



Office of the Integrity Commissioner's

ANNUAL REPORT

April 2016 – April 2017

www.tdsb.on.ca

To: Chair Robin Pilkey and Members of Toronto District School Board

I submit this Annual Report to the Toronto District School Board for their consideration, in fulfillment of my role as the Board's Integrity Commissioner. This Report covers the period April 4, 2016 to April 4, 2017.

Sincerely,



Suzanne Craig
Integrity Commissioner

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FOREWORD

This Annual Report covers the 2016 reporting year, a period in which the first Office of the Integrity Commissioner for a School Board in Ontario was instituted.

1.1 A NEW ERA IN INTEGRITY

a) A glance at the past, clear direction for the future:

In November 2014, the former Ontario Education Minister appointed an external investigator to conduct a review of the Toronto District School Board ("TDSB"), that had been described as having "a culture of fear". The former chair of the TDSB had asked the government to intervene after a prolonged acrimonious relationship between the former education director and several trustees over disclosure of information, in addition to staff complaints of intimidation by some trustees.

There had been reports that two external audits of the TDSB "uncovered problems with capital and structural deficits and with trustee expenses, but it's the public disputes between staff and trustees that drew the government's attention."¹

The former Education Minister named Margaret Wilson, the former registrar of the Ontario College of Teachers, to conduct the external review, which included an examination of operational issues and focus on the TDSB's governance structure.

On January 15, 2015, the Minister of Education provided a list of directives to the TDSB in response to Margaret Wilson's report. The Minister directed the TDSB to comply with the directives by February 13, 2015. At a Board meeting on January 20th, Trustees accepted the Minister's directives.

At the February 4th Board meeting and the February 10th special board meeting, Trustees approved several responses to the Minister's directives, including, in particular, the development of a governance policy that brought clarity to the roles and responsibilities of Trustees and staff.

With a bold and intentional step, the TDSB took a leadership role in Ontario and went one step beyond the Wilson report by establishing the policy framework for the creation of the position of Integrity Commissioner. The

Board commissioned Janet Leiper, the highly-respected former Integrity Commissioner for the City of Toronto, to advise the Board during this process. Ms. Leiper's vast experience in the areas of law, ethics and integrity was instrumental in developing the Board's accountability framework and the drafting of a comprehensive TDSB Board Code of Conduct (the "Code") and Code Protocol.

b) Code of Conduct for Board Members:

This was the first School Board in Ontario to institute an Integrity Commissioner to independently apply and enforce a comprehensive ethical document to supplement the rules of the Education Act with respect to the actions and behavior of School Board Trustees.

The TDSB approved the Code of Conduct for Board Members in June 2015. This was the first School Board in Ontario to institute an Integrity Commissioner to independently apply and enforce a comprehensive ethical document to supplement the rules of the Education Act with respect to the actions and behavior of School Board Trustees.

The stated objective of the Code is to ensure that the principles of transparency and accountability inform the conduct of individual Trustees such that the TDSB as a public body responsible to its communities, maintains the confidence of the public. The rules of the Code enshrine a shared commitment to adhere to a common basis for acceptable conduct while in office and apply to all Trustees.

The Code is a document that sets out the ethical standards agreed upon collectively by the Trustees. While the Code is to be considered in its entirety, the wording of each provision has been carefully crafted to encourage Members to conduct themselves at all times in such a way as to promote respect for the Board, all levels of

1. <http://www.cbc.ca/news/canada/toronto/liz-sandals-calls-in-outside-expert-to-review-tdsb-1.2849421>

government, and government administration including all TDSB staff.

Trustees hold positions of privilege. Therefore, they must discharge their duties in a manner that recognizes a fundamental commitment to the wellbeing of the community and students as a whole and have high regard for the integrity and presence of the TDSB.

c) Office Operation:

In 2015, the TDSB approved an Office budget to fund a part-time Integrity Commissioner.

The statutory regime of the Office of the Integrity Commissioner sets out the authority of the Integrity Commissioner: the Education Act, (Subsection 218.1) Board Policy P075 – the Code of Conduct and Board Procedure 708, the Complaint Protocol. Comprehensively, the Statute, the Code of Conduct, the Complaint Protocol and the relevant TDSB bylaws, form the statutory regime and authority framework.

