



**OFFICE OF THE INTEGRITY COMMISSIONER'S
ANNUAL REPORT
APRIL 2017 – APRIL 2018**

June 15, 2018

TO: Chair Robin Pilkey 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 April 4, 2017 to April 4, 2018

Sincerely,

A handwritten signature in cursive script, appearing to read "Suzanne Craig", is displayed within a light gray rectangular box.

Suzanne Craig
Integrity Commissioner

This is the Annual Report for the Office of the Integrity Commissioner, which covers the period from April 2017 to April 2018. 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.

Activities of the Office of the Integrity Commissioner in 2017

The Office received 15 informal complaints in relation to the Code. There were four formal complaints filed against Trustees under the Code in 2017

INTEGRITY COMMISSIONER ACTIVITIES CODE COMPLAINTS AND INQUIRIES

Informal complaints



15

Formal complaints



4

Of the four formal complaints received against Trustees in relation to the Code, two were resolved through negotiated mediation and two were sustained with findings of contravention by the Trustee and recommended sanctions were adopted by the Board.

From the public



From staff



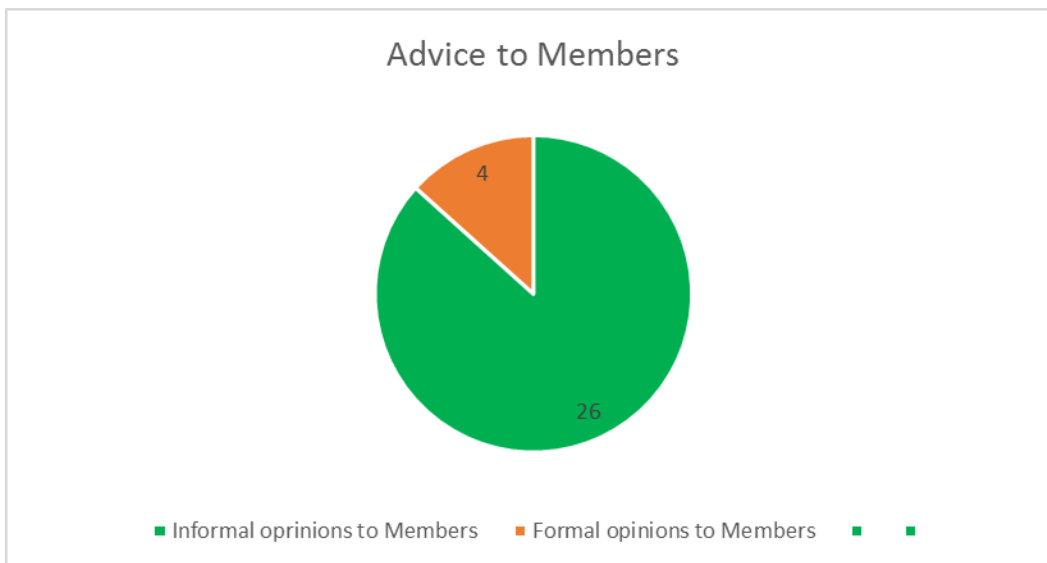
From Trustees



Total Code Related

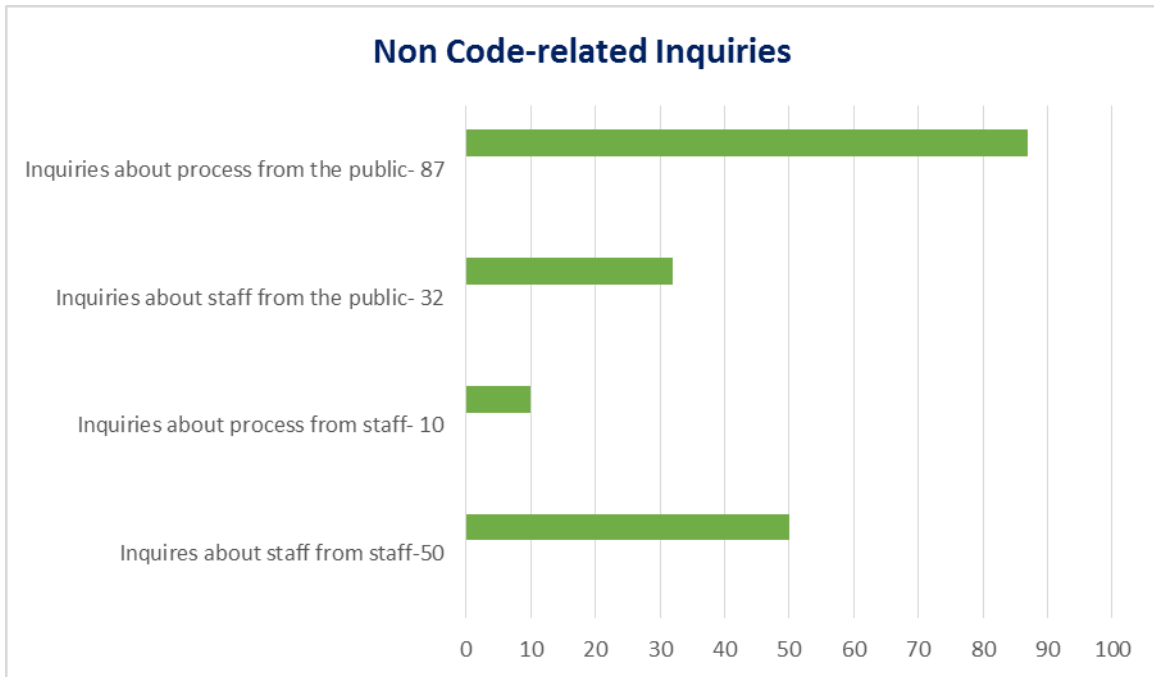


BOARD TRUSTEE CODE ADVICE REQUESTED



ACTIVITIES OF THE TDSB OFFICE OF THE INTEGRITY COMMISSIONER

Non-Code-related Inquiries received by the Integrity Commissioner



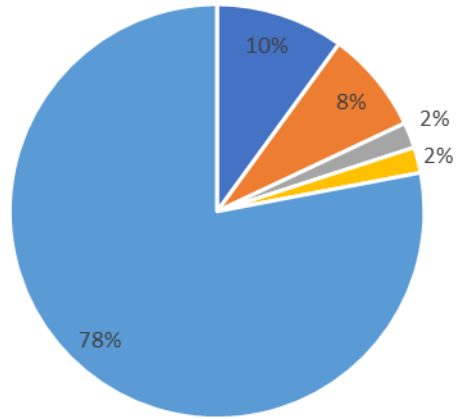
179

Total Inquires received by Integrity Commissioner

399

CLASSIFICATION OF INQUIRIES TO THE INTEGRITY COMMISSIONER

From the Public

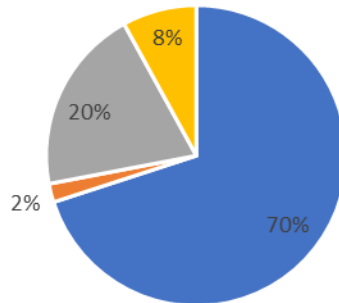


- Integrity Commissioner Jurisdiction- 10%
- Complaints from parents - 8%
- Harassment - 2%
- Human Rights/Discrimination- 2%
- Other -78%

Other includes: school location/closure, diversity and accommodation issues, French language schools,

CLASSIFICATION OF INQUIRIES TO THE INTEGRITY COMMISSIONER

From Trustees



- Requests for advice from Integrity Commissioner - 70%
- Allegations of systemic bias in Board Policy -2%
- Access to Board information -20%
- Other - 8%

Informal and Formal Complaints:

There were four Formal complaints filed with my Office and 15 Informal complaints brought forward to my Office in the 2017 reporting year.

