

Court File No.: 112/18

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
DIVISIONAL COURT**

BETWEEN:

**THE TORONTO DISTRICT SCHOOL BOARD**

Applicant

-and-

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO**

Respondent

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**RESPONDING APPLICATION RECORD**

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August 1, 2018

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SUPERIOR COURT OF JUSTICE  
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TORONTO DISTRICT SCHOOL BOARD

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AFFIDAVIT OF CHRISTOPHER PAUL BLOYE

AFFIRMED JULY 27, 2018

I, CHRISTOPHER PAUL BLOYE of the City of Kitchener, in the Province of Ontario,  
AFFIRM AS FOLLOWS:

1. I am Christopher Paul Bloye, Director, Capital Program Branch of the Capital and Business Support Division of the Ministry of Education (the Ministry). I have been an employee of the Ministry since January 2002 and have held the position of Director, Capital Programs Branch since July 2017. I have attached my curriculum vitae as **Exhibit 1** to this affidavit.
  
2. I swear this affidavit to provide evidence concerning the history of Ontario's education development charges (EDC) regime. Except where noted otherwise, the following statements are based on my personal knowledge through my work for the Ministry during the relevant periods. Where I describe events prior to my

employment with the Ministry, I am relying on the Ministry's records as compiled by staff in the Capital Program Branch for the purposes of this affidavit.

### Overview of the Ontario education system

3. Public education in Ontario is delivered through a decentralized system of school boards established by the Legislature to govern the provision of elementary and secondary instruction in publicly-funded schools. There are four kinds of district school board in Ontario: English-language public district school boards; English-language separate district school boards; French-language public district school boards; and French-language separate district school boards.
4. The *Education Act* sets out a clear division of responsibility between school boards and the Ministry. School boards are statutory corporations independent from the Ministry and are governed by elected trustees. Although the Minister of Education is responsible for the overall administration of the *Education Act*, school boards, not the Ministry, are responsible for the day-to-day delivery of education to students throughout the province.<sup>1</sup> The Ministry provides adequate financial resources and the flexibility to enable school boards to meet their responsibilities, and monitors board actions to ensure accountability to taxpayers. School boards are the owners of board property and the Ministry has no authority to direct boards to undertake or not undertake particular capital projects.

### Origin of EDCs

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<sup>1</sup> The Province does operate schools which provide education directly to students with special education needs who require intensive supports – Deaf or hard of hearing, deafblind, blind or have low vision or have severe learning disabilities.



5. In the 1950s, increased urbanization and demand for housing created fiscal pressure on municipalities required to provide new infrastructure. Prior to 1959, municipalities entered into subdivision agreements with developers to pay for on-site services and charged informal fees to pay for off-site services.
6. From 1959 to 1989, the *Planning Act* provided authority for municipalities to enter into such agreements and provided the basis for fees for infrastructure called "lot levies". Lot levies were negotiated on a site to site basis, and municipalities were required to spend the monies raised on services for those who paid the levies.
7. In 1989, the rules and procedure for levying development fees were standardized in a separate act for the first time, the *Development Charges Act, 1989*, SO 1989, c 58, and referred to henceforth as "development charges". A copy of this law in its original form is attached as **Exhibit 2**.
8. The *Development Charges Act, 1989* had three fundamental principles:
  - a. Municipalities have the authority to levy fees on new development through development charges, if they so choose.
  - b. The process of establishing a development charge and any accountability mechanisms are codified in provincial legislation and standardized throughout the province.
  - c. Development charges must be tied to the costs of providing infrastructure for growth related services ("growth must pay for growth" principle).

