



Ethics + Diversity



Office of the Integrity Commissioner's

ANNUAL REPORT

April 2019 – September 2020

www.tdsb.on.ca

To: Chair Alexander Brown and Members of Toronto District School Board

I submit this Annual Report to the Toronto District School Board for their consideration, in fulfillment of my role as the Board's Integrity Commissioner. This Report covers the period April 4, 2019 to September 30, 2020.

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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FOREWORD

This Annual Report covers the 2019 reporting year. However, due to the global pandemic of Covid -19 and the relevance of certain issues that arose in the first half of 2020, I have decided to include in this report, some issues of note that occurred in the period between January and September 2020.

1.1

a) 2019: Negotiating Difficult Decisions:

“We have had a different supply teacher three times in 2 weeks”, “[w]hen my son’s teacher is away, the class just has a mini vacation”, [my child] has a learning plan but [the supply teacher] had no idea what his learning level was”. It seems like a distant past looking back at issues facing the Board in April 2019. The issues that rose to the top of mind of parents, teachers, schools and the Trustees of the Toronto District School Board (the “TDSB”), were not about PPE, social distancing or face coverings. In April 2019, the discussions were moving towards collective agreement negotiations, cancellation of some bus routes and class sizes.

The TDSB spokesperson at that time, advised that the TDSB “had faced... challenges that led the board to resort to an emergency roster of fill-ins”. “The TDSB has experienced some challenges in filling jobs for teachers absent on some days,” he said. “While we generally have an ample roster of Occasional Teachers, a combination of absence levels of permanent teachers and daily jobs being declined by Occasional Teachers can lead to challenging circumstances on some days.”¹

In April 2019, changes were made to the Board Member Code of Conduct (the “Code”) with a view to providing clear directions to Trustees on when to seek advice from the Integrity Commissioner. In addition, the corresponding Complaint Protocol for the Board Member Code of Conduct (the “Complaint Protocol”), provided

additional clarification with regard to the application of the *Municipal Conflict of Interest Act* (“MCIA”) rules to Trustees.

On the heels of my 2018 Annual Report in which, for the second year in a row, I reported on the gaps in policy that set out the process for providing information to Trustees, the Associate Director of School Operations and Service Excellence, contacted my Office to seek my input and comments on the draft Information Flow Protocol for Trustees. Staff worked on the governance procedure, with the protocol scheduled to be presented to the Committee of the Whole Board meeting on October 16, 2019. After being discussed at the November Governance and Policy Committee, Trustees directed staff to consult with this Office in further developing this procedure. At the time of writing this Annual Report, the Information Flow Procedure has not been completed and as a result, I continue to receive requests for advice from Trustees who are simply seeking information from data in the custody and under the control of the TDSB, but who are concerned that their request will be perceived as either inserting themselves in the operations of the Board or simply information that Trustees should not access. Especially during that very challenging time when the Board was facing difficult discussions about contract negotiations, class sizes and services to students, it required a constant back and forth between Trustees and my Office to determine where the information was held in the Board and to whom the Trustee could ask in order to receive the information. While I acknowledge that Board staff has worked on the development of the Information Flow Procedure, the current iteration of the procedure does not address the gaps that I report on in my last two annual reports.

b) A New Normal:

As at March 4, 2020, the Province’s Emergency Order imposed certain restrictions on gatherings. The subsequent administrative office closures due to Covid-19, significantly impacted the day to day communications between Board Trustees. Zoom and

¹City News, April 3, 2019 <https://toronto.citynews.ca/2019/04/03/exclusive-tdsb-used-unqualified-people-to-fill-in-for-teachers-over-1000-times-in-5-month-span/>

WebEx meetings became the norm and new conduct supplanted behaviour that usually took place at in person Committee and Board meeting. From the time the Covid-19 restrictions were imposed, there seemed to be a general trend towards conduct that lacked decorum now that virtual meetings supplanted in person meetings. We have seen examples across Canada and beyond, which only underscores how day to day communications in the public service has changed. One example can be found in a North Vancouver-Seymour municipality, in which a candidate made offensive and insulting comments against a fellow colleague. The Member later apologized and another Member stated

“On reflection, those comments were inappropriate, and it was right for [the Member] to apologize.”²As Committee and Board meetings moved from the brick and mortar locations to virtual spaces, a new normal was created where rolling of eyes and pointed off hand comments became the regular...”

c) The Search for Equitable Outcomes:

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

As underscored in previous reports of this Office, the stated objective of the Code is to ensure that the principles of transparency and accountability inform the conduct of individual Trustees such that the TDSB as a public body responsible to its communities, maintains the confidence of the public. The rules of the Code enshrine a shared commitment to adhere to a common basis for acceptable conduct while in office and apply to all Trustees. However, what happens when conduct of Trustees in search of equitable outcomes has the result (or is perceived to have the result) of rules not being followed?