The first formal complaint that was resolved informally, alleged that the Member of the Board had used their office in contravention of Board policies, including rules of the Code. The complaint alleged that the Member had contravened rules 6.2 (c) and 6.5 of the Code by using a picture created for the purposes of TDSB business that contained images of students of the TDSB, for non-Board related purposes. Rules 6.2 and 6.5 of the Code prohibit Trustees from disclosing without consent, personal information which is required to be kept confidential under MFIPPA, as well as, using TDSB resources obtained as a result of the Trustee's performance of their duties for any election campaign or campaign-related activities. In my discussion with the Member as well as through a review of the documents provided, the Member expressed their deep and sincere regret for having used the photo with the Complainant's image prior to seeking consent. After complying with my recommended settlement terms and tendering their apology to the Complainant, the complaint was concluded without the matter requiring formal submission to the Board.

When proceeding through a mediated facilitation of a formal complaint, the Integrity Commissioner's default 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 Member 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 addition to tendering an apology to the Complainant, expressing regret for their actions and acknowledging that the use of the Board images is contrary to Board policies, the rules of the *Municipal Freedom of Information and Protection of Privacy* ("MFIPPA) and the Code rules, the Trustee agreed to attend an education session to review the TDSB rules that govern protection of personal privacy and the use and disclosure of personal information.

The second formal complaint that was resolved informally, was with reference to the use of the influence of a Member's office to the private advantage of another person, business or otherwise. During the preliminary review in relation to the allegations of the complaint, it was determined that there was no impropriety by the Member who had no involvement in the issue.

Two formal complaints received in the 2017 report year were significant contraventions of the ethical decision-making obligations of a Board Trustee. Each of these two formal complaints were sustained and my recommendations brought forward to the Board for consideration were adopted in their entirety.

Board Member Code of Conduct Complaint Investigation #0317

The report presented to the Board the findings of my investigation under the Code relating to the conduct of the Board Member in connection to non-permissible behavior against two Board staff persons. The complaint raised the following issues:

1. the allegation that the Board Member maliciously or falsely injured the professional or ethical reputation of the Complainants, contrary to Rule 6.9 of the Code;
2. the allegation that the Board Member did not show respect for the professional capacity of the staff and in so doing, contravened Rule 6.9 of the Code; and
3. the allegation that the Board Member's behavior was disrespectful and intimidating, in contravention of former Rule 6.10 of the Code.

I found that Issues #1 and #2 involved allegations in respect of the Board Member's actions which constituted falsely injuring the professional reputation and disrespect for the professional capacity of the staff, which is contrary to a Trustee's obligations under the Code.

I found that Issue #3 triggered the provisions of Rule 6.10 of the Code, which requires Trustees to treat staff members respectfully and without abuse, bullying or intimidation and to ensure that their work environment is free from discrimination and harassment. Harassing or discriminatory behaviour, as indicated in the TDSB Workplace Harassment Prevention Policy ("Harassment Prevention Policy") and Human Rights Policy, which occurs in the course of the performance of the duties of the Trustee, is subject to the provisions of the Code.

This complaint investigation underscored the substantial power imbalance between the TDSB staff and Trustees which, without a full adherence to Board Governance Policy and Code rules, acts to erode a safe and healthy work environment and creates intimidating and strained relationships between Board staff and Trustees. In the report to Board, I set out how courts and tribunals recognize that a substantial power imbalance can erode, if not impede, a Complainant's belief that they can address intimidating and harassing behavior. The victim fears unforeseen consequences which could seriously impact work-related autonomy and reputation. In these cases, it is not uncommon for victims of harassment to tolerate unwanted behaviour longer than expected. I also set out in the report that, the Ontario Human Rights Commission notes that a person does not have to object to the harassment at the time it happens for there to be a violation, or for the person to claim their rights under the Code.

