



April 2, 2024

OPSBA Submission to Ontario's Regulatory Registry postings re:

- ***Integrity Commissioner Qualifications & Code of Conduct Complaint Process***
- ***Trustee Code of Conduct Sanctions - Maximum Reduction of Honoraria***
- ***In-person Attendance Requirements for Board and Committee Meetings (Ontario Regulation 463/97)***

The Ontario Public School Boards' Association (OPSBA) welcomes the opportunity to respond to the current Regulatory Registry postings that concern important governance-related issues for our members. The Association has previously commented on these with our [formal submission](#) last spring regarding Bill 98, *The Better Schools and Student Outcomes Act*, and in past [advocacy](#) work.

As the province's leading advocate for public education, OPSBA continues to support initiatives that improve student achievement and well-being, and that also lead to increasing public confidence in our world-class public education system. We believe that strong local governance, with students at the forefront, contributes to this success.

Our internal consultative Work Groups, that is composed of public school board trustees from all regions of the province, have also participated in recent topic-specific Ministry of Education consultations this year regarding Codes of Conduct and the use of Integrity Commissioners (ICs). The responses to the proposals included in this submission reflect our aforementioned past commentary, as well as input from senior staff, the Indigenous Trustees' Council, the Black Trustees' Caucus, and legal counsel.

The Education Act New Regulation: Integrity Commissioner Qualifications & Code of Conduct Complaint Process

The use of Integrity Commissioners in Trustee Code of Conduct policies has generated much discussion among our members.

Key Concerns:

- Trustees should be the only people able to bring forward a code of conduct breach; members of the public should not be eligible to do so. OPSBA will be recommending that our members update their Code of Conduct policies accordingly.
- Some school boards already have ICs with contractual obligations and there may be costs associated with these contracts. These obligations must be considered when determining the optimal timelines for implementation. School boards that already have people in place to complete a contract require some flexibility, or they should be reimbursed for costs associated with potential litigation or negotiating a cost to break the contract.
- We will also continue to recommend to our member boards to first use an informal investigative process before complaints are directed to an IC.
- There remains a significant concern about the number of powers that will be given to ICs, including the determination of breaches and sanctions.
- Public school board trustees have expressed concerns about the potential for certain aspects of the proposed regulation to lead to unnecessarily high costs for

the use of ICs, and the proposed appeal process. These funds would be better directed to students.

Further Considerations:

- Any changes to create an IC-led process or change Trustee Code of Conduct policies should not be implemented prior to the next term (2026-2030).
- The investigative and appeal processes should not be finalized until the IC roster is established, to allow for consultation with the ICs themselves. These experts will have additional advice and expertise to contribute.
- Any final process needs to be procedurally and administratively fair to all parties. The process needs to clearly state which actions are conducted publicly and which are done privately (in-camera).
- It is made clear that ICs are only involved in code violations (not to provide other advice and counsel).
- Any policy should support the goal of promoting and strengthening school board governance, as well as preserving and enhancing relationships.
- All IC-related costs should be fully funded by the Ministry of Education.
- The Ministry of Education review OPSBA's [Template for Code of Conduct and Enforcement of Code of Conduct](#) which was originally developed in 2012 and updated in 2019. (The template represents the combined work of OPSBA's Policy Development Work Group, Board of Directors, legal counsel, and many trustees, including the Indigenous Trustees' Council.)
- Any policy considers how to approach and ensure sanctions are culturally responsive. For example, OPSBA consulted the ITC about this when sanctions were to be imposed on Indigenous Trustees who are appointed by their First Nation Community. (Please see the statement about this in our template)

The following feedback reflects the various subsections considered in the proposal:

1. IC Roster

- OPSBA appreciates the Ministry of Education allowing school board/trustee associations to review the proposed list of candidates and provide comments for consideration.
- Once fully consulted on, all boards should have equal access to a roster of ICs and funding to cover their use, including the appeal process.
- The roster members must have a set of standard qualifications, and consistent rules to follow. There would have to be some sort of oversight to ensure ICs retain independence and neutrality.
- We suggest the Ministry of Education consider involving the Ontario Education Services Corporation (OESC) to maintain the roster of ICs as it represents all four school systems. Alternatively, a committee with representatives from each of the four school board/trustee associations and the ministry could be established.
- The Ministry of Education is proposing to procure the services of an executive search firm to help create the roster of ICs. Our recommendations for a firm include the following:

- The Ministry of Education should consider executive search agencies that have successful experience in the K-12 sector in Ontario, have outstanding credentials and references, demonstrate expertise in mitigating bias in the process, and maintain excellent networks within Ontario to assist with the identification of suitable candidates.
- The Ministry of Education should consider the firm's track record in helping their clients successfully increase the diversity of their placements.