This has been a very unusual year. While the reporting year for this Annual Report concluded on April 4, 2020, the change from face-to-face meetings to virtual meetings led to conduct triggering Code rules, in particular the rule of decorum. The scheduled June annual report was delayed. A series of issues contributed to the delay. What began in March 2020 was a new reality of virtual meetings which highlighted the disrespectful conduct of some Trustees.

²<https://globalnews.ca/news/7391950/sexist-bc-liberals-take-fire-over-leaked-zoom-video-mockina-ndps-bowinn-mo/>

In May and June 2020, this Office received several Code complaints. Some of these complaints had as the subject, allegations of disproportionate representation leading to comments perceived to be threatening, while others had as the subject, dismissive behaviour with undertones of race. In my advice and education function, I advised that at the core of these complaints was a perception experienced by some Trustees of being disempowered and these Trustees felt, that by extension, the communities that they represented were without a voice at the Board table. With the convergence of the virtual meetings format and world events highlighting historical biases and oppression against people of colour, racialized Trustees felt that this was a time when their voices could raise issues that had been overlooked in the past. The issues of decorum raised in the Code complaints were overshadowed by the allegations that there was unequal treatment of motions and that the motions of certain Trustees were “shut down” because of the communities they represented and not because procedural rules were not followed.

1.2 ISSUES OF NOTE:

a) Conduct At Board And Committee Meetings, Discreditable Conduct: A view into the current times:

In July 2020, I wrote to the Board of Trustees with information in exercise of my advice and education function as Integrity Commissioner for the Board. What motivated this advice was the receipt by my Office of several complaints relating to Trustee conduct.

All Board Trustees are subject to the TDSB Code. Over the course of several Board and Committee meetings, several Trustees expressed concerns that their attempts to raise issues of importance to their communities were dismissed through the inconsistent application of the motion rules.

TDSB By-law rules and Motions

Part 5 of the TDSB Bylaws is entitled “Board And Committee Meetings - Rules And Procedures”. The sections contained in this Part of the TDSB Bylaws set out rules that include the following:

5.13.1 The Chair or designate will maintain a list of members who wish to speak to a motion.;

5.13.2 The Chair will recognize a member to speak by calling the member by name and indicating that the member has the floor.;

5.13.3 Members and participants in a meeting will address their comments through the Chair of the meeting.;

5.13.4 At Board meetings, members and participants will stand, if able.;

5.13.5 No member will interrupt another member who has the floor, except for the Chair presiding over a meeting or a member for the purpose of stating a point of order or question of personal privilege.;

5.13.6 Members will confine their comments to the merits of the motion being considered.;

5.13.7 The Chair may rule a question out of order if a member has already asked substantially the same question in another form.;

5.13.8 The presiding officer is entitled to move, second or speak to a motion, but only once they have relinquished or passed the role of presiding officer to another member. Should the presiding officer move a motion, having relinquished their role as presiding officer, they may not preside over the meeting until the motion has been dealt with.;

5.13.9 At any time before a motion is put to a vote, a member may request that the motion be read aloud.;

In response to the queries and complaints received during this period by this Office and the responses to the complaints that virtual meetings changed the dynamics of Committee and Board meetings, I replied that the nature of the meetings being virtual as opposed to taking place

in brick and mortar venues, did not in any way remove Trustee’s obligation to act with decorum.

Obligations under the Board Member Code of Conduct

Rule 6.8 of the Board Member Code of Conduct is entitled Conduct At Board And Committee Meetings . This rule states that:

Members of the Board act in the service of the community. They have the opportunity to set an example for future leaders who may look to them for guidance and leadership. They are expected to respect the procedural rulings of the Chair. They are expected to refrain from verbally attacking or belittling those who complain or do not agree with them. It is vital that members of the Board conduct themselves with decorum at board and committee meetings and in accordance with the provisions of the TDSB’s Bylaw concerning meeting procedures.

