

t dsb

Toronto District
School Board



OFFICE OF THE INTEGRITY
COMMISSIONER'S

2020-21

ANNUAL REPORT



September 22, 2021

TO: Chair Alexander Brown and Members of the Toronto District School Board

I submit this Annual Report to the Toronto District School Board for their consideration and receipt, in fulfillment of my role as the Board's Integrity Commissioner.

This Report covers the period October 1, 2020 to September 1, 2021

Sincerely,

A handwritten signature in black ink, appearing to read 'Suzanne Craig', written in a cursive style.

Suzanne Craig
Integrity Commissioner

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OVERVIEW

This is the Annual Report for the Office of the Integrity Commissioner, which covers the period from October 1, 2020 to September 30, 2021. The Integrity Commissioner is tasked with the application of the rules of the Board Member Code of Conduct (the “Code”). In addition, the duties of the Office include providing comments on Board governance policies that intersect with the Code provisions and responding to queries from the public, Board staff and Members of the Board.

This Annual Report sets out the activities of this Office against the backdrop of a global pandemic. In my role in overseeing the application of the rules of the Code to the conduct of Trustees, my Office has reviewed significant issues at the Board, particularly those involving staff/Trustee and Trustee/Trustee interaction. In my investigator role, I have probed complex and systemic issues and, upon request by the Board, I have been consulted on such initiatives as the development of the Board’s Self Assessment (BSA) tool, the creation of the Board’s Information Flow Protocol and the Board’s Bylaw Review Ad Hoc Committee. Early in January 2021, the Government of Ontario announced new measures to help slow the spread of COVID-19 in the Province. The issuance of the government stay-at-home order, requiring everyone to remain at home with exceptions for essential purposes until at least February, required schools to pivot to at-home learning with in-person supports for the students with special education needs who cannot be accommodated through remote learning. Many parents wrote to this Office sharing that their children were experiencing a heightened level of anxiety because of the COVID-19 Pandemic and that the “classroom disruption”, in compliance with the government restrictions risked further emotional distress. As the mandate of this Office does not include response to inquiries and complaints on Board policy or actions of the administration, I was unable to provide response to these emails, except for acknowledgement of receipt and an invitation to the writers to consult with their school Superintendent or area representative.

Throughout this reporting year, the work of this Office demonstrated that independent oversight of the conduct of Trustees in the largest school board in Canada is essential, in particular during a time of crisis. As the Board’s ethics officer, I provided guidance to senior staff and flagged issues of note, particularly during my consultation with the governance expert engaged by the Board, Charles Ungerleider, Director of Research & Managing Partner, Directions Evidence and Policy Research Group, LLP (the “Governance Expert”). During my consultations with the Governance Expert, my Office provided input around how the adherence to Code rules forms the foundation of a Trustee’s duty to responsible governance, fiduciary accountability and strategic planning for the Board. The activities of this Office monitored the transparency, accountability and fairness of the actions of individual Trustees. The processes under the Code Complaint Protocol ensured that concerns of staff and the public were heard and addressed, and that investigative action was taken when necessary. Examples of the results achieved in respect of these concerns can be found throughout this report.

HOW THIS OFFICE WORKS

As the Integrity Commissioner for the TDSB, my Office acts as an independent and impartial officer who receives concerns of staff, the public and Trustees with respect to the conduct of individual Trustees. The Board Member Code of Conduct stipulates that the names of complainants are confidential and investigations are conducted in private, while the investigation report is submitted to the Board in public session.

What this Office can do:

- Review and investigate complaints about individual Trustee's actions, conduct at meetings, interaction with one another, use of language that is disrespectful, harassing or meant to bully. Anyone who has knowledge of Trustee behaviour that is contrary to the Code rules, may attempt to resolve the complaint through the informal complaint process. If efforts to resolve the matter are not successful, and if the matter is within the jurisdiction of this Office, an individual (Trustee, staff or public) may pursue the complaint through the formal complaint process.
- Determine whether the Trustee's actions or behaviour were in contravention of the Code rules. Flag to the Board of Trustees and Board senior staff, trends in complaints that suggest systemic issues and or gaps in policy and recommend best practices and/or ways to improve clarity in obligations to enhance Code compliance.
- Assist Board staff and the public with general questions about the Office's complaint processes. Conduct formal investigations, if after an initial classification the Office determines it is warranted, and make recommendations on sanctions or remedial action.

While it has been the policy of this Office to have an open door policy such that any question, concern or complaint will be received at the intake stage, matters not within the jurisdiction of this Office will not be investigated by the Integrity Commissioner's Office and the complainant will be advised to pursue the matter through another process.

The Complaint Protocol for the Code sets out the scope of the Integrity Commissioner's authority over matters addressed by the Code. Under the Complaint Protocol an allegation that may involve a contravention of the Criminal Code of Canada is a police matter, and would not be investigated by the Integrity Commissioner. Also, the Integrity Commissioner does not investigate a complaint of alleged conflict of interest involving a Trustee. Complaints involving allegations under the *Municipal Conflict of Interest Act* are enforced through the courts.

The Complaint Protocol makes no provision for anonymous complaints or for withholding the complainant's name from the Trustee against whom the complaint is made. However, an individual who brings forward an informal complaint may request that their name not be disclosed to the Trustee.

What this Office cannot do:

- Overturn decisions of Board staff or the administration, the Board of Trustees or Committees.
- Set TDSB policy (although this Office is consulted on important initiatives).
- Review or investigate the actions, decisions or omissions of the Board administration, principals, teachers or school support staff.
- Provide legal advice or representation or act as an advocate for a complainant or staff person.

1.1 WORKING THROUGH CHANGE

I was appointed as Integrity Commissioner for the TDSB in April 2016 for a 5-year appointment with a 1-year renewal. In the Spring of 2021, the Board passed a resolution extending my appointment for 1-year past the 5-year mandate. My appointment will run until April 2022. The work and achievements of this Office were possible in large part, due to the collaboration and professional commitments of countless staff, all of whom have demonstrated to me that professionalism is alive and well at the TDSB. Though I am grateful to the professional collaboration of all TDSB staff with whom I have worked, I extend a special thank you to Ms. Denise Joseph-Dowers, the Senior Manager of Governance and Board Services and her staff at Board Services, Ms. Ciara Behan, the Executive Assistant, Office of the Chair and Trustee Services, the Trustee Liaison staff, Mr. Wassif Hussain, the Manager of Internal Audit, Ms. Leola Pon, Executive Officer, Legal Services, and Mr. Ryan Bird, Executive Officer (A), Government, Public and Community Relations. It is because of a 5-year long working relationship across the administration, that this Office has been able to provide guidance, information and professional development sessions to Trustees, propose best practices, recommend amendments to policy, and resolve problems behind the scenes, as well as fulfilling the public facing duties of my mandate through publishing Code Complaint Investigation Reports, Annual Reports and policy Memoranda.

