

York Region District School Board

Governance Session

Monday, April 3, 2017

COMPENDIUM OF LEGISLATION

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EDUCATION ACT

PART VI • BOARDS

s. 218.1 – Duties of Board Members

Duties of board members

218.1 A member of a board shall,

- (a) carry out his or her responsibilities in a manner that assists the board in fulfilling its duties under this Act, the regulations and the guidelines issued under this Act, including but not limited to the board's duties under section 169.1;
- (b) attend and participate in meetings of the board, including meetings of board committees of which he or she is a member;
- (c) consult with parents, students and supporters of the board on the board's multi-year plan under clause 169.1 (1) (f);
- (d) bring concerns of parents, students and supporters of the board to the attention of the board;
- (e) uphold the implementation of any board resolution after it is passed by the board;
- (f) entrust the day to day management of the board to its staff through the board's director of education;
- (g) maintain focus on student achievement and well-being; and
- (h) comply with the board's code of conduct. 2009, c. 25, s. 25.

s. 218.2(1) – Code of Conduct

Code of conduct

218.2 (1) A board may adopt a code of conduct that applies to the members of the board. 2009, c. 25, s. 25.

s. 218.4 – Duties of Board Chair

Additional duties of chair

218.4 In addition to any other duties under the Act, the chair of a board shall,

- (a) preside over meetings of the board;
- (b) conduct the meetings in accordance with the board's procedures and practices for the conduct of board meetings;
- (c) establish agendas for board meetings, in consultation with the board's director of education or the supervisory officer acting as the board's director of education;
- (d) ensure that members of the board have the information needed for informed discussion of the agenda items;

- (e) act as spokesperson to the public on behalf of the board, unless otherwise determined by the board;
- (f) convey the decisions of the board to the board's director of education or the supervisory officer acting as the board's director of education;
- (g) provide leadership to the board in maintaining the board's focus on the multi-year plan established under section 169.1;
- (h) provide leadership to the board in maintaining the board's focus on the board's mission and vision; and
- (i) assume such other responsibilities as may be specified by the board. 2009, c. 25, s. 25.

PART XI • SUPERVISORY OFFICERS

s. 283(1) – Chief Executive Officer

Chief executive officer

283. (1) A board shall not appoint or employ a person as a director of education unless the person is a supervisory officer who qualified as such as a teacher. 1997, c. 31, s. 124.

Same

(1.1) A director of education is the chief education officer and the chief executive officer of the board by which he or she is employed. 1997, c. 31, s. 124.

Idem

(2) The chief executive officer of a board shall, within policies established by the board, develop and maintain an effective organization and the programs required to implement such policies. R.S.O. 1990, c. E.2, s. 283 (2).

General report of chief executive officer

(3) At the first meeting in December of each year, the chief executive officer of a board shall submit to the board a report in a format approved by the Minister on the action he or she has taken during the preceding 12 months under subsection (2) and a copy of such report shall be submitted to the Minister on or before the 31st day of January next following. R.S.O. 1990, c. E.2, s. 283 (3).

s. 283.1(1) – Additional Duties of Director of Education

Additional duties of director of education

283.1 (1) In addition to his or her other duties under this Act, the director of education shall,

- (a) annually review with the board the multi-year plan developed under clause 169.1 (1) (f);
- (b) ensure that the multi-year plan developed under clause 169.1 (1) (f) establishes the board's priorities and identifies specific measures and resources that will be applied

in achieving those priorities and in carrying out its duties under this Act, in particular, its responsibility for student achievement as set out in section 169.1;

- (c) implement and monitor the implementation of the multi-year plan developed under clause 169.1 (1) (f);
- (d) report periodically to the board on the implementation of the multi-year plan developed under clause 169.1 (1) (f);
- (e) act as secretary to the board;
- (f) immediately upon discovery bring to the attention of the board any act or omission by the board that in the opinion of the director of education may result in or has resulted in a contravention of this Act or any policy, guideline or regulation made under this Act; and
- (g) if a board does not respond in a satisfactory manner to an act or omission brought to its attention under clause (f), advise the Deputy Minister of the Ministry of the act or omission. 2009, c. 25, s. 47.

References to secretary

(3) A reference in this Act or any other Act, or in the regulations made under this or any other Act, to the secretary of a board is deemed to be a reference to the director of education of the board. 2009, c. 25, s. 47.

PART VII • COMPLIANCE WITH BOARD OBLIGATIONS

s. 230 — Investigation, Board Compliance with Certain Requirements

Investigation, board compliance with certain requirements

230. The Minister may direct an investigation of a board's affairs if the Minister has concerns that the board may have done or omitted to do something and the act or omission,

- (a) contravenes, indicates an intention to contravene or might result in a contravention of paragraph 2 [course of study] or 3 [courses and areas of study] of subsection 8 (1) or of a regulation made under section 11.1 [Regulations re Provincial Interest] or 170.1 [Class Size];
- (b) makes, indicates an intention to make, or may result in the making of a payment of a type governed by section 191 [honoraria] or 191.2 [travel and other expenses] that does not comply with section 191 or a regulation made under it, or section 191.2, as the case may be; or
- (c) applies funds, indicates an intention to apply funds or may result in the application of funds in a manner that contravenes a regulation made under section 234 [Legislative grants]. 2006, c. 10, s. 20.

PART IX • FINANCE (Division D)

Supervision of Boards' Financial Affairs

s. 257.30(1) – Investigation of Board's Financial Affairs

Investigation of board's financial affairs

- 257.30** (1) The Minister may direct an investigation of the financial affairs of a board if,
- (a) the financial statements of the board for a fiscal year, or the auditor's report on the statements, required to be submitted to the Ministry under section 252, indicate that the board had an accumulated deficit for that year;
 - (a.1) the board was required under subsection 257.29.1 (1), (2) or (4) to submit a financial recovery plan to the Minister within the time specified by the Minister and the board failed to do so;
 - (a.2) the board was required under subsection 257.29.1 (3) to comply with a financial recovery plan and the board failed to do so;
 - (a.3) the board was required to comply with a regulation made under subsection 257.29.1 (5) and the board failed to do so;
 - (b) the board has failed to pay any of its debentures or instruments prescribed under clause 247 (3) (f) or interest on them, after payment of the debenture, instrument or interest is due and has been demanded;
 - (c) the board has failed to pay any of its other debts or liabilities when due and default in payment is occasioned from financial difficulties affecting the board; or
 - (d) the Minister has concerns about the board's ability to meet its financial obligations. 1997, c. 31, s. 113 (4); 2009, c. 34, Sched. I, s. 12 (1); 2010, c. 26, Sched. 5, s. 4 (1).

MUNICIPAL CONFLICT OF INTEREST ACT

s. 2 – Indirect Pecuniary Interest

Indirect pecuniary interest

2. For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

- (a) the member or his or her nominee,
 - (i) is a shareholder in, or a director or senior officer of, a corporation that does not offer its securities to the public,
 - (ii) has a controlling interest in or is a director or senior officer of, a corporation that offers its securities to the public, or
 - (iii) is a member of a body,
that has a pecuniary interest in the matter; or
- (b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter. R.S.O. 1990, c. M.50, s. 2.

s. 3 – Interest of Certain Persons Deemed that of Member

Interest of certain persons deemed that of member

3. For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member. R.S.O. 1990, c. M.50, s. 3; 1999, c. 6, s. 41 (2); 2005, c. 5, s. 45 (3).

s. 5 – Duty of Member

When present at meeting at which matter considered

5. (1) Where a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. R.S.O. 1990, c. M.50, s. 5 (1).

Where member to leave closed meeting

(2) Where the meeting referred to in subsection (1) is not open to the public, in addition to complying with the requirements of that subsection, the member shall forthwith leave the meeting or the part of the meeting during which the matter is under consideration. R.S.O. 1990, c. M.50, s. 5 (2).

When absent from meeting at which matter considered

(3) Where the interest of a member has not been disclosed as required by subsection (1) by reason of the member's absence from the meeting referred to therein, the member shall disclose the interest and otherwise comply with subsection (1) at the first meeting of the council or local board, as the case may be, attended by the member after the meeting referred to in subsection (1). R.S.O. 1990, c. M.50, s. 5 (3).

MUNICIPAL FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

s. 14(1) – Personal Privacy

Personal privacy

14 (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy. R.S.O. 1990, c. M.56, s. 14 (1).

s. 14(2) – Criteria re Invasion of Privacy

Criteria re invasion of privacy

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;

- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record. R.S.O. 1990, c. M.56, s. 14 (2).

s. 14(3) – Presumed Invasion of Privacy

Presumed invasion of privacy

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations. R.S.O. 1990, c. M.56, s. 14 (3).

s. 31 – Use of Personal Information

Use of personal information

31 An institution shall not use personal information in its custody or under its control except,

- (a) if the person to whom the information relates has identified that information in particular and consented to its use;
- (b) for the purpose for which it was obtained or compiled or for a consistent purpose; or
- (c) for a purpose for which the information may be disclosed to the institution under section 32 or under section 42 of the *Freedom of Information and Protection of Privacy Act*. R.S.O. 1990, c. M.56, s. 31.

ROLES AND RESPONSIBILITIES OF TRUSTEES

York Region District School Board

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“A clear understanding of a school board trustee’s role and responsibilities is fundamental to good governance.”

Good Governance: A Guide for Trustees,
School Boards, Directors of Education and
Communities (2010)

Legal Framework

- ◆ Under the *Constitution Act, 1867*, the Provincial Government has complete oversight over educational matters in Ontario.
- ◆ A school board is a corporate body.
- ◆ *Education Act* provides: “every district school board is a corporation and shall perform all the duties that are conferred or imposed on it under this or any other Act.”

Role of Trustees

- ◆ Elected to represent all stakeholders in the school district by articulating and supporting a shared commitment to excellence in public education.
- ◆ Promotes student achievement and well-being through the delivery of effective and appropriate education programs.
- ◆ Effective stewardship of the Board's resources.

YRDSB Trustees

Governors: Provide strategic direction, oversight and evaluation to ensure development and delivery of quality education programs.

Advocates: Inform and influence public perceptions and Provincial education law and policy.

Community Leaders: Engage with the public to build understanding, guidance and active support for public education.

Dignity of the Office

- ◆ Trustees shall discharge their duties loyally, faithfully, impartially and in a manner that will inspire public confidence in the abilities and integrity of the Board.
- ◆ Trustees shall recognize that the expenditure of school board funds is a public trust and endeavour to see that the funds are expended efficiently, in the best interests of the students.

Dignity of the Office (cont'd)

- ◆ Trustees shall be aware that as leaders of the Board, they must uphold the dignity of the office and conduct themselves in a professional manner, especially when attending Board and community events when acting in the capacity of trustee.
- ◆ Trustees shall ensure that their public comments are issue-based and not personal, demeaning or disparaging with regard to students, staff, fellow trustees or the Board as a whole.

Section 218.1(e) of the *Education Act*

- ◆ A Trustee must uphold the implementation of any board resolution after it is passed by the board.

Upholding Decisions

- ◆ All trustees shall accept that, he or she has no individual authority as a trustee other than that delegated by the Board.
- ◆ Each trustee shall uphold the implementation of any Board resolution after it is passed by the Board, in accordance with section 218.1(c), of the *Education Act*.
- ◆ A proper motion for reconsideration or rescission, if permitted by the Board's Operational By-Law, may be requested by a trustee.

Upholding Decisions (cont'd)

- ◆ A trustee must be able to explain the rationale for a resolution passed by the Board.
- ◆ A trustee may respectfully state his or her position on a resolution provided it does not in any way undermine the implementation of the resolution.

Spokesperson for the Board

- ◆ The Chair of the Board is the spokesperson to the public on behalf of the Board, unless otherwise determined by the Board.
- ◆ No other trustee shall speak on behalf of the Board unless expressly authorized by the Chair or Board of Trustees to do so.
- ◆ When individual trustees express their opinions in public, they must make it clear that they are not speaking on behalf of the Board.

Statutory Duties of School Boards under the *Education Act*

- ◆ Ensuring that schools within their jurisdiction operate according to the *Education Act*, its regulations, and other relevant legislation;
- ◆ Preparing the Board's annual budget and reporting the Board's expenditures to the community and the ministry;
- ◆ Effective use and management of resources entrusted to it in a manner that ensures delivery of effective and appropriate education while upholding public confidence;

Statutory Duties (cont'd)

- ◆ Creating and implementing Board policies;
- ◆ Determining the number, size and location of schools in the Board's jurisdiction;
- ◆ Determining school attendance boundaries; and
- ◆ Hiring professional staff and other staff to deliver educational services.

Complying with the *Education Act*

- ◆ All Trustees are expected to comply with the duties of board members set out in section 218.1 of the *Education Act*.

Duties of Trustees under section 218.1 of the *Education Act*

- ◆ Assisting the board in fulfilling its obligations under the *Education Act*;
- ◆ Attending and participating in board and committee meetings;
- ◆ Bringing the concerns of their constituents to the attention of the board;
- ◆ Consulting parents, students and supporters of the board about the board's multi-year plan;

Duties of Trustees under the *Education Act* (cont'd)

- ◆ Entrusting the day-to-day management of the board to its staff through the director of education;
- ◆ Maintain focus on student achievement and well-being through development of policies; and
- ◆ Complying with the board's code of conduct.