In this complaint, the Trustee was in a position to exclude staff from operational and functional activities that form part of their professional work duties. I was satisfied that the Trustee did not intend to falsely injure the reputation of the staff. However, the actions and statements subject of the complaint had the effect of implying that staff had acted inappropriately. I found that this was an unwarranted public criticism of TDSB staff, in circumstances where the Trustee had apparently not made any efforts to determine what steps staff had taken in their professional roles at the Board.

This report presented the findings of my investigation under the Code relating to the conduct of the Trustee in connection with a complaint that alleged inappropriate utterances made by the Trustee contrary to two provisions of the Code. The complaint set out that the Trustee used disparaging comments in relation to issues of sexual orientation, thereby contravening Rule 6.1(a) of the Code and they also used language that refers to an individual's sexual orientation, in a pejorative and demeaning way, thereby contravening the Rule 6.10 of the Code. The Code requires Trustees to treat other Board Members, the public and TDSB staff, respectfully and without abuse, bullying, or intimidation and to ensure that their work environment is free from discrimination and harassment.

I found that the Trustee's conduct also engaged the TDSB Workplace Harassment Prevention Policy ("Harassment Prevention Policy") and Human Rights Policy as their comments were made in the presence of staff and ultimately, the conduct engaged a staff member.

Rule 6.1(a) of the Code contains one of the principles which guides the interpretation and application of the Code provisions which set out prohibited conduct. This is one of the fundamental guiding principles to inform ethical behavior for TDSB Trustees. It is so very crucial to the effective application of a collection of ethical rules that the lack of understanding or dismissive approach taken by a Trustee will act to nullify the intent and purpose of a having a Code in respect of actions and behavior of Trustees.

I found that the actions of the Trustee irrefutably constituted discreditable conduct contrary to Rule 6.10 of the Code. I also found that the use of the phrase to which the Complainant took issue was discriminatory contrary to the Human Rights Policy and that the conduct created a poisoned work environment for a staff member contrary to TDSB's Harassment Prevention policy. I took pains to set out in the complaint investigation report, that in reaching my conclusions, it is not necessary to consider the intent of the Trustee but rather the perspective of a reasonable person and of the staff member, whose safe workplace was seriously undermined as a result of the Trustee's behaviour.

I set out in my report that the Trustee reasonably ought to have known that their comments and use of disparaging language was unwelcome, intimidating and disrespectful to the staff in attendance when the comments were made and that the disparaging tone and inference was disrespectful to staff and the community generally. Significant to reaching my findings, was the fact that even after being told that their comments were offensive to the Complainant, the Trustee did not cease the conduct. Although the Trustee expressed sincere regret for having made the comments, they did nonetheless make comments contrary to Rule 6.10 of the Code and in the context, those comments created a poisoned work environment under the Harassment Prevention

Discrimination and harassment are prohibited under the Ontario *Human Rights Code* and the *Occupational Health and Safety Act* (“OHSA”), as well as TDSB policies including the Workplace Harassment Prevention Policy (P034) and the Human Rights Policy (P031).

In April 2017, the Board approved an updated Harassment Prevention Policy after a comprehensive review by the TDSB Human Rights Office. The Policy aims to promote a climate of understanding and mutual respect where all are equal in dignity and rights and to provide a means of redress for individuals who are discriminated against or harassed contrary to the policy. The Board also adopted an updated Workplace Harassment Prevention and Human Rights Procedure in October 2017 (the “Harassment Prevention Procedure”) which sets out the protocol for considering, among other things, allegations of discrimination and workplace harassment.

Public interest remedies have long been used in Human Rights and Workplace Harassment cases to indicate types of remedies that have an impact on the broader community of individuals who are affected beyond the specific circumstance of a particular breach. Public interest remedies include mandatory education, publicizing the fact of the complaint and finding and issuance of a formal public apology that puts on the public record that the conduct of the Respondent fell short of the acceptable behavior expected of the members of the particular organization.¹

Occasionally, in cases involving Workplace Harassment, staff will raise allegations of harassment immediately after the misconduct occurs. However, more often, especially in a work environment with a history of reprisal against staff, staff will attempt to cope with the situation without making a report against the harasser. In the context of the TDSB, choosing how to deal with harassment, staff may be influenced by factors such as the tone set by Trustees and what response is given to Code complaints made against elected officials. Often, staff view no alternative but silence, as bringing forward a complaint may reasonably lead to them losing their job because of “rocking the boat.” The combination of fear of reprisal and loss of employment may be a barrier to reporting Code complaints for staff.

