



Bylaws Review Ad Hoc Committee: Interim Report

To: Governance and Policy Committee

Date: 2 June, 2021

Report No.: 06-21-4108

Strategic Directions

- Create a Culture for Student and Staff Well-Being
- Build Strong Relationships and Partnerships Within School Communities to Support Student Learning and Well-Being

Recommendation

It is recommended that the Bylaws Review Ad Hoc Committee: Interim Report be received.

Context

At the November 16, 2020 Organizational Board meeting, the Bylaws Review Ad Hoc Committee was established with a mandate to review the Board's Bylaws and to present recommendations regarding revisions to the Governance and Policy Committee.

Specifically, the Board of Trustees resolved:

- (a) That a Bylaws Review Ad Hoc Committee be established as follows:

Mandate: To review the Board's bylaws and present recommendations regarding revisions to the Governance and Policy Committee in the spring 2021

Membership: Up to five members;

- (b) That Trustees Doyle, Laskin, Rajakulasingham and Wong be appointed to serve on the Bylaws Review Ad Hoc Committee for a term ending November 14, 2021.

At its first meeting in January 2021, the Bylaws Review Ad Hoc Committee established a two-step process for the review of the Bylaws:

- i. the Committee will conduct an initial review of the Bylaws. Required revisions, in principle, will be recommended. The review will include soliciting input from all trustees;
- ii. staff will revise the Bylaws, in accordance with direction provided, and will submit a revised draft for the Committee’s consideration.

The Committee recommended an equity assessment of the Bylaws be incorporated into the review process, based on the principles of the Equity Policy (P037).

The Committee also recommended that it seek input from the Integrity Commissioner as part of the Bylaws review.

Six (6) Bylaws Review Ad Hoc Committee meetings have taken place to date beginning on January 27, 2021. The Committee has considered the following related matters (themes) and associated Bylaws provisions:

| Bylaws Provisions Considered to Date: |
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| Theme: COMMITTEES |
| Attendance |
| Committee of the Whole |
| Mandates/Terms of Reference |
| Special Committees vs. Subcommittees |
| Reporting to Board |
| Clarification on Non-Trustee Members |
| Community Advisory Committees |
| Chair/Vice Chair Election Procedure |
| |
| Theme: MEETINGS - RULES AND PROCEDURES - Part 1 |
| Agenda |
| Notice of Motion |
| Suspending Provision of Bylaws |
| Mover/Secunder Requirement to Put an Agenda Item on the Floor |
| Quorum of Special Committees and Subcommittees |
| Approval of reports for receipt |
| Public/Private Meetings |

The Committee reports from each meeting were provided to the Governance and Policy Committee for information. A summary of the Committee’s decisions in principle to date can be found in Appendix A.

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As part of the review, on May 6, 2021, the TDSB's Integrity Commissioner presented to the Committee a memorandum on preliminary review of the Board's Bylaws.

The TDSB's Equity and Human Rights Office have attended Bylaws Review Ad Hoc Committee meetings and is expected to continue the Bylaws equity assessment.

On March 10, 2021, upon recommendation by the Bylaws Review Ad Hoc Committee and the Governance and Policy Committee, the Board of Trustees extended the deadline for presenting the final report on the review of the Bylaws and changed it from spring 2021 to November 2021. The Bylaws Review Timeline is provided in Appendix B.

The Bylaws Review Ad Hoc Committee – Interim Report is being presented to the Governance and Policy Committee for information.

Action Plan and Associated Timeline

Subject to the Governance and Policy Committee's directions, the Bylaws Review Ad Hoc Committee – Interim Report will be provided to the Board of Trustees for information. The Committee is expected to continue review of the Bylaws in accordance with the Bylaws Review Timeline (Appendix B).

Resource Implications

No additional resources will be required at this time.

Communications Considerations

No additional communications requirements are required at this time.