Duties of Board Chair

- ◆ Preside over meetings of the Board;
- ◆ Conduct the meetings in accordance with the Board's procedures and practices for the conduct of Board meetings;
- ◆ Establish agendas for Board meetings, in consultation with the Board's Director of Education;

Duties of Board Chair (cont'd)

- ◆ Ensure that members of the Board have the information needed for informed discussion of the agenda items;
- ◆ Act as spokesperson to the public on behalf of the Board, unless otherwise determined by the Board;
- ◆ Convey the decisions of the Board to the Board's Director of Education;

Duties of Board Chair (cont'd)

- ◆ Provide leadership to the Board in maintaining the Board's focus on the multi-year plan established under section 169.1;
- ◆ Provide leadership to the Board in maintaining the Board's focus on the Board's mission and vision; and
- ◆ Assume such other responsibilities as may be specified by the Board.

Director of Education

- ◆ The position of the Director of Education is established by section 279 of the *Education Act*, which provides:

“Every district school board shall, subject to the regulations employ a supervisory officer as director of education and such other supervisory officers as it considers necessary to supervise all aspects of the program under its jurisdiction.”

Accountability under the *Education Act*

- ◆ Director of Education is established as chief executive officer and chief education officer of the Board [s. 283(1.1)];
- ◆ Chief executive officer of the Board shall, within the policies established by the Board, develop, implement and maintain an effective organization and programs required to implement such policies [s. 283(2)].

Additional Duties of the Director of Education

- ◆ Annually review with the Board the multi-year plan;
- ◆ Ensure that the multi-year plan developed under clause 169.1(1)(f) establishes the Board's priorities and identifies specific measures and resources that will be applied in achieving those priorities;
- ◆ Implement and monitor the implementation of the multi-year plan;
- ◆ Report periodically to the Board on the implementation of the multi-year plan;
- ◆ Act as secretary to the Board.

Director of Education (cont'd)

- ◆ In accordance with the provisions of the *Education Act*, the Director of Education is the only board official who reports directly to the Board of Trustees.
- ◆ All other Board staff, including supervisory officers, report to the Director of Education.
- ◆ The Board exercises its responsibility for the management of the Board and the engagement of its staff through the Director of Education.

Reviewing the Director of Education

- ◆ The Board of Trustees is responsible for recruiting, selecting and reviewing the performance of the Director of Education.
- ◆ Usually this review is performed on an annual basis at the same time as the review of a Board's multi-year plan.

Review may include the following duties:

- ◆ Develop and maintain an effective organization and the programs.
- ◆ Ensure that the multi-year plan establishes the Board's priorities and identifies specific measures and resources that will be applied in achieving those priorities.
- ◆ Implement and monitor the implementation of the multi-year plan.
- ◆ Report periodically to the Board of Trustees on the implementation of the plan.
- ◆ Act as secretary to the Board of Trustees.

Supervisory Officers

- ◆ Consistent with the hierarchical nature of school boards, supervisory officers are responsible to the corporate board through the Director of Education.
- ◆ Subsection 286(3) of the *Education Act* provides that “Every supervisory officer appointed by a board is responsible to the board through the chief executive officer for the performance of the duties assigned to the supervisory officer by the board.”

Duty to Attend Board Meetings

- ◆ Trustees have a duty to attend meetings of the Board of Trustees.
- ◆ Subsection 228(1)(b)(e) of the *Education Act* provides:
 - “A member of a board vacates his or her seat if he or she . . .
. . . absents himself or herself without being authorized by resolution entered in the minutes, from three consecutive regular meetings of the board.
. . . fails to meet the requirements of section 229”
- ◆ Subsection 229(1) of the Education Act states:
 - “ . . . a member of a board shall be physically present in the meeting room of the board for at least three regular meetings of the board in each 12-month period beginning December 1.”

Multi-Year Plan

- ◆ The *Education Act* requires Boards to develop multi-year plans to carry out their duties to deliver quality education, ensure students' well-being and act as stewards of resources.
- ◆ Such plans are developed with input from various stakeholders in the Board and surrounding communities, and are intended to set out clear strategies and priorities to be carried out through the governance of the Board of Trustees.
- ◆ This plan must be reviewed annually with the Director of Education and made publicly accessible.

In-Camera Meeting

- ◆ The *Education Act* establishes a number of circumstances in which meetings are closed to the public or *in camera*.
- ◆ A meeting of a committee of the Board of Trustees as well as a committee of the whole of the Board may be closed to the public where the subject under consideration involves:
 1. The security of the property of the Board;

In-Camera Meeting (cont'd)

2. The disclosure of intimate, personal or financial information in respect of a member of the Board or committee, an employee or prospective employee of the Board or a pupil or his or her parent;
3. The acquisition or disposal of a school site;
4. Decisions in respect of negotiations with employees of the Board;
5. Litigation affecting the Board; or
6. An ongoing investigation of the Board by the Office of the Ontario Ombudsman.

Respect for Confidentiality

- ◆ Every trustee shall keep confidential any information disclosed or discussed at any private meeting of the Board, in accordance with section 207(2), of the *Education Act*, and keep confidential the substance of deliberations of a private meeting, unless required to divulge such information by law or authorized by the Board to do so.
- ◆ No trustee shall use confidential information for either personal gain, to the detriment of the Board, or that undermines confidence in public education.

Confirmation at a Public Meeting

- ◆ Where a committee of the Board does proceed *in camera*, any decision made by that committee will have to be confirmed by the entire Board at a public meeting in a formal resolution.
- ◆ A committee of the Board may conduct private or *in camera* sessions.
- ◆ However, to effectively transact business of the Board, the committee must report to the entire Board in a public session.

Avoidance of Conflict of Interest

- ◆ Expected to comply with the *Municipal Conflict of Interest Act*.
- ◆ Trustees are not permitted to vote on or discuss matters in which they have a direct or indirect pecuniary interest.
- ◆ The direct or indirect pecuniary interest of a parent, spouse or child is deemed to be the interest of the trustee.

Conflict of Interest, Direct or Indirect

1. Prior to any consideration of the matter, disclose the interest.
2. Not take part in the discussion of, or vote on any question in respect of the matter.
3. Not discuss the issue with any other person.

Conflict of Interest (cont'd)

4. Not attempt in any way whether before, during or after the meeting to influence the voting on such question.
5. Leave the meeting or the part of the meeting during which the matter is under consideration.

Recorded in Minutes of Board Meeting

- ◆ When the meeting is open to the public, every declaration of interest shall be recorded in the minutes of the board meeting.
- ◆ When the meeting is not open to the public, the declaration of interest shall be recorded in the minutes of the next board meeting open to the public.

Disclosure of Conflict

- ◆ Every trustee is responsible and accountable for exercising good judgment and avoiding situations that might present a conflict of interest.
- ◆ Where a conflict of interest might exist each trustee has an affirmative duty to disclose such conflict when it becomes apparent.

Avoidance of Personal Advantage and Conflict of Interest

- ◆ No trustee shall accept a gift from any person or entity that has dealings with the Board if a reasonable person might conclude that the gift could influence the trustee when performing his or her duties to the Board.

Cannot Use Your Office to Advance Your Interests

- ◆ A trustee shall not use his or her office to advance his or her interests or the interests of any family member or person or organization with whom or with which the trustee is related or associated.
- ◆ No trustee shall use his or her office to obtain employment with the Board for the trustee or a family member.

Bill 68

- ◆ On November 16, 2016, Ontario legislators introduced the *Modernizing Ontario's Legislation Act, 2016*.
- ◆ Bill 68 proposed amendments to 16 pieces of legislation – including significant changes to the law's approach on both actual and potential conflicts of interest by public officials under the *Municipal Conflict of Interest Act*.

Notable amendments that will affect Boards include:

- ◆ Trustees who declare a conflict of interest would be required to file a written statement disclosing their interest, including a description of its general nature;
- ◆ Boards would be required to maintain registries where copies of such statements may be publicly accessed;
- ◆ Any person reviewing such documents or other information – not just an elector – would be entitled to have a judge determine whether a trustee has acted contrary to the *Municipal Conflict of Interest Act*,

Amendments will also include:

- ◆ Judges would have new discretion to consider reasonable measures taken by trustees to prevent contravention of the *Municipal Conflict of Interest Act*, including consultation with an Integrity Commissioner, when determining the type of penalty to be applied for contravention; and

Amendments will also include: (cont'd)

- ◆ Corresponding to the above discretion to take mitigating factors into account, judges would be able to impose penalties short of outright removal for trustees found to have contravened the *Municipal Conflict of Interest Act*, including a reprimand or a suspension lasting up to 90 days.

Municipal Freedom of Information and Protection of Privacy Act

- ◆ The two main objectives of MFIPPA as it applies in a school context are:
 - To provide the public with a right of access to information in the possession and control of a Board; and
 - To protect the privacy of individuals, such as students, teachers or principals, with regard to personal information about themselves that is held by a school or Board.

Records

- ◆ The Act establishes a right of access to existing “records” in the custody or under the control of an institution.
- ◆ The term “record” is defined in the Act to include any record of information however recorded.
- ◆ It includes correspondence, minutes, reports, photographs and computer tapes and any other recorded information regardless of medium or format.

Act does not apply to oral comments

- ◆ An access request under this legislation only applies to records or recorded information in the custody or under the control of a Board.
- ◆ Therefore, it is important to recognize that an access request does not apply to any oral comments, discussions or deliberations.

Access Request

- ◆ Under the Act, any person may make a request for information held by a Board.
- ◆ The Act sets out a procedure for handling such requests.
- ◆ Requests for information are made to “heads” of institutions
- ◆ At YRDSB the head of the institution is the Director of Education

Duty of the Head

- ◆ The head is responsible for administering the Act, ensuring proper procedures are taken to preserve records, and for complying with the access and privacy provisions of the Act.
- ◆ The duties of a head include responding to access requests, adhering to time limits and notice requirements, and making decisions about the disclosure of records.

Personal Information

- ◆ Under the MFIPPA, an individual has *prima facie* right of access to any “personal information” about himself or herself in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to order it reasonably retrievable by the institution.
- ◆ “Personal information” is defined in the Act as recorded information about an identifiable individual.

Personal Information (cont'd)

- ◆ Such personal information can include recorded views or opinions of other individuals about an employee or prospective employee.
- ◆ Personal information includes an individual's name, his or her address and any information related to his or her education.
- ◆ Trustees should be alert to the fact that any personal information that they gather, whether related to a student, parent or other individual, will fall within the scope of the MFIPPA.

Disclosure of Personal Information

- ◆ Personal information regarding students and staff in the custody of the Board may not be disclosed except in specific circumstances. The MFIPPA provides:
 - “A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information
 - . . . relates to employment or educational history.”
- ◆ The general prohibition, and the enumerated exemptions, apply to personal information in the care and under the custody of trustees.

When a Board may disclose a record

- ◆ Section 32 of the MFIPPA establishes circumstances when a Board may disclose a record or other personal information.
- ◆ The most relevant exemptions for educators are:
 - if the person to whom the information relates has identified that information in particular and consented to its disclosure;

When a Board may disclose a record (cont'd)

- for the purpose for which it was obtained or for a consistent purpose;
- if the disclosure is made to an officer, employee, consultant or agent of the Board who needs the record in the performance of their duties and if disclosure is necessary and proper in the discharge of the Board's function;
- for the purpose of complying with an Act of the Legislature or an Act of Parliament;

When a Board may disclose a record (cont'd)

- to the Ontario Provincial Police or other law enforcement institution or agency in Canada to aid in an investigation with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- in compelling circumstances affecting the health and safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates; and
- in compassionate circumstances, to facilitate contact with a spouse, close relative or a friend of an individual who is injured, ill or deceased.

Impact on Trustees

- ◆ Trustees should recognize that their notes, e-mails and other records created by them may be subject to disclosure requests under the MFIPPA.
- ◆ Trustees should be careful in preparing written records and always bear in mind that these records may not always be confidential.