The Code of Conduct and TDSB Bylaws have been created and approved by the Board of Trustees to ensure that each elected Trustee’s voice is equally present at the table and heard. This ensures that various perspectives of the public represented by all Trustees are represented. Fairness and decorum underpin the ethical obligations of Board Trustees which are required under the Code of Conduct, the Education Act, and the Governance Policy. Trustees must be careful to avoid the use of vexatious comment or conduct against fellow Trustees that is known or ought reasonably to be known to be unwelcome and disrespectful, especially in respect of virtual meetings.

In discussions with this Office, Trustees suggested that their comments were part of a robust debate or made in the heat of the moment of a Board meeting debate. However, I advised that under the Code, a Trustee must not make comments that are intended to offend or may be perceived by the recipient as being inappropriate, offensive or dismissive. It is important always, but with particular urgency at this time in which meetings are conducted virtually and nerves are frayed as a result of living through a global pandemic, that all Trustees follow the letter and spirit of the rules of the TDSB Board Member Code, the TDSB Governance Policy, the TDSB Bylaws, the TDSB Human Rights Policy and the TDSB Harassment Prevention Policy which together function to underscore

the obligation of Trustees to be respectful and act with fairness towards staff, the public and fellow Trustees. Trustees recognize the importance of cooperation with other Members of the Board and respect for the professional roles of staff. Notwithstanding and despite different perspectives and opposing votes, Trustees are required under the Code, to strive to create an atmosphere during Board and Committee meetings and through email and social media communications that is conducive to solving issues before the Board, using respectful language and behavior in relation to fellow members, staff and the public. As pointed out by one Trustee, assumptions got in the way of the important work to be done by the Board of Trustees. While a Trustee may publicly state that they did not support a decision of Board or that they voted against a decision, a Trustee must not denigrate the Board decision or how another Trustee voted when responding to a member of the public or through social media. This will undermine the confidence in decisions of the TDSB and the policies and by-laws of the Board.

As I have reported in previous years, I have observed Trustees conducting themselves at Board or Committee and through informal email and social media communications, with a lack of decorum and respect for other Members of the Board. During this reporting year and in the 6 months of 2020 included in this report, there appeared to be several reasons for contention, including but not limited to: a lack of understanding that Committees do not make decisions, the Board does; the recognition that the Board holds an enormous amount of data and that while access to this data by Trustees can assist the Board in moving the pendulum towards greater equity, the rules apply to give order, allow fairness and promote accountability. As shared by one Trustee during a discussion around Trustee inappropriate tweets and how these tweets act to shame Trustees to vote in a particular way, “self-interest and expediency often get in the way of our fundamental sense of justice.” [... and] “despite our best efforts to rectify it, life simply isn’t fair.”³ As seen in some of the other school boards in Ontario, there is the perception among the public and some Trustees that the “referees” are biased. In other words, those parts of the institution that are created to act in an arms-length objective way, do not and as a result, the processes at the Board are viewed from within or externally as, “rigged” to benefit one group over another, the louder voice over the more subdued, the oppressors over the oppressed. I am pleased to report that Board has taken significant steps to address some of these issues. In fact, the Board of Trustees engaged a highly-regarded equity consultant to provide a 3-part series of professional learning sessions on equity

³The seven-part podcast *Against the Rules* with Michael Lewis,

and anti-racism.

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

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

It was clear from the matters that came to my attention during this reporting period, that as had happened in the past reporting years, during the course of facilitating the resolution of some complaints, some very valuable lessons were learned. More needs to be done on the part of this Office to educate and inform Trustees on rules of the Code and the intersection with TDSB By-laws and other relevant policies. Further, there is also a need to recognize and understand that some of the significant areas of intersection with the Code rules, such as equity and anti-racism, require a coordinated educative approach so the “disruption of the denial” of the status quo⁴ does not function outside of the approved rules of the Board and without kindness. Certainly, there are those who have commented that the very rules of the Board function as an example of colonial oppression and as a systemic barrier to inclusion of those who have been disproportionately excluded from representation and decision-making. Notwithstanding the recognition of the above, the Code is a body of ethics rules and the agreed upon commitment of all Trustees to abide by certain rules of conduct and behaviour to enhance public confidence in the effective governance of the school board.