Board Policy and Procedure Reference(s)

- TDSB Board Bylaws, November 11, 2020 - Current
- Delegation Procedure (PR718)

Appendices

- Appendix A: Bylaws Review Ad Hoc Committee Decisions in Principle To Date
- Appendix B: Bylaws Review Timeline

From

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BRC DECISIONS IN PRINCIPLE TO DATE

| Theme | Issue/Problem | Questions for Consideration | Bylaw Subsection | Decisions in Principle |
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| COMMITTEES | | | | |
| Attendance | <p>Current Bylaws provide an exemption to trustees who are on pregnancy/parental leave from missing 3 consecutive Board meetings without losing trustee office. The Bylaws are silent on Committee membership, i.e., missing 3 committee meetings without losing committee membership.</p> | <p>Should pregnancy/parental exception also apply to Committees? If so, revise section 5.7.3 and place it after current section 5.7.11</p> | (5.7.3/5.7.11) | Yes |
| | <p>Current Bylaws set out requirements for physical attendance of meetings. The requirements are inconsistent with the new rules and practices of electronic meetings and virtual participation introduced during the COVID-19 pandemic.</p> | <p>Should we revise section 5.7.1 and include an exemption clause for circumstances such as the COVID-19 pandemic?</p> | (5.7.1) | Yes (Add provision to default to relevant legislation in case of conflict) |
| | <p>Concern that some meetings are not open to all trustees. If there are meetings that are closed to non-members, this must be included in the committee terms of reference and only if required by law/legislation/confidentiality agreements etc.</p> | <p>Are any meetings, including committees and subcommittees, closed to trustee non-members?</p> | TBC | The terms of reference for committees/subcommittees must clearly outline the rules re attendance by non-members. |
| Committee of the Whole | <p>Need to confirm and clarify concept of the Committee of the Whole, particularly in relation to newly established Planning and Priorities Committee. “Committee of the Whole” (CW) may mean a) a meeting of the Board of Trustees using procedural rules of a committee (as defined in the current Bylaws), or b) a separate committee of the Board composed of all trustees (as was defined in the previous version of the Bylaws).</p> | <p>Is Committee of the Whole a meeting format or a committee? Depending on the answer to the question above, revise definition of “Committee of the Whole” and related provisions to ensure clarity.</p> | (1.6) and (4.5.5) (1.6) | Meeting format |
| | <p>Consider whether any rules applicable to Committee of the Whole should be spelled out in the Bylaws.</p> | <p>Who should preside over Committee of the Whole meeting? Who is chair and vice-chair at CW? Should the CW meetings be scheduled in advance?</p> | TBC TBC TBC | <p>There is value in defining Chair for CW, recommend that it should be VC of Board. It’s proposed that Vice-Chair of the Board would chair CW meetings, and the Chair of the Board would serve as a Vice-Chair of CW. No (However, because delegations are permitted at CW, the notice of meeting would have to be provided in advance, thus essentially scheduling is required.)</p> |