Impact on Trustees (cont'd)

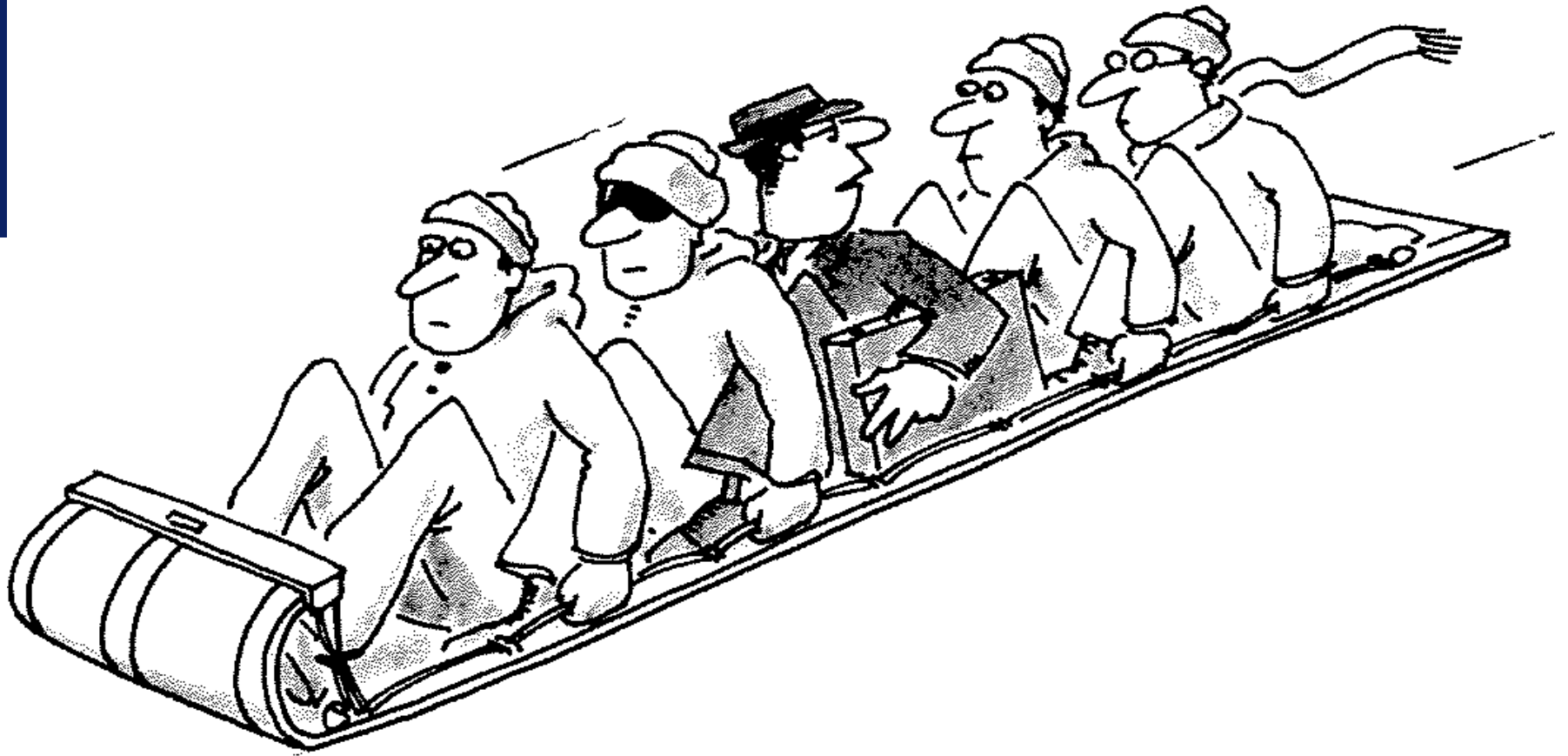
- ◆ Access for information requests are frequently made by the media or other organizations interested in public education.
- ◆ Given the public nature of the role of the trustee, documents created by trustees should avoid personal invective, rumour or inflammatory statements.

Role of YRDSB Trustee

- ◆ It is important to recognize the public trust and responsibility the collective body carries and that this trust and responsibility is honoured through determining and enforcing norms of acceptable behaviour.
- ◆ Trustees are responsible for upholding the Mission, Vision and Values of the Board.

“You must be the change you wish to see in the world.”

Mahatma Gandhi



“Look, I’m not saying it’s going to be today. But someday - someday - you guys will be happy that you’ve taken along a lawyer.”

Thank You!

TOR01#6763781

ROLES AND RESPONSIBILITIES OF TRUSTEES
YORK REGION DISTRICT SCHOOL BOARD

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INTRODUCTION

Trustees of the York Region District School Board (the “YRDSB”) play a multi-faceted role in public education. As recognized by the Ontario Public School Boards’ Association and other trustee associations in *Good Governance: A Guide for Trustees, School Boards, Directors of Education and Communities*, trustees are policy makers, advocates and financial guardians of public funds. Trustees are accountable in their roles to their constituents, students and staff, the provincial government and the public at large. Trustees are community leaders, dedicated to acting in the best interest of the YRDSB.

The primary function of the board of trustees is to establish policies by which the schools are to be administered. The administration of the educational program and the day-to-day operation of the school is, in turn, left to the staff under the guidance of the Director of Education and the Superintendents of Education. Policy decisions may only be made after full discussion and debate at committee or meetings of the board of trustees and after the board of trustees has adopted a resolution enacting the policy. Once a resolution is enacted, individual trustees are bound by the decision. They must work with other trustees and staff to promote and implement that policy.

In balancing their roles and responsibilities, trustees are guided and constrained by their duties and obligations. Trustees must, at all times, act in the best interest of the School Board and in compliance with the law. Trustees must avoid conflicts of interest, both pecuniary and personal, and strive to build and acknowledge consensus.

The purpose of these guidelines is to assist trustees in understanding their various duties and roles as well as to provide trustees with an overview of the legal framework that impacts public education in Ontario.

THE LEGAL FRAMEWORK FOR EDUCATION IN ONTARIO

Provincial Oversight

Under the Canadian Constitution, the Provincial Government has complete oversight over educational matters in Ontario. The Supreme Court of Canada has repeatedly held that the province has unfettered power over the operation of school boards. Most recently, the Court has written:

“The Constitution gives the provincial government the plenary power over education in the province, and it is free to exercise this power however it sees fit in relation to the public school system.”

The Ministry of Education has the overall authority to determine the direction of education in Ontario. The Ministry sets curriculum and provides funding to school boards. The Ministry determines the overall direction through legislation, regulations and policy memoranda.

School Boards are Subject to Provincial Power

The corollary of the Province’s power to legislate in the area of education is that school boards are subject to and required to follow the law set down by the Province. The Supreme Court of Canada again has stated that school boards are a type of municipal institution and are delegates of provincial jurisdiction. School boards are bound to implement the law set out by the Province.

School Boards are Corporations

A School Board (“Board”) is a corporate body. The *Education Act* provides that “every district school board is a corporation and shall perform all the duties that are conferred or imposed on it under this or any other Act”. The corporate Board is a distinct legal entity from the board of trustees that oversees the Board’s policies.

Trustees are Members of the School Board

Under the *Education Act*, an individual trustee is referred to as a “member” of a Board. Individual trustees are part of the whole Board, and duties and powers are conferred under the *Education Act* on both the corporate Board and its individual trustees. Individual trustees’ duties include participation in meetings, upholding the implementation of resolutions and complying with their Board’s code of conduct. The Board as a whole must fulfill duties and exercise powers to uphold a responsibility for student achievement and effective stewardship of resources. The manner in which the Board fulfills its duties and exercises its powers is through resolutions passed at duly constituted meetings of Board members (i.e., the board of trustees).

The primary role of the Board members is to establish policies by which the schools are to be administered. The administration of the educational program and the day-to-day operation of the school is, in turn, left to the staff under the guidance of the Director of Education and the Superintendents of Education. Policy decisions may only be made after full discussion at committee or Board meetings.

Individual trustees do not have any independent authority. This means, for example, that a trustee may not enter a contract with a third party on behalf of the Board unless he or she has been properly delegated that authority by the Board.

The Board operates by majority rule. Once a decision has been adopted by the Board or a committee of the Board, individual trustees must abide by that decision. Trustees who disagree with a majority decision may enter a minority report, and they may inform their constituents of their opposition. However, once the vote has been decided, the new policy becomes the policy of the Board of Trustees and its implementation must be supported by all members of the Board.

DUTIES OF A SCHOOL BOARD

At law, duties are distinguished from powers by the fact that any person who has a legal duty is obligated to complete the duty. The legislation prescribes a penalty for a failure to carry out the duty. Duties are typically recognizable because legislation states that they “shall” be carried out. Powers, on the other hand, are those matters where legislation confers discretion on an individual to decide whether to take a particular action or make a particular decision. Persons who have a power under a statute are not obligated to carry out the power. Powers are typically recognizable because legislation states that they “may” be carried out.

In education, the individual trustees, director of education, principals, teachers, supervisory officers and Boards all have statutory duties prescribed by the *Education Act*.

Statutory Duties of School Boards Under the *Education Act*

The main duties of Boards are those established by the *Education Act*. These main duties include:

- ensuring that schools within their jurisdiction operate according to the *Education Act*, its regulations, and other relevant legislation;
- preparing the Board’s annual budget and reporting the Board’s expenditures to the community and the ministry;
- effective use and management of resources entrusted to it in a manner that ensures delivery of effective and appropriate education while upholding public confidence;
- determining the number, size and location of schools in the Board’s jurisdiction;
- determining school attendance boundaries; and
- hiring professional staff and other staff to deliver educational services.

The *Education Act* prescribes a range of duties. Every Board shall:

- provide instruction and adequate accommodation during each school year for the students who have a right to attend a school under the jurisdiction of the Board;
- operate kindergartens;
- in accordance with regulations, provide or enter agreements to provide special education programs and special education services for exceptional students;
- develop and implement a plan for the co-instructional activities in schools in accordance with Ministry guidelines;

- ensure that every school within the Board is operated in accordance with the *Education Act* and regulations;
- keep schools open during the school year, except where otherwise provided under the *Education Act*;
- appoint principals and an adequate number of teachers for each school;
- provide the textbooks that are required to be purchased under the regulations;
- establish a school council for each school operated by the Board; and
- do anything that a Board is required to do under any provision of the *Education Act* or under any other Act.

This is only a brief summary of some of the duties prescribed by law. Boards also have a duty to ensure that elementary and secondary teachers work the prescribed hours established by the *Education Act* and ensure that the classroom sizes, in the aggregate, do not exceed levels prescribed by regulation.

The *Education Act* makes trustees personally liable for the failure of a Board to comply with certain obligations. Where a Board contravenes specific duties prescribed by the *Education Act*, the provincial cabinet may make any order it deems necessary to vest control over the affairs of the Board in the Ministry of Education. This is an extreme power and one that must be understood by individual trustees. Where a Board contravenes, indicates an intention to contravene or does or omits to do something that may contravene the following provisions of the *Education Act*, the Minister may obtain a vesting order. Trustees will work with Board staff to ensure that the Board's duties are fulfilled.

POWERS OF A SCHOOL BOARD

As with duties, the *Education Act* prescribes the powers of a Board. These are the areas where a Board may (as opposed to shall) act.

The powers of Boards are extensive. A Board may:

- establish finance, education, personnel and property committees composed of Board members;
- determine the number and kind of schools to be established and maintained and establish the attendance area for each school;
- provide and operate playgrounds;
- operate junior kindergartens;
- establish and maintain school libraries and resource centres;
- permit the schools and school buses of the Board to be used by others for any lawful purpose;
- provide for the promotion and encouragement of athletics and for the holding of school games;
- provide activities and programs on or off school premises, including field trips;
- establish continuing education courses;
- provide courses for the teachers of the Board;
- operate cafeterias for students and staff;
- provide educational programs in detention centers, homes and hospitals;
- establish and operate day cares or day nurseries in schools; and
- require teachers to work during some or all of the five working days prior to the beginning of school.

It should be obvious from this list, which outlines only a fraction of the powers of a Board, that the powers of a Board are extensive. Indeed, many of these powers, such as the ability to operate cafeterias for students and staff, would appear to be self-evident. However, from a legal point of view, conferring powers on a Board is significant. If a power is not expressly conferred by legislation, school boards generally cannot carry out or perform the power. An example of this is in the area of finances. A Board may issue financial instruments and raise money only as

prescribed by the *Education Act*. A school may not, for example, hold or trade public securities. A Board is not expressly provided with such a power.

Accordingly, trustees must be careful to comply with the legal authority vested in a Board by the *Education Act* and other relevant statutes. When uncertain, the Board may, by resolution, request a formal legal opinion from legal counsel.

FINANCIAL AFFAIRS

Financial Stewardship

Boards receive funding from the Government of Ontario on the basis of a funding formula, and have a duty to act as stewards of these resources. In general, a Board will be able to finalize its budget in March of each year, when the Government of Ontario announces the Grant for Student Needs (GSN) that will apply to the year ahead.

In accordance with the Board's duty of financial stewardship, the board of trustees is required to develop a balanced budget that enables the Board to fulfill its duties and responsibilities to the community. A board of trustees may develop its own budget process. However, it is advisable for this process to be open and transparent, and for budgets to be approved at meetings that are open to the public.

Duty to Pass Balanced Budget

The *Education Act* requires Boards to set out the estimated revenues and expenses before each fiscal year. Boards shall ensure that they do not adopt estimates that would allow for an in-year deficit. Accordingly, a Board has a duty to approve a balanced budget each year.

The *Education Act* requires Boards to operate within balanced budgets. The failure to do so may have serious consequences for schools and students. Where a Board fails to comply with this obligation, the Ministry of Education may effectively seize control of the affairs and operation of the Board from the locally-elected trustees. Such a result may seriously undermine the entire school system, since local governance, conducted by trustees who understand the issues affecting schools and communities, is considered essential to a healthy system of public education.

Where an individual trustee fails to comply with an order by the Ministry or votes against such an order, that trustee is guilty of an offence and may be held personally liable by a court of competent jurisdiction.

The power of the Ministry with respect to vesting orders derives from the general provincial power over education. The removal of elected trustees may occur and, indeed, has occurred recently. The exercise by the Province of this extraordinary power has been upheld by the Ontario Divisional Court.

Investigation of Board's Financial Affairs

The Minister of Education may direct an investigation of a Board's financial affairs if:

- the financial statements of the Board or the auditor's report on those statements indicate that the board had an accumulated deficit for that fiscal year;
- the Board has failed to pay any of its prescribed debentures or instruments or interest on them after payment of the debenture, instrument or interest is due and has been demanded;

- the Board has failed to pay any of its other debts or liabilities when due and default in payment is occasioned from financial difficulties affecting the board; and
- the Minister has concerns about the Board's ability to meet its financial obligations.

