



ONTARIO PUBLIC
SCHOOL BOARDS'
ASSOCIATION

Leading Education's Advocates

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Municipal Legislation Review
Ministry of Municipal Affairs and Housing
Local Government Policy Branch
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OPSBA Submission to the Municipal Legislation Review

OPSBA appreciates the opportunity to provide comments and feedback for this municipal legislation review. As a key participant in municipal government, we want to ensure the voice of the democratically elected local school trustee is heard and the role of school boards is understood. With that in mind, we will respond to those topics that are appropriate under these three pieces of legislation; *The Municipal Act*, *The City of Toronto Act* and the *Municipal Conflict of Interest Act*. Please note that we have already provided comprehensive feedback to the earlier review concerning the *Municipal Elections Act*.

The Discussion Guide breaks down the consultation questions into three themes: Accountability and Transparency, Municipal Financial Sustainability, and Responsive and Flexible Municipal Government.

ACCOUNTABILITY AND TRANSPARENCY

Code of Conduct

Do you know whether your municipality or school board has a code of conduct? If so, does it seem to be working effectively?

We believe school board code of conduct policies contribute to confidence in public education and respect within the community for the integrity trustees bring to their role. In February 2012, OPSBA shared with its members a *Template for Code of Conduct and Enforcement of Code of Conduct*. The template represented the combined work of OPSBA's Policy Development Work Team, Board of Directors, legal counsel and many trustees, including the First Nation Trustees' Council.

The template was, and is, intended as a guide for school boards. A school board may decide to add or amend provisions of the template to address their local concerns and reflect the mandate and vision of their board.

We recommend that boards consider using an informal procedure first and foremost when investigating a breach of the Code of Conduct and discuss remedial measures to positively correct alleged inappropriate behaviour. We suggested using the more formal complaint procedure for those egregious and repetitive behaviours that disrupt the ability of a board to conduct its business.

As recently as a couple of months ago, OSPBA surveyed its member boards to determine the prevalence for code of conduct policies. Our results indicated that the vast majority of our member boards have a current policy in place and a remaining few are in the process of establishing a new policy.

Do you think there should be a greater range of penalties for violating a code of conduct?

Currently under the *Education Act*, “If the Board determines that the Trustee has breached the Board’s Code of Conduct, the Board may impose one or more of the following sanctions:

- (a) *Censure of the Trustee.*
- (b) *Barring the Trustee from attending all or part of a meeting of the Board or a meeting of a committee of the Board.*
- (c) *Barring the member from sitting on one or more committees of the Board, for the period of time specified by the Board.*

As elected officials with a constituency they have been elected to represent, we have maintained that Boards should not impose heavier sanctions than the above but could impose a lesser one as a warning or a requirement that the Trustee successfully complete specified professional development courses at the expense of the Board.

School boards would decide the sanction or penalty for a breach and may consider some issues more serious than others. Trustees cited the issue of confidentiality to be extremely important and any breach should have stronger penalties. It is important to note that school boards do not have the power to declare a Trustee’s seat vacant.

We would also argue that any “penalties” should be considered in the same manner as those for other elected officials, including MPPs and MPs.

With regard to school boards, it is important to understand that some boards have First Nation Trustees appointed to their board. They are encouraged to have regard for Ontario Regulation 462/97 *First Nations Representation on Boards*. This Regulation provides that appointed First Nation Trustees are deemed to be elected members of the board. While this means that a Trustee Code of Conduct and the Enforcement provisions would apply equally to First Nation Trustees, school boards should have regard for the fact that the Regulation expressly provides that First Nation Trustees represent the interests of the First Nation students of that school board. School boards should consider taking this fact into consideration when imposing any sanction for a breach of the Code of Conduct by a First Nation Trustee.

Integrity Officers (Integrity Commissioner, Municipal Ombudsman, Auditor General, Lobbyist Registry)

**Are there gaps in the current municipal accountability and transparency system?
What kinds of tools would support greater accountability and transparency in local government?**

Last December, the Ontario government passed Bill 8, *Public Sector and MPP Accountability and Transparency Act*. This omnibus piece of legislation included a total of 11 Schedules, including Schedule 9 – Amendments to the Ombudsman Act and Related Amendments, which was proclaimed this past spring (May 21, 2015). This means that provincial oversight of the Ontario Ombudsman would now include school boards effective September 1, 2015. OPSBA had argued that school boards and the education sector have significant “provisions for review of decisions, most of which involve external third parties, including internal standard reviews, objections, appeals and hearings.”