9. The *Development Charges Act, 1989* authorized three types of development charges: (1) municipal, (2) GO Transit and (3) education. Part III of the *Act* dealt with EDCs, allowing school boards to levy development charges for the first time. This was the legislation considered by the Supreme Court of Canada in *Ontario Home Builders' Association v. York Region Board of Education*, [1996] 2 SCR 929.
10. Under this legislation, eligible boards could collect EDCs for education capital costs, which were defined as including acquisition, construction, expansion, alteration, improvement, furnishing or equipping of school facilities (section 29). A board was eligible to pass an EDC by-law if there was residential development in the board's jurisdiction increasing education capital costs, subject any other prescribed conditions (section 30).
11. In 1995, Ontario announced a review of the *Development Charges Act, 1989* which resulted in the *Development Charges Act, 1997*, SO 1997, c 27, becoming the governing legislation for municipal development charges, and the two other forms of development charges ultimately being dealt with in separate legislation.

#### **Bill 160 changes to EDCs**

12. The *Education Quality Improvement Act, 1997* known as Bill 160, received Royal assent on December 8, 1997. Bill 160 introduced a new education funding model that removed the ability of school boards to generate their own capital funds through taxation. This model was initially called Student-Focused Funding but today is known as Grants for Student Needs.

13. Starting in 1998, boards received the funding necessary for their operations from the province in the form of a combination of legislative grants from money appropriated by the Legislature, and education taxes, the rates of which are set by the Minister of Finance through regulation. The new education funding formula replaced a complex system of financing education that had involved a combination of government grants and revenue raised by school boards from their local property tax bases. Before 1998, school boards would set local education property taxes, and municipalities would collect the taxes on board's behalf. This system was considered inequitable, since boards with large property tax bases were able to raise more money than boards with access to small tax bases. Starting in 1998 boards no longer had the authority to determine education tax rates.
14. Bill 160 created Part IX, Division E of the *Education Act* as the new statutory provisions governing EDCs. The portion of Bill 160 creating Division E is attached as **Exhibit 3**.
15. Subsection 257.54(1) provides that "[i]f there is residential development in the area of jurisdiction of a board that would increase education land costs, the board may pass by-laws for the imposition of education development charges against land in its area of jurisdiction undergoing residential or non-residential development." Subsection 257.54(6) provides that the imposition of an EDC by a board is subject to prescribed conditions.
16. The provisions of Division E also define eligible land costs (257.53(2)-(4)), sets out which development actions for which EDCs may be imposed (257.54(2)), provides

for exemptions and sub-regions within an EDC by-law (257.55, 257.57) and specifies that the maximum duration of an EDC by-law is five years (257.58). The Act requires that a board complete an EDC background study before passing an EDC, hold a public meeting after completing the study, and pass the by-law within one year of completing the study (257.61-257.63). Any person may appeal an EDC by-law to the Ontario Municipal Board (257.65), which is now the Local Planning Appeal Tribunal.

17. EDCs are payable upon a building permit being included and are paid to the municipality which issues the permit (257.80-257.81). A board with an EDC by-law is required to establish an EDC account and deposit EDC revenues in the account (257.82-257.83). The provisions referred to in this section have not changed since Bill 160.

18. Ontario Regulation 20/98 ("the EDC Regulation") came into force on February 1, 1998 and has prescribed the conditions for EDC by-laws since that time. Unlike in the past, eligible costs for EDCs were now limited to the cost of land and related site preparation, reflecting the fact that boards would receive separate funding for the cost of constructing new schools and additions. The original version of the EDC Regulation is attached as **Exhibit 4**.

19. At the time that the EDC Regulation was being crafted, the Ministry consulted with a group of school board staff representing school boards that been levying EDCs under the previous scheme. The Ministry also consulted the Urban Development Institute ("UDI"), which produced a paper entitled "The Education Quality

Improvement Act (Bill 160): A New Methodology for Calculating Education Development Charges”, which I attach as **Exhibit 5**. The UDI report recommended that board capacity projections be done on a board-wide basis instead of the past practice of basis projections on a review area (see page 10). The report indicated that no boards in Toronto were levying EDCs under the previous approach (see Appendix B).