Under the updated TDSB Harassment Prevention Procedure, discrimination is defined:

Discrimination is any practice or behaviour, whether intentional or not, which has a negative effect on an individual or group because of any of the prohibited grounds of the Code including race, ancestry, place of origin, ethnic origin, colour, citizenship, creed (religion), sex, gender identity, gender expression, sexual orientation, age, marital status, family status, disability/perceived disability, or receipt of public assistance (applies to the social area of housing only). [emphasis added]

A person’s comments may be discriminatory regardless of intent.

The Trustee used a word to refer to a person whom she “hated”. She did so in the context of a conversation in which the Trustee, to use their own words “aired my distaste for [an individual]

¹ Ontario Human Rights Commission

in such a demeaning way. In the report to the Board, I found that the continued use of the word referring to an individual, even after the Complainant advised that they found it problematic showed the Trustee's disregard for the effect that the comments were having in the workplace. The Trustee appeared to link the sexual orientation of the person to her "hatred" even when the Complainant raised their concern about the use of the word for the second time. Whether it was the intention or not, the effect of the Trustee's conduct was to demean an individual based on their sexual orientation. The Trustee's comments were discriminatory contrary to the *Human Rights Code* protected ground of sexual orientation.

While I accepted that the Trustee did not intend to disparage an individual's sexual orientation, the use of the word, their aggressive demeanor, and their complete disregard for staff's objections to the unwelcome comments demonstrated a heavy handedness and dismissiveness on the part of the Trustee that has no place at the TDSB or in any workplace that values and is committed to the equity and dignity of its staff. Such demonstrated behaviour by a Trustee cannot be tolerated.

Issues of Note

The informal complaints received by my Office, raised similar areas of concern that were brought forward by individuals in relation to non Code-related inquiries.

Generally speaking, the issues that were brought forward to my Office that were not formal complaints, fell into the following categories:

- (a) Trustee Access to Information under the custody and control of the Board
- (b) Trustee staff interaction

Trustee Access to Information in the Custody and Control of the Board

Under the Municipal Freedom of Information and Protection of Privacy (the "MFIPPA"), the Board is listed as an institution governed by access and privacy rules. In respect of personal information under the custody and control of the Board, any information deemed to be personal information under MFIPPA may only be disclosed with the consent of the individual to whom the information belongs, or for a use consistent with the purpose for which it was collected.

Generally, under section 32(b) of MFIPPA, a constituent could consent to the disclosure of their personal information contained in Board information holdings to a Trustee. However, the constituent's consent must be explicit and detailed. The fact that a constituent has discussed the details of a personal matter does not relieve the TDSB or its staff from adherence to the privacy rules of MFIPPA.

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.*

The existence of this section of the Code, indicates that the TDSB has assumed responsibility for the care and protection of this kind of information. In governing the behaviour of Trustees, the TDSB has demonstrated an intent to regulate personal information from unauthorized access of board members in the exercise of their roles as a Trustee.

It is imperative that the Board acknowledge that the staff are bound by the rules of MFIPPA and are prohibited from disclosing student file information and other confidential or proprietary information without prior receipt of written consent of the party. Rule s.2 (c) of the Code states:

Confidential information includes information in the possession of, or received in confidence by the TDSB, that the TDSB is either prohibited from disclosing, or is required to refuse to disclose, under...MFIPPA, or other legislation, or received in confidence from other third parties or a corporate, commercial, scientific, or technical nature, information that is persona, and information that is subject to solicitor-client privilege.