During this reporting period, I identified that there is a need for this Office to provide more Trustee education sessions to clarify the meaning of Code provisions, and in particular, the difference between what constitutes fervent political discourse which is allowed under the Code and language that is disrespectful or hurtful, whether that be directed to another Trustee, a TDSB staff person or a member of the public, especially and insofar as the language may relate to a protected status under Human Rights policy of the TDSB. I have also observed that there is a clear need for education and awareness for Trustees on the importance of refraining from actions and comments that harm, intimidate and belittle, in particular towards fellow colleagues during Board meetings. In

⁴I have taken the phrase “disrupt and denial” from Ms. Kike Ojo-Thompson, Koyo Institute, Professional Learning Session delivered at the TDSB.

March 2020, a Motion was brought forward by Trustee Kandavel, seconded by Trustee Donaldson: “That a Board consultant be retained to develop a self-assessment tool for trustees and that a trustee committee, with a maximum of seven members, be struck to select a firm to develop a self-assessment tool for trustees that can be applied annually.” I am pleased to report that a consultant has been engaged by the Board of Trustees to conduct the development of a Board Self-Assessment tool. The Trustee working group has already met twice with the consultant.

b) Code Complaints: Equity Issues:

As a result of my observations during the informal resolution of complaints, I found that many Trustees and some members of the public, see an urgent need for a discussion and commentary on, what is perceived as, the existence of systemic biases embedded in the “way business is carried out” at the Board. It is my position that this subject is not within my jurisdiction to investigate or review. However, in my capacity of ethics officer for the Board, I have an obligation to report on that which intersects with the application and effective compliance with the Code, that has come to my attention in the course of the activities of this Office. In this reporting period, I have raised with the former Chair and current Chair, that there are matters that intersect with the Code regime, that require the immediate attention of the Board. As one of her acts as Chair, Trustee Pilkey worked with the former Director of Education to engage an equity consultant to deliver the equity and anti racism training for Trustees.

On August 10, 2020, Trustee Alexander Brown was elected as the new Chair of the TDSB during a special meeting of the Board. Since assuming his new role, Chair Brown has worked with the Board and my Office to identify opportunities for collaboration with the equity consultant and my Office to develop training for Trustees that bridges provisions of the Code and anti-oppression/anti-black racism and governance. I applaud Chair Brown in his efforts to work collaboratively to engender input from staff, Trustees, consultants in equity, governance and my Office. In a challenging time, during a global pandemic, with issues of race and equity, I applaud Chair Brown in his work to date and the courage of the Board to address very real issues and to have difficult but powerfully meaningful conversations.

As a result of my participation in informal complaints, I have made recommendations that the Board begin a discussion about circumstances where Trustees perceive that they are being silenced in a discussion and debate,

and being prevented from a full discussion on questions relevant to their roles as representative of their community. However, I strongly recommend that this discussion take place in a space where there is an understanding and agreement by Trustees of the importance of a consistent application of and adherence to the rules of the TDSB By-laws and Code.

Some of the issues that have been raised with my Office include matters such as scheduling time for meetings. These matters of ordinary business have become the catalyst for disputes among Trustees that belie deeper issues of inclusion and systemic beliefs that inform policy and rules. In fact, when one Trustee expressed his discontent with the time of scheduling of a meeting, his behaviour was defined as “intimidating”. While the matter was not pursued by my Office, this was an example of one of the many disputes among Trustees which was brought to my attention as conduct that on its face, was within my jurisdiction to review, though I dismissed the matter. Even though, after a preliminary review, I decided this was not a matter to be pursued through the Code process, several Trustees raised this matter as an example of Trustee conduct having significant undertones of racial bias.

Some non-racialized Trustees have advised my Office that the actions of some of their colleagues appeared to them to be a form of micro aggression disguised as questions about meeting procedure or motions. Some racialized Trustees explained that while probing questions by non-racialized Trustees were viewed by most as appropriate forms of discourse, conversely emails and questions by racialized Trustees on similar matters of importance for their communities were defined as intimidating.