The goal of the *Education Act* is to ensure that Boards do not engage in deficit financing. The final point provides the Minister with a very broad discretion to appoint an investigator to look into the financial affairs of a Board. Where the Minister has "concerns" about a Board's ability to meet its financial obligation, he or she has the authority to appoint an investigator. While the Minister must, no doubt, act reasonably and not arbitrarily in forming his or her concern, the express intention on the part of a Board to run a deficit or the actual approval of a deficit budget may provide a reasonable basis upon which the Minister may exercise his or her authority to appoint an investigator to review the financial affairs of the Board.

Powers of Investigator

The investigator has extensive powers to assist him or her in carrying out the investigation. An investigator may:

- require the Board to produce any records that may in any way relate to the financial affairs of the Board;
- examine and copy any of those records; and
- require any officer of the Board or any other person to appear before him or her and give evidence, under oath or affirmation, relating to the financial affairs of the Board.

An investigation, to some extent, has the same authority as a public inquiry. An investigator has the power to summons any individual to give evidence in the investigation. The investigator does not, however, have the authority to declare a person in contempt who fails to comply with the summons or refuses to produce a document or answer a question as required after appearing before the investigator. Contempt orders, and any punishment associated with those orders, may only be made by the Ontario Superior Court of Justice (Divisional Court) after that Court conducts an inquiry into the matter.

The investigator is required to prepare a written report for the Minister. The investigator may only recommend that the affairs of the Board be vested in the Ministry where the investigation discloses evidence:

- of financial default or probable financial default;
- of an accumulated deficit or probable accumulated deficit; or
- of serious financial mismanagement.

There is no definition of serious financial mismanagement in the Act. However, the intention of the legislation is meant both to correct financial default and deficits that have occurred and to prevent Boards from making any financial default or incurring any deficits.

Powers of the Minister

The Minister has certain powers on reviewing the investigator's report. Upon reviewing the investigator's report, the Minister may:

- give any directions to the Board that he or she considers advisable to address the financial affairs of the Board.

Only the provincial cabinet has the authority to make a vesting order. Such an order has sweeping effect. It vests in the Ministry of Education control and charge over the administration of the affairs of the Board. The provincial cabinet may make a vesting order in the following two instances:

- where the report prepared by the investigator recommends that control and charge over the affairs of the school should be vested in the Ministry; and
- where a Board has failed to comply with any direction given by the Minister.

In the event that the investigator's report recommends that control and charge over the administration of the affairs of the Board should be vested in the Ministry, the provincial cabinet may make any order that it considers necessary or advisable to vest in the Ministry control and charge over the administration of the affairs of the Board.

The Minister also has the power to make and issue orders. The Minister may make any orders that he or she considers advisable to carry out the provisions under the applicable division of the *Education Act* or any agreement made under the applicable division.

Directions and decisions made by the Minister or any vesting orders made by cabinet are expressly not subject to question or review by any court. Only the Minister may amend or revoke a direction, decision or order made by him or her. Similarly, only the provincial cabinet may amend or revoke a vesting order. While this is a very strongly worded bar against judicial intervention, it is likely that a court would reserve the right to review directions, decisions or orders where they were not authorized by the *Education Act* or where the Minister or cabinet acted arbitrarily or in bad faith.

Where a vesting order is in place, the Minister has control and charge over the exercise and performance by the Board of its powers, duties and obligations. In effect, the Minister, and his or her designates, replaces the trustees. Once a vesting order has been made, the powers and duties of a Board may only be exercised in accordance with and subject to the vesting order or any agreement. All actions taken by the Minister are deemed to be the actions of the Board.

The *Education Act* provides that, where a vesting order is made, there is significant control exercisable by the Minister. In the event a vesting order is made by the provincial cabinet, the Minister has control and charge over the Board generally with respect to any matter in any way affecting the Board's affairs.

Without limiting the power of the Minister, the *Education Act* sets out certain areas where the Minister may exercise power and control. They include:

- the appointment and dismissal of the Board's officers and employees and their powers, duties, salaries and remuneration;
- the Board's revenues and expenditures;
- the Board's sinking fund, retirement funds and any other funds and the money belonging to those funds;
- the Board's accounting and audit systems and dealings with the Board's assets, liabilities, revenues and expenditures;
- the financial statements of the board;
- the amounts to be provided for in the yearly or other estimates;
- the borrowing of money for the current expenditures of the board until the current revenue has been received;
- the imposition, charging and collection of all fees, charges and expenses; and
- the sale or other disposition of any of the Board's assets.

Although the focus in the enumerated matters is financial, the Minister's power is with respect to all the affairs of a Board. Once a vesting order is in place, nothing, except the Minister's discretion, prevents the Minister and his or her designates from introducing or amending existing policies related to such matters as safe schools or special education.

The *Education Act* also provides the Minister with sweeping powers to undo or alter the existing debt obligations of the Board. Those powers include the power to:

- consolidate all or any part of the Board's debt;
- issue instruments to satisfy the debt of the Board and require current debenture or instrument holders to accept these new debentures;
- vary the basis, terms, times and places of payment of the Board's debt; and
- with the approval of two-thirds of the Board's creditors, implement a plan to cancel interest in arrears or modify or compromise the rights of debenture or instrument holders or other creditors.

A Board that is subject to a vesting order has no access to or ability to deal with its money, except with the approval of the Minister. Where a Board attempts to act in contravention or defiance of the Minister or a vesting order, the Minister may apply to court for an injunction to restrain such action.

Offences, Penalties and Personal Liability

The *Education Act* imposes penalties on trustees who fail to comply with provisions of the Act. The *Education Act* requires trustees and Board employees to comply with the directions, decisions, and orders of the Minister in any matter relating to the affairs of the Board. Any such person who knowingly fails to comply with any such direction, decision or order, or who, as a member of the Board, votes contrary to such direction, decision or order, may be held personally liable by a court of competent jurisdiction.

If a Board that is subject to a vesting order applies any of its funds otherwise than as ordered or authorized by the Minister, the trustees who voted for the applications will be jointly and severally liable for the amount so applied, which amount may be recovered in a court of competent jurisdiction.

The *Education Act* provides that a Board will not indemnify any of its members, officers or employees with respect to any fine imposed or conviction for any offence under these provisions or with respect to a court finding of liability in the event of a legal action.

It should also be recognized that the Minister has the authority to dismiss from office any officer or employee of a board of trustees who fails to carry out any decision, direction or order of the Minister under these provisions and may exercise all the powers of the board of trustees for such purpose, under its name.

COLLECTIVE BARGAINING

Boards are employers. Approximately 85% of Board budgets and funding is dedicated to wages and benefits for its various employee groups. As employers, Boards have a legal responsibility for labour relations with unionized employees.

Bargaining Process

Collective bargaining briefs are generally developed in advance. Typically, the unions, having canvassed their members in the months leading up to negotiations, will present more proposals than the Board. Negotiations then involve the discussion, acceptance or rejection of those proposals. In conducting negotiations, the Board must consider government funding, comparable settlements and problems with existing provisions in the relevant collective agreement. Negotiations require a heavy time commitment

Confidentiality

Information respecting negotiations with employees must be kept strictly confidential. The *Education Act* expressly permits Boards to meet *in camera* where negotiations with employees are under discussion. In addition, information respecting labour negotiations is not subject to disclosure under the *Municipal Freedom of Information and Protection of Privacy Act*.

Confidentiality is a critical aspect of labour negotiations and must be respected by all trustees and staff. The employees' bargaining agent is no more entitled to confidential information respecting negotiation strategies and decisions of the Board than the Board is entitled to confidential information about the bargaining agent's positions. The process of successfully negotiating a collective agreement involves a complicated and often delicate give and take by both sides. Disclosure of confidential information not only undermines the Board's position but also disrupts the process and any progress that may have been made.

Legal Framework for Collective Bargaining

Collective bargaining between Boards and teachers is governed by the *Labour Relations Act, 1995*, the *Education Act*, and the *School Boards Collective Bargaining Act, 2014*. For non-teaching staff, the primary piece of legislation governing collective bargaining is the *Labour Relations Act, 1995*.

The *School Boards Collective Bargaining Act, 2014* provides for a 2-tier bargaining system between Boards and labour unions. This tiered system entails separate bargaining at central (i.e., Province-wide) and local (i.e., for each Board) tables.

Employer bargaining agencies have exclusive authority to represent the Boards during bargaining at a central table, to perform their duties under the *Labour Relations Act, 1995*, and to bind the Boards to central terms of their collective agreements. The other parties to central bargaining are (i) the labour union representing the employees; and (ii) the Provincial Crown, as represented by the Ministry of Education. The Crown's involvement is meant to help facilitate an

agreement between the parties and no memorandum of settlement of central terms can come into effect until agreed to by the Crown.

The first required task at the central table is for the parties to negotiate the determination of all items that would fall within the scope of central bargaining. Central items would include matters such as salaries, benefits and class size. Any item that was not agreed to as constituting a “central item” would become a “local item” and would be available for local bargaining. This negotiation of centrally-bargained items is repeated in each round of central bargaining.

Local negotiations are conducted between local representatives of a given Board and the local representation of its employees. The local union represents the employees while the Board represents the employer. These parties bargain on local issues through the process defined by the *Labour Relations Act, 1995*. Local issues typically include items like staffing, transfers, bulletin board postings, and pay schedules.

Issues that are agreed-upon at the central table will become part of the local collective agreement, in addition to whatever items are agreed-upon at the local table. In other words, the collective agreement in operation between any particular Board and its local union will consist both of terms that were agreed to at the central table, and terms that were agreed to at the local table. Accordingly, although central terms are not negotiated and agreed-upon through a local process, these terms nevertheless constitute part of the local collective agreement and may impact the scope and interpretation of the locally-negotiated terms.

The ratification of local terms is carried out by a separate vote from the ratification of central terms. Further, local terms cannot come into effect until *both* the central and local terms have been ratified. Accordingly, the effectiveness of local terms negotiated at any particular Board will directly *depend* on the ratification of central terms by a weighted majority of schools throughout Ontario.

Central terms applicable to the YRDSB are ratified by a vote of all Boards represented by the Ontario Public School Boards’ Association, with votes weighted to reasonably reflect, for each member Board, the size of the bargaining units containing employees at that Board. In order for central terms to come into effect, the Crown must also agree to these terms. Local terms are ratified according to the processes and procedures of local bargaining units, and the Crown does not play a role in such ratification.

The impact of the *Education Act* on negotiations means that certain matters may not be subject to negotiation. Boards and teachers’ unions may not bargain out of duties that are prescribed under the *Education Act*. For example, the parties may not negotiate a lower number of teaching hours than that prescribed under the statute. Such a provision in a collective agreement would not be enforceable. The *Education Act* ultimately prevails over any provision in a collective agreement.

What is a strike?

Under the *Labour Relations Act, 1995* a strike includes:

“ . . . a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding, or a slow-down or other concerted activity on the part of employees designed to restrict or limit output.”

This definition applies to non-teaching staff employed at the Board. It has limited application to teachers. For teachers, the definition of what constitutes a strike is, in fact, much broader. The *School Boards Collective Bargaining Act, 2014* provides this more encompassing definition. For teachers, a strike is defined as follows:

“ ‘strike’, in relation to a teachers’ bargaining unit, includes any action or activity by teachers in combination or in concert or in accordance with a common understanding that is designed or may reasonably be expected to have the effect of curtailing, restricting, limiting or interfering with,

- (i) the normal activities of a Board or its employees,
- (ii) the operation or functioning of one or more of a Board’s schools or of one or more of the programs in one or more schools of a Board, or
- (iii) the performance of the duties of teachers set out in the *Education Act* or the regulations under it,

including any withdrawal of services or work to rule by teachers acting in combination or in concert or in accordance with a common understanding.”

The definition of strike is intentionally broad. A strike will occur where teachers withdraw any services or duties that they would otherwise be required to perform. Obviously, a complete withdrawal of services will constitute a strike but a partial withdrawal of services, provided such a withdrawal is in combination or in concert or in accordance with a common understanding, will also constitute a strike.

The action need not be Board-wide to be considered a strike. Action need only interfere with the operation or functioning of a single program at a school to constitute strike action.

In addition to a work stoppage, the following activity may be deemed to be a strike by the Ontario Labour Relations Board:

- A concerted effort to refuse to accept supervisory assignments;
- A concerted refusal to perform some or all of the required duties of one’s employment; and
- A concerted refusal to cross pickets lines by employees not on strike themselves.

In one case, teachers engaged in a work to rule campaign during a lawful strike period. As part of that campaign, teachers engaged in the following activity:

- They entered school 15 minutes before the school day began;
- They left school 15 minutes after the school day ended;
- They attended no meetings during the day, including staff, department, heads or curriculum meetings;
- They undertook to provide a class list indicating a percentage mark for each student upon request by the principal;
- They provided no tutorials for students; and
- They refused to attend parent teacher interview nights.

The OLRB determined that such concerted activity constituted a strike for the purposes of the *Labour Relations Act, 1995*. (See *Grand Erie District School Board* [1999] O.L.R.D. No. 135.) Again, the key factors in determining whether a strike had occurred were a concerted effort to interfere with the operation of the school and the withdrawal of services that the teachers would otherwise be required to perform.

What is a lock-out?