During the period covered by this Annual Report, there were several changes in the senior organizational structure of the Board. In October 2020, Dr. Kathy Witherow was appointed TDSB's Interim Director of Education, replacing Interim Director Carlene Jackson who began her appointment as Ontario's Comptroller General. In December 2020, Ms. Karen Falcolner was appointed the next Interim Director of Education and fulfilled this role until the appointment to the permanent Director of Education, Colleen Russell-Rawlins, was announced in June 2021. Against the backdrop of these senior management changes, several policy initiatives began with a view to enhancing governance, accountability and fairness at the Board; the most significant being the Trustees' work on the development of the Board Self-Assessment Tool, the work of the Bylaws Review Ad Hoc Committee and the work on the Information Flow Protocol. This Office was consulted on these three important governance initiatives and I set out the highlights and my reflections below.



1.2 TORONTO DISTRICT SCHOOL BOARD: SELF-ASSESSMENT TOOL

In October, the TDSB Board began working on the development of a self-assessment tool. The commitment to develop this tool was undertaken by the TDSB Board elected in 2018. Amidst the unique challenges of an ongoing COVID-19 Pandemic and at a time when the TDSB was conducting a search for a Director of Education, the fact that Board Trustees wholeheartedly participated in this significant task demonstrates a willingness to achieve accountability that is relevant and meaningful. The development of the TDSB Board Self-Assessment Tool “is instrumental to effective governance that, in turn, should have a material impact on student achievement and well-being, the elimination of educational inequality, and citizen confidence in public schooling”¹.

The Governance Expert paid particular attention to the comments and recommendations of the [Hall] Toronto District School Board: Results of the Self-Assessment Tool Governance Advisory Panel Report (including “Positive Change That’s Working: Submission of TDSB Trustees to the Governance Advisory Panel”²) The Governance Expert underscored that in her report, Hall described “governance dysfunction” arising in part from lack of role clarity, accountability, and leadership that, in turn, were sources of the “erosion of public confidence”. Hall noted that the tension in the role of school trustee was a contributing factor to role confusion on the part of Trustees:

... trustees are elected by their local communities and are expected to bring the voice of their communities to the board table, but at the same time they are expected to act as a unified body in the best interests of all students of the board (Hall, 2015)

The purpose of the TDSB developing a Board Self-Assessment Tool is to clearly delineate the understanding that the Director of Education is the only employee directly responsible for translating the Board’s policies, values, and goals into action; that Boards should not give direction to or evaluate any district employees reporting to the Director; a working agreement on equity; the role of the Board of Trustees and the Board’s policies and code of conduct which set the boundaries for the agreed upon standards while acting in the best interests of the TDSB. The Board seeking the input of this Office during the development of the self-assessment tool afforded this Office with the opportunity to have the standards of the Code operationalized and included in the values, goals and policies of this important TDSB governance tool.

¹Charles Ungerleider, Managing Partner & Director of Research, Directions Evidence and Policy Research Group Le Groupe Directions: Recherche et analyse des politiques

²Toronto District School Board Governance Advisory Panel Report

1.3 TORONTO DISTRICT SCHOOL BOARD BYLAWS REVIEW AD HOC COMMITTEE

In January of 2021, under the leadership of Trustee Shelley Laskin, at the Organizational Board, the TDSB established a Bylaws Review Ad Hoc Committee (the “Bylaws Committee”). In the words of Chair Laskin, the Bylaws Committee was created,

“with a mandate to review the Board’s bylaws and present recommendations regarding revisions to the Governance and Policy Committee in the spring 2021[...]. The Committee is supported by [the] Senior Manager, Governance and Board Services and General Counsel [...] and is led by [the Board’s] Policy Coordinator and staff in Policy Services.

For context and background, the previous bylaws review was formally initiated at the GPC’s predecessor, Governance Review Committee, on August 31, 2016. [...] The current Bylaws Review Ad Hoc Committee is committed to ensuring the process for identifying edits is inclusive of all trustees’ voices – and in addition to policy and governance expertise, we discussed involving staff in Human Rights and Indigenous Education and/or outside expertise to ensure the bylaws are also reviewed through an equity lens.”

To be an effective governance tool, the Bylaws should:

- Have defined terms with consistent meaning and application.
- Be clear so they can be easily understood by Board members.
- Include sufficient clarity and detail so that multiple interpretations are avoided – or the creation of commentary to set out the adopted interpretation, to create clear, fair decision-making processes without bias.

During my review of the current Bylaws, I have identified that, in large part, the Bylaw provisions are clearly articulated in its existing form, however, the rules are not well understood by Trustees. At the time of writing this Annual Report, the work of the Bylaws Committee has made significant progress in identifying and addressing some of the gaps in Trustees’ understanding of the current format.

In particular, during my mandate as the 1st Integrity Commissioner of the Board, I have seen that there has been little opportunity to impart first principles regarding “how to’s” to incoming new Trustees. Further, I have identified that there may be practices, that have come to be viewed as bylaw rules, that are not listed in the Bylaws and this has led to confusion, during meetings and beyond.

This is an opportune time to provide clarification about the meaning and application of the Bylaws so that Trustees of the Ad Hoc Committee can make recommendations to the Board to clarify what has been open to too many interpretations. I commend the work of the Ad Hoc Committee as the substantive rules of meeting management supplement and confirm the governing rules set out in the *Education Act* and the TDSB Governance Policy. It is clear that Trustees do not fully understand the Bylaws provisions, when and how to use them, the purpose for them or why they are not consistently applied in each situation. There is an important role to be played by expert staff in Governance and Board Services in advising Trustees on the interpretation of the Bylaws in various circumstances. I look forward to the completion of the work of the Ad Hoc Committee.