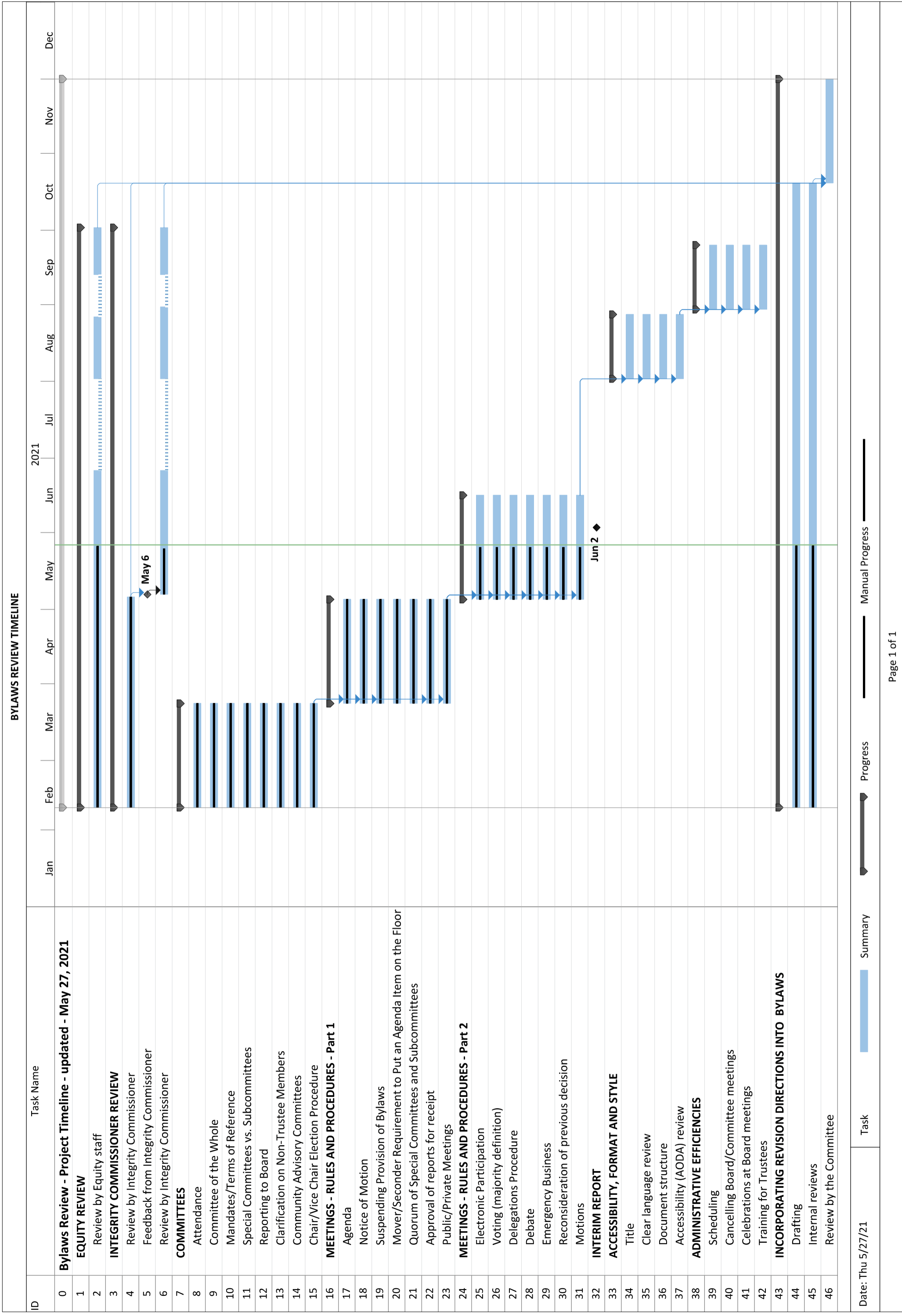
| Theme | Issue/Problem | Questions for Consideration | Bylaw Subsection | Decisions in Principle |
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| | | Is a simple majority vote required to convene a CW meeting? | (4.5.5) | Yes (majority vote) |
| | | Should delegations be permitted at CW meetings? | (5.16) | Yes |
| | | Can a CW meeting be convened during special Board meeting? | (4.5.5) | Yes – if suspending the bylaws – 2/3 vote |
| Mandates/Terms of Reference | Mandate of the Planning and Priorities Committee (PPC) includes “other issues referred to it from time to time by the Board or the Chair of the Board”. | Should we limit PPC’s mandate, and Chair’s referral ability, so that PPC cannot duplicate the work of other committees? | (4.5.3.g) | No, the preference is to keep the catch-all provision. |
| | Current Bylaws do not state which committee is responsible for the Board Bylaws. | Should we explicitly include ‘Bylaw Review’ in GPC mandate? | (4.6.4) | Yes |
| | Concern that committees have mandates, but do not have terms of reference. | Should we require terms of reference for every Committee? | (4.1.2) | Yes |
| | | Should we create a template with standard terms of reference for Board committees to use make the process easier? | TBC | Yes |
| | | Should mandates and terms of reference be included in the Bylaws? | TBC | No. The terms of reference template will be part of a new Governance Procedure. The Bylaws will include reference to the Governance Procedure to ensure flexibility. |
| Special Committees vs. Subcommittees | Under the Bylaws, Special Committees are established by the Board, and Subcommittees are created by Committees. Clarification is required on whether Committees have authority to create Subcommittees. | Should Special Committees (Director’s Search, Board Self-Assessment, Negotiations, etc.) have more specific provisions embedded in the Bylaws (e.g., reporting structure, final authority, etc.)? | (4.8) | Yes |
| | | Should the Bylaws explicitly delegate authority to Committees to establish and dissolve Subcommittees? Committees are not decision-making bodies and may only make recommendations to the Board for consideration and final approval’. | (1.6), (4.1), (4.3) (4.8) and (4.9) | No, the Bylaws need to clarify that Committees may make recommendations to the Board to establish Subcommittees. The approval authority resides with the Board. In addition, the Bylaws should outline the process for establishing staff committees that include Trustees as members. |

