l'Enseignement supérieur and approved by the Conseil du Trésor;
 - (h) other agreements with the Government of Québec and the Government of Canada;
 - (i) best practice in the governance of school boards and other public bodies in Quebec and other relevant jurisdictions.

¹ CQLR, c. I-14.

III. GENERAL RESPONSIBILITIES OF COUNCIL

7. Part X of the *Education Act* governs the Cree School Board.² The Board is subject to the other provisions of the Education Act and other Quebec laws save in case of inconsistency.³
8. Under the *Civil Code of Québec*, the board of directors of a corporation is responsible for managing its affairs and it exercises all the powers necessary for that purpose. Among other things, a board of directors may create management positions and delegate the exercise of certain powers to the holders of those positions.⁴
9. The Council of Commissioners has the rights, powers and obligations conferred by the *Education Act* upon commissioners.⁵ The Council may, by by-laws, delegate *some* of its rights, powers and obligations to the Executive Committee⁶ as well as to the Director General, Deputy Directors General and senior staff.⁷
10. The *Education Act* provides that the day-to-day administration of the school board shall be under the jurisdiction of the Executive Committee, which shall also exercise the other powers conferred upon it by the by-laws.⁸
11. The Council has in fact delegated certain powers to the Executive Committee and to the Director General, Deputy Directors General and senior staff, as detailed in the *Functions and Delegation of Powers By-law No. 7*.
12. In general, the principal responsibilities of the Council of Commissioners are similar to those of a board of directors of a corporation: they relate to oversight, strategic planning and corporate policy.⁹ The Council is not responsible for operational matters, which are the responsibility of management.
13. The members of the Council of Commissioners are required to exercise their power with competence (or skill) and diligence in the best interests of the Cree School Board. They owe a “fiduciary duty” towards the Board. The duty is a “fiduciary” duty because the

² Sections 568-599.

³ Section 571.

⁴ CCQ, art. 335.

⁵ *Education Act*, s. 184.

⁶ *Education Act*, s. 185.

⁷ *Education Act*, s. 187.

⁸ *Education Act*, s. 186.

⁹ Industry Canada, *Primer for Directors of Not-for-Profit Corporations*, 2002, p. 14.

obligation to act in the best interests of the School Board, at its core, is an obligation of loyalty, honesty and good faith.¹⁰

14. Commissioners should make decisions affecting the School Board based on a full consideration of all appropriate material and on the advice of professionals where required. They should ensure oversight of all aspects of the School Board's operations. As noted above, the Commissioners may delegate certain functions to senior management, but must maintain a supervisory role.¹¹
15. The duty of diligence implies that Commissioners should attend meetings of the Council whenever reasonably possible. In this respect, section 4.11e) of General By-Law No. 1 provides that the office of a Commissioner shall automatically be terminated, if, without a valid reason, a Commissioner does not attend three consecutive meetings, with at least a seven day interval between each such meeting..
16. Commissioners should be thoroughly informed about any decisions the Council has to make and ensure that they are provided in a timely manner before the Council meeting with all relevant documents, including agreements, financial reports and information, legal opinions and other information necessary to make knowledgeable and informed decisions at the Council meeting.¹²
17. The duty of diligence also implies that the Commissioners should
 - (a) exercise independent judgement when voting on all School Board decisions, and not simply vote with the majority for no well-informed reason;
 - (b) carefully review all reports relating to the School Board's financial affairs, including interim and year-end financial statements;
 - (c) with the assistance of senior staff, carefully review and participate in formulating the annual budget and strategic plan;
 - (d) require senior management to provide them with any ongoing operational and program information;

¹⁰ *Ibid.*, p. 14.

¹¹ *Ibid.*, p. 17.

¹² *Ibid.*, pp. 17-18.

- (e) monitor the day-to-day management of the Executive Committee; and,
 - (f) monitor and supervise the chief staff person and regularly assess his or her performance;
 - (g) be aware of all internal policies affecting the organization and ensure that certain key policies are in place (such as a conflict of interest policy); and,
 - (h) be aware of the laws affecting the corporation and obtain necessary legal and accounting advice.
18. In September 2019, further to certain governance problems experienced at the English Montreal School Board, the Ministry of Education published a *Final Investigation Report on the Governance and Management of the English-Montreal School Board*¹³ (Report) further to certain governance problems experienced at that school board.
19. The Report relates to a specific school board governed by the *Education Act* of general application,¹⁴ not the *Education Act* applicable to the Cree School Board.¹⁵ Nevertheless, much of the Report's analysis and observations regarding the governance of a school board, and the respective roles of the council of commissioners and of senior management, appears broadly relevant for the Cree School Board. Certain extracts of the Report are presented in translation in the Schedule at the end of this document.

IV. SPECIFIC RESPONSIBILITIES OF COUNCIL

20. The specific responsibilities of the Council of Commissioners of the Cree School Board as an institution of Cree self-government in education and as a statutory public corporation include the following:
- (a) oversight, having due regard to the responsibility of management for current operations;

¹³ Ministère de l'Éducation et de l'Enseignement supérieur, *Rapport d'enquête final sur la gouvernance et l'administration de la Commission scolaire English-Montréal*, septembre 2019 (http://www.education.gouv.qc.ca/fileadmin/site_web/documents/publications/Rapport_final_CSEM_Caviar_de_2019-11-06.pdf).