1.4 TORONTO DISTRICT SCHOOL BOARD INFORMATION FLOW PROTOCOL

In all of the past Annual Reports, this Office has recommended to the Board that an Access to Information policy be developed to provide clear guidance to Trustees and staff on the process to be followed by individual Trustees when seeking Board-held information.

Rule 6.2 (b) of the Code entitled Confidential Information, makes specific reference to the responsibility of Trustees to not seek access to confidential information of the Board, including personal information. In particular, Rule 6.2(b) states:

Members of the Board should not access or attempt to gain access to confidential information in the custody of the Board unless it is necessary for the performance of their duties and not prohibited by Board policy.

However, outside of the specific requirement regarding personal information, Trustees require a clear understanding of access to information processes in relation to the duties, roles and responsibilities.

In previous Annual Reports, this Office has set out that it is important for staff to understand that while Board Trustees carry out their duties as defined within section 218.1 of the *Education Act*, it is the Board as a whole that approves budget, policy, Committee processes and other such matters, requests from Trustees for information that is not covered by confidentiality is an allowable action under the Code. There should be an expectation and understanding on the part of Board staff that all information that does not fall within an exemption provision of MFIPPA or confidentiality requirements of the Board, can be disclosed to Trustees upon request and in accordance with an approved process.

Whether a requester is a member of the public or an individual Trustees, the right of access to information directly corresponds to a desire to shed light on the operations of the Board. The principle of open government is one that allows citizens to scrutinize the activities of elected officials and public servants to ensure that they are acting in the public interest. One pillar that supports open government is freedom of information legislation, which gives people the right to access government-held information. This legislation also provides a recognizable threshold against which general access guidelines may be measured.

Over the past 5 years, I had encouraged the Board to work to enhance its access to information regime and build upon existing routine disclosure and active dissemination of information that is not personal, corporate confidential or information required by MFIPPA to be withheld under an access request. With an identification of the groups or categories of Board records and information that are deemed routine and non-confidential, the Board can identify which records may be provided to the public and individual Trustees outside of the FOI process or through an approved access protocol.

I was pleased to have been consulted by staff of the Information Flow Protocol Committee with a view to having the access to information for Trustees include recommendations from the previous Annual Reports of this Office. I am pleased to have seen the Information Flow Protocol approved at the April 28, 2021, Governance Policy Committee meeting.

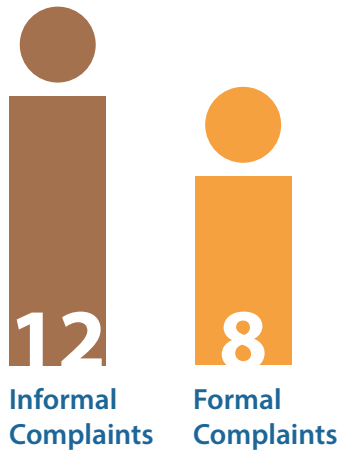
2.1 ACTIVITIES OF THE OFFICE OF THE INTEGRITY COMMISSIONER

The Office received 12 informal complaints in relation to the Code. There were 8 formal complaints filed against Trustees under the Code in the reporting period of this Annual Report.

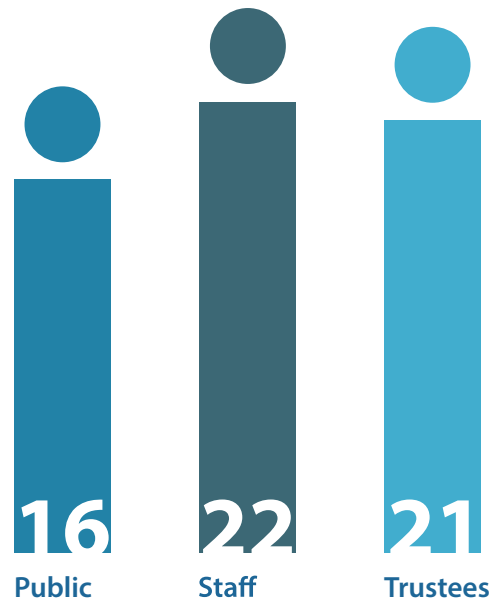
INTEGRITY COMMISSIONER ACTIVITIES CODE COMPLAINTS AND INQUIRIES

CODE COMPLAINTS

Of the 8 formal complaints received against Trustees in relation to the Code, 5 were resolved through negotiated mediation and 3 were dismissed at the intake stage after the completion of a preliminary review.



CODE APPLICATION INQUIRIES



BOARD TRUSTEE CODE ADVICE REQUESTED



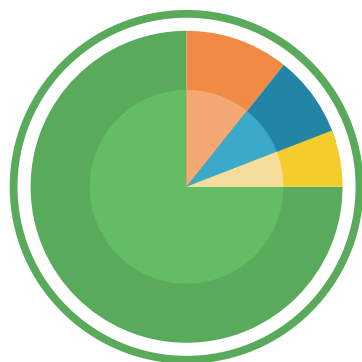
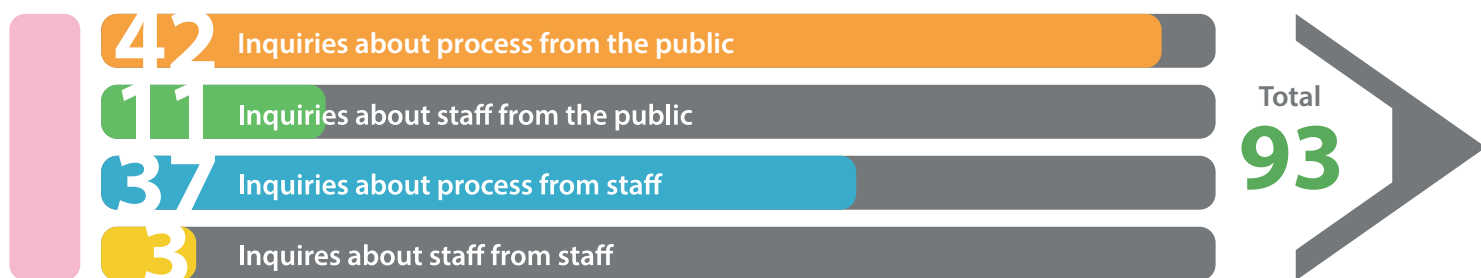
ADVICE TO MEMBERS