A lock-out is defined for the purposes of the *Labour Relations Act, 1995*. Lock-out includes:

“... the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of employees, with a view to compel or induce the employees, or to aid another employer to compel or induce that employer’s employees, to refrain from exercising any rights or privileges under this Act or to agree to provisions or changes in provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, an employers’ organization, the trade union, or the employees.”

A lock-out enables an employer to place economic pressure on employees in the course of collective bargaining. As with strikes, employers may not impose a lock-out until the requisite conditions under the *Labour Relations Act, 1995* have been met.

Closure of Schools During Strike or Lock-out

Only the Board may decide to close schools during a strike or lock-out. Subsection 19(2) of the *Education Act* provides:

“In case of strike by members of a teachers’ bargaining unit or a lockout of those members, the board may close one or more schools if it is of the opinion that,

- (a) the safety of pupils may be endangered during the strike or lockout;
- (b) the school building or the equipment or supplies in the building may not be adequately protected during the strike or lockout; or

- (c) the strike or lockout will substantially interfere with the operation of the school.”

Teachers are not entitled to be paid for the days on which the school is closed.

Duty not to Strike or Lock-out

Fundamental to the collective bargaining relationship and healthy labour relations is the requirement that there will be no strikes or lock-outs during the operation of a collective agreement. Teachers may not engage in a strike unless:

1. the applicable collective agreement has expired;
2. the parties have completed the mandatory conciliation process and the Minister of Labour has issued a report with respect to the outcome of that process; and
3. teachers have held a strike vote in which more than 50% have voted to approve a strike.

Teachers who engage in an activity that falls within the definition of a strike prior to the above three conditions expiring will be engaged in an illegal strike. In such circumstances, the Board may apply to the OLRB for an order declaring an illegal strike and restraining teachers from participating in such activity. At a local level, principals may require teachers to perform their full duties before teachers are in a legal position to strike.

Conciliation

At the request of either party, the Minister of Labour will appoint a conciliation officer to confer with and assist the parties in attempting to conclude a collective agreement. If the employer and the union still cannot reach an agreement through conciliation, the officer must report to the Minister of Labour within 14 days of appointment (or such later time as agreed to by the parties). The Minister may then appoint a conciliation board or give the parties written notice that he or she does not consider it appropriate to appoint a conciliation board. This notice is known colloquially as the “no board”. It is rare for the Minister to appoint a conciliation board. Prior to issuing a “no board” report or appointing a conciliation board, the Minister may appoint a mediator selected jointly by the parties, if the parties request a mediator in writing.

A strike or lock-out is legal 14 days after the release of the no board notice. However, in reality, the more exact date is 17 days after the Minister mails the “no board” notice because the notice is not deemed to be released until the second day after it was mailed. This extends the period to 16 days and since they must be clear days, a strike or lock-out may not occur until the beginning of the 17th day.

Strike Vote

In addition to the above two criteria, teachers may not lawfully strike unless a strike vote by secret ballot is taken. The timing of such vote must be within 30 days or less before the collective agreement expires or at any time after the collective agreement expires. More than

50% of those voting must vote in favour of a strike. A strike vote must be limited to two questions: namely, whether to authorize a strike or not to authorize a strike. If teachers vote to authorize a strike, their unions will have a strike mandate and, subject to the Board's right to lock-out, may continue to negotiate or declare a strike. As outlined above, a strike may include a wide divergence of activities, ranging from a partial withdrawal of services of a work to rule campaign to a complete withdrawal of services.

Final Offer Vote

At any time before the commencement of a strike or lock-out, an employer may request the Minister of Labour to direct a vote of the employees in the affected bargaining unit on a final offer made by the employer. The holding of such a vote, however, does not affect any time periods for conducting conciliation or declaring a strike under the *Labour Relations Act, 1995*.

Prohibitions on Encouraging Unlawful Strikes or Lock-Outs

In addition to the prohibitions on the timing of strikes or lock-outs, employees and employers cannot make threats during the operation of a collective agreement. The *Labour Relations Act, 1995* provides that no employee shall threaten an unlawful strike and no employer shall threaten an unlawful lock-out of an employee. Similarly, no trade union or officer, official or agent of a trade union shall procure, counsel, support or encourage an unlawful strike or threaten an unlawful strike. Any such activity is considered an unfair labour practice and either party may apply to the OLRB to restrain such activity.

CONFLICT OF INTEREST

Municipal Conflict of Interest Act

The *Municipal Conflict of Interest Act* deals with conflicts of interest that arise because of personal, financial interests of the trustee. Trustees are not permitted to vote on or discuss matters in which they have a direct or indirect pecuniary interest. Where such a conflict exists, trustees shall, prior to any consideration of the matter at a meeting, disclose the interest and the general nature of the interest to the entire board of trustees. Trustees shall not attempt in any way to influence the voting on a matter where the trustee has a pecuniary interest. Where the matter is discussed at an *in camera* meeting, the trustee is required to leave the meeting or the part of the meeting where the matter is discussed. Even an appearance of impropriety may lead to consequences.

A pecuniary interest must be thought of broadly. Any direct or indirect financial interest on the part of the trustee may raise a conflict of interest. A direct conflict of interest will arise where the trustee himself or herself stands to benefit or suffer financially by a decision of the board of trustees. For the purposes of the *Municipal Conflict of Interest Act*, a trustee has an indirect pecuniary interest in a matter considered by the Board if:

1. the trustee is a shareholder, director or senior officer of a corporation that does not offer shares or securities to the public and that corporation has a pecuniary interest in the matter;
2. the trustee is a shareholder, director or senior officer of a corporation that does offer shares or securities to the public and that corporation has a pecuniary interest in the matter;
3. the trustee is a member of a body that has a pecuniary interest in the matter; or
4. the trustee is a partner or an employee of a person or body that has a pecuniary interest in the matter.

As well, the direct or indirect pecuniary interest of the parent, spouse, same-sex partner or child of a trustee is deemed to be the pecuniary interest of the trustee.

The *Municipal Conflict of Interest Act* creates a number of exceptions to the requirement that trustees not participate in meetings or discussions respecting pecuniary interests. These exceptions include:

- where the pecuniary interest of the trustee is one that the trustee has in common with electors generally; and
- where the pecuniary interest of the trustee is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the trustee.

Declaring a Conflict

A trustee who identifies a direct, indirect or deemed conflict of interest in a matter before the board of trustees must declare it before any discussion of the matter begins. Specifically, the trustee must follow these steps:

- publicly declare the conflict of interest, state the general nature of the interest and have the declaration recorded in the minutes;
- do not vote on the matter;
- do not take part in the discussion of the matter or attempt to influence the vote; and
- when a committee of the board, including a committee of the whole board, is in closed session, leave the room for as long as the matter is under consideration and have this fact recorded in the minutes.

In the event that a trustee is absent from a meeting during which that individual would have been placed in a conflict of interest, at the next meeting attended by the member, the member must disclose the interest and otherwise refrain from discussing, influencing, or voting on the matter.

Contravention of the Legislation

Only an elector entitled to vote at the board elections can allege conflict of interest by a member or former member. The elector must apply to a judge within six weeks of learning of the alleged contravention. The application to the judge must be made within six years after the conflict is alleged to have occurred.

Once a judge finds that a trustee has contravened his or her disclosure obligations under the *Municipal Conflict of Interest Act*, the judge must declare the member's seat vacant. In addition to declaring the seat vacant, the court may:

1. disqualify a trustee from being a trustee for a period of not more than seven years; and
2. where the contravention has resulted in a personal, financial gain, require the trustee to make restitution to the person suffering the loss or to the Board.

If the contravention occurred inadvertently or because of a *bona fide* error in judgment, the legislation allows that the trustee will not be disqualified from the board or have his or her seat declared vacant. However, the trustee may still be required to make restitution.

In a Board setting, the *Municipal Conflict of Interest Act* has been invoked, among other circumstances, in the context of labour relations. For example, a trustee whose husband was a teacher was found to have contravened the *Municipal Conflict of Interest Act* when she voted on a budget for teachers' salaries that was discussed without declaring a conflict. The interest of the husband was deemed to be the interest of the trustee. Similarly, where a trustee whose spouse was an elementary school teacher voted on the secondary teachers' collective agreement, a violation of the *Municipal Conflict of Interest Act* occurred. The Ontario Divisional Court

determined that the relationship between secondary and elementary teachers was such that voting on the secondary contract would surely influence the elementary teachers' contract and, therefore, the spouse's pecuniary interest.

Trustees must be alert to the potential conflicts established by the *Municipal Conflict of Interest Act*. By the nature of their duties and public standing, trustees will be under the close scrutiny of the media, their constituents and the general public. Failure to consider any potential conflicts, and to seek appropriate legal advice, if necessary, may result in serious consequences.

Bill 68

On November 16, 2016, Ontario legislators introduced the *Modernizing Ontario's Legislation Act, 2016*, also known as Bill 68. This Bill proposed amendments to 16 pieces of legislation – including significant changes to the law's approach on both actual and potential conflicts of interest by public officials under the *Municipal Conflict of Interest Act*.

Notable amendments that will affect Boards include;

- The start date of trustees' terms of office would change from December 1 to November 15 in the year of a regular election. This is to address the lag time from election dates (third week of October) to start date of the term of office;
- The *Municipal Act, 2001* and the *City of Toronto Act, 2006*, would be amended to provide for the appointment of Integrity Commissioners by municipalities. The role of these Commissioners would include advising trustees with respect to their obligations under the *Municipal Conflict of Interest Act*, as well as any rules, policies, codes or other official documents governing trustees' conduct;
- Trustees who declare a conflict of interest would be required to file a written statement disclosing their interest, including a description of its general nature;
- In turn, Boards would be required to maintain registries where copies of such statements may be publicly accessed;
- Any person reviewing such documents or other information – not just an elector – would be entitled to have a judge determine whether a trustee has acted contrary to the *Municipal Conflict of Interest Act*;
- Judges would have new discretion to consider reasonable measures taken by trustees to prevent contravention of the *Municipal Conflict of Interest Act*, including consultation with an Integrity Commissioner, when determining the type of penalty to be applied for contravention; and
- Corresponding to the above discretion to take mitigating factors into account, judges would be able to impose penalties short of outright removal for trustees found to have contravened the *Municipal Conflict of Interest Act*. Such lesser penalties would include reprimand and a suspension lasting up to 90 days.

Conflict with Board Decisions

In addition to legal conflicts, more frequently, a trustee may find himself or herself in conflict with a decision of the board of trustees. Such a practical conundrum will arise from time-to-time. Trustees, in their role as advocates, must pursue their visions and views respecting what is in the best interest of the Board. Trustees will strive to reach consensus. Unanimity, of course, is not always achievable. Hence, the board acts through resolutions and motions supported by a majority of trustees. The majority-rule model requires trustees, at a certain point, to accept the decision of the entire board of trustees. Even in circumstances where an individual trustee vehemently disagrees with the position of the entire board, the trustee must always act in the best interest of the corporate Board. Such a duty must prevail over the personal views of individual trustees.

In situations where an individual trustee continues to take contrary positions despite a duly passed resolution of the entire Board, the Ontario Superior Court of Justice has recommended that such a trustee resign from his or her position if he or she wishes to maintain and advocate a contrary point of view. In *Hearst (Town) v. Ontario North East District School Board*, the Court provided guidance with respect to the appropriate actions to be taken by a trustee who found herself participating in a legal application against the Board, seeking to set aside a duly passed resolution of the Board. In this scenario, the Court wrote:

“There is no (school board) in the absence of trustees. The individual trustees comprise the (school board). The (school board) is comprised of the trustees. The (school board’s) authority is exercised by the trustees making resolutions in duly convened meetings. While they are accountable to their communities, that accountability is both general and specific. From time to time, there will be a conflict between interests of a specific constituency and the school community in general. That is to be expected. The trustees must make decisions in the best interests of the entire school community while trying to accommodate the specific constituencies. This will not always be easy. In fact, it is well accepted that there will often be a minority view or position which cannot be accommodated without special measures. Should an individual trustee be unable to persuade her colleagues to accept her view and wish to ask the Courts to favour her position over the majority of her colleagues, she should resign. There would be no reason to resign if she did not wish to participate in the litigation. But she cannot exercise her rights as a trustee, including her right to participate in decisions regarding the conduct of the litigation while at the same time working hand in hand with the applicant. I find that the trustees are clients in their capacity as trustees of the (school board), and as such, counsel should not communicate with them except through (school board) counsel.

In answer to the vexing problem, that the trustee has limited powers of dissent if she disagrees with actions of the majority, the simple answer is that she should resign if she wishes to participate in litigation against the (school board). While it is true that the *Education Act* allows the majority of the (school board) to reject the resignation, surely they must do so for proper motive and any decision would be subject to judicial review.”

This decision supports the view that an individual trustee may not take an adversarial position with respect to resolutions duly passed by a Board. Such a position may be contrary to an obligation to act in the best interests of the Board. Where the actions of a trustee are no longer in the best interest of the entire Board, represented by the collective of individual trustees, such a trustee can no longer continue to serve.

The appropriate method in which a trustee may register opposition to decisions taken by a majority of the board of trustees is by casting a dissenting vote on any resolution or motion before the board of trustees or a Committee of the Board. A dissenting vote lets the trustee's constituents know where he or she stands and provides an effective political method of advocating positions and points of view. Opposition, of course, is part of politics. Beyond that, a trustee must be cautious about registering his or her dissent outside of the meeting room.