20. To be eligible to pass an EDC by-law under the original version of the EDC Regulation, a board was required to have produced approved estimates which indicated that the estimated average number of either elementary or secondary pupils over the five years following the passage of the by-law exceeded the board’s capacity to accommodate the pupils (subsection 10(2)).

#### **Changes to EDC eligibility rules since 1998**

21. In 2001 an EDC Consultation Committee (EDC Committee) was established to recommend amendments that would ensure school boards, fairly and equitably, have the resources they need to purchase new school sites. The EDC Committee concluded its review with a report to the Minister, including 28 recommendations with proposed amendments to the *Education Act*, the EDC Regulation and development of an EDC Guideline. The EDC Committee’s report is attached as **Exhibit 6**.

22. The report did not recommend any changes to the initial threshold criterion of estimated enrolment exceeding capacity. It did recommend a second possible criterion, that boards be eligible to pass an EDC by-law when a previously passed

EDC by-law was expiring and there was a deficit in their EDC reserve fund. The report described its rationale for this recommendation (at page 7):

As part of the flexibility in decision making that boards are granted with respect to pupil accommodation, some boards may elect to fast track the purchase of some of their sites with debt financing and build those schools in the first five years of the fifteen year enrolment projection period. As a result, it is possible that a board may have a deficit in its EDC reserve fund at the commencement of a second bylaw period, but has sufficient school capacity to accommodate enrolment from anticipated development. Under this circumstance, there would be no means of recovering the debt.

Under the existing regulation, a school board becomes eligible to pass an EDC bylaw only if the board's average elementary and/or secondary enrolment within its jurisdiction exceeds the board's elementary and/or secondary capacity over the proposed five-year term of the bylaw. In the scenario described above, the board would not be eligible to pass a second bylaw.

Allowing boards the flexibility to buy sites and construct schools earlier than projected can create greater efficiency in providing for pupil places in growth areas.

23. In 2002, in response to the report, Ontario Regulation 95/02 was passed (attached as **Exhibit 7**), which amended the EDC Regulation to add an additional eligibility criteria related to an EDC deficit (now sub-clause 10(2)(iii)) and made other methodological changes recommended by the report.

24. The Ministry also at this time published the EDC Guideline, attached as **Exhibit 8**.

25. A consolidated current copy of the EDC Regulation is attached as **Exhibit 9**, which includes technical amendments in the intervening years. .