The Office of the Integrity Commissioner is responsible for ensuring the Board Member Code of Conduct governing Trustees is objectively applied. The Integrity

Commissioner's duties include:

1. Providing general advice to Trustees on issues of ethics and integrity including Board Member Code of Conduct, policies, protocols;
2. Conducting investigations into requests made by a Trustee, member of the public or staff, into whether a Trustee has contravened any rule of the Board Member Code of Conduct;
3. Providing confidential written and oral advice to individual Trustees about their own situation under the Board Member Code of Conduct and other policies and protocols governing the ethical behaviour;
4. Providing the Board with specific and general opinions and advice on the TDSB policies and protocols regulating the conduct of Trustees and issues of compliance with those policies and protocols.

In addition to the above duties, the Integrity Commissioner responds to informal complaints and requests for information in relation to the Code from Trustees, members of the public and staff including receiving matters that do not fall within the jurisdiction of the Office and directing the complainants to the appropriate TDSB department, policy or other jurisdiction.

1.2 ISSUES OF NOTE:

a) Conduct At Board And Committee Meetings

During the course of facilitating the resolution of some complaints, some very valuable lessons were learned and it is my position that these lessons learned should form the basis of future Trustee education sessions. During the resolution of complaints that I received, I clarified for the Trustee/Respondent and the Complainant that there is a difference between fervent political discourse which is allowed under the Code and language that is disrespectful or hurtful, whether that be directed to another Trustee, a TDSB staff person or a member of the public, especially and insofar as the language may relate to a protected status under Human Rights policy of the TDSB. I have observed that there is clear need for education and awareness for Trustees on the importance of refraining from actions and comments that harm, intimidate and belittle, whether that be towards fellow colleagues during Board meetings, TDSB staff or members of the public.

As a result of my observations during the informal resolution of complaints, I decided to consult with the Manager of the Human Rights Office of the TDSB because, it is my view that many Trustees and some members of the public, see an urgent need for a holistic discussion and commentary on the existence of systemic biases embedded in the "way business is carried out" at the Board. It is my position that this subject is not within my jurisdiction to investigate or review. However, in my capacity of ethics officer for the Board, I have an obligation to report on that which intersects with the application and effective compliance with the Code. As a result of my observations, and my obligations to enforce the rules of the Code, I strongly encourage Trustees to be mindful of the weight of their comments. I recommend that notwithstanding the fact that a Trustee may view her or his comments as well-meaning or a correct assessment of a particular situation, the conduct of the members of the Board must be of the highest standard to maintain the confidence of the public. Any comments that a Trustee may make, should

not be directed at individuals or members of a particular community, but rather should be made with respect to the policy concern of the Trustee and in an appropriate context within a committee framework that will address and seek solutions for such concerns.

education and training sessions are required to enhance awareness of this fundamental cornerstone of ethical decision-making at the TDSB: an institution committed to respect for cultural diversity.

Elected officials, generally come to office with a desire to advocate for their constituents and community. However, once elected, a Trustee becomes an individual member of one decision-making body that represents the Board collectively and makes decisions as a whole, in the best interests of all stakeholders of the TDSB. It is for the above-noted reasons that I believe that education and training sessions are required to enhance awareness of this fundamental cornerstone of ethical decision-making at the TDSB: an institution committed to respect for cultural diversity. It should be noted that TDSB Trustees are now participating in anti-racism and anti oppression training as part of an organizational commitment to equity at all levels – from Trustees to the classroom.

Trustees act collectively as the Board and must respect the decisions of the Board and professional advice of staff

Trustees are required under the Code, to strive to create an atmosphere during Board and Committee meetings that is conducive to solving issues before the Board, using respectful language and behavior in relation to fellow members, staff and the public.

A Trustee recognizes the importance of cooperation with other Members of the Board and respect for the professional roles of staff. Trustees are required under the Code, to strive to create an atmosphere during Board and Committee meetings and through email and social media communications that is conducive to solving issues before the Board, using respectful language and behavior in relation to fellow members, staff and the public.