I have reviewed the orientation packages that Trustees received at professional learning sessions. I note that there are gaps in the materials the importance of which is necessary for Trustees to effectively understand not only rules on governance in the public school board sector, procedural by-laws and rules on motions, but also how to obtain required information to make informed decisions and from whom the information can be requested. Further education and professional learning sessions for Trustees are required in order to build a greater awareness of the fundamental cornerstones of ethical decision-making at the TDSB. There is also a need for an enhanced understanding of what respect for cultural diversity looks like and an understanding of the role played by decision processes influenced directly or indirectly by what Ms. Ojo-Thompson refers to as “powerful unexamined ideas”⁵ and the vestiges of colonial oppression. However, just as

⁵Taken from a presentation by Ms. Kike Ojo-Thompson, Kojo Institute, Professional Learning Session delivered at the TDSB.

important to governance as the above-noted areas are, it is equally important to ensure that the journey to greater inclusion, diversity and breaking down of “unexamined biases” be through a rules-based process. While it is recognized that it is often difficult to determine what behaviour is “respectful” when one is literally “fighting for one’s life”, respect is a universal term and whether there is agreement on that point or not, the rules of the Code enshrine fundamental rules of decency, fairness and decorum and until such time as these rules are amended, they remain in force and my Office will enforce them consistently and fairly.

c) Closed Meeting Minutes:

As part of my investigation of Code complaints, I am required to receive information from witnesses, including information about discussions that took place during closed meetings. However, it is difficult to obtain unbiased information in respect of deliberations in closed session meetings, without encountering the natural bias of individuals with whom I speak. Section 207 of the Education Act sets out that the Board may decide to close a meeting to the public if certain matters will be subject of the Board discussions.

Section 207(1) of the Education Act states:

Subject to subsections (2) and (2.1), the meetings of a board and the meetings of a committee of the board, including a committee of the whole board, shall be open to the public, and no person shall be excluded from a meeting that is open to the public except for improper conduct.

Closing of certain committee meetings

(2) A meeting of a committee of a board, including a committee of the whole board, may be closed to the public when the subject-matter under consideration involves,

- (a) the security of the property of the board; [...]
- (b) Decisions in respect of negotiations with employees of the board; [...]

In 2012, the former Ombudsman of Ontario called on all Ontario municipalities to electronically record their in-camera meetings. He stated that “[s]ome councils are models of transparency, others are shockingly secretive and even defiant in the face of complaints...I would like to see municipalities record all meetings including those held in-camera so the records can be examined if there are allegations of violating municipal law.

For the purpose of fair and transparent investigations, it is imperative for me to review the facts and arrive at decisions, based on a balance of probabilities. However, when the subject of my review is a discussion that happened at a closed session meeting, it has become clear to me that I may be receiving prepared accounts of the proceedings rather than the facts as played out at the meetings.

It is for this reason, that with a view to facilitating accuracy of my investigations, I am recommending that the Board consider including in the procedural by-law, a provision that verbatim meeting minutes be taken and or recorded.