- Informal opinions to Members
- Formal opinions to Members

2.2 ACTIVITIES OF THE TDSB OFFICE OF THE INTEGRITY COMMISSIONER

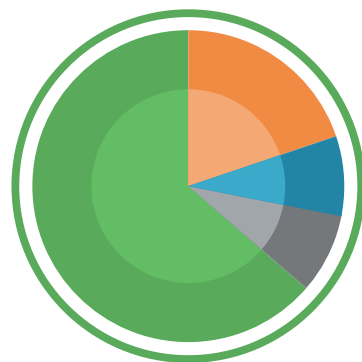
NON-CODE-RELATED INQUIRIES RECEIVED BY THE INTEGRITY COMMISSIONER

NON CODE-RELATED INQUIRIES



CLASSIFICATION OF INQUIRIES TO THE INTEGRITY COMMISSIONER FROM THE PUBLIC

- Integrity Commissioner Jurisdiction- 75%
- Complaints from parents - 5%
- Human Rights/Discrimination- 10%
- Harassment - 10%



CLASSIFICATION OF INQUIRIES TO THE INTEGRITY COMMISSIONER FROM TRUSTEES

- Requests for advice from Integrity Commissioner - 60%
- Allegations of systemic bias in Board Policy -10%
- Access to Board information -20%
- Other -10%
Includes: school location/closure, diversity and accommodation issues, French language schools.

2.3 INFORMAL AND FORMAL COMPLAINTS

There were 8 Formal complaints filed with this Office and 12 Informal complaints brought forward to this Office in the 2020-21 reporting year.

Of the 8 formal complaints, 5 were resolved through facilitated mediation and 3 were dismissed at the intake stage after the completion of a preliminary review.

In several of the formal complaints that were resolved informally, the complaints alleged that the Trustees had contravened rule 6.10 with behaviour that was disrespectful and conduct that to the objective bystander would be taken as abusive or insulting towards another Trustee.

As I stated in previous Annual Reports, when proceeding through a mediated facilitation of a formal complaint, the default position for this Office is to take the comments made by the parties at face value with the presumption that both the Complainant and the Respondent seek Trustees' adherence to the Code rules. I compare any statements made by the parties during this process against statements of witnesses. I accept the Complainant's and the Respondent's verbal and written submissions provided during this process.

The objective of a Formal Code complaint process is to discover facts upon which to make a decision on whether a Trustee, on a balance of probabilities, has contravened the Code of Conduct rules. The purpose-driven function of the complaint process allows the Integrity Commissioner the discretion to conclude a matter with recommendations, as part of an informal resolution of a Formal Complaint.

In the 5 formal complaints that were concluded through facilitated mediation, Trustees named in the complaint were advised that a determination of compliance or contravention of the Code can only be made following an investigation of a Formal Complaint. In 2 of these complaints, I advised that, on the face of the complaint there was no Trustee conduct that would trigger a violation of Rule 6.10 of the Code. In the remaining 3 of the formal complaints, though the alleged conduct appeared on its face to be contrary to Code rules, through mediation, the Respondent confirmed that they understood their actions ran contrary to the Code and the parties agreed to an information resolution. In accordance with Rule 6.4 (c) of the Board Member Code Protocol, other than in exceptional circumstances, the Integrity Commissioner will not report to the Board of Trustees on any informal complaint or the informal resolution of a formal complaint, except as part of an annual report or other periodic report.

In addition, in one of the formal complaints that was dismissed, the Trustee named as the Respondent was alleged to have contravened Rules 6:10 (a) and (b) of the Code: the obligation to treat members of the public, one another, and staff members respectfully, without abuse, bullying or intimidation, and the obligation to adhere to the TDSB Workplace Harassment Prevention and Human Rights policies and the Ontario Human Rights Code. This Office concluded that the alleged conduct, in respect of the issues, did not constitute a violation of any provision of the Code. Further, this Office clarified that the substance of the complaint was not within my jurisdiction to address as there is a grievance process set up to be followed under the collective agreement. While the Office of the Integrity Commissioner does not act as an appeal body in respect of decisions made by a Grievance Panel, if a Board Trustee is the respondent named in a grievance and the panel or reviewer determines that a term of the collective agreement or the unionized employee's rights have been contravened, a copy of that determination can be forwarded to this Office and be reviewed in respect of the complaint allegations under section 6.11 of the Code – Failure To Adhere To the Board Policies and Procedures and determine if, in addition to the Grievance Panel's determination, the matter may be considered from the perspective of a Code breach.

3. ISSUES OF NOTE

3.1 The Board Member Code of Conduct and Human Rights

Generally, 'Harassment' is defined as: A course of conduct or comments which is unwelcome or offensive to an individual or group of individuals, thus creating an uncomfortable work atmosphere. The Ontario Human Rights Code defines harassment as '...engaging in a course of vexatious comment or conduct that is known or ought to reasonably be known to be unwelcome'. Under the Code, every employee has a right to be free from harassment in the workplace on the following grounds... Usually, harassment is offensive behaviour that is repeated after an employee knows it is unwelcome. However, harassment may also occur from a serious, single remark or action and need not be directed at a particular individual. A 'poisoned work environment' can result from degrading or humiliating comments, behaviour or displays of material not directed to a specific individual that creates an uncomfortable atmosphere. In addition, the Board's policy addresses cases of harassment outside of the Ontario Human Rights Code, such as personal harassment and abuse of authority that do not specifically relate to a prohibited ground in the Ontario Human Rights Code.

Where the Respondent to a complaint is a Trustee, the Board's policy has given the jurisdiction to receive and investigate the complaint with the Integrity Commissioner. The process set out in the Code provides that that if an employee or a member of the public brings forward a harassment or discrimination complaint against a Member of the Board to the TDSB Human Rights Office, it shall be immediately forwarded to the Integrity Commissioner. If a complaint is filed with the Integrity Commissioner, after an initial assessment, they shall consult with the TDSB Human Rights Office and then determine the appropriate next steps, including referral of the complaint to an independent investigator.