On occasion, I have observed a small number of Trustees conducting themselves at Board or Committee meetings and through informal email and social media communications, with a lack of decorum and

respect for other Members of the Board, staff and the public. In addition, a small number of Trustees have acknowledged to me their dissatisfaction with the removal of constituency assistants, individual assigned offices and other services that were recommended through the 2015 Provincial Directives. The result of this dissatisfaction for these few Trustees has been a stubborn disobedience to Board rules or attempts to circumvent existing policy. The above being said, the majority of Trustees have demonstrated a willingness and commitment to adhere to their obligations under the Code of Conduct and Board policies.

a Trustee must not denigrate the Board decision when responding to a member of the public, as this will undermine the confidence in decisions of the TDSB and the policies and by-laws of the Board.

While a Trustee may publicly state that they did not support a decision of the Board or that they voted against a decision, a Trustee must not denigrate the Board decision when responding to a member of the public, as this will undermine the confidence in decisions of the TDSB and the policies and by-laws of the Board.

The foundation of respect for fellow Board Members, staff, the public and decisions of the Board, is demonstrated when a Trustee:

- adheres to the rule of accurately communicating the decisions of the Board, even if they disagree with a majority decision, , so that there is respect for and integrity in the decision-making processes of the Board of Trustees;
- refrains from making disparaging comments about other Trustees, Board processes and decisions.

b) Complaints outside of the jurisdiction of the Integrity Commissioner

Given the statutory limitations of the *Education Act* and the Board's by-laws with respect to the powers of the Integrity Commissioner, there is currently no ability for the Integrity Commissioner to receive, review or report to the Board or disclose information about decisions or omissions of the administration or the TDSB.

Despite the Integrity Commissioner's lack of jurisdiction to investigate non-Code complaints and the existence of the investigative and oversight powers of the Provincial Ombudsman, as an Office of last resort, my Office continues to receive issues of concern that do not relate to the Board Member Code of Conduct. Members of the public and TDSB staff continue to seek, through inquiries to my Office, an open, transparent and reprisal-free process for the investigation of matters outside of my jurisdiction.

Of note is the fact that the TDSB has laudibly enacted a Whistleblower Policy which "ensures protection against reprisals related to the reporting of suspected wrongdoing", that can be used by anyone to raise concerns about suspected wrongdoing by an employee of the TDSB.

The TDSB website lists examples of wrongdoing that can be brought forward as:

- Contravention of a federal or provincial act or regulation
- An act or omission that creates danger to life, physical or mental health, safety or the environment
- Mismanagement inconsistent with laws, regulations and Board policies, including waste of financial resources, abuse of managerial authority, mismanagement, or loss/theft of public assets
- Financial fraud
- Time theft
- Deliberate non-compliance with Board policies and procedures
- Directing or counseling a person to commit any of the above

Notwithstanding the number of policies and procedures in place to identify and prevent improper professional activities at the TDSB, my Office continues to receive complaints that would be more appropriately addressed through an Ombudsman process or through one of the existing complaint mechanisms at the TDSB.

I recommend that the Board continue to communicate with staff and the public on what complaint processes are available at the Board to address various categories of complaints that do not relate to the application of the Board Member Code of Conduct. It is important to remember that the Toronto District School Board Governance Advisory Panel Report (the "Hall Report")

2. <http://www.edu.gov.on.ca/eng/new/2015/TDSB2015.html>

submitted to the Minister of Education, on August 19, 2015 set out that:

Accountability and transparency would be enhanced at the TDSB with the existence of an integrity commissioner and an ombudsman. We also conclude that a fully staffed Human Rights Office and a board secretary that is separate from the director's position would increase accountability at the TDSB and help to restore staff and public confidence.

...