Rights of Trustees

As we have indicated above, legal accountability for decisions of the board of trustees applies to the Board as a corporate entity rather than to individual trustees. The *Education Act* gives no individual authority to trustees. While it is clear that the provincial government may not pass laws that infringe individual rights of trustees in their status, for example, as spouses, a trustee does not exercise individual rights when fulfilling his or her duties as a trustee. Certainly, neither the *Education Act* nor any other statute, strictly speaking, establishes such rights for trustees and there is no right that will forgive a trustee from complying with his or her broad duties and obligations.

However, as suggested by the *Hearst (Town)* decision, trustees have a right to fulfill their elected duties as trustees and to represent their constituents. This right must be exercised free of any perceptions of discrimination. In this respect, the rights of a trustee are derivative of the democratic rights of his or her constituents. Broadly speaking, constituents have a right to participate in the operation of the Board through their duly elected representative. A trustee must not lose sight of the essential fact that he or she is a representative of the electors. In pursuit of this end, a trustee has the right to participate in the board of trustees' deliberations and decisions. Provided the trustee is not disqualified by a conflict or other reason, a trustee has the right to fulfill his or her role as a trustee.

Without being exhaustive, it can be said that a trustee has the following rights:

- the right to build consensus amongst other trustees;
- the right to advocate in favour of the trustee's point of view, even where that point of view is not shared by a majority of trustees;
- the right to vote as the trustee sees fit on any resolution or motion before the board of trustees;
- the right to have that vote recorded; and
- the right, in the absence of any conflict of interest, to hold his or her seat and represent his or her constituents.

Such rights may not override a trustee's duty to act in the best interest of the Board. That duty is paramount. Any conflict, either under statute, at common law or between trustees, must cause a trustee to give way to the greater interests of the Board. Moreover, the public disclosure of internal disputes among trustees may undermine public confidence in the board of trustees.

Helpful Hints

1. Trustees should ensure that schools within their jurisdiction operate according to the *Education Act*, its regulations and other statutes. Legal accountability for board of trustees decisions applies to the Board as a corporate entity rather than to individual trustees.
2. Trustees must be sensitive to potential conflicts of interest. A member who identifies a direct, indirect or deemed conflict of interest in a matter before the board of trustees must declare it before any discussion of the matter begins. If there are any doubts about a conflict of interest, trustees should seek legal advice.
3. Public interests must always prevail over private, individual interests. A trustee must not use his or her office to advance his or her own personal interest or the interests of a family member or associate.
4. Trustees must not solicit or accept a personal benefit, or a benefit to a family member, in connection with the performance of his or her duties. Exceptions to this broad rule exist where the gift or benefit is in the public interest, the acceptance of the gift or benefit will not bring the integrity of the trustee into disrepute or the gift or benefit received is an incident of the protocol or social obligation of being a member of the Board.
5. Trustees have a duty to act in the best interest of the Board. This includes both statutory and common law obligations and obligations to uphold public confidence in the board. Trustees should recognize when a battle is lost. Losing battles, even key battles, is part of political as well as public life. The board of trustees operates by majority rule.
6. In situations where a trustee feels that the best interests of the Board are served other than as the majority sees fit, the appropriate response is to register that view through meeting procedures. Any dissenting opinions or viewpoints may be registered in public meetings by casting dissenting votes. In extreme situations, a trustee may be required to resign where he or she wishes to register his or her dissent outside of the meeting room. This will be the case where the trustee considers it necessary to take an adversarial position contrary to the position of a majority of the board of trustees.
7. Policy development is a key way in which trustees can affect the direction of education. This work is complex and requires a broad perspective, with the recognition that policies must be applied to the whole Board. Policy decisions are not always unanimous. Trustees who disagree with a majority decision may enter a minority report. However, once the vote has been decided, the new policy becomes the property of the whole board of trustees.

DUTIES OF TRUSTEES

Duties and Responsibilities of Trustees

In addition to their paramount duty to act in the best interests of the Board, trustees also have various specific duties enumerated in the *Education Act*. These duties require that a trustee of the Board:

- (a) carry out his or her responsibilities in a manner that assists the board of trustees in fulfilling its duties under this Act and associated guidelines and regulations;
- (b) attend and participate in meetings of the board of trustees and its committees;
- (c) consult with parents, students and supporters of the Board on the board of trustees' multi-year plan;
- (d) bring concerns of parents, students and supporters to the attention of the board of trustees;
- (e) uphold the implementation of any board of trustees resolution after it is passed;
- (f) entrust the day-to-day management of the Board to its staff through the Board's director of education;
- (g) maintain focus on student achievement and well-being; and
- (h) comply with the Board's code of conduct.

To facilitate the duties above, the *Education Act* provides a Board with discretion to adopt a Code of Conduct. Once adopted, the provisions of this Code are binding upon trustees under the *Education Act*. A trustee found to be in breach of a Code of Conduct by the board of trustees may be censured, barred from board meetings, or barred from sitting on one or more committees of the board.

Accountability under the *Education Act*

The *Education Act* establishes accountabilities that are hierarchical in nature. As discussed above, school boards are deemed to be corporations pursuant to subsection 58.5(1) of the *Education Act*.

The board members are accountable to the provincial government for matters expressly referred to in the *Education Act*, including the financial affairs of the school board, board policy, governance issues, the delivery of provincial curriculum and ensuring class sizes comply with the law.

In turn, the *Education Act* establishes the director of education as the chief executive officer of the corporation and provides that the director of education is accountable to the board of trustees.

The position of the director of education is established by section 279 of the *Education Act*, which provides: “Every district school board shall, subject to the regulations employ a supervisory officer as director of education and such other supervisory officers as it considers necessary to supervise all aspects of the program under its jurisdiction.”

In addition to his or her duties as a supervisory officer, the *Education Act* further establishes the role of director of education. Subsection 283(1.1) of the *Education Act* provides that a director of education is the chief education officer and the chief executive officer of the board by which he or she is employed. Subsection 283(2) provides that the “chief executive officer of the board shall, within the policies established by the board, develop and maintain an effective organization and the programs required to implement such policies.”

Consistent with the hierarchical nature of school boards, supervisory officers are responsible to the corporate board through the director of education. Subsection 286(3) of the *Education Act* provides that “Every supervisory officer appointed by a board is responsible to the board through the chief executive officer for the performance of the duties assigned to the supervisory office by the board.”

With respect to the duties of board members, subsection 218.1(f) of the *Education Act* provides that a member of a board shall “entrust the day to day management of the board to its staff through the board's director of education.”

In accordance with the provisions of the *Education Act*, the director of education is the only board official who reports directly to the board of trustees. All other board staff, including supervisory officers, report to the director of education. The board exercises its responsibility for the management of the board and the engagement of its staff through the director of education.

With respect to the selection, hiring and establishing terms and conditions of employment of a supervisory officer, the provisions of the *Education Act* hold the director of education accountable to the board. The director of education has a statutory duty to develop and maintain an effective organization and the programs required to implement school board policies.

EFFECTIVE COMMUNICATION

Trustees will often find themselves confronted with very difficult and sensitive issues from parents, students and other constituents. The role of the trustee, in these circumstances, is often blurred. On the one hand, trustees are accountable to their constituents, who typically are the parents of students. Without question, trustees must exercise a fair degree of discretion in responding to complaints. Trustees must, in appropriate circumstances, act as advocates for their constituents.

On the other hand, trustees are also charged with operating the Board. This role requires a trustee to represent the interests of the Board and to seek to insure that the Board be operated fairly and efficiently, while balancing the interests of parents, students, staff and the public at large. The nature of the trustees' role, their accountability to a number of disparate groups, including parents and the provincial government, make them lightning rods for discontent.

In managing their role, trustees are well advised to treat parental complaints fairly, seriously and judiciously, while balancing the various interests in play. Trustees must strive to find the truth in the facts that they will be confronted with. In doing so, the trustee will be a more credible advocate and leader.

The trustee is an advocate for better public education. This advocacy may involve representations on behalf of a Board to the provincial government or on behalf of community members to the Board. The Ontario Public School Boards' Association emphasizes that the advocacy role must be directed towards the best interests of students. At the local level, trustees work on behalf of the community and must consider the unique needs of that community when deciding what position to take on an issue. Trustees encourage constituents to participate in the school system. This involves familiarizing people with procedures for bringing their views before the Board (for example, through public or written submissions).

The satisfactory resolution of parental or constituent complaints instils confidence and trust in the education system both within a Board and on the part of parents and students who have the greatest interest in that system. In this respect, you may see your role as a mediator, policy maker and employer.

Responding to Parental Concerns

Trustees should only respond to parental concerns after fully reviewing the facts. When you receive a call or correspondence from a parent that raises concerns about the conduct of staff, other trustees, students or other parents that warrants your involvement, indicate to the parent that you are not able to comment, but you will look into the issue further.

Speak to the senior Board personnel who are responsible for the school or relevant issues. Ask them to review the matter with school staff to obtain the school's position or version of events.

Responses should be aimed at diffusing tension between the parent and the school. Trustees should view their role as a mediator, to assist the school and the parent in resolving any issues.

Defamation

Trustees may be held liable for statements that are defamatory of other trustees, staff or any individual. Our courts have recognized the importance and worth that an individual has in his or her reputation. Defamatory statements are untrue statements that tend to lower the opinion of an individual in the eyes of the community. Also referred to as libel with respect to written statements and slander with respect to verbal statements, a defamation action may be brought by individuals who feel that they have suffered harm as a result of untrue statements.

Trustees do not enjoy a parliamentary privilege with respect to statements made in the boardroom or in any other forum. This means that trustees must be scrupulously truthful and fair in making statements about staff, their fellow trustees and members of the public.

MEETINGS

Education Act

As set out above, trustees have a duty to attend meetings of the board of trustees. Subsection 228(1)(b) of the *Education Act* further provides:

“A member of a board vacates his or her seat if he or she . . .
. . . absents himself or herself without being authorized by resolution entered in the minutes, from three consecutive regular meetings of the board.”

Paragraph 4 of subsection 170(1) requires Boards to:

“fix the times and places for the meetings of the board and the mode of calling and conducting them, and ensure that a full and correct account of the proceedings thereat is kept.”

Multi-year Plan

The *Education Act* requires Boards to develop multi-year plans to carry out their duties to deliver quality education, ensure students' well-being and act as stewards of resources. Such plans are developed with input from various stakeholders in the Board and surrounding communities, and are intended to set out clear strategies and priorities to be carried out through the governance of the board of trustees. This plan must be reviewed annually with the Director of Education and made publicly accessible. Leadership and collaboration among trustees is essential to ensure that the policies and practices necessary to carry out the plan are put into effect.

Reviewing the Director of Education

The board of trustees is responsible for recruiting, selecting and reviewing the performance of the Director of Education. Usually this review is performed on an annual basis at the same time as the review of a Board's multi-year plan. This review is to be carried out by trustees with a view to the performance of the following duties of the Director as set out in the *Education Act*:

- (a) develop and maintain an effective organization and the programs required to implement such policies.
- (b) ensure that the multi-year plan establishes the Board's priorities and identifies specific measures and resources that will be applied in achieving those priorities and in carrying the Board's duties.
- (c) implement and monitor the implementation of the multi-year plan.
- (d) report periodically to the board of trustees on the implementation of the plan.
- (e) act as secretary to the board of trustees.

- (f) immediately upon discovery bring to the attention of the board of trustees any act or omission by the board of trustees that in the opinion of the director may result in or has resulted in a contravention of the *Education Act* or its regulations.
- (g) if a board of trustees does not respond in a satisfactory manner to an act or omission brought to its attention, advise the Deputy Minister of the Ministry of the act or omission.

In regard to the review, the director and the board of trustees should have a mutual understanding of the performance goals to be met by the director with respect to the above duties.

Organizational Meeting

The Chair of the board of trustees shall convene, with consideration of all trustees, after the second Monday in November but prior to the first meeting of trustees in December, an informal meeting of all trustees who will be holding office in the following year for any of the following purposes:

- (a) discussing their objectives for the forthcoming year as well as their expectations from a new Chair of the Board; and
- (b) requesting trustees to express their intentions to stand for the positions of Chair, Vice-Chair, Budget Chair, membership on Chair's Committee and interest to chair any other committee of the Board.

December Meeting

Early in September of the year of a municipal election, the Chair's Committee shall appoint a Committee of two trustees (the "Inaugural Planning Committee") to make appropriate arrangements for the first meeting of trustees to be held in the following December at a time and place set by the board of trustees. The agenda for the December meeting shall include an introduction of trustees to serve in the coming year (in an election year only), the election of a board chair, the election of a budget committee chair, and the election of two trustees to the chair's committee. Under its current bylaws, all elections of the YRDSB's board of trustees are carried out by secret ballot. However, it is open to a board of trustees to adopt bylaws that allow for voting to be open and public.

By electing a chair, fellow trustees place confidence in that member of the Board to guide its activities in the coming year. The chair should be elected with a view to facilitating the building of consensus among trustees in terms of the goals and responsibilities to be carried out during that individual's leadership term.

All elections shall be by secret ballot, and all ballots shall be counted by the Director of Education and the Assistant Manager, Board and Trustee Services, in the presence of a scrutineer supplied by the Board's auditing firm. A candidate with the majority of votes will be elected to any position.