26. As of July 27, 2018, 27 out of 72 district school boards in Ontario have passed EDC by-laws:

Board	Date By-law Expires	Area to which By-law applies	Res. Charge / Unit	Non-Res Charge / Sq. Ft. of G.F.A.	% of Charge Attributed to Residential Development	% of Charge Attributed to Non-Residential Development
Algonquin and Lakeshore CDSB	15-Oct-22	City of Kingston	\$254.00	\$0.00	100%	0%
Brant Haldimand Norfolk CDSB	01-Oct-18	City of Brantford, County of Brant	\$912.00	\$0.00	100%	0%
CÉP de l'Est de l'Ontario	01-Apr-19	City of Ottawa	\$423.00	\$0.22	90%	10%
CÉP de l'Est de l'Ontario	30-Mar-20	United Counties of Prescott and Russell	\$444.00	\$0.00	100%	0%
CÉC du Centre-Est	01-Jun-19	City of Ottawa	\$718.00	\$0.53	85%	15%
Dufferin Peel CDSB	30-Jun-19	Regional Municipality of Peel	\$1,343.00	\$0.56	75%	25%
Durham CDSB	01-May-19	Region of Durham (excl. Municipality of Clarington)	\$786.00	\$0.00	100%	0%
Durham DSB	01-May-19	Region of Durham (excl. Municipality of Clarington)	\$1,949.00	\$0.00	100%	0%
Greater Essex County DSB	10-May-19	Municipality of Leamington, Town of Amherstburg, Town of Essex, Town of Kingsville, Town of Lakeshore, Town of LaSalle, Town of Techumseh and the Township of Pelee	\$305.00	\$0.00	100%	0%
Greater Essex County DSB	10-May-19	City of Windsor	\$305.00	\$0.00	100%	0%
Halton CDSB	23-Jun-19	Regional Municipality of Halton	\$2,269.00	\$0.58	85%	15%
Halton DSB	23-Jun-19	Regional Municipality of Halton	\$4,364.00	\$1.11	85%	15%
Hamilton-Wentworth DSB	29-Aug-19	City of Hamilton	\$1,039.00	\$0.39	85%	15%
Hamilton-Wentworth CDSB	29-Aug-19	City of Hamilton	\$885.00	\$0.34	85%	15%
Kawartha Pine Ridge DSB	20-Jul-20	Municipality of Clarington	\$1,028.00	\$0.24	90%	10%
Niagara CDSB	21-Jun-20	County of Lincoln	\$186.00	\$0.00	100%	0%
Niagara CDSB	21-Jun-20	Welland Area County	\$172.00	\$0.00	100%	0%
Ottawa CSB	01-Apr-19	City of Ottawa	\$466.00	\$0.34	80%	20%
Ottawa-Carleton DSB	01-Apr-19	City of Ottawa	\$723.00	\$0.52	80%	20%
Peel DSB	30-Jun-19	Regional Municipality of Peel	\$3,224.00	\$0.45	90%	10%
Peterborough, VNCCDSB	01-Jul-20	Municipality of Clarington	\$710.00	\$0.16	90%	10%
Simcoe Muskoka CDSB	03-Nov-18	Simcoe County	\$448.00	\$0.12	90%	10%
Simcoe County DSB	29-Oct-18	County of Simcoe	\$1,311.00	\$0.35	90%	10%
Toronto CDSB	30-Jun-19	City of Toronto	\$1,493.00	\$1.07	75%	25%
Upper Grand DSB	23-Aug-19	County of Wellington	\$1,567.00	\$0.00	100%	0%
Upper Grand DSB	23-Aug-19	County of Dufferin	\$832.00	\$0.00	100%	0%
Waterloo CDSB	31-May-21	Region of Waterloo	\$653.00	\$0.32	80%	20%
Waterloo Region DSB	31-May-21	Region of Waterloo	\$1,948.00	\$1.41	80%	20%
Wellington CDSB	23-Aug-19	County of Wellington	\$317.00	\$0.00	100%	0%
York CDSB	01-Jul-19	Regional Municipality of York	\$991.00	\$0.17	90%	10%
York Region DSB	01-Jul-19	Regional Municipality of York	\$5,416.00	\$0.90	90%	10%

### Rationale for the EDC eligibility criteria

27. In the Ministry's view, the EDC eligibility criteria of enrolment greater than capacity encourage boards to ensure their assets are managed as efficiently as possible. School boards in Ontario need to have the ability to acquire new sites to allow for the construction of new schools to address accommodation pressures which exist within certain neighbourhoods. However, boards also need to address other neighbourhoods which are facing declining enrolment and thus have schools which are underutilized. The current eligibility criteria balance these two goals.

28. Using the eligibility criteria of enrolment greater than capacity which requires boards to respond to underutilization, is particularly important given the long-term demographic trends that are the background to any future planning for the Ontario

education system. Many boards in Ontario have declining enrolment. In total, Ontario's publicly-funded school system has 2.3 million pupil places for 2.0 million projected students for the 2018-19 school year.

29. School boards are expected to ensure the financial viability of their board while sustaining learning environments that support student achievement. This includes effectively using existing space. As part of a board's regular capital planning exercise, boards will review their facilities to ensure that education funding is directed towards supporting students and not to maintain excess space.

30. It would not be prudent from a financial perspective to construct new schools when boards have excess space that already exists to accommodate enrolment growth.