2.1 ACTIVITIES OF THE OFFICE OF THE INTEGRITY COMMISSIONER IN 2019

INTEGRITY COMMISSIONER ACTIVITIES CODE COMPLAINTS AND INQUIRIES

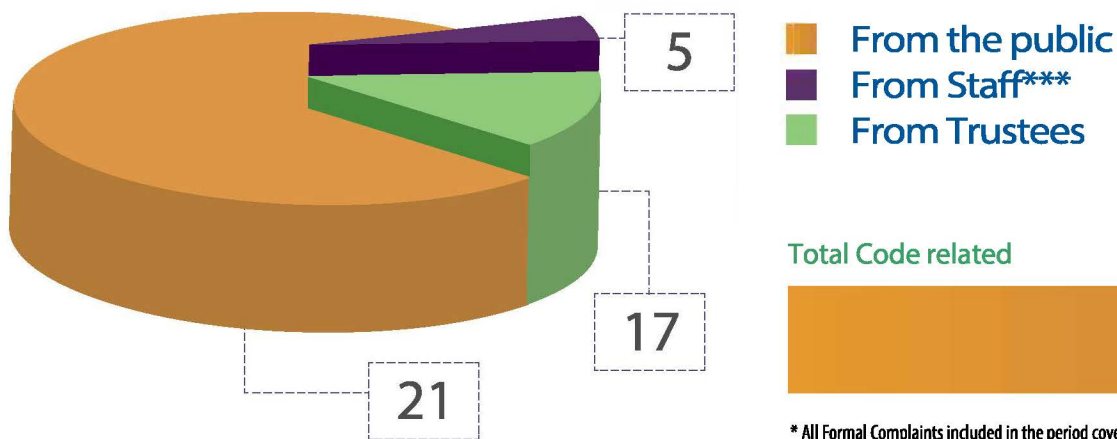
Formal complaints*

0

Informal complaints**

15

INQUIRIES RECEIVED BY THE INTEGRITY COMMISSIONER ON CODE APPLICATION



Total Code related

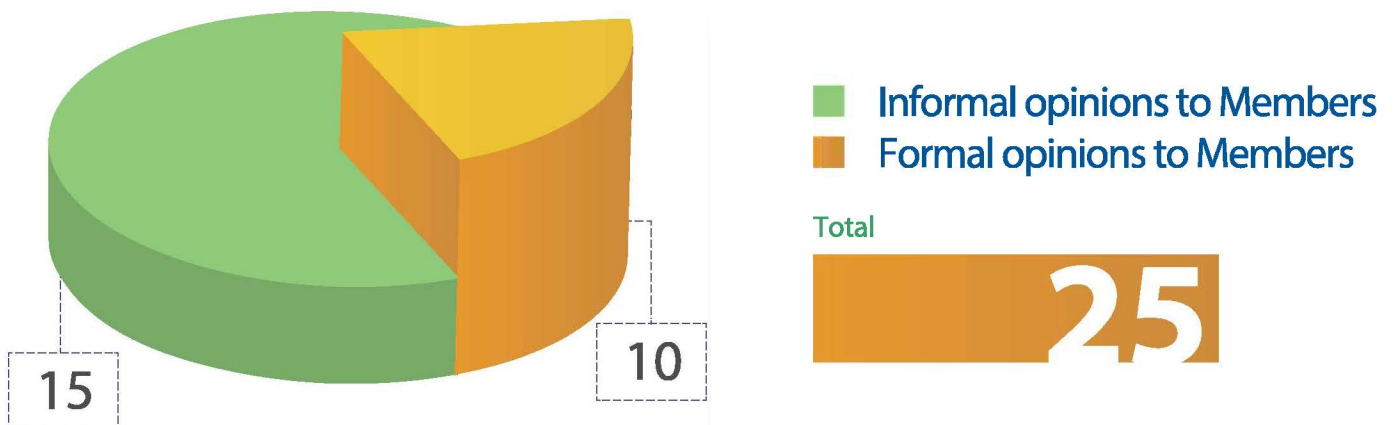
58

* All Formal Complaints included in the period covered by this Annual Report were filed with this Office between the period of June and July 2020.