We are aware that the board of trustees recently considered establishing an ombudsman position but decided against doing so given that the Ontario Ombudsman's jurisdiction has been extended to school boards. The panel believes that for the community to have restored confidence in the TDSB, it is essential that a board-level ombudsman be established to provide responses to complaints and concerns from parents and the community that are independent from the board. In fact, we spoke with the Ontario Ombudsman, who told the panel that he fully supports the implementation of internal ombudsmen within school boards, noting that the public is best served when local issues can be addressed at the local level.²

While an internal ombudsman within the TDSB is one option that the Board may consider, other local governance options to facilitate the resolution of concerns and complaints at the local level are also within the authority of the Board to consider.

c) Trustee Supported Community Events

I am pleased to have been invited to attend 2 meetings of the Governance and Policy Committee of the TDSB where the review of the Trustee Expense Policy and the Code of Conduct were discussed by Committee members.

Trustees have multi-faceted roles, one of them being a representative of their community. In particular, pursuant to the TDSB Governance Policy, Trustees are governors of the Board making decisions on behalf of the residents. But they are also leaders in their community and participate in various forms of public engagement and provide support for community organizations and community development activities.

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From time to time, Trustees seeks to support student and school initiatives. Notwithstanding their relationship with their community, Trustees must strike a balance between an appropriate use of their office, name recognition and image (photos) and participation in activities which may reasonably give rise to the perception of self-promotion or special consideration, treatment or advantage.

The Code provides the specifics that identify an appropriate use of a Trustee's office. A careful consideration of the key principles of the Code contained in the Policy section, will assist Trustees in determining the types of community events and school activities that Trustees can sponsor as part of their official Board duties, the participation in which will foster and enhance respect for the TDSB mandate as set out in the *Education Act* and the TDSB Governance Policy.

The Integrity Commissioner applies the rules set by the Board that determine the standards of conduct that will be used to measure Trustees' actions and behaviour and hold them accountable. In assessing a complaint, the Integrity Commissioner must determine if a Trustee's activity or behaviour is in compliance with the Code.

The Code sets out rules that Trustees have collectively agreed to follow to regulate their behaviour. The application of the rules and the investigation of contraventions is handled by the Integrity Commissioner, an independent third party. The Integrity Commissioner does not set the rules of the Code in respect to allowable activities under the Trustee Expense Policy or any other TDSB policy. The Integrity Commissioner applies the rules set by the Board that determine the standards of conduct that will be used to measure Trustees' actions and behaviour and hold them accountable. In assessing a complaint, the Integrity Commissioner must determine if a Trustee's activity or behaviour is in compliance with the Code. The evaluation of a Trustee's behaviour is fact specific. However, in applying the rules of the Code to the actions and behaviour of a Trustee, the Integrity Commissioner will be guided by the key principles contained in Rule 6.0 of the Code

2.1 ACTIVITIES OF THE OFFICE OF THE INTEGRITY COMMISSIONER IN 2016

The Office received 13 informal complaints in relation to the Code of Conduct for Board Members. There were 5 formal complaints filed against Trustees under the Code in 2016.