31. The Ministry does recognize that in some cases the available space may not be in the same neighbourhood as the students reside. Boards have a number of options by which they can manage excess space including school closure and consolidation, boundary changes, grade configurations, offering targeted programming or exploring whether available space can be leased out to community partners.

32. The Ministry is also aware of the potential for a board to intentionally create a deficit in its EDC reserve account in order to preserve its EDC eligibility pursuant to sub-clause 10(2)(ii) of the EDC Regulation. However, the Ministry expects that boards will make such large financial decisions only in the best interests of their students. In the absence of this criterion, boards would not be able to meet their financial obligations related to the EDC by-law. This allows boards the flexibility to buy sites earlier than projected.



33. The relevant historical material the Ministry has been able to locate shows that the Ministry has considered modifications to aspects of the EDC Regulation, including the eligibility criteria, several times since 1998, and consulted with stakeholders to solicit their views. In my experience working within government, these considerations reflect the Ministry's commitment to the ongoing review of its policies and programs to ensure they best serve the needs of the people of Ontario. Over a twenty year period, it is typical for modifications to most government policies to be internally considered at some point.

#### **Ministry's role in administering EDCs**

34. Before imposing EDCs, a school board is required by the EDC Regulation to prepare a background study which includes current capacity and enrolment of each of the school board's elementary and secondary school and projections of total new elementary and secondary enrolment for the school board for a 15-year period.

35. A 15-year planning horizon is used rather than the five-year maximum for an EDC by-law in order to smooth fluctuations in EDC by-law rates over time. The background study determines projections of residential housing starts and projections of the number of elementary and secondary students expected to attend the school board's schools as a result of this development. It also demonstrates the board's plans for new schools to accommodate the projected enrolment increases from development. The study also includes the number of sites required and the projected cost to acquire and prepare this land. The unit charge rates for both residential and non-residential development are also determined.

36. The background study is reviewed by the Capital Program Branch in the Capital and Business Support Division of the Ministry. Ministry staff will review the background study to ensure that the board meets the eligibility criteria. The school board's estimates of the projected enrolment increases resulting from the anticipated development in the area and the number of new school sites required to accommodate this enrolment will also be reviewed and approved. Once the Ministry approves these aspects of the study, the board can proceed with the EDC by-law procedure set out in the EDC Regulation.

37. Each year, boards with EDC by-laws are required to submit to the Ministry financial reports documenting:

- a. the initial balance of the EDC account;
- b. all revenues deposited into the EDC account, including interest earned;
- c. all expenditures made from the EDC account, including the:
  - i. cost of land for new school sites;
  - ii. cost to service the sites acquired;
  - iii. cost of site development required to prepare the sites for construction;
  - iv. interest costs associated with loans associated with the acquisition of sites funded from the EDC account; and closing balance of the EDC account; and

v. closing.

**Provincial capital funding for school boards from 1998 to present**

38. As part of the Bill 160 reforms, New Pupil Places (“NPP”) became Ontario’s main capital funding model for school boards and was used until 2010. The NPP model was implemented primarily for the growing urban boards where their enrolment exceeded their school capacity. Attached as **Exhibit 10** is a technical paper from 2007 which describes NPP at starting at page 92.

39. As with EDCs, under NPP, boards qualified for funding based on their board-wide enrolment being greater than capacity. A funding amount/pupil would be provided based upon the difference between enrolment and capacity. Nine boards including TDSB did not receive NPP funding from 1998 to 2010 since their enrolment never exceeded capacity.

40. In 2010, the province changed the way that major capital projects were funded from NPP to a new program called Capital Priorities. Under this model, the Ministry provides school boards with capital funding on a project-by-project basis rather than providing a pool of funds which was managed by the board as was the case under the old NPP model. The capital funding model was changed because most boards in the province were experiencing declining enrolment and the grant did not provide sufficient funds to support new construction. With declining enrolment, boards needed to consolidate schools with low enrolment and in some cases construct replacement schools. The NPP funding formula also did not address other capital needs of the sector which included: replacement of schools in poor condition,

consolidation of schools and the need to provide schools for French-speaking persons. However, the Ministry did offer targeted programs which addressed some of the needs which the NPP funding formula did not.