Conversely, it is important for staff to understand that while Members of the Board carry out their duties as defined within section 218.1 of the *Education Act* and 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 provisions of MFIPPA or confidentiality requirements of the Board, shall be disclosed to Trustees upon request or in accordance with an approved process.

Whether a requester is a member of the public or an individual Trustee, 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.

I encourage the Board to work to enhance its access to information scheme 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 group 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.

Without movement on routine disclosure/active dissemination (RD/AD), there is the risk of entering the likely situation of having to draft protocols in respect of Trustee's access to various documents and information held by the Board. With the expansion of the Directory of Records to

identify Board records that are often requested and may be routinely disclosed, staff will cease to be placed in the often difficult position of refusing to provide information to a Trustee in fulfilment of their duties under MFIPPA.

The TDSB can look to other municipal government institutions (i.e. the City of Toronto and the City of Ottawa) for benchmarks on access by elected officials to general information held by the municipal body. For example, at these municipalities, where an elected official requires information in their official capacity in order to carry out duties related to that function, the Member seeking access to information that is not ordinarily available to the public must make a request to the appropriate delegated senior staff. MFIPPA staff, together with the delegated senior staff will review the information to ensure that disclosure of the information to the elected official is in compliance with the access and privacy legislation. One way the Board may consider going forward is to adopt a Trustee access procedure in which, depending on the nature and type of information requested by a Trustee, the information provided could be stamped “NOT FOR PUBLIC RELEASE” i.e. details of information of ongoing negotiations. In this way, the Trustee is provided information that they deem necessary to fulfill their duties of office, while the Board continues to adhere to its confidentiality and privacy obligations.

Trustee -Staff Interaction

The OBPSA 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.²

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.³ (Bold emphasis, mine)*

In fulfilling the dual role of Member of the Board and a representative for their community, a Trustee must balance being receptive to the concerns of their constituents and seeking solutions with the understanding that the Director of Education is responsible for the effective

² Good Governance: A Guide for Trustees, School Boards, Directors of Education and Communities, 2014, OESC, p.24-25

³ Ibid, p.32

implementation of the policies of the Board, staff is responsible for the day-to-day operations of the Board and that the role of monitoring the effectiveness of policies and implementation plans belongs to the board as a whole and not to any one individual Trustee.

The *Education Act* (the “Act”) distinguishes between a board’s responsibility for policy development and the responsibility of the Director of Education for operationalizing that policy. It is important that the Board of Trustees be clear about roles and responsibilities and determine, through policy, which matters are operational and therefore addressed by the Director, and which matters are policy and, therefore, decided on by the Board.

Several inquiries that have been brought to my Office as informal code matters, general questions or that have been identified as falling outside of my jurisdiction to receive or investigate, relate to the often unclear relationship between an individual Trustee and TDSB staff.

Pursuant to the Guide, the Director of Education is the sole employee who reports directly to the Board. Individuals (staff, Trustee and the public) consulted my Office to seek assistance in identifying the appropriate protocol that should be followed when a Trustee is seeking an outcome from staff. Trustees have explained to me that they do not intend to “represent” a student or a parent in an inappropriate way that is prohibited by the *Act*. However, parents raised issues of what they perceived to be inaction on the part of their Trustee representative, Trustees expressed uncertainty about whether their requests to assist their constituents would be viewed as an intrusion into the professional sphere of staff and staff communicated to me their reticence to respond to a direct request from a Trustee for fear of a return to a former time when Board Trustees intimidated and influenced staff with the intent of interfering with that staff person’s duties.

While I have found that the preponderance of inquiries to my office that raised issues in respect of the relationship between a Trustee and Board staff, did not raise a matter that was on its face a complaint matter under the Code, the lack of clear lines of responsibility often give 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.

It is clear that bringing forward community concerns 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 senior management, as well as an understanding of the distinction between policy development and implementation or operationalizing a policy.

STATEMENT OF EXPENDITURES

April 2017- April 2018

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

\$5,027.50 – Remuneration for Formal Complaint investigations

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