INTEGRITY COMMISSIONER ACTIVITIES CODE COMPLAINTS AND INQUIRIES

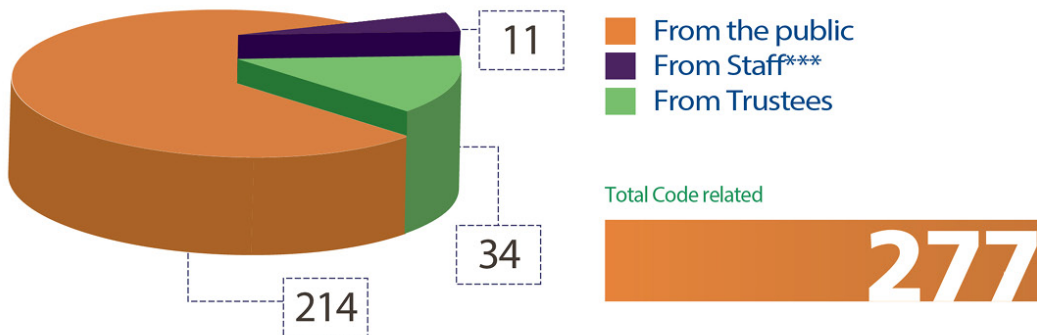
Formal complaints*



Informal complaints



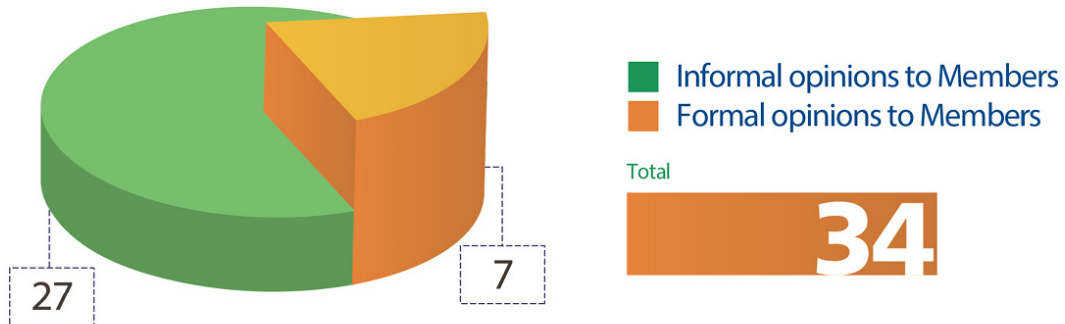
INQUIRIES RECEIVED BY THE INTEGRITY COMMISSIONER ON CODE APPLICATION**



*4 Formal Complaints were concluded through informal resolution facilitated by the Integrity Commissioner 1 Formal Complaint went on to investigation and the final report was submitted to the Board on March 22, 2017

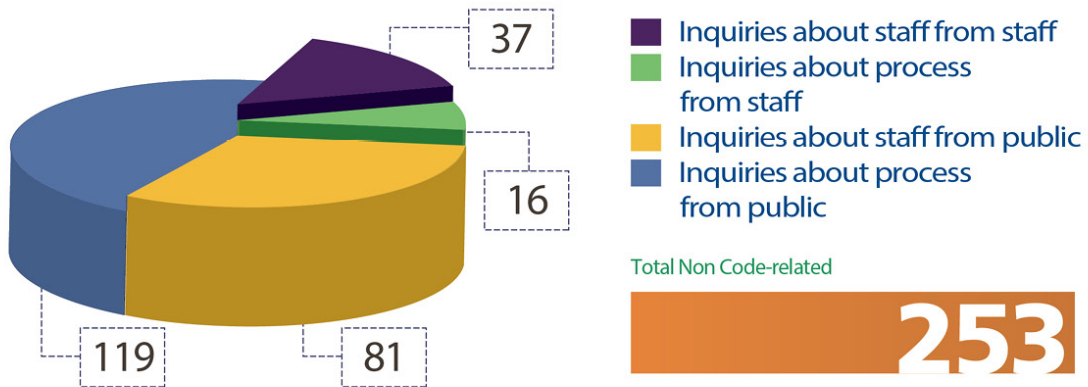
Emails, phone calls regarding questions on the application of Code rules *staff includes administrative and academic employees