41. The Capital Priorities program provides school boards with an opportunity to identify their most urgent and pressing pupil accommodation needs. Funding is allocated on a business case basis for new schools, retrofits, and additions. School boards are required to identify their highest and most urgent capital priorities and submit the associated business cases in order to be considered for funding approval. Attached as **Exhibit 11** is Memorandum 2017:B7 dated June 12, 2017, which announced the most recent annual round of Capital Priorities funding.

42. Since 2011, including the 2017 Capital Priorities program, the Ministry has provided over \$4.1 billion in funding under the Capital Priorities program to support about 240 new school facilities and 275 additions/retrofits at existing schools.

43. Eligible projects for Capital Priorities funding are those addressing school boards' pupil accommodation needs, including:

- a. Enrolment pressure: Projects that accommodate pupils where enrolment is currently or is projected to persistently exceed capacity at a school or within a group of schools, and students are currently housed in non-permanent space (e.g., portables).
- b. School consolidations: Projects that support the reduction of excess capacity in order to decrease operating and renewal costs and address

renewal need backlogs. These projects may also provide other benefits such as improved program offerings, accessibility or energy efficiency.

- c. Facility condition: Projects to replace schools that have very high renewal needs.

44. After business cases are submitted, the Ministry then analyzes and reviews the capital projects submitted by school boards in accordance with procedures that are applied equitably to all school boards. In assessing the capital projects submitted, the Ministry considers whether projects can be completed within the specified time period and how well they fit within the categories identified for provincial funding. A holistic assessment of all projects submitted is conducted each round. As part of the submission process, the Ministry asks school boards to rank each submitted project in priority. Those priority rankings assist the Ministry in determining which projects to fund but are not themselves determinative.

45. School boards do not generally receive approval for all their capital needs nor do they necessarily receive an approval in each round of Capital Priorities. Funding is allocated after an in-depth review of all capital priorities submitted by all school boards based on the degree of urgency, alignment with Ministry priorities, and the overall availability of Capital Priorities funding.

46. Funding for new school construction varies based on the number of pupils to be accommodated, whether the new school will be an elementary and/or secondary school, and the geographic location of the new school to reflect differences in construction cost throughout the province. The funding formula for the construction

of new schools is as follows: The Number of Pupil Places × The Area per Pupil Benchmark (m<sup>2</sup>) × The Construction Cost Benchmark (\$/m<sup>2</sup>) × The Geographic Adjustment Factor for the particular location.<sup>2</sup>

47. In 2015, the Ministry introduced another capital funding program called the "School Consolidation Capital" funding program. This program enabled boards to submit projects that supported the Ministry's School Board Efficiencies and Modernization initiative.

48. The program was a supplemental program to Capital Priorities and provided funding for capital projects to support:

- a. The consolidation of two (or more) schools into one new facility;
- b. The construction of an addition and/or undertake a major renovation to an existing school to accommodate enrolment from other underutilized schools and;
- c. To right-size existing schools by renovating or demolishing existing excess space.

49. The Ministry reviewed proposals submitted under the School Consolidation Capital program that would allow a board to reduce their excess capacity in a cost-effective way. Approved projects needed to generate sufficient savings to warrant the investment and, where required, any associated Pupil Accommodation Review had to be completed. The Ministry announced \$750 million over 4 years beginning in

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<sup>2</sup> The Geographic Adjustment Factor adjusts the amount of funding to reflect the cost of construction/materials in different areas of the province (e.g. increased costs in Northern Ontario).