The following committees will also be established at the December meeting:

- (a) Equity and Inclusivity Advisory Committee

- (b) Joint Board Consortium Committee (with Coterminous Board)
- (c) Policy and By-Law Committee
- (d) Property Management Committee
- (e) Student Discipline Committee
- (f) Trustee Code of Conduct Committee
- (g) Statutory Committees required by Provincial Statute
 - (i) Audit Committee
 - (ii) Parent, Family and Community Engagement Advisory Committee
 - (iii) Special Education Advisory Committee
- (h) Any other committee(s) as determined by the Board

Members of the standing committees are also elected by the Board. The Chair's Committee is also established, consisting of the Chair, the Vice-Chair, the chairs of the standing committees and, if applicable, the Past Chair.

Regular Meetings

Unless otherwise ordered by special motion of the board, regular Meetings shall be held in public on the first Tuesday in each month, beginning at 7:30 p.m.

Board of trustees Meetings adjourn no later than 11:00 p.m., unless the board decides by an affirmative and recorded vote of at least a quorum of the members present to extend the meeting to a specified time or until a specific piece of business is completed. Meetings so extended shall continue either for a specific time or until a specific piece of business is completed, as the board determines.

Special Meetings

Special meetings may be called:

- (i) By the Chair; or
- (ii) On the written request of four members of the Board to deal with urgent or time sensitive matters.

Written notice of all special sessions, accompanied by a statement of all the business to be transacted, must be delivered to each trustee at least 24 hours before the meeting is to take place. No other business shall be considered unless all members of the Board are present and agree.

Meetings Open to the Public

As a general rule, meetings of a board of trustees will be open to the public. No person may be excluded from such a meeting. This is an important democratic principle and assists the public in holding trustees accountable.

***In Camera* Meetings**

The *Education Act*, however, establishes a number of circumstances in which meetings are closed to the public or *in camera*. A meeting of a committee of the board of trustees as well as a committee of the whole of the Board may be closed to the public where the subject under consideration involves:

1. The security of the property of the board;
2. The disclosure of intimate, personal or financial information in respect of a member of the Board or committee, an employee or prospective employee of the Board or a pupil or his or her parent;
3. The acquisition or disposal of a school site;
4. Decisions in respect of negotiations with employees of the Board;
5. Litigation affecting the Board; or
6. An ongoing investigation of the Board by the Office of the Ontario Ombudsman.

Where a committee of the Board does proceed *in camera*, any decision made by that committee will have to be confirmed by the entire Board at a public meeting in a formal resolution. A committee of the Board may conduct private or *in camera* sessions. However, to effectively transact business of the Board, the committee must report to the entire Board in a public session.

Meeting Procedures

Procedures for the conduct of meetings are established by the Board's by-laws. Boards have flexibility and discretion in establishing procedures for meetings. Where a matter arises that is not addressed in the by-laws, a majority of trustees present at a meeting may adopt an appropriate procedure. The board of trustees is the master of its own procedure.

Setting the Agenda for Board Meetings

The Chair's committee is responsible for setting the agenda for a board of trustees' meeting. The Chair's committee will consider and approve all regular public and private board meeting agenda items.

Quorum

In order for the Board to conduct any business, a quorum must be present. Subsection 208(11) of the *Education Act* provides:

“The presence of a majority of all the members constituting a board is necessary to form a quorum.”

The “majority of all of the members” is the majority of members fixed by law.

An exception to this rule occurs under the *Municipal Conflict of Interest Act*. Section 7 of that Act relieves against the strict calculation of quorum where members of a Board are disqualified from voting on an issue because of a conflict of interest. Subsection 7(1) provides:

“Where the number of members who, by reason of the provisions of this Act, are disabled from participating in a meeting is such that at that meeting the remaining members are not of sufficient number to constitute a quorum, then, despite any other general or special Act, the remaining number of members shall be deemed to constitute a quorum, provided such number is not less than two.”

Subsections 7(2) and 7(3) deal with the unusual circumstance where only one member is entitled to vote on an issue. In that circumstance, the Board may apply to a judge to relieve against the provisions of the statute.

The effect of section 7 of the *Municipal Conflict of Interest Act* is to permit quorum to be reduced below the number fixed by law where members declare a conflict. Individual trustees who declare a conflict do not form part of the quorum.

The general rule is that a Board may not transact business unless a quorum of trustees is present at the meeting. A quorum will not be present where sufficient trustees refuse to attend a meeting or leave a meeting thereby reducing the number present below the level required for a quorum. In either case, a Board may not transact business. Such a meeting has the authority, however, to adjourn for lack of quorum to a subsequent date. Quorum is not lost by the mere refusal to vote. Provided a majority of trustees is in attendance at a meeting, quorum will be achieved and business may be conducted.

Student Trustees

Student trustees liaise between the school community and the board of trustees. Student trustees at the YRDSB complete an application to be considered into the position and are chosen by members of the York Region Presidents' Council, a body consisting of all Student Council Presidents in York Region public secondary schools. While student trustees are not members of the Board and are not entitled to exercise a binding vote on matters before the board of trustees, they may register a recorded non-binding vote on a matter before the trustees and may participate in regular meetings.

RESIGNATION OF TRUSTEES

Subsection 220(3) of the *Education Act* deals with the resignation of trustees. It provides:

“A member of a board, with the consent of the majority of the members present at a meeting, entered on the minutes of it, may resign as a member, but he or she shall not vote on a motion as to his or her own resignation and may not resign as a member if the resignation will reduce the number of members of the board to less than a quorum.”

A majority of trustees present at a duly constituted meeting of a board of trustees may consent to the resignation of a trustee. It is important to note that a trustee may not resign except with the consent of the majority and provided the resignation will not reduce the number of trustees to less than a quorum. A resignation is ineffective if it does not have the consent of the majority of trustees at the meeting.

Subsection 220(4) provides an exception to subsection 220(3). Notwithstanding section 220(3), a trustee may resign to become a candidate for another office.

VACANCIES

In addition to resignation, vacancies on a board of trustees may arise by operation of law. There are a number of ways in which a trustee's seat may become vacant. For instance, an elector may apply to a judge to have the seat of a trustee declared vacant because that trustee has contravened the *Municipal Conflict of Interest Act*. A judge has the express statutory authority under section 10 of the *Municipal Conflict of Interest Act* to declare that trustee's seat vacant.

Subsection 228(1) of the *Education Act* sets out a number of scenarios in which the seat of a trustee will become vacant. A member Board vacates his or her seat where he or she:

- is convicted of an indictable offence;
- absents himself or herself without being authorized by resolution entered in the minutes from three consecutive regular meetings of the board;
- ceases to hold the qualifications necessary to act as a member of the board;
- is disqualified under subsection 219(4); or
- fails to be physically present in the meeting room of the board for at least three regular meetings of the board in each 12-month period beginning December 1 in each year.

Subsection 219(4) disqualifies trustees in scenarios such as where the trustee becomes an employee of a Board or a member of the Legislative Assembly or House of Commons.

Filling Vacancies

Section 221 of the *Education Act* deals with filling vacancies on a board of trustees. Subsections 221(1) and 221(2) provide:

“(1) Subject to section 224, if the office of a member of a board becomes vacant before the end of the member's term,

(a) the remaining elected members shall appoint a qualified person to fill the vacancy within 90 days after the office becomes vacant, if a majority of the elected members remain in office; or

(b) a by-election shall be held to fill the vacancy, in the same manner as an election of the board, if a majority of the elected members do not remain in office.

(2) Despite clause (1) (a), if members of the board are elected under the *Municipal Elections Act, 1996*, the remaining elected members may by resolution require that an election be held in accordance with that Act to fill the vacancy if the vacancy occurs,

(a) in a year in which no regular election is held under that Act;

- (b) before April 1 in the year of a regular election; or
- (c) after the new board is organized in the year of a regular election.”

Section 224 deals with the situations where a vacancy occurs within one month before the next election or after the election but before a new Board is organized.

Effectively, there are two scenarios that exist to deal with vacancies. Where a majority of the elected trustees remain in office, they are required to appoint a replacement or hold a by-election. Where a majority of trustees do not remain in office, then a by-election must be held. Subsection 221(2) provides a Board with the discretion to hold an election where a resignation occurs in a non-election year or prior to April 1 in an election year as an alternative to appointing a replacement trustee.

In the case of the YRDSB, subsection 221(1)(b) requires that, if there are 8 or more vacancies, by-elections must be held. Where there are any fewer than 8 vacancies, the remaining Board members are required by subsection 221(1)(a) to appoint replacements or, if they wish to exercise the discretion conferred by subsection 221(2), they can require that an election be held.

As set out above, the number of trustees on the Board can only go below 7 where vacancies occur by operation of law. Consequently, where a trustee elects to resign because he or she disagrees with the majority of the Board or wishes to make a broader political statement, he or she may do so provided the resignation will not reduce the number of remaining trustees below quorum and provided the majority of members present at the appropriate meeting consent to the resignation. The remaining trustees then have a duty to appoint his or her replacement or to hold an election.

RECORDS AND PRIVACY

The use and disclosure of information that is in the possession of a Board is governed by the *Municipal Freedom of Information and Protection of Privacy Act* (the “MFIPPA”) as well as the *Education Act*. Records that are created by school personnel and trustees are subject to the MFIPPA and may not be disclosed except in accordance with the Act. In addition, the *Education Act* deals with the secrecy of the Ontario Student Record (the “OSR”). It also imposes penalties on school personnel who disclose the OSR except as authorized by that statute.

Municipal Freedom of Information and Protection of Privacy Act

The two main objectives of MFIPPA as it applies in a school context are:

- To provide the public with a right of access to information in the possession and control of a Board; and
- To protect the privacy of individuals, such as students, teachers or principals, with regard to personal information about themselves that is held by a school or Board.

The Act establishes a right of access to existing “records” in the custody or under the control of an institution. The term “record” is defined in the Act to include any record of information however recorded. It includes correspondence, minutes, reports, photographs and computer tapes and any other recorded information regardless of medium or format.

An access request under this legislation only applies to records or recorded information in the custody or under the control of a Board. Therefore, it is important to recognize that an access request does not apply to any oral comments, discussions or deliberations.

Under the Act, any person may make a request for information held by a Board. The Act sets out a procedure for handling such requests. Requests for information are made to “heads” of institutions. The head is responsible for administering the Act, ensuring proper procedures are taken to preserve records, and for complying with the access and privacy provisions of the Act. The duties of a head include responding to access requests, adhering to time limits and notice requirements, and making decisions about the disclosure of records.

A request must be in writing and an individual making such request must provide sufficient detail to enable an experienced employee to locate the record. The access scheme in the Act sets out specific time limits – usually 30 days – within which institutions must respond to requests for access to information. In addition, a Board must have information available that describes how the Board is organized and its general responsibilities. Furthermore, the Board must provide a list of the general classes or types of records in its custody or control.

Penalty For Violating the MFIPPA

Any person who wilfully discloses personal information in contravention of the Act is liable to a fine of up to \$5,000. In addition, any person who maintains a personnel information bank that contravenes the Act; makes a request for access to information under false pretences; wilfully

obstructs the Commissioner in the performance of her functions; wilfully makes a false statement to the Commissioner in the performance of her functions; wilfully conceals, alters or destroys a record with the intent of limiting an individual's access to information; or wilfully fails to comply with an order of the Commission is also liable to a fine not exceeding \$5,000.

Personal Information

Under the MFIPPA, an individual has *prima facie* right of access to any "personal information" about himself or herself in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to order it reasonably retrievable by the institution.

"Personal information" is defined in the Act as recorded information about an identifiable individual. Such personal information can include recorded views or opinions of other individuals about an employee or prospective employee.

Personal information includes an individual's name, his or her address and any information related to his or her education. Any information gathered by a school concerning an identifiable student or other individual will likely be personal information. Trustees should be alert to the fact that any personal information that they gather, whether related to a student, parent or other individual, will fall within the scope of the MFIPPA.

Under the MFIPPA, a record is also broadly defined and includes "any record of information however recorded." A record includes photographs, e-mail and other electronic documents, and notes taken by a trustee in the course of his or her duties. Any record created or received by a trustee that contains personal information may not be disclosed to third parties except in accordance with the MFIPPA.

Disclosure of Personal Information

Generally, personal information regarding students and staff in the custody of the Board may not be disclosed except in specific circumstances. The MFIPPA provides:

"A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information . . .

. . . relates to employment or educational history."

The general prohibition, and the enumerated exemptions, apply to personal information in the care and under the custody of trustees.

Section 32 of the MFIPPA establishes circumstances when a Board may disclose a record or other personal information. The most relevant exemptions for educators are:

- if the person to whom the information relates has identified that information in particular and consented to its disclosure;
- for the purpose for which it was obtained or for a consistent purpose;

- if the disclosure is made to an officer, employee, consultant or agent of the Board who needs the record in the performance of their duties and if disclosure is necessary and proper in the discharge of the Board's function;
- for the purpose of complying with an Act of the Legislature or an Act of Parliament;
- to the Ontario Provincial Police or other law enforcement institution or agency in Canada to aid in an investigation with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- in compelling circumstances affecting the health and safety of an individual if upon disclosure notification is mailed to the last known address of the individual to whom the information relates; and
- in compassionate circumstances, to facilitate contact with a spouse, close relative or a friend of an individual who is injured, ill or deceased.

Individual Consent

All consents to disclosure must be in writing, dated and, depending on his or her age, signed by the individual to whom the information relates. The written consent should also clearly describe the information for which consent to disclose is provided. Students under the age of 16 may not consent to the disclosure of personal information. In such circumstances, the individual having lawful custody of the student may consent to disclosure.