¹⁴ CQLR, c. I-13.3.

¹⁵ CQLR, c. I-14.

- (b) accountability to the Cree Nation, to Cree parents and students and to government funding agencies in respect of:
 - (i) performance indicators;
 - (ii) management of resources, including procurement and contracting;
- (c) adoption of strategic plan;
- (d) adoption and amendment of by-laws;
- (e) annual budget approvals (capital, operations, debt);
- (f) approval of capital plan;
- (g) specific major capital project approvals;
- (h) approval of annual report and financial statements;
- (i) management reporting;
- (j) human resource policies and succession planning;
- (k) delegations of authority to senior management;
- (l) evaluation of senior management; and
- (m) risk management policies.

V. BOARD GOVERNANCE BY-LAWS AND POLICIES

A. GOVERNANCE BY-LAWS

1. *Consolidated General By-law No. 1*
2. *Functions and Delegation of Powers By-law No. 7*
3. Other By-laws

B. GOVERNANCE POLICIES

[TBD]

C. GOVERNANCE TOOLS

[TBD]

D. MANAGEMENT POLICIES

[TBD]

VI. REVIEW

21. This Governance Framework, and each of its related governance policies and tools, shall be reviewed at least every three years.

* * * * *

SCHEDULE

[OFFICE TRANSLATION]

EXTRACTS FROM

FINAL INVESTIGATION REPORT ON THE GOVERNANCE AND MANAGEMENT OF THE ENGLISH-MONTREAL SCHOOL BOARD¹⁶

The Chairperson must see to the proper functioning of the school board and ensure that the laws, regulations and decisions of the Council are implemented impartially while respecting the roles and responsibilities of everyone. [...]

To ensure the proper functioning of the school board, the Chairperson may verify the work performed by the Director General and inquire into operations. Their role is not to encroach on the powers of management employees who implement the decisions of the Council, nor to dictate conduct to anyone, but simply to ensure that everything is applied in accordance with laws, regulations and Council decisions. [...]

The Chairperson must ensure the proper functioning of the school board through the Director General, who is responsible, under the law, to ensure good management and to implement Council decisions. The Chairperson cannot tell the Director General what to do or take decisions for them. The implementation by the Director General must be impartial. They have, however, the choice of the means to achieve the result desired by the Commissioners. In summary, the Chairperson ensures proper operation by seeing to it that the Director General ensures proper functioning and does so correctly. This is a very rigorous oversight.

It is not desirable for the Chairperson to meet with managers on their own initiative. This should not be a regular, systematic or habitual way of doing things. If they do, they should notify the Director General or have entered into a prior operating agreement with the latter.

Decisions are made by the Council, by majority vote, and the Chairperson must follow the decisions even if they personally disagree. They cannot substitute their decision for that of the Council [...] The Council is sovereign.

The Director General is accountable to the Council of Commissioners, not to the Chairperson alone.

¹⁶ Ministère de l'Éducation et de l'Enseignement supérieur, *Rapport d'enquête final sur la gouvernance et l'administration de la Commission scolaire English-Montréal*, septembre 2019, pp. 48-50 (http://www.education.gouv.qc.ca/fileadmin/site_web/documents/publications/Rapport_final_CSEM_Caviar_de_2019-11-06.pdf).

Best Governance Practices

Governance is the set of responsibilities and practices exercised by the [Council of Commissioners] and management to ensure that the objectives are achieved, that the risks are identified and managed and that resources are properly used.

Governance refers mainly to the relationships between the members of an organization, its board of directors, management and other stakeholders. Although a school board is governed by a council made up of elected commissioners, their functions are similar to those of a board of directors. Best governance practices therefore find their relevance in the school context.

Good governance is characterized, first and foremost, by its effectiveness, *i.e.* its ability to achieve the goals that have been set. It meets criteria of transparency, integrity and accountability. It provides strategic guidance and oversight of the management of an organization by relying on an independent, loyal, competent and ethical board of directors. [...]

Governance Roles and Responsibilities

The main role of the Council is not to carry out the day-to-day management of an organization, but to *ensure that the organization is well managed* and that it is heading in the direction desired.

To ensure that the organization is well managed, the Council must first ensure that it recruits and retains a chief executive, the Director General in the case of a school board, who is strong and competent, able to recruit senior collaborators who are experienced and able to provide appropriate leadership at all levels of the organization. The Council must also oversee the management of resources and require a proper accounting from the senior management.

To ensure the strategic control of the organization, the Council is required to question and approve a vision for the organization, a strategic plan, and to oversee the implementation of the action plan proposed by the senior management to achieve the objectives defined.

The commissioners are considered as mandataries of the organization, and they have the duty to act in the higher interest of the organization. They must not delegate the general responsibility that they have to direct the organization, but should delegate sufficiently, or assign certain functions, to the management of the organization so as to avoid interfering in the day-to-day management. They should therefore keep their supervisory role over the management's performance in the tasks assigned to it. The members of the Council have the duty to act with prudence and diligence.