2014-15 to support the improvement of school capacity utilization. The School Consolidation Capital program was wrapped up in 2017. School consolidation projects continue to be funded through Capital Priorities program. Memorandum 2017:B7, referred to above as **Exhibit 11**, describes these changes at page 2.

50. Since 2011 the Ministry has also provided funding through the Land Priorities Program to those school boards like TDSB who are not eligible to collect EDCs for residential growth related accommodation needs, or that have a need to purchase land this is not related to residential growth. Thus, all boards have a source of funding available for site acquisitions and preparation.

51. Funding for Land Priorities funding is provided on a case-by-case basis. At any point during the year, boards can submit a request to the Ministry requesting funding. Prior to April 2018, TDSB had not submitted any requests for Land Priorities funding. To date, the Ministry has provided approximately \$259 million in Land Priorities funding to support 95 site purchases for 41 school boards.

52. In April 2018, the Ministry announced a new additional capital investment of up to \$100 million in the Land Priorities Program in 2018-19 to support site acquisition and preparation costs for projects that are not eligible for EDCs for all boards, including those dealing with rapid enrolment growth in urban areas. Attached as **Exhibit 12** is Memorandum 2018:B11 announcing this funding at page 6.

53. Starting in 2011-2012, the Ministry also allocated an annual funding amount to school boards, called School Condition Improvement, to address major building components such as foundations, roofs, windows and building systems such as

HVAC (heating, ventilation and air conditioning) and plumbing. School boards are also able to address building interiors or surrounding site components with this funding. To date the Ministry has provided nearly \$4.7 billion in funding to 72 school boards through this program. Memorandum 2018:B11, referred to above, describes this program at pages 1-3.

54. Since 2003, the Ministry has also provided School Renewal Allocation is to address the costs of repairing and renovating schools. The Ministry has provided over \$4.7 billion in funding to 72 district school boards under this program. Memorandum 2018:B11, referred to above, describes this program at page 5.

55. Full-Day Kindergarten was fully implemented in Ontario by September 2014, and through this program the Ministry provided \$1.6 billion to 72 school boards for the creation of approximately 3,500 new kindergarten classrooms.

56. Other areas of provincial capital funding provided by the Ministry include Temporary Accommodation (\$280 million to 61 boards since 2010), child care and family support capital (\$538 million in child care funding and \$56 million for EarlyON programs to 64 school boards since 2015), and Community Hubs Education Capital (\$100 million to 72 boards since 2016).

#### **TDSB's Ineligibility for EDCS**

57. To the Ministry's knowledge, the Toronto District School Board ("TDSB"), the applicant in this proceeding, has never been eligible under section 10 of the EDC Regulation to pass an EDC by-law because it has always had excess capacity at



elementary and secondary levels. TDSB has never sought approval from the Ministry to pass an EDC by-law.

58. Based on the Ministry's information as of January 2018, TDSB has over 65,000 excess spaces. This number has steadily increased since 1998, when the board had only 41,000 excess spaces.<sup>3</sup> It is therefore clear that this excess capacity pre-dated the Ministry's June 28, 2017 memorandum requesting a moratorium on school closures. The last time that the Ministry asked boards to defer school closures was in December 2003. Attached as **Exhibit 13** is a press release from December 13, 2003 announcing the deferral until September 2004.

59. On the elementary panel, the board has 34 schools that operate at a capacity less than 50%. There are an additional 37 schools which operate at a capacity of less than 60%. On the secondary panel, the board operated 15 schools that operate at a capacity of less than 50%. There are an additional 4 schools which operate at a capacity of less than 60%. On the secondary panel, the board currently operates two schools at a utilization of 30%. George Harvey CI was constructed to accommodate 1,700 students and currently has 510 students enrolled. Burnhamthorpe CI has 397 students in a facility that was constructed to accommodate over 1,300 students. A table of the Ministry's most recent data showing a full list of TDSB schools' enrollment compared to capacity is attached as **Exhibit 14**.