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| Reporting to Board | Current Bylaws lack details on reporting structure, including timing and sequence, allowing for the potentially problematic flow of information. | Should we clarify that a report of all committee meetings must go to the following Board meeting, so the Board has a record of all committee work? What must be included in a report when it must go to the Board, etc.? | (4.3.2) | Yes, this appears to be recent practice and there is already an adequate template. |
| Committee Membership | Current Bylaws state that only trustees may be members of a committee (including subcommittees). | Which Committees, including Special Committees and Subcommittees can have staff and outside parties as members? | (4.4.8) | Only Trustees are considered members of any type of Board Committee. Need to clarify what terms should be used when staff/outside members are on specific committees, whether mandated or not. |
| Community Advisory Committees | The list of Community Advisory Committees (CACs), that is included in the Bylaws, is frequently amended as new CACs are established and some are dissolved. Tracking the changes appears to be problematic. Current Bylaws list of CACs is incomplete, it does not include LGTBQ2S CAC. | Do we need to list CACs in the Bylaws? Is there a way to easily update the Bylaws if we establish or dissolve a CAC? | (4.10.2) | Status Quo: Section 1.3.4 (d) allows for housekeeping changes such as correcting the name of CACs. |
| Chair/Vice Chair Election Procedure | The procedure for Election of Board Chair and Vice Chair is not included in the Bylaws. It exists as a Board resolution, outside the Bylaws and associated governance procedures, and therefore is not easily searchable/available. | Should we elaborate on specific details and incorporate the procedure into Bylaws? Alternatively, should the Chair/Vice-Chair Election procedure be adopted as a separate governance procedure, such as the Delegation Procedure? | (3.4) | Yes, elaborate on details but keep outside Bylaws as procedure to allow more flexibility. |
| Meetings Part One | | | | |
| Agenda | Concern regarding Board agenda clearing as new Committee Chairs/Vice-Chairs are unaware of the best/current practice requiring their attendance at agenda clearing meetings. | Should Standing Committee Chairs and Vice-Chairs formally participate in determining the content of Board meeting agenda? Should Board Vice-Chair be included? Current provision, 5.12.1a: <i>"The content of the agenda for Board will be determined by the Board Chair in consultation with the Director or designate"</i> Similarly, should Vice-Chairs of Committees formally participate in determining the content of Committee meeting agendas? Current provision, 5.12.1b: <i>"The content of the agenda for Committee will be determined by the</i> | (5.12.1a) and (5.12.1b) | Yes, it's beneficial to include the VC, but agenda clearing should not be contingent on VC attendance. |