BOARD TRUSTEE CODE ADVICE REQUESTED



ACTIVITIES OF THE TDSB OFFICE OF THE INTEGRITY COMMISSIONER

Non Code-related Inquires received by Integrity Commissioner

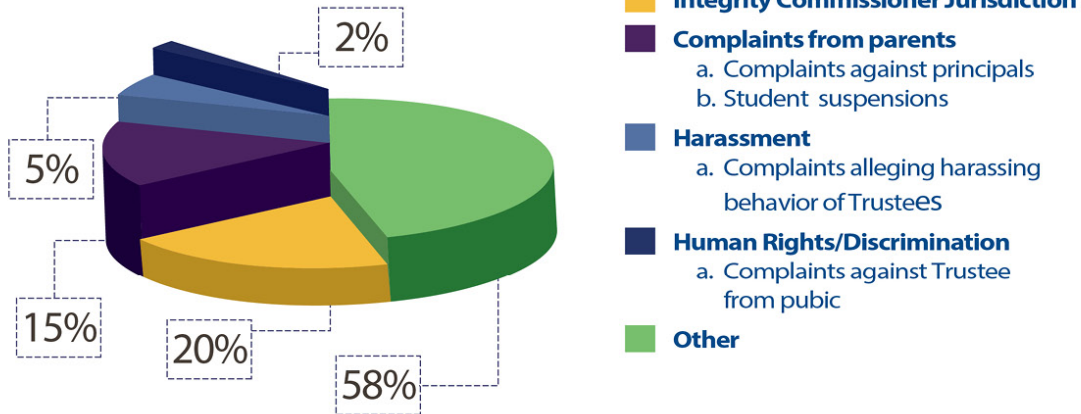


Total

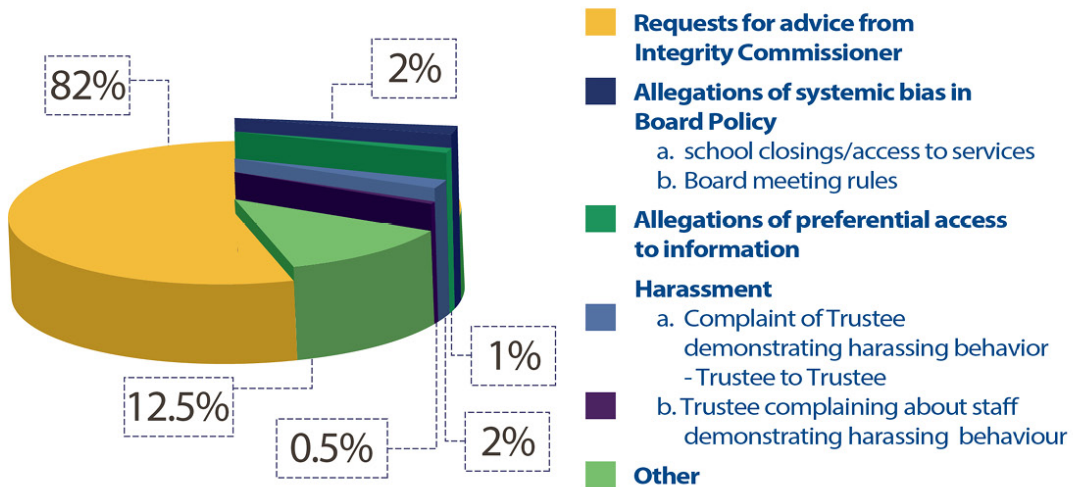


CLASSIFICATION OF INQUIRIES TO THE INTEGRITY COMMISSIONER:

FROM THE PUBLIC



FROM TRUSTEES:



i) TDSB Code Complaint #0316

In December 2016, my Office received a Code complaint with respect to allegations that a Trustee received gifts from a Union, in contravention of Rule 4.3 of the Code (Gifts, Benefits and Hospitality), which according to the complaint, resulted in a perceived granting by the Trustee of his future support and assistance with collective bargaining discussions in relation to the Union. In addition, the complaint alleged that the Trustee failed to adhere to the Board Employee and Trustee Expense Policy in relation to the financial rules around Board Trustee Expense account allowable expenditures and required approvals. Rule 4.11 of the Code (Failure to Adhere to the Board Policies);

I concluded that the purpose of the governance recommendations that came out of the Margaret Wilson Report that have been incorporated into the Trustee Expense Budget rules, had been seriously undermined by the actions of the Trustee that was investigated.

The Trustee was found to have contravened the TDSB Trustee Expense Policy Operational Procedure expenditure rules by failing to adhere to the processes by which trustees of the TDSB must follow in order to claim allowable expenses for the performance of Board business. In particular, I found that the Trustee had failed to respond to Finance department, as well as Governance and Board Services ("Board Services") staff with respect to adherence to accounting period requirements. Despite having been told by senior officials of the TDSB, of the serious risk to the integrity of the TDSB accounting and governance policy by a Trustee failing to follow the prescriptive policy direction in relation to the day-to-day

management and implementation instructions from staff, the Trustee under investigation did not cease his conduct in contravention of Board approved rules.

ii) Trustees' public comment on matters before the Board:

The rules of the Code were not put in place to stifle the opinions of Trustees, but rather to ensure the avoidance of undue influence and to ensure fairness in decision making. The fundamental principles of the Code require a Trustee to make every effort to participate diligently in Committee and Board discussions with good faith and care.