2. IC Qualifications

- OPSBA supports the initial list of qualifications, but suggest these additional needs to be added:
 - Knowledge of the *Municipal Elections Act*
 - Knowledge of school board governance (not simply municipal governance)
 - Understanding of differences between operational issues, governance issues, and what constitutes a Code of Conduct breach
 - Understanding of the *Ontario Human Rights Code* grounds (Age, Ancestry, colour, race, Citizenship, Ethnic origin, Place of origin, Creed, Disability, Family status, Marital status [including single status], Gender identity, gender expression, Sexual orientation)
 - Understanding of anti-racism and anti-oppression principles and frameworks
 - Ability to produce a report of the finding of facts that is neutral and does not include personal opinion or hearsay
 - Ability to disseminate information in a way that is accessible to all parties and meets AODA standards (i.e. accessible formats and communication supports)
- Reviews should be done every three to five years to obtain feedback from school boards who have used anyone on the roster. Consideration could be made to include ICs as well to share their insight.
- Understanding that there are not many people skilled to perform this investigation function for school boards in this province, therefore ICs should be able to remain on the list indefinitely unless a review or evaluation suggests otherwise.

3. Notice and Referral of Complaint

- OPSBA appreciates the proposed changes to the provision of notice for complaints about both the Chair and Vice-Chair. Providing notice to another trustee – possibly one who has been previously selected for such a role – rather than the Director of Education, is a better approach from a governance perspective.
- OPSBA supports the proposed change in the time period for referral to an Integrity Commissioner from 10 days to 20 business days, however, we suggest the Ministry of Education use 20 “school days” as defined in the *Education Act*, which means any school day (194 days) that is not a school holiday (as defined in O. Reg. 304: School Year Calendar, Professional Activity Days). Ten days is

insufficient time to allow for the possibility of informal resolution of a complaint, particular at certain times of year such as summer or other common holiday periods.

- OPSBA further recommends that consideration be given to the school year calendar and the time period to not include Winter Break, March Break, Multi-Faith Religious Holy Days and possibly July and August. Local board policies could reflect their calendars (e.g. “or as specified by local board policy” could be added to the regulation).
- Any allegation of a breach of the Code must be brought to the attention of the Chair or Vice-Chair no later than six weeks after the breach comes to the knowledge of the trustee reporting the breach.
- OPSBA will be recommending that its members use an informal process (as outlined in our template) to attempt to resolve the complaint with remedial measures during the initial time period prior to the referral to an IC and a formal investigation process.

4. Investigation Process

Required Content for Notice

- The notice of breach should include not only the date of the incident(s) but the date the trustee alleges there is a breach discovered. The IC will need to know this to determine whether to commence an investigation under 218.3 (8).
- The initial notice of the complaint to the board should not be made public prior to the expiration of the 20 business days (or 20 school days, as is being recommended by OPSBA) before the referral to an integrity commissioner for investigation to provide time to determine if the complaint can be resolved informally.
- The regulation should stipulate that no complaints can be brought during an election period, and investigations should be suspended in the case of criminal investigations or proceedings or investigations under another Act.
- OPSBA recommends the following be added to the regulation, “In an election year for trustees, a code of conduct complaint, shall not be brought during the period commencing the day after nominations have closed and ending after the first Board meeting after the new term of office of the Board commences. If the trustee accused of a breach of the Code is not re-elected, no investigation into the alleged breach of the Code by that trustee shall be undertaken. The limitation period for bringing a complaint shall be extended as necessary. If the subject-matter of the complaint is being investigated by law enforcement officers, a criminal charge has been laid, or is otherwise being dealt with in accordance with a procedure under another Act, the investigation by the integrity commissioner shall be suspended until the police investigation, charge or matter under another Act has been finally disposed of.”