When looking at governance at the TDSB, there is not a clear approved process to determine jurisdiction on matters relating to workplace/sexual harassment or discrimination in complaints which involve a Trustee. The lack of clarity is compounded by the inconsistency of provisions set out under the Code and the Board Human Rights Office (HRO) procedures. Even with the rules clearly set out in the Board Member Code Protocol regarding the investigation process when a Trustee is named in a complaint involving allegations of discrimination, the Board has obligations of an employer and the requirement to ensure a workplace free from harassment and discrimination under Ontario Health and Safety legislation and the Ontario Human Rights Code.

Typically, a workplace policy gives the organization jurisdiction to receive and investigate workplace harassment and discrimination complaints, make findings of contravention of the policies and decide on penalties, up to an including termination of employment. However, a Board Trustee is not an employee under the *Education Act* and enforcement of a breach of discrimination policy rules by a Trustee is within the jurisdiction of the Integrity Commissioner. But what role does the Board have as an employer, separate and apart from the Integrity Commissioner's role set out in the Code Protocol?

Most of the municipal Workplace Policies follow accepted employment and workplace law principles, which do not limit application to interaction as among employees and only at the "office" or at the main workplace. Section 6.10(a) of the Board Member Code contains a general provision on decorum that imposes an obligation on Trustees to avoid acts of abuse, bullying or intimidation, that may not rise to the level of workplace harassment and as such, arguably there may be a situation in which the Human Rights Office may make a finding that there has not been a contravention of the TDSB Workplace Harassment Prevention and Human Rights policies and the Ontario Human Rights Code, but in the Code investigation, the Integrity Commissioner could find the same conduct, contrary to ethical rules and make an adverse finding.

3. ISSUES OF NOTE (CONT.)

I look forward to working with the Board to clarify the roles and responsibilities of addressing human rights, harassment and discrimination complaints.

3.2 TDSB Communications

Throughout this reporting period, in reviewing an informal complaint, this Office needed to identify which TDSB policies or procedures governed the actions of the Trustee named in the complaint. One complaint related to a situation where a tweet was posted by the TDSB on its official Twitter feed. In discussions with staff, this Office was advised that upon request by the Trustee for an official acknowledgement related to a particular observance, the day had been acknowledged by the City of Toronto before and the request was flagged with senior Board executives who approved the tweet.

The Office of the Integrity Commissioner is not responsible for reviewing or investigating staff actions or omissions. However, the allegations were in respect to a Trustee instructing staff, hence the matter was deemed with the Office's jurisdiction. The actions of the Trustee were not reviewable by the Office of the Integrity Commissioner in respect of the rules of the Human Rights policies, however, this Office had to fulfill its role and ensure that the Trustee did not violate the Code by inserting themselves into the professional ambit of staff - in other words attempting to direct staff without going through the Board's approval process. This Office sought to identify the process involved in bringing forward a request to have a matter become subject of TDSB official social media communications. In addition, this Office reviewed the procedure, policy and guidelines that govern the determination of bringing forward a motion for a recognition day/week/month.

The matter was dismissed as there was no evidence that staff was compelled to act contrary to their professional decision-making authority. As I have identified that there is no approved Board policy that deals specifically with when to make a day or event recognized on the TDSB website, I recommend that this policy gap be addressed and if there is an approved process that this be communicated to all Trustees.

3.3 Roles and Responsibilities of Trustees: Disrespectful and Disruptive Conduct

Several informal and formal Code complaints, as well as general inquiries to this Office, raised substantive issues that deal with the roles and responsibilities of the Board of Trustee versus the role and responsibilities of individual Trustees.

Section 2.1.2 of the TDSB Board Bylaws sets out that, in broad terms, the Board of Trustees is required to:

- (a) Promote student achievement and well-being;
- (b) Ensure the effective stewardship of the Board's resources;
- (c) Deliver effective and appropriate education programs to its pupils;
- (d) Develop and maintain policies and organizational structures that promote the goals of the TDSB;
- (e) Monitor and evaluate the effectiveness of policies developed by the Board in achieving its goals and the efficiency of the implementation of those policies;
- (f) Develop and review annually a Multi-Year Strategic Plan in accordance with Section 169.1(1)(f) of the Education Act; and

3. ISSUES OF NOTE (CONT.)

- (g) Monitor and evaluate the performance of the Director.

Section 2.2.1 of the TDSB Board Bylaws states that, Trustees are expected, but not limited, to:

- (a) Recite the Declaration of the Office and Oath of Allegiance in accordance with section 209 of the Education Act;
- (b) Attend and participate in meetings of the Board and Committees;
- (c) Bring the concerns of parents, students and the TDSB's stakeholders to the Board;
- (d) Uphold the implementation of any Board resolution after it is passed by the Board;
- (e) Maintain a focus on student achievement and well-being;
- (f) Consult with parents, students and the TDSB's stakeholders on the Board's Multi-Year Strategic Plan under section 169.1(1)(f) of the Education Act;
- (g) Comply with the TDSB's Board Member Code of Conduct;
- (h) Declare any pecuniary conflict of interest, whether direct or indirect, in accordance with the Municipal Conflict of Interest Act at the Board and Committee meetings;
- (i) Must not be present at a closed session meeting for matters where they have declared a conflict of interest; and
- (j) Maintain confidentiality by not disclosing to any member of the public confidential information acquired by virtue of their office or during closed sessions.

Of significance is the guidance developed for school boards and Trustees set out in the Ontario Public School Boards' Association (OPSBA) Good Governance Guide:2018-2022 (the "Guide"). In particular with respect to the roles and responsibilities of Trustees, the Guide states:

In carrying out their role, trustees have the very real challenge of balancing their responsibilities and allegiances as representatives of their communities with their role as education leaders within the decision-making body of the board as a whole. This dual responsibility can mean that the ultimate decisions made are at variance with the specific interests of a particular geographical constituency, demographic population, or interest group. All trustees are expected to act in the best interest of the board and its students as a whole. Effective board governance is dependent on a clear understanding of, and respect for, roles and responsibilities. As trustees communicate with their communities and hear their concerns, they must at the same time convey that changes to existing board policy require consideration by the full board. Trustees, as individuals, do not have authority to make decisions or take action on behalf of the board.³

Over the course of the period covered in this Annual Report, there have been some Trustees that have stated in public Committee and Board meetings that any decision of the Committee or Board to not approve a particular motion was tantamount to a decision to uphold systemic discrimination and an example of how institutional bias effected through decisions not to change, produces outcomes that disproportionately disadvantages certain groups (low income, racialized, special needs).