School boards are governed by the *Education Act* and operate under many regulations, directives, policies, procedures, by-laws etc. Most school board policies are based on specific legislation and/or regulation that intrinsically have an appeal mechanism. Moreover, the reporting requirements for school boards far exceed the requirements in any other sector.

With regards to the new oversight, OPSBA has been connecting with the Ombudsman’s office to ensure they fully understand the education sector, how our funding works and the role of school boards and their trustees. We have participated in stakeholder consultations to discuss the Ombudsman’s complaint investigative process, arranged for the Acting Ombudsman to attend a Board of Directors meeting, and will continue to seek other appropriate professional development opportunities for our members.

Our own internal research indicates that many boards have established processes to inform parents and members of the community about who and when to contact should they have a concern. Currently, there is a wide variety in these processes ranging from approved policies and procedures to informal protocols and general information. We will work with our education partners in developing a common process for raising complaints and concerns.

We are also aware that one of our member boards is in the process of hiring a part time Integrity Commissioner to oversee their Trustee Code of Conduct.

Conflicts of Interest

**How might conflict of interest rules be made clearer for municipal officials and the public?
Do you think the current rules prevent municipal councillors from participating in municipal decision making too often? Do you feel that your own councillor/board member (e.g. school trustee) has been able to represent your interests at meetings given these conflict of interest rules?
Do you think municipal councillors need more support to comply with conflict of interest rules? For example, having a municipality make expert or legal advice available to them.
How could public access to the decision-making process about conflicts of interest be improved?
What do you think are the appropriate penalties for violating conflict of interest rules?
Who should enforce municipal conflict of interest rules?**

The main purpose of the *Municipal Conflict of Interest Act* is to protect the public interest by ensuring that public officials do not improperly take advantage of their positions of trust to seek personal gain. The concept of pecuniary, or financial interest, is confusing for many trustees and determining what is indirect or deemed interest. The decision to declare a conflict of interest is the personal responsibility of the

trustee. Although it is a personal decision, it has been suggested to us that a “Conflict of Interest” checklist might be helpful.

OPSBA has communicated our concerns regarding the *Municipal Conflict of Interest Act* (MCIA) for several years to both the Ministry of Education and the Ministry of Municipal Affairs and Housing.

On a fairly regular basis, our Association discusses conflict of interest and offers advice and PD sessions to our members. Two “cases” in particular, received extensive media coverage that generated much discussion. One case involved a trustee who voted on school renovations in her ward and the allegation was that her own property value will or would increase. The other case was in regard to possible school boundary changes and the fact that the trustee lived in the particular area that was under review. In these two instances, it was our belief that trustees were properly performing their elected job duties and were unfairly accused of breaching conflict of interest.

As mentioned in the above section, OPSBA created a Code of Conduct template that includes six main principles, including “Avoidance of personal advantage and conflict of interest.” Under that principle we included the following:

- *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. However, this does not, for example, preclude a Trustee from accepting a free ticket or admission to a charitable event or professional development event.*
- *A Trustee shall not use his or her office to advance the Trustee's 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.*

With regards to the actual legislation, we offer these comments:

- *Section 1 - Definitions.* We suggest adding a definition for pecuniary interest. This is given a broad interpretation by our courts and each case seems to be determined individually.
- *Section 4 - Exceptions -- Clause (j) By reason of the member having a pecuniary interest which is an interest in common with electors generally.* This refers directly to the two media cases mentioned earlier. This “interest in common” is not defined in the Act so trustees are left to make individual decisions and/or seek legal advice.
- *Section 10 - Power of judge to declare seat vacant, disqualify member and require restitution.* We believe that the penalty should not be so singular and severe. There should be a menu of sanctions that should also match the seriousness of the offence.