Integrity Commissioner Powers and Processes

- The proposal indicates that an IC would “define the scope of the investigation” and we recommend that this be amended to ensure that the “scope” is mutually agreed upon between the Board of Trustees, the IC, and not solely determined by the IC.
- OPSBA has concerns about the expansion of the powers of an IC under consideration. A written report containing the finding of facts (and possibly a recommendation as to whether a breach of the Code has occurred), should be prepared, and provided to the Board, for consideration, but the Board of Trustees (as the governing body) is the only entity who should be deciding whether the code has been breached and any sanctions.

5. Appeal Process

- OPSBA is concerned that the timelines for appeal are too long. Under the most recent proposal, appeals could take a minimum of five to six months to complete.
- Further, the regulation is still silent with respect to whether there is a stay of a decision pending appeal.
- The government could adopt a similar concept as s.25 of the *Statutory Powers Procedure Act* (SPPA) – which does not apply here – and either say it is automatically stayed or up to the panel whether it is stayed.
- The proposal suggests that a three-member panel will be appointed for the appeal process. The appeal process must be fully funded by the ministry.

6. Integrity Commissioner Fees and Sanctions

- Boards are concerned about budgets and costs for professional services, if the IC roster is mandated by legislation, it should come with some financial support provided to the Board Administration and Governance line in the Grants for Student Needs or be covered centrally by the ministry. Several factors could be used to determine the level of funding, but none would be able to accurately predict where/to what level IC services would be required. A system that reimburses a board for the cost of IC services is needed.
- Experience has shown that in the absence of clear parameters, some use of ICs has led to increased costs due to an IC increasing their scope of work.
- There is no central body for ICs that regulates their work as these individuals come from different educational/career backgrounds. Because of this, their rates vary. Also, geography and overhead are factors when considering rates (i.e. GTA, North vs. South, etc.)
- The OPSBA Code of Conduct template includes a broader range of sanctions and has always stressed the use of remedial solutions and professional development as the best course of action. Tied to this is the concept of restorative justice and rehabilitation. This often delivers a much more productive and successful outcome.
- An IC should never have the power to impose a sanction that vacates a trustee’s seat. Trustees are democratically and locally elected by their communities.

The Education Act Regulation: Trustee Code of Conduct Sanctions - Maximum Reduction of Honoraria

For several years, OPSBA has provided commentary regarding trustee honoraria and the need to support those individuals who run for public office and are democratically elected or appointed by their communities to advocate for public education. Public school board trustees are not paid salaries, but rather are given a modest honorarium, a remuneration that has not seen any increases since 2006. Moreover, it is worthwhile noting that the range in trustee honoraria is approximately \$7,500 to \$29,000. This is far below the living wage/poverty line.

We are aware that through Bill 98, *The Better Schools and Student Outcomes Act*, the *Education Act* (218.3.1) was amended to include a list of possible sanctions an Integrity Commissioner *may* impose, one of which was to, “*reduce the member’s honorarium by an amount not exceeding the prescribed amount, requiring the member to return any excess already paid to the member and authorizing the board to recover the excess from the member.*”

The ministry is proposing that the maximum amount by which a trustee's honoraria may be reduced as a sanction for breaching a school board's Trustee Code of Conduct be 25% of a trustee's combined base and enrolment amount for the year of the term of office in which the breach occurred.

OPSBA believes that trustees are not compensated enough for this penalty to be meaningful and provide an effective deterrent. This sanction will be meaningless for those trustees who are not concerned about breaching the code and are not worried by a reduction in honoraria.

We will be strongly recommending that an IC *not* impose this sanction, and instead refer to the use of remedial solutions and professional development as the best course of action. Tied to this is the concept of restorative justice and rehabilitation, which often delivers a much more productive and successful outcome. The OPSBA Code of Conduct template includes this broader range of sanctions.

It is unfortunate that trustees and school boards seem to be held to a different standard, and face different consequences or penalties than other levels of government and elected officials.

Over the past few election cycles, OPSBA has been actively working to increase the number and diversity of trustee candidates. We have concerns that this punitive action will be a disincentive for community members to join public service. At a time when the risk/reward of public service is so off balance due to rising instances of abuse and harassment, implementing a policy like this will only serve to deter more qualified people from seeking elected office.