Though I have observed that Board Trustees are committed to the principles of the anti-racism, anti-discrimination and

³OPSBA Good Governance Guide: 2018-2022, p.36

3. ISSUES OF NOTE (CONT.)

equity documents of the Board and that the TDSB has continued to identify ways to make a difference in the lives of racialized, low-income, special needs, First Nation, Indigenous, and new Canadians, it is clear from the behaviour that I have witnessed during Committee and Board meetings that individual Trustees' positions on a solution, differ vastly one from the other and some Trustees believe that a desire to eradicate systemic bias and discriminatory practices in Board policies justifies a position of non-adherence to approved and existing procedural rules. There are racialized Trustees that have expressed feeling alienated and there are non-racialized Trustees that have taken the position that my comments made in the 2019 Annual Report were used to weaponize my Office and the Integrity Commissioner's comments were distorted. The reality is that over the course of this reporting year, the Board has become divided along racial lines. So intense did the mistrust between Trustees become at times, that following providing notice of receipt of a Code complaint to one Trustee, they replied in the following way:

I'm writing to you personally to express my complete bewilderment to why those allegations were actually considered particularly the absurdity of the complaint #2. [...]

Today, I stumbled upon a quote by Voltaire which reads, "Those who can make you believe absurdities, can make you commit atrocities." I share this to not at all imply you believe their horrendous twisting of words or that you are committing an atrocity, but to bring to the surface what is really going on here. In my opinion, they are intentionally and purposefully trying to assassinate my character. My fear is that if these spurious allegations are accepted, even as an informal complaint, it will lead to arguably even more false allegations and slander.

In response to the Respondent's assertion that the Complaint is frivolous and their admonition that the Office of the Integrity Commissioner is being used for an inappropriate purpose, it is my position that the Board's Integrity Commissioner is the administrative decision-maker vested with the power to receive and evaluate a Code complaint and on its face, refuse to investigate, or dismiss a complaint where the complaint is frivolous, vexatious or not made in good faith. However importantly, if the Office determines that a complaint, while touching on matters that may be viewed by a Respondent as frivolous or motivated by racial bias, is properly addressed to matters within the Code, that does not by itself mean the complaint is frivolous or made in 'bad faith.' A valid complaint that addresses conduct caught by the Code will generally not be in bad faith, in the absence of actual or constructive fraud, design to mislead or deceive, or a dishonest purpose. The above-noted comments of one Trustee mirrored sentiments expressed by others. The lack of trust among Trustees, particularly drawn against lines of race, was evident in various circumstances throughout this reporting year. The comments of some Trustees suggest that certain Code complaints are motivated only by race or general animus and the Respondent should not be required to provide a response as the substance to the complaint seeks to have the Integrity Commissioner carry out an investigation that is politically or otherwise motivated and that the failure to "provide evidence" acceptable to the Trustee named in the complaint demonstrates a desire to cause an investigation to be made without any proper factual foundation. As a procedural safeguard, the Board Code contains a complaint process that sets out how the Integrity Commissioner will conduct her preliminary review prior to deciding whether or not to commence an investigation. During this reporting year, the process set out in the Code was carried out in evaluating complaints and the assertion made by some Trustees that this Office should immediately dismiss complaints, demonstrates a lack of understanding of the role of this Office, the process followed when a complaint is received and the roles and responsibilities of individual Trustees. To be very clear, this Office is entirely aware of the concerns raised by racialized Trustees and by other Trustees. This Office is aware of circumstances in which microaggressions have demonstrated behaviour that, if investigated, could lead to a finding

3. ISSUES OF NOTE (CONT.)

of discriminatory behaviour. This Office has also received calls and emails, the review of which demonstrated some evidence of discriminatory behavior, however in other instances, the review had no evidence of discriminatory behavior but rather only evidence of a Trustee that simply decided they would not adhere to the rules of procedure or decorum. This Office has communicated to the Board that personality clashes, microaggressions and outright rudeness by some Trustees is conduct captured and prohibited by the Code and if any Trustee witnesses such conduct, the appropriate course of action is to bring forward an informal or formal Code complaint to the Integrity Commissioner. That being said, in circumstances where a Code complaint has been brought forward and this Office has identified the substance of the complaint to be either non-adherence to procedural rules or rules of the Code, the fact that the Trustee named in the complaint is dissatisfied with this Office's handling of the matter and continues their inappropriate behaviour, has caused many other Trustees to feel defeated in the work of the Board's ability to overcome this impasse.

During the course of Committee and Board meetings, some Trustees have communicated to this Office that they feel personally attacked when they publicly take a particular position at Board meetings and that this fear of being verbally attacked has led to a reticence on the part of many Trustees to speak candidly at public meetings. During this reporting year as in the previous reporting year, many Trustees have shared with this Office that they are committed to anti-oppression and anti-black racism work, however they takes umbrage when their motivation for voting a particular way is attributed to being complicit to supporting systemic discrimination. The Code and the Board's procedural rules require Trustees to refrain from levelling personal attacks one to the other. The disrespectful and inappropriate behaviour that I have witnessed is limited to a handful of Trustees who have been advised by this Office that their conduct runs afoul of the Code rules. Attempts to hold some Trustees accountable has taken the form of disruptive behaviour during Committee and Board meetings, and general incivility. Through continued work on the Board's self-assessment tool, the work of the Bylaws Review Ad Hoc Committee and information and training sessions by this Office, while I am deeply concerned by the lack of understanding by some Trustees of the effect of their inappropriate behaviour on the morale of the Board and staff, I am confident that with enhanced governance guidelines and clarification of procedural rules, examples of disruptive and disrespectful behaviour will be identified and addressed through the formal Code complaint and investigation process.