Scope of Intervention of a Council	
Strategic Planning	Management Reports
Risk Management	External Communications Policy
Integrity of Information Systems	Evaluation of Management
Integrity of Control Systems	Remuneration of Management
Protection of Personal Information	Crisis Management

**CREE SCHOOL BOARD
GOVERNANCE COMMITTEE
TERMS OF REFERENCE**

MARCH 2021

I. ESTABLISHMENT

1. It is proposed that the Council of Commissioners of the Cree School Board shall formally establish, by by-law, a Governance Committee (“**Committee**”) as an advisory committee reporting to the Council of Commissioners.

II. COMPOSITION

2. The Committee shall be composed of the following persons:
 - (a) Chairperson of the Council of Commissioners, *ex officio*;
 - (b) Two other members of the Council of Commissioners designated by it and to serve at the pleasure of the Council of Commissioners;
 - (c) Director General, *ex officio*.

III. FRAMEWORK

3. The governance and legislative framework of the Cree School Board includes the following instruments:
 - (a) the *James Bay and Northern Québec Agreement*, including Section 16, Cree Education;
 - (b) the *Education Act for Cree, Inuit and Naskapi Native Persons*, CQLR, c. I-14, and related regulations;
 - (c) Cree values, practices, customs and traditional approaches in education and learning;
 - (d) other laws and regulations of Québec relating to education and the governance of public bodies;

- (e) the by-laws, policies, procedures and guidelines of the Cree School Board, with special reference to
 - (i) *Consolidated General By-law No. 1*;
 - (ii) *Functions and Delegation of Powers By-law No. 7*;
- (f) the *Strategic Action Plan* of the Cree School Board;
- (g) the *Budgetary Rules of the Cree School Board* concluded with the Government of Québec as represented by the ministère de l'Éducation et de l'Enseignement supérieur and approved by the Conseil du Trésor;
- (h) other agreements with the Government of Québec and the Government of Canada;
- (i) best practice in the governance of school boards and other public bodies in Quebec and other relevant jurisdictions.

IV. MANDATE

- 4. The mandate of the Committee shall be to provide advice and recommendations to the Council of Commissioners regarding good governance of the Cree School Board within the framework mentioned in section 3, including the following elements:
 - (a) the revision or amendment, where appropriate, of the instruments mentioned in section 3, working in collaboration with any special advisor designated by the Council from time to time;
 - (b) the development and maintenance of effective governance of the Cree School Board, having regard, in particular, to
 - (i) the elements mentioned in section 5;
 - (ii) accountability and transparency;
 - (iii) Code of Conduct and conflict of interest;
 - (c) initial orientation and continuing training of Commissioners with a view to enabling them to fulfill their legal and fiduciary responsibilities, with special reference to the instruments mentioned in section 3;
 - (d) assessment of the Council's strengths and challenges and means to optimize Council effectiveness;

- (e) such other matters as the Council of Commissioners may refer to it from time to time.
5. More particularly, the Committee shall provide the Council of Commissioners with advice and recommendations regarding the respective roles and responsibilities of the Council of Commissioners, the Executive Committee and senior management, having regard to
- (a) the governance framework mentioned in section 3;
 - (b) the essential functions of the Council of Commissioners of the Cree School Board as an institution of Cree self-government in education and as a statutory public corporation, including:
 - (i) oversight, having due regard to the responsibility of management for current operations;
 - (ii) accountability to the Cree Nation and to government funding agencies in respect of:
 - A. performance indicators;
 - B. management of resources, including procurement and contracting;
 - (iii) adoption of strategic plan;
 - (iv) adoption and amendment of by-laws;
 - (v) annual budget approvals (capital, operations, debt);
 - (vi) approval of capital plan;
 - (vii) specific major capital project approvals;
 - (viii) approval of annual report and financial statements;
 - (ix) management reporting;
 - (x) human resource planning;
 - (xi) delegations of authority to senior management;
 - (xii) evaluation of senior management; and
 - (xiii) risk management policies.

V. PROCESS

6. The Committee shall, in its internal deliberations, function by consultation and consensus.
7. In carrying out its mandate, the Committee shall, at the direction of the Council of Commissioners, consult with the Grand Council of the Crees (Eeyou Istchee), the Cree Nation Government and the Cree First Nations of Eeyou Istchee.
8. The Committee may also consult interested stakeholders, including, where appropriate, the following:
 - (a) parents committees in the Cree communities served by the Cree School Board;
 - (b) senior management staff of the Cree School Board;
 - (c) teaching staff of the Cree School Board;
 - (d) other interested persons and bodies.

VI. SUPPORT

9. The Committee may, with the approval of the Council of Commissioners, call upon such technical, management, financial and legal support and advisors as it may deem appropriate to assist it in carrying out its mandate.
10. The Cree School Board shall provide the Committee with the administrative and logistical support it requires to carry out its mandate.

VII. REPORTS

11. The Committee shall report to the Council of Commissioners on its deliberations and recommendations at least once every three months or at such specific times as the Council of Commissioners may indicate.