Section 10 also allows a judge the discretion to disqualify the member from office for up to seven years. Municipal terms are four years and we seek clarification as to why these periods do not align.

We would also be interested in discussing the possibilities of other entities or avenues to “weigh” in on conflict of interest decisions. Do all challenges have to go to court and have a judge rule?

Another significant issue to consider for school boards is that many individuals became trustees because they had a connection to their local school and board. There are many examples of trustees having to declare a conflict because of their family relationships. This can result in a number of trustees declaring a conflict of interest and, therefore, unable to discuss and vote on budget and employee contract issues.

Below are examples of recent headlines which suggest that more discussion and education about conflict of interest needs to occur.

- [Conflicts mean only two Catholic board trustees voted on budget](#) (*Hamilton Spectator*)
- [Change hiring rules](#) -- *During a recent meeting, seven of the board's 11 trustees declared a conflict of interest when the matter of employee contract negotiations arose. The trustees left the room, leaving three of their peers to deal with the item. (Mississauga News).*

Open Meetings

Do you think there should be more options for municipal councils to use technology in holding meetings? (e.g., internet video conferences?) Please provide examples.

Do you think that the public has appropriate access to council meetings? How could municipal council meetings be more transparent?

Under what circumstances do you think it is appropriate for council to discuss matters in private? (e.g. personal information, security of the municipality)

Although this section is referring to municipal councils, OPSBA would like to state one of the primary ways that school boards meet public expectations of transparency and accountability is to make policy decisions at open, public meetings. This is mandated via the *Education Act* and includes committee meetings as well. Trustees can attend meetings either in person or through electronic means. Moreover, some boards live webcast their meetings or have archived videos of their meetings. Meeting notices, agendas and minutes are all posted on board web sites.

The *Education Act* does allow for certain matters to be discussed in private. These are outlined in Section 207 and deal mostly with human resource or legal issues. It should be noted that even though these discussions are in private, any vote must be done in public.

Other

Overall, what do you see as the province's role in supporting municipal and local board accountability and transparency? What do you see as your municipality's role?

How effective are the accountability and transparency requirements in the Municipal Act, City of Toronto Act and Municipal Conflict of Interest Act?

How might accountability and transparency rules be made clearer for municipal officials, board members and the public?

Accountability and transparency are two values that OPSBA, school boards and their elected trustees strive to ensure on a daily basis. Governed by several acts of legislation and regulations, boards are mandated to demonstrate these values in their policies, procedures, guidelines and the numerous reports required.

MUNICIPAL FINANCIAL SUSTAINABILITY, and
RESPONSIVE AND FLEXIBLE MUNICIPAL GOVERNMENT

Finally, there were two other sections with questions about *Municipal Financial Sustainability* and *Responsive and Flexible Municipal Government*. The first topic included questions about planning and prioritising. We continually seek opportunities to meet with our municipal partners to discuss many issues that affect our communities including decisions around schools (new and those that may close), child care, transportation, shared school spaces and many more.

The other topic asked about allowing regions to respond to changing demographics and/or rapid population growth. The number of elected school trustees and their distribution over a board's jurisdiction are governed by the *Education Act* and Ontario Regulation 412/00 "Elections to and Representation on District School Boards". We have commented in an earlier submission (Municipal Elections Act Review) about some changes in the timing of information shared with school boards in order to make these decisions. Part of this includes the need for accurate and up-to-date data.

In closing, we look forward to more consultation with the Ministry of Municipal Affairs and Housing and the Ministry of Education about these issues. It was suggested that perhaps the Ministry could share and communicate with the sector more regularly about common issues (i.e. conflict of interest rulings and rationale etc.) We also look forward to commenting on any future legislation that may be introduced.



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The Ontario Public School Boards' Association (OPSBA) represents public district school boards and public school authorities across Ontario. Together our members serve the educational needs of almost 70% of Ontario's elementary and secondary students. The Association advocates on behalf of the best interests and needs of the public school system in Ontario. OPSBA believes that the role of public education is to provide universally accessible education opportunities for all students regardless of their ethnic, racial or cultural backgrounds, social or economic status, individual exceptionality, or religious affiliation.