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| | | <i>Committee Chair in consultation with the Director or designate'.</i> | | |
| | Concern regarding staff missing the three business day deadline for providing agenda/background materials. | How can staff deadlines (3 business days prior to meeting) be enforced? | (5.12.2) | Referred to staff. |
| Notice of Motion | Need to confirm and clarify whether a Committee notice of motion can only be submitted by a member of the Committee. | Who can submit a notice of motion at a Committee meeting: any Trustee or only member of the Committee? | (5.15) | Status Quo – Any trustee can submit a notice of motion, but the actual motion must be moved by member of committee. |
| | Concern regarding who can subsequently move/second a motion after its advance notice. | If a notice of motion was given as advance notice, must it be moved at a subsequent meeting by the same mover/second? | (5.15) | No |
| | “No ice of mo ion for con idera ion’ is use in the Board/Committee agenda materials while there is no reference to t is ter in the Bylaw . laws “no ice of mo ion for con idera ion” does not e is . | Id the Board refr in from u ing term “No ice of mo ion for con idera ion’ in agenda mate ials. Technically, the notice of motion for consideration is a motion to be considered at the meeting. What new language could be used in agenda materials? | (5.15) | Referred to staff. |
| Suspending Provision of Bylaws | Current Bylaws state that Committees are not permitted to suspend any provision of the Bylaws, but CW/PPC have been making motions to change the rules around speaking time. | Should Bylaws be revised to allow for Committees to suspend provisions of the Bylaws? | (1.2.2) and (5.13.10 – 5.13.11) | Should be limited to only affect speaking time. Staff to present BRC with options (i.e., 3 vs 5 mins speaking time) |
| Mover/Second Requirement to Put an Agenda Item on the Floor | Under current practices, after approval of meeting agenda, Chair presiding over the meeting calls for a mover and seconder to put each matter/item of the agenda on the floor. Excerpt from December 18, 2020, Chairs/Vice-Chairs training materials: <i>All staff reports contain a recommendation – read the recommendation out loud for the Committee and call for a mover and seconder to put the matter on the floor. This is required before any debate can begin, even if the recommendation is just to receive the report for information. (We are now moving to agenda item number one. The recommendation contained on page three of your agenda and reads as follows. May I have a mover and seconder for this matter please?)</i> School boards and municipalities generally do not require a mover/second for items to be considered after the approval of | Should we remove the requirement to have a mover/second for items already approved in the agenda? If a mover/second are still required, should we apply the requirement consistently, and allow the mover to speak last, as per regular procedure for moving a motion? If mover/second are no longer required, should we clarify that it is the responsibility of the Chair/presiding officer to keep meetings moving? | TBC – stated in training documents (Dec 18, 2020, Chairs/Vice-Chairs training materials) | Yes, may be removed. Generally, the duplication of action is not required/efficient. <i>Note: The mover and seconder of the motion (if generated by Trustees) is to be reflected in the motion record.</i> |