** 10 Informal complains received between June and July 2020

*** staff includes administrative and school employees

BOARD TRUSTEE CODE ADVICE REQUESTED



Total

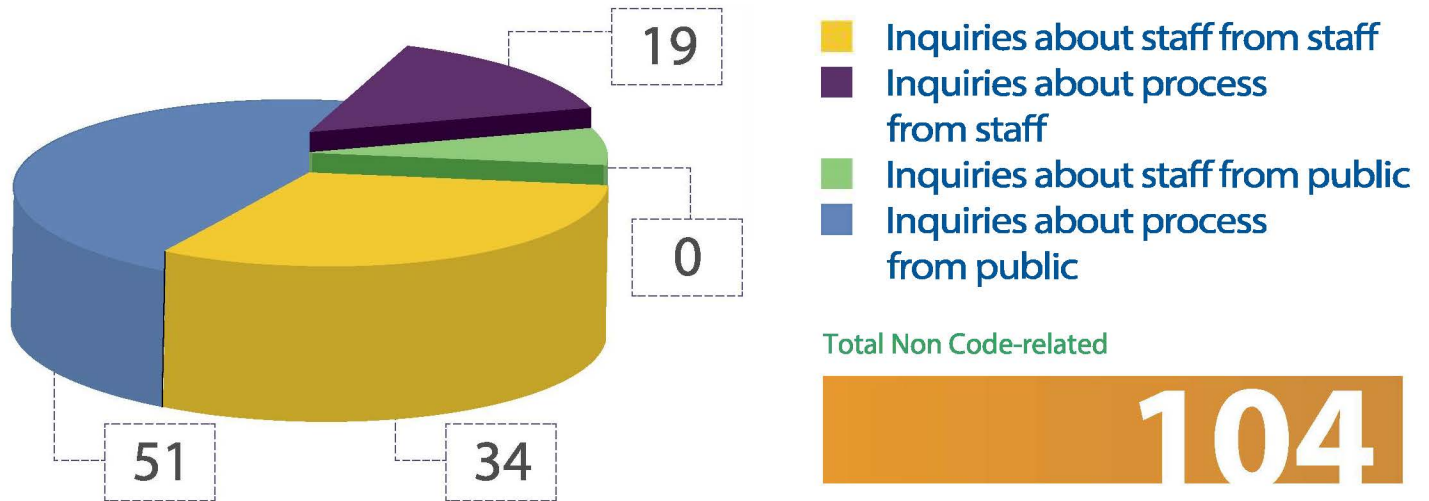
25

The Office received 10 informal complaints in relation to the Code of Conduct for Board Members. There were no formal complaints filed against Trustees under the Code in 2019.

As in previous years, the majority of inquiries received by this Office during the 2019 reporting year were not Code of Conduct complaints. These inquiries related to matters that included 'promotion of equality and respect', 'Human Rights/Discrimination', 'Complaints from parents', 'Allegations of systemic bias of Board policy', and 'Denial of or Difficulty in gaining Access to Board policy'.

ACTIVITIES OF THE TDSB OFFICE OF THE INTEGRITY COMMISSIONER

Non Code-related Inquires received by Integrity Commissioner



Total

187

EXPENDITURES OF THE OFFICE OF THE INTEGRITY COMMISSIONER

April 2019 – April 2020

\$28,250 – Annual Stipend for Integrity Commissioner Services (including remuneration for Integrity Commissioner services, advice to Trustees, mileage, office expenses)

3.1 EXAMPLES OF ADVICE TO TRUSTEES:

Q. Can an individual Trustee bring forward a complaint against a member of staff if she/he uses Twitter as a regular means of communication to engage with staff, students, parents and community members, but includes inaccurate information that has not been endorsed by the Board of Trustees?

A. Rule 6 of the Code requires all Trustees to treat staff with respect and not falsely injure the professional or ethical reputation of staff. The Director of Education is responsible for her or his staff's conduct, through the delegator of Executive Superintendents and Superintendents. If there is a matter for which a Trustee believes there has been inaccurate information disseminated to the public, including parents, students and community members, the Trustee may bring this to the attention of the Executive Superintendent or Director of Education. If the matter relates to the Director, the Trustee may initiate the conflict resolution procedure set out in section 4.3.1 (m) of the Board Governance Policy.

Q. As a trustee, is there any limitation on who I can hire to work with me personally? For example, if I wanted to hire someone to help me with my emails and organization, can I hire someone and pay out of my own pocket?

A. The work of an elected official in carrying out her/his official duties shall be funded by the institution for which they are elected. The accountability of Trustees is directly linked to the appropriate and lawful use of resources of the Board according to the governing statutes/policies, including staff time. Paying out of pocket for staff, hired directly by the Trustee may contravene hiring policies and allow the Trustee to "opt out" of spending, hiring and other rules put in place to ensure transparency in decision-making. In addition, this would create an unequal playing field for the office of a Trustee whereby Trustees with more available personal resources could arguably provide a better level of service to their constituents.

It is understandable that you would want to better serve your constituents and the Board. However, the need for support to Trustees (staff, advice, transportation, ecc) should be debated at the appropriate Committee and afforded through resolution, to all Trustees.

Q. What are the boundaries for personal expenses on what I can charge back to the TDSB for my role?

A. Generally speaking, whatever can be charged back to the TDSB or whatever is an allowable reimbursement, is defined in the Trustee Expense Policy as an allowable expense. Outside of these, any other expenses are not allowable and cannot be reimbursed. While the use of one's personal resources appears, in the first instance, to free the public purse (taxpayers) from the burden of additional expenses, it allows the Trustee to "opt out" of the rules and accountability for their actions/decisions in respect of what they have applied their personal funds—even though this may not be the intent of their desire to use their personal funds.

Q. A Trustee asked if there were Code restrictions to helping a non-profit organization fundraise. The Trustee wanted to know if they could endorse the organization and solicit funds from corporations or donors on its behalf?

A. The Trustee should avoid directly asking for donations on behalf of any organization in their official capacity. While provisions of Rule 6.3 of the Code and the Trustee Expense Policy allow a Trustee to attend fundraising events and speak