60. In 2015 the Minister of Education appointed Margaret Wilson to review and advise on issues relating to TDSB. Her report stated that the board had failed to manage

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<sup>3</sup> Between 1998 and 2018, some of the changes to TDSB's excess capacity can be attributed to changes to school programming (i.e. the addition of FDK and removal of OAC) and the calculation of school capacity.

their capital assets and that even if the board experienced spectacular growth in the city in the next decades, the board would still not require all of the existing school stock the board currently owns. The report is attached as **Exhibit 15**.

61. TDSB's *Long-Term Program and Accommodation Strategy 2017-2026* shows that TDSB is using the Ministry's expected methods of school closure and consolidation, boundary changes, grade configurations, offering targeted programming and exploring whether available space can be leased out to community partners to respond to growth. It is attached as **Exhibit 16**.

#### **Provincial capital funding provided to TDSB**

62. The Ministry's records indicate that since 2003, TDSB has received a total of \$2.8 billion in provincial capital funding. This is distinct from the \$3.9 billion it has received to operate the school facilities such as heating, lighting, cleaning and maintenance. This section describes the various funding streams, also described above, that provided capital funds to TDSB as part of that total \$2.8 billion.

63. Through the Capital Priorities funding program, the Ministry has provided TDSB with over \$183 million in Capital Priorities funding to support 29 capital projects. This funding supported 7 new schools, 9 additions, 9 retrofits and 4 demolitions. Of these 29 capital projects, 14 projects that were to relieve enrolment pressure. A list of all of these projects is attached as **Exhibit 17**.

64. This funding includes \$8.5 million to support demolition and site preparation costs, which are eligible land costs under the EDC Regulation. A list identifying this funding is attached as **Exhibit 18**.

65. This funding also includes \$13.6 million to support the construction of a new 728 pupil place elementary school to replace Davisville Jr. Public School. This funding was provided in 2015. The project is currently in the pre-tender phase. To my knowledge, TDSB has never informed the Ministry that additional land is required to construct a replacement school on this site.

66. TDSB has received \$1.1 billion from the School Condition Improvement Program described above.

67. In 2018, TDSB applied for funds under the Land Priorities Fund for the first time since the program's inception in 2011. In spring 2018 the Ministry provided TDSB with \$24 million in Land Priorities funding to support the purchase of 1.8 acres in North York (the Canadian Tire Lands). This is the largest draw on the Land Priorities program since inception in 2011 and represents roughly 10% of the \$259 million total provided to boards. A letter dated May 7, 2018, communicating funding approval is attached as **Exhibit 19**.

68. TDSB received \$665 million in School Renewal Allocation funding since 2003.

69. TDSB received \$214 million from Full-Day Kindergarten capital funding prior to the program's full implementation in September 2014.

70. TDSB received \$10.5 million Temporary Accommodation funding since 2011.

71. TDSB received \$73.9 million in child care and family support capital funding since 2015.

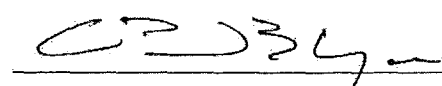
72. TDSB received \$13.8 million from Community Hubs Education Capital since 2016.


**Toronto Catholic District School Board EDCs**

73. The Toronto Catholic District School Board ("TCDSB") has been eligible since 1998 to pass EDC by-laws due to continually having secondary enrolment estimates above capacity. According to the Ministry's records, the TCDSB has collected over \$169 million from EDCs between 2002 and 2016.

74. TCDSB's previous EDC by-law expired in June of 2018. TCDSB passed a new by-law on June 29, 2018, with a duration of one year, at the same rate as the previous by-law.

AFFIRMED BEFORE ME at the City )  
of Toronto, in the Province of Ontario )  
this 27<sup>th</sup> day of July, 2018 )

  
\_\_\_\_\_  
**Christopher Paul Bloye**

  
\_\_\_\_\_  
Padraic Ryan

LSO #61687J