3.4 Trustee -Staff Interaction

The OPSBA Governance Guide (the "Guide") sets out the general principles in respect of school boards, trustees, school board staff and their respective roles and responsibilities. The Guide states that:

In carrying out their role trustees have the very real challenge of balancing their responsibilities and allegiances as representatives of their communities with their role as education leaders within the decision-making body of the board as a whole.⁴

With reference to an individual Trustee's role, the Guide states that:

A clear understanding of a school board trustee's role and responsibilities is fundamental to good governance. A school board trustee is a member of a board, not a member of a parliament, and it is important for both trustees and the general public to understand that school board trustees hold no individual authority. The school board, as a corporate body, is the legislative source of all decisions, and individual trustees are granted no authority through the Education Act.⁵

⁴Good Governance: A Guide for Trustees, School Boards, Directors of Education and Communities, 2014, OESC, p.24-25

⁵Ibid, p.32

3. ISSUES OF NOTE (CONT.)

Several inquiries have been brought to this Office as informal code matters and simply telephone calls of concern from staff during this reporting period. Rather than attempt to communicate the concerns through my lens, I have decided to include the staff's comments verbatim below:

- "Trustees ask [staff] questions and when they receive an answer and they are not happy with it, they kept coming back with the same questions"
- "When [a particular Trustee's] motions are defeated, they become mean towards their colleagues and staff"
- "There are personality issues... I mean... what remedy is there for a "problem" Trustee?"
- "What happens when a Trustee is rude? I don't know if there is a rule against being a bad person... they are elected officials."
- "Its not about growing a thicker skin to keep my job... I don't want to grow a thicker skin in order to grow in the TDSB"
- "Fixing someone's personality is not my job"
- "One day Trustees will understand that the way they treat staff at meetings impacts everyone... even staff not at the meeting... other staff hear what is said, even if a teacher hasn't spoken to that Trustee, their behaviour impacts what staff believe is the level of respect or lack thereof"
- "I said to [a particular Trustee] "please let's communicate"... I just want the relationship to get better"
- "There are just some problem Trustees... just a few... they push the envelope"
- "[Trustees] have a right to bring forward any motion but when they have pre-conversations with staff as part of bringing forward a motion and the motion is defeated, [some named Trustees] get unreasonable, like they have to get their own way"

During this reporting period, there remains an unclear understanding of the appropriate relationship between an individual Trustee and TDSB staff. With respect to a small number of Trustees, staff who have consulted with my Office have communicated that they do not feel comfortable pursuing matters involving inappropriate Trustee conduct through the formal Code process because of concerns of reprisal against them. This Office has been steadfast in assuring staff that Rule 6.12 of the Board Code contains provisions that deem acts of reprisal as conduct prohibited and any contraventions enforceable under the Code. Rule 6.12 states:

Any reprisal or threat of reprisal against a complainant or anyone else for providing relevant information to the Integrity Commissioner is prohibited.

While I have found that the preponderance of concerns raised by staff to my Office involved the inappropriate conduct of a small number of Trustees, issues in respect of the relationship between a Trustee and Board staff, generally, the lack of a clear understanding of the role of a Trustee versus the role of the Board of Trustees often gives rise to the potential for Trustees to inadvertently cross the line and fall short of their Code obligations, in particular in respect to adherence to Rule 6.9 of the Code – Conduct Respecting Staff Members and 6.10 – Discreditable Conduct.

3. ISSUES OF NOTE (CONT.)

It is clear that many of the issues discussed at Committee and Board meetings are extremely important to the Trustees as they bring forward community concerns in respect of student achievement and performance. Make no mistake that this Office is proficient in governance best practices and the application of public sector regulatory schemes. Representing constituents is a legitimate function of a Trustee under the *Education Act*, however, the way in which concerns are brought forward must respect the boundaries that define the role of a Trustee from that of the administration, as well as understanding the distinction between policy development and implementation or operationalizing a policy. Trustee interaction with staff by email, on the phone, during in-person or virtual meetings must involve respect of the neutral role and professional expertise of staff. TDSB administration, principals, teachers and support staff are experiencing the challenges and stresses of this unprecedented time, as much as Trustees are. Maintaining a focus on student achievement and wellbeing does not give license to run roughshod over staff. Long meetings, competing priorities, limited financial resources often lead to spiked emotions and short tempers in meetings or in preparation for Board meetings. Staff at all levels of the TDSB administration are not in a position to “respond in kind” to pointed comments or microaggressions. While an occasional misplaced comment happens in all workplaces, it is incumbent upon Trustees in adherence to their Code obligations, to treat staff with respect and to ensure that their work environment is free from disparaging comments or actions.



BOARD MEETINGS

AT THE
TORONTO DISTRICT SCHOOL BOARD

4. EDUCATION AND OUTREACH

January and May 2021:

All trustees and student trustees were invited to Code interactive workshops, which focused on an information presentation covering Board Member Code of Conduct rules, Municipal Conflict of Interest provisions and workshop scenarios. The May session included co-presentation with Ms. Tina Lopes, Governance Consultant, Leading Change for Equity. These workshops were the first of three Trustee professional development sessions scheduled to be held in 2021.

February 2021:

Presentation to Ontario Public School Boards' Association, Policy Development Work Team meeting.

March 2021:

Consultation with Hamilton-Wentworth District School Board.

April 2021:

Meeting with Human Rights Office staff and Superintendent.

May 2021:

- Public Sector Ethics Conference – panelist.
- Osgoode Hall Law School Canadian Public Law and Governance Symposium - panelist.

June 2021:

-Virtual Municipal Integrity Commissioners of Ontario Spring meeting in June. The agenda topics included strengthening municipal codes of conduct, Municipal Conflict of Interest Act case law, the Collingwood Inquiry, Dhillon vs the City of Brampton, and public inquiries in Ontario. Moderator for panel discussion on disqualifying and non-disqualifying conflicts of interest under the MCIA and Codes of Conduct.

- Guest lecturer at Western University's Local Governance Program presenting recent updates to accountability and transparency in municipal government, harassment complaints under Codes of Conduct and the Provincial Consultation on changes to municipal Codes of Conduct.

5. EXAMPLES OF INTEGRITY COMMISSIONER ADVICE

Q. A Trustee requested advice on whether their proposed action would trigger rule 6.9 of the Code. The Trustee wanted clarification on an official communication that was sent out to teachers and parents at the beginning of the school year. The Trustee prefaced their question to me by clarifying that “Trustees are 100% with staff and support them. But there needs to be transparency so that Trustees can respond correctly to parent emails”.

A. Based on the information provided to me, I did not believe that the Trustee’s conduct had triggered the Board Member Code of Conduct. Rule 6.9 states in part:

(a) No member of the Board shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff members of the Board, and all members of the Board shall show respect for the professional capacities of staff members.

I advised that the Office cannot predetermine the outcome of a complaint. However, I advised that on its face, requesting staff clarification on information that had been forwarded through official channels to teachers and parents, was not conduct that contravened the Code.