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| | <p>the agenda (Toronto Catholic DSB, Vancouver SB, Ottawa-Carleton DSB (OCDSB), Hamilton-Wentworth DSB, Thames Valley DSB . le of Order also does not have t is requirement. The Chair (presiding officer) is expected to execute this function and move the meeting along the approved agenda.</p> | | | |
| | <p>Concern that the rules re withdrawal a motion prior to a vote are not quite clear. Some Trustees quote the first part of the Bylaws (5.15.7) but forget the second (5.15.8):</p> <p><i>5.15.7 A motion that has been moved and seconded is considered to be on the floor and will be decided by a vote, unless withdrawn.</i></p> <p><i>5.15.8 A member who moved a motion may withdraw it from consideration before the vote is taken on the motion, provided that the seconder or no other member present objects to the motion from being withdrawn.</i></p> | <p>Should these two provisions [5.15.7 and 5.15.8] be combined for clarity?</p> | <p>(5.15.7) and (5.15.8)</p> | <p>Yes – combine for visuals and remove inclusion of ‘seconder’ as the motion belongs to all trustees once on the floor.</p> |
| | <p>The Bylaws requires a mover and a seconder to put a motion on the floor for consideration. The Board, however, does not require a seconder for certain procedural motions in accordance with the Robert’s Rules (see Appen ix A attached .</p> | <p>Should the Bylaws state that certain motions do not require a seconder?</p> <p>If so, should we clarify which motions do not require a seconder in the Bylaws?</p> <p>Should we attach Appendix A – Parliamentary Procedure Chart as an appendix to the Bylaws or as part of a governance procedure supporting Bylaws?</p> | <p>(5.15) and (5.15.7)</p> | <p>Yes – include Parliamentary Procedure Chart as an appendix to the Bylaws.</p> |
| <p>Quorum of Special Committees and Subcommittees</p> | <p>Need to clarify whether ex-officio members may be counted towards quorum at any Committee (as defined in s. 1.6), including Subcommittee and Special Committee or at Standing Committee only. Current Bylaws Definitions (1.6) and applicable provisions (4.4.5, 4.4.10 and 5.10.7) are unclear.</p> <p><i>1.6 Definitions: “Ex-Officio Member” means a member of a Committee by virtue of holding the Chair or Vice-Chair position of the Board. An ex-officio member is not a regular member but has the same voting rights and privileges as any other member of a Committee. Quorum (i.e., the minimum number of regular members necessary to conduct a Committee meeting) does not increase with the attendance of ex-officio member(s) at the meeting, but an ex-officio member will count towards quorum.</i></p> <p><i>4.4.5 The Chair and Vice-Chair of the Board will be ex-officio members of each Standing Committee, with full voting privileges.</i></p> | <p>At which meetings are ex-officio members counted towards quorum?</p> <p>Should 4.4.5 be amended to state that the Chair and Vice-Chair of the Board are ex-officio members of all Committees. Id the de i i ion of “Ex-Officio Member’ in .</p> | <p>(1.6), (4.4.5), (4.4.10) and (5.10.7)</p> | <p>Chair and VC should only be ex-officio members on Standing Committees.</p> |

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| | <p><i>4.4.10 A Trustee who is not a member or an ex-officio member of a Committee cannot move a motion, vote or be counted towards quorum, but may attend the meeting and speak to a motion under consideration by the Committee.</i></p> <p><i>5.10.7 An ex-officio member will be counted towards quorum at a Committee meeting</i></p> | | | |
| Approval of Reports for Receipt | <p>Need to confirm and clarify whether reports for receipt should be voted on.</p> <p>Robert's Rule indicate that a vote to receive information is not necessary. Presentation or submission of a report for receipt constitute the receipt. The practices at school boards vary.</p> <p>Under Board's current practices, oral updates, Director's leadership reports, reports from Trustees representing the Board at external organizations, Student Trustees' reports, etc. voted on.</p> | <p>Do reports for receipt need to be voted on?</p> <p>What would it mean if a report for receipt is not carried/passed?</p> <p>If approval of reports for receipt is still required, should we clarify that approving a report for receipt does not approve any staff commitments/plans mentioned in the report?</p> <p>If approval of reports for receipt is still required, should the Bylaws clarify that all types of reports for information (both oral and written) would have to be voted on.</p> | TBC | Clearly define in the Bylaws what 'receipt' entails, continue voting on receipt; TBD if voting is needed on verbal updates/reports. |
| Public/Private Meetings | <p>The Integrity Commissioner, through her annual report (April 2019-September 2020), recommended recording private meetings.</p> <p>Concern with current Bylaws' alignment/compliance with the Ombudsman's report on open meetings.</p> | <p>Should the Board record private meetings? If so, should the Bylaws outline the process details?</p> <p>Should the Bylaws include limitations on what can and cannot be discussed using the 'chat' function?</p> | (5.4) | <p>No. Suggested further discussion with the Integrity Commissioner to clarify recommendation and possible solutions.</p> <p>Yes.</p> |



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