A Trustee may state that he or she did not support a decision, or voted against the decision. However, a Trustee should refrain from making disparaging comments about other Trustees, reference in a pejorative way, their gender, race, age, sexual orientation, affinity or any other protected grounds under the Human Rights policy of the TDSB.

While each Trustee has a right to speak on a matter with conviction and state their own position, the Member should not denigrate a decision of Committee or Board. A Trustee should clearly distinguish their own personal views from the position of Committee or Board when making public statements. While Parliamentary privilege grants law makers in certain legislatures a protection against civil or criminal liability for statements made in the course of their legislative duties and while the Code was not put in place to infringe on free speech, an individual Trustee must refrain from making disparaging comments about other Members, processes and decisions, or the actions of staff and the public.

STATEMENT OF EXPENDITURES

April 2016 – April 2017

\$25,000 – Annual Stipend for Integrity Commissioner Services (including remuneration for Integrity Commissioner services, seminar and workshops, mileage, office supplies)

CLOSING REMARKS

Board Trustees come to their position on the Board with various interests, skills sets and personal perspectives. It is this spectrum of knowledge and viewpoints that makes the coming together of individual Trustees as one decision-making body, a strength for the community. However, Trustees are encouraged to remember that under the *Education Act*, decisions are made collectively by the Board, in accordance with approved TDSB procedure and not by any individual Trustee.

The majority of inquiries that came into this office were with respect to matters not governed by the Code rules. My responses to the questions raised by the public in queries received by email correspondence and telephone calls, directed individuals to existing TDSB complaint processes or the Ontario Ombudsman.

The activities of the Office of the Integrity Commissioner in the period covered by this Annual Report have been focused on setting up the operations of the Office and providing education and clarification by way of written and oral advice to individual Trustees, TDSB staff and the public about the application of the rules of the Code and the role of the Integrity Commissioner. The majority of inquiries that came into this office were with respect to matters not governed by the Code rules. My responses to the questions raised by the public in queries received by email correspondence and telephone calls, directed individuals to existing TDSB complaint processes or the Ontario Ombudsman. Of the 530 inquiries that were received by the Office of the Integrity Commissioner, only 18 were Code of Conduct Complaints against Trustees. Of the 18 Code related complaints, it is important to underscore that only 5 reached the level of a Formal Complaint, four of which were resolved informally.

While some individuals were not pleased by my decision to not commence a Code investigation, the purpose-driven function of the Complaint Protocol allows the Integrity Commissioner the discretion to decide not to commence an investigation or discontinue an investigation where it becomes apparent that there are insufficient grounds to continue or if the matter is frivolous or vexatious.

The majority of my dialog with TDSB staff and the public attempted to clarify the role of the Board versus the role of an individual Trustee in Committee and Board

decisions. In response to individuals who expressed to me their dissatisfaction with Board decisions, I pointed out that a decision of the Board that took place after motions were put forward by one or more Trustees, could not be generally, a reason to bring forward a Code complaint against a Trustee. While I have no authority to review or comment on the substance of Board decisions or policies, individual requests for my participation in a facilitated discussion on matters that intersected with Code rules, did result in the individual or Trustee having a better understanding of the process to be followed in order to raise a concern in relation to a Board decision or policy rules.

In conclusion, I would like to extend my appreciation to both the Manager, Governance and Board Services, Ms. Denise Joseph-Dowers, who has assisted me in understanding the various department roles and responsibilities at the TDSB and to the Executive Assistant to the Chair, Ms. Ciara Behan, who has assisted me in scheduling introductory meetings with all Trustees and organizing the 2 Trustee education sessions that I delivered in September 2016 and January 2017.

Respectfully submitted,



Suzanne Craig
Integrity Commissioner

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OFFICE OF THE INTEGRITY COMMISSIONER ANNUAL REPORT

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