Q. In preparation for an upcoming meeting, a Trustee wanted to know the procedure for when it is appropriate to raise a Point of Order or Point of Privilege.

A. I advised the Trustee that they should consult with the staff of Governance and Board Services. I advised that generally speaking, in public sector organizations, a Point of Order is when a Trustee believes that there has been a deviation from the rules or bylaw and they are seeking clarification and a ruling by the Chair on whether the bylaw rules are being correctly followed. In this situation, a Trustee may interrupt another to raise a point of order and why they believe the discussion should be interrupted to receive clarification on whether the rule is being followed or not. The Chair’s ruling may be challenged and a majority vote taken.

A Point of Personal Privilege is different and often misused by Trustees. This is used only when a Trustee feels they have been disrespected and either their reputation has been called into question by a statement made by another Trustee or the conduct at the Board/Committee has gotten out of hand. The Chair rules or recesses to consider or consults staff. The Chair’s ruling may be challenged on a majority vote.

The 2 important points to remember are:

1. Point of Order - anyone can move it and it must be about following the rules or process, the reason can’t be obscure - the mover must say what rule they believe is being breached.
2. Point of Personal Privilege - is a decorum point and is raised when the Trustee has been offended or believes someone else has been offended by the comments or actions of a Trustee or the meeting has descended into disrepute. The mover cannot simply say Point of Privilege because they are upset. It must be a clearly defined offense, reason for calling it and what the mover wants to achieve (i.e. I would like an apology or I would like the Chair to ask the Trustee to retract their previous statement).

5. EXAMPLES OF INTEGRITY COMMISSIONER ADVICE

Q. A Trustee requested clarification on what complaint processes were in force at the TDSB in addition to complaints to the Integrity Commissioner:

A. I advised that there were Non-Union Employee complaint processes, Unionized Employee Grievances, Internal Human Rights Complaints Processes, Ontario Student Records Appeals, Parent Concern Protocol and many more. I advised that I did not know if there was one repository for all complaints and complaint processes, however, staff of Governance and Board Services and the Legal Services staff would be in a position to advise further.

6. STATEMENT OF EXPENDITURES

October 2020- September 2021

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

\$22,203.90 – Remuneration for Formal Complaint investigations

CLOSING REMARKS

This is the final year of my mandate as Integrity Commissioner for the Toronto District School Board. During this 5-year appointment (currently, the Board has invoked the option to extend the appointment for 1 year), I have had the honour of working with a slate of elected officials that have worked tirelessly to represent students and parents, make decisions to support student achievement and well-being and create improved governance practices to enhance through public education, the lives of students, staff, parents, and the broader community.

Social Media:

Over the past 5 years, there has been a growing trend in government generally regarding elected and appointed officials use of social media to communicate with constituents, as well as to engage in discussions regarding issues that are at the forefront of political events. At the TDSB, these discussions have often centered around controversial matters that relate to class sizes, special education, the budget and allocation of limited resources, and more recently, equity, anti-oppression and implementation of processes related to Covid-19 mandated health decisions. Often, Trustees have communicated to this Office that their comments on social media or during Board meetings reflect their opinion on an important issue that affects their community. Some Trustees have taken issue with this Office's decision to pursue Code complaints insisting that their comments were strongly worded but not discourteous, offensive or aggressive, and should not be subject of a Code investigation. In fact, some Trustees have suggested that the complaints filed against them are frivolous and politically motivated or the complainant is using the Office of the Integrity Commissioner to move forward another Trustee's political or personal agenda. As I have pointed out above, it is the position of this Office that the Integrity Commissioner for the TDSB is an appointed third-party decision-maker vested with the power to refuse to investigate, or to dismiss a complaint where the complaint is frivolous, vexatious, or not made in good faith. While I concur that there have been instances in which Trustees have stated that their comments under investigation were made to support their community, to stand up against discrimination or simply simply state their opinion, Trustees must take care not to act as the spokesperson for the entire Board and this Office has gone forward with reviews or investigations of Code complaints only after determining that the complaint is properly addressed to matters within the Code.

Through an Equity Lens:

During the review of the myriad of matters and concerns that came to this Office, I have observed that there is a need for a deeper or different discussion when the policies and decision-making of the Board have outcomes that are not reflective of an equity context, and when the outcomes of Board decisions adversely impact certain communities disproportionately and more often than others.

As determined in several informal complaints brought forward during this reporting period, discussions about whether the Boards' organizational and policy structure perpetuate institutional bias against underrepresented groups and lead to an enshrined system that promotes or allows biased outcomes adverse to marginalized groups, is to be welcomed and the current Board has undertaken to have these discussions. "Institutional bias", "discrimination", and "isms" of oppression, should be called out and addressed. However, there must be a safe and respectful space where shared values and the consistent application of fair processes intersect, and these discussions should be about issues and not the individual personalities of Trustees.

CLOSING REMARKS

A Final Word:

The TDSB Board Member Code of Conduct is an ethics document containing approved rules upon which Trustees have agreed that their conduct will be measured. In order for this Office to fairly apply the Code rules to the actions and behaviour of individual Trustee and in order for this Office to remain relevant, the values, vision, processes and rules of the Board must be shared, understood and respected by all of Trustees. If what is in place needs to be changed, meaningful discussions should take place, as is occurring at this time with the updates to the TDSB Bylaws and work on the Board Self-Assessment Tool. Notwithstanding the issues of concern set out above that I am required to communicate as part of a transparent accountability reporting regime, I am proud to serve this Board that has Trustees who were part of the previous decision to create this Office to enhance accountability, as well as the group of Trustees elected in 2018 that hit the ground running with excitement, commitment and a strong desire to create effective policy direction and build public confidence by demonstrating accountability to the public and for public education. This Board has demonstrated a willingness to have difficult discussions and the work of Trustees, including in support of this Office, has set a high bar for accountability in the public sector for other school boards in Ontario to follow. As I write today, the future appears to be less uncertain than a year ago when I tabled my previous Annual Report. Although there have been some missteps, I applaud the efforts of Trustees of the Toronto District School Board who I have seen endeavour to live out and make relevant, integrity and accountability in the years of my appointment as the Board's Integrity Commissioner.



Picture from The Globe And Mail