Proposed Changes to In-person Attendance Requirements for Board and Committee Meetings (Ontario Regulation 463/97)

The following is our understanding of the proposed changes:

- 1) The first proposed change would require board's electronic meeting policies to apply to *all* trustees (not just the chair or designated) and allow four exceptions for in-person meeting attendance of a regular meeting of the board (primary residence travel distance, weather conditions, health-related issues, and disability). These would take effect once a regulation is filed (and could be before the next term.)
- 2) The second proposed change is that effective November 15, 2026, board policies will require *all* trustees (including those in the role of Chair or designate) to be physically present for all regular meetings of the board in each year of the term of office, unless one of the four exceptions to the requirement for in person attendance applies.

OPSBA recognizes that face-to-face meetings with trustees present physically, allows for rich dialogue, respectful debate, and discussion. But we would like to note that member boards have had success with hybrid approaches to their meetings and have shared that this has included cost savings (travel expenditures), increased community participation, reduced barriers, reinforced environmental stewardship, and supported greater accessibility. Many boards see this as an equity issue and have found value in providing options for their board members, as well as members of the public.

OPSBA understands and supports that these changes are to be applicable to all regular meeting of the board, and not considered for any special board meeting or any committee meetings.

OPSBA would like to ensure that there be flexibility for boards to develop local policies concerning the four exceptions and how they are to be defined. Specifically,

- The first exception is regarding distance from a trustee's primary residence to the meeting location being more than 125 kilometres. How will this be accurately measured and by what standard method? (i.e. Waze, Google Maps)
- The second exception is about weather. How will the exception of weather conditions be explained/captured? Who decides and under what authority?
- The third exception is about health – how is this approved? Does this include mental health as well?
- The fourth exception is about disability – how is this approved? What is the list of approved or accepted disabilities? Will a medical note be required to indicate that it presents a challenge for participating in person? Who then also makes the final decision as to the reasonableness of the request? It is also important to note that school boards have obligations under the *Ontario Human Rights Code* and the *Accessibility for Ontarians with Disabilities Act, 2005 (AODA)* to accommodate people with disabilities.

OPSBA members supported the inclusion of a fifth or “extra” exception that allows local boards to approve the participation of a member in regular board meetings by electronic means. (This could include traffic/travel times, additional and competing board-related attendance requirements, or other local specific issues that could hinder a trustee’s ability to be physically present.)

OPSBA will recommend to boards that any exceptions that include personal information be respected and kept confidential. OPSBA also requests that boards be given the funds to support approved exceptions and provide the means for electronic participation.

As work moves forward in creating a revised regulation, we ask that the ministry staff work with school board/trustee associations to ensure there is absolute clarity about meeting requirements and allowances as mandated by both the *Education Act* and any revised regulation. This would include:

- That under the *Education Act* a trustee’s seat is automatically vacated if the trustee is absent from three consecutive regular meetings of the board, unless the absence is authorized by board resolution entered into the minutes. “Regular meetings” means board meetings not committee meetings and a trustee who participates in a meeting through electronic means is deemed to be present at the meeting.
- That under the *Education Act* trustees may take a pregnancy or parental leave for up to 20 weeks without authorization from their board. The seat of the member who takes a parental or pregnancy leave would not be declared vacant if they missed three consecutive regular board meetings during the 20-week time period.
- That the revised regulation would keep the current allowances for meeting electronically due to closures authorized by public health and the government for extraordinary circumstance (i.e. pandemic).
- That until the next term of office begins in 2026, the revised regulation would still require the physical presence of chairs (or designates) to attend at least half the meetings and trustees to attend three meetings in a 12-month period beginning November 15.
- That beginning the next term of office in 2026, the revised regulation would require *the physical presence* for all trustees at all regular meetings of the board, unless an exception is met.

The Ontario Public School Boards' Association represents English public district school boards and public school authorities across Ontario, which together serve more than 1.3 million public elementary and secondary students. The Association advocates on behalf of the best interests and needs of the public school system in Ontario. OPSBA is seen as the expert voice of public education in Ontario and is routinely called on by the provincial government for input and advice on legislation and the impact of government policy directions.



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