Purpose for Which Information Obtained or Consistent Purpose

A purpose is a consistent purpose only if the individual from whom the information was directly collected might reasonably have expected such a disclosure.

Disclosure to Officer or Employee of School Board

This exemption permits the day-to-day operation of a school, including disclosure of personal information from the principal of a school or a teacher as necessary. The section also permits disclosure in cases where it is necessary in the performance of another employee's duties and obligations.

Provincial or Federal Law

This exemption permits school personnel to disclose personal information in order to comply with a statute enacted by the governments of Ontario or Canada. Disclosure of personal information to comply with a regulation or a by-law is also covered by this exemption. For example, section 72(3) of the *Child and Family Services Act* requires a principal or teacher to report suspicions of child abuse or a child in need of protection to a children's aid society and to report the information on which the suspicion is based. This exemption relieves against what would otherwise be a breach of the MFIPPA when a principal or teacher makes such a report.

Aid in Law Enforcement

School personnel are permitted to disclose personal information to the police to aid in investigations with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result. It is important to understand that this exemption permits disclosure; it does not compel disclosure. A Board may require a search warrant to be executed before access to personal information is granted. For example, in cases dealing with records in the Ontario Student Record (“OSR”), which are privileged, a search warrant or a subpoena must be served before such records are disclosed.

Compelling Circumstances

To satisfy this exemption, compelling circumstances must exist that affect the health or safety of an individual.

Compassionate Circumstances

Compassionate circumstances only arise where there is a need to make contact with a friend or family member of an individual who is ill, injured or deceased. Only the personal information necessary to facilitate contact with the friend or family member should be disclosed.

Use of Personal Information

As with disclosure, the MFIPPA regulates the use that a Board can make of personal information. Section 31 provides that an institution shall not use personal information in its custody and under its control except:

- (c) if the person to whom the information relates has identified that information in particular and consented to its use;
- (d) for the purpose for which it was obtained or compiled or for a consistent purpose; and
- (e) for a purpose for which the information may be disclosed to the institution under section 32.

Right of Individual to Whom Personal Information Relates

An individual to whom personal information relates has a right of access to any personal information in the custody or under the control of a Board with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the Board. An individual also has the right to request that personal information be corrected where there is an error or omission.

Retention of Records

Personal information provided to and used by Boards must be retained for a minimum of one year unless the Board has passed a resolution or by-law authorizing a shorter period of time or

the individual to whom the information relates consents to its earlier disposal. The purpose of the one-year period of retention is to permit individuals to whom the information relates to have access to the information.

Education Act

A principal has a duty under the *Education Act* to maintain the Ontario Student Record (“OSR”). Ultimate responsibility for administering access to the OSR rests with the principal. Access to the OSR is governed by the *Education Act* and the *Ontario Student Record (OSR) Guideline, 2000* issued pursuant to that statute and the MFIPPA.

Under section 266 of the *Education Act*, the OSR is privileged for the information and use of supervisory officers and the principal, teachers and designated early childhood educators of a school for the improvement of instruction and other education of the student. The *Education Act* expressly provides that the OSR is not available to any person except with the written permission of the parent or guardian of the student or the student, where the student is 18 years of age or older. The OSR is also not admissible in evidence in any legal proceeding except with the written permission of the parent or guardian of the student or the student, where the student is 18 years of age or older or a court order. Accordingly, in any legal proceeding, access to the OSR must be in accordance with the OSR Guideline.

Trustees will not have access to information in a student’s OSR without prior consent of the parent of the student or the student where he or she is an adult.

The *Education Act* requires every Board employee to preserve the secrecy of the contents of the OSR and not to communicate those contents except:

- (a) as may be required in the performance of his or her duties; or
- (b) with the written consent of the parent or guardian of the student where the student is a minor; or
- (c) with the written consent of the student where the student is an adult.

The *Education Act* and the OSR Guideline also establish that a principal has responsibility for maintaining the OSR. Generally, the notes and records created by trustees will not be placed in the OSR. If they are, however, that decision will be made by the principal of the relevant school.

Conclusion

It is important for Trustees to recognize that their notes, e-mails and other records created by them may be subject to disclosure requests under the MFIPPA. Therefore, trustees should be careful in preparing written records and always bear in mind that these records may not always be confidential. Access for information requests are frequently made by the media or other organizations interested in public education. Given the public nature of the role of the trustee, documents created by trustees should avoid personal invective, rumour or inflammatory statements.

SAFE SCHOOLS

Safe Schools Policy

The YRDSB takes extensive steps to ensure that its schools are safe and nurturing learning environments for all students, staff and parents. YRDSB is committed to vesting and sustaining caring and safe schools which promote student learning, achievement and well-being. Each student has the right to learn in positive and respectful surroundings free from harassment and discrimination. Inclusive, accepting, respectful and healthy relationships allow individuals to reach their full potential. The Board has a Caring and Safe Schools Policy and Procedures which focus on the standards of behaviour expected of members of its school community.

Among other things, the Board of Trustees is responsible for:

- reviewing the Caring and Safe Schools Policy in accordance with the priorities in the Trustees' Multi-Year Plan and the approved policy review cycle;
- understanding and communicating with members of the community about the Caring and Safe Schools Policy;
- establishing a Student Discipline Committee and approving trustee membership; and
- endorsing a whole school approach to caring and safe schools, which includes progressive discipline.

Suspension Appeals and Expulsion Hearings

Trustees are responsible for adjudicating appeals from suspensions and expulsion hearings. This responsibility is prescribed by the *Education Act*.

Trustees are required to hear evidence presented by the school and the student's parents or guardian or adult student and determine what, if any, is the appropriate consequence of student misconduct. In this role, trustees are required to ensure that the process is fair to all participants and that the Board's Caring and Safe Schools Policy is applied.

The Trustees on the Student Discipline Committee have the authority to impose the appropriate consequence as set out in the *Education Act*.

In an expulsion hearing, under subsection 311.3(4) of the *Education Act*, the Student Discipline Committee will:

- (a) consider the submission of each party to whatever form the party chooses to deliver his or her submissions, whether orally, in writing or both;
- (b) solicit the views of all the parties as to whether the pupil, if he or she is expelled, should be expelled from his or her school only or from all schools of the Board; and

- (c) solicit the views of all the parties as to whether, if the pupil is not expelled, the Board should confirm the suspension originally imposed, confirm the suspension but reduce its duration or withdraw the suspension.

After completing the hearing, the Student Discipline Committee will decide:

- (a) whether to expel the pupil; and
- (b) if the pupil is to be expelled, whether the pupil is expelled from his or her school only or from all schools of the Board.

In making the decision set out above, the Student Discipline Committee will take into account:

- (a) all submissions and views of the parties, including their views as to whether the pupil, if expelled, should be expelled from his or her school only or from all schools of the Board;
- (b) any mitigating or other factors prescribed by the Regulations; and
- (c) any written response to the principal's report recommending expulsion that a person gave the Board under subsection 311.1(7) before the completion of the hearing.

The Board cannot expel a pupil if more than 20 school days have expired since the pupil was suspended under section 310, unless the parties to the expulsion hearing agree on a later deadline.

Role of the Trustee at Hearings

The trustee must bring an open, impartial mind to issues raised at expulsion hearings. In addition to being the ultimate judge at such hearings, the trustee is responsible for ensuring that all parties to a hearing are treated fairly and provided a full opportunity to make their case. The trustee must weigh and consider evidence presented at the hearing, alongside submissions of the parties and any mitigating factors or other factors.

In considering the most appropriate response to address inappropriate behaviour, the following should be taken into consideration:

- the particular student and circumstances;
- the nature and severity of the behavior; and
- the impact on the school climate, including the impact on students or other individuals in the school community.

In situations where a trustee has dealt with a complaint regarding staff actions or discipline in schools, in the event that the matter ends up before the trustees in an administrative hearing, such as a suspension appeal or expulsion proceeding, that trustee may have to step down from hearing

the matter. A trustee who sits on an administrative tribunal is required to be free from prior knowledge that would create a bias or perception of bias in the matter. Members of the Board, who make up an administrative tribunal, may have to disqualify themselves in the interests of procedural fairness, where they have had prior involvement in a matter or because they would be perceived as having a bias for or against one of the parties involved.

EQUITY AND INCLUSIVE EDUCATION

Ontario's publicly funded education system supports and reflects the democratic values of fairness, equity and respect for all. Recognizing the importance of education, the Ontario government has established three core priorities:

- high levels of student achievement
- reduced gaps in student achievement
- increased public confidence in publicly funded education

An equitable, inclusive education system is fundamental to achieving these core priorities, and is recognized internationally as critical to delivering a high-quality education for all learners. "Equity and excellence go hand in hand. . . . In a truly equitable system, factors such as race, gender, and socio-economic status do not prevent students from achieving ambitious outcomes. Our experience shows that barriers can be removed when all education partners create the conditions needed for success."*

All publicly funded school boards, including the YRDSB, are required to develop, implement, and monitor an equity and inclusive education policy that includes a religious accommodation guideline, in accordance with the requirements set out in Ministry policy, and that complies with relevant legislation, including amendments to the *Education Act*.

The Board's Equity and Inclusivity Policy and its related procedures outline its commitment to ensuring equitable and inclusive learning and working environments that uphold and reflect the following Seven Guiding Principles of *Ontario's Equity and Inclusive Education Strategy*:

Equity and inclusive education:

- is a foundation of excellence;
- meets individual needs;
- identifies and eliminates barriers;
- promotes a sense of belonging;
- involves the broad community;
- builds on and enhances previous and existing initiatives; and
- is demonstrated throughout the system.

* Ministry of Education, Ontario, *Reach Every Student: Energizing Ontario Education* (Toronto: Ministry of Education, Ontario, 2008), p.8.

With respect to religious accommodation, the Board will acknowledge each individual's right to follow or not to follow religious beliefs and practices free from discriminatory or harassing behaviour and will take reasonable steps to provide religious accommodations to staff members, trustees and students, as outlined in the Board's Scheduling Events on Faith Days communication to all staff and the Board's guideline on *Program Accommodations for Faith Purposes: A Guideline for Religious Accommodations*.

The Board of Trustee is responsible for supporting the effective implementation of the equity and inclusivity policy by:

- knowing and understanding the seven guiding principles of the Equity and Inclusive Education Strategy;
- reviewing and amending all policies and the Board's Multi-Year Plan through an equity and inclusivity lens.
- using an equity lens to inform decisions regarding resource allocation to support the board improvement planning process, and
- representing the views of all communities.

HONORARIA AND EXPENSES

Trustees are not and may not be employees of the Board. Boards may determine an honorarium to be paid to trustees. The amount of this honorarium shall consist of:

1. The base amount for the year.
2. The enrolment amount for the year.
3. The attendance amounts payable to the member for the year.
4. The distance amounts payable to the member for the year.

As of the time of this publication, trustees at the YRDSB set trustee honoraria at \$23,472.26 per annum, and the Chair and Vice-Chair receive \$33,472.26 and \$28,472.26 per annum, respectively.

Trustees may be reimbursed for various expenses they incur in the course of fulfilling their duties.

OTHER LEGISLATION

Boards exist in an increasingly complicated legal environment. In addition to the statutes referred to above, many other statutes impose legal obligations on Boards and impact on the day-to-day operations of schools.

The following is a brief description of some of those statutes.

Human Rights Code

Boards must not discriminate in employment or in the provision of services, including special education services. While Boards have always encountered the Code in the context of hiring, promotions and firings, the Code is increasingly being invoked by parents of students with special needs who are not satisfied with the educational program being provided to their children.

Occupational Health and Safety Act

This statute requires employers to maintain safe workplaces, which includes ensuring against workplace violence and harassment, and imposes penalties for violations of the Act. Employees are entitled to refuse to work in unsafe conditions.

Employment Standards Act, 2000

The Act establishes minimum standards of employment for all employees. Quite apart from any obligation in any collective agreement, a Board must abide by the terms and conditions established by this Act.

Pay Equity Act

Employers must not pay female employees less for similar jobs that male employees perform. Employers, including Boards, must implement, publish and follow a pay equity plan.

Occupiers' Liability Act

Occupiers of premises are liable for injuries that occur on those premises. For Boards, this means that all schools and other property must be maintained in safe manner so as to avoid foreseeable risks of harm.

Workplace Safety and Insurance Act, 1997

Employees are entitled to compensation for injuries sustained in the course of their employment. This Act also imposes duties on employers, including obligations to report accidents and re-employ injured workers.

Child and Family Services Act

All persons have an obligation to report child abuse under this Act. Teachers and principals who fail to fulfill this duty may be prosecuted. Boards must work with local children's aid societies in fulfilling this important public duty.

Youth Criminal Justice Act

Board employees are frequently called on to give evidence or produce OSRs in criminal proceedings involving students. Police, in turn, may advise Boards with respect to students who are involved in criminal matters in the following circumstances:

- to ensure compliance by the student with an order of the Court or a direction to be released from secured custody to attend school;
- to ensure the safety of staff, students and other persons; or
- to facilitate the rehabilitation of the student

Boards must partner with the police in ensuring that schools are safe for all students, staff and parents. To that end, the YRDSB is party to the Police and School Board Protocol. The purpose of the Protocol is to guide police and schools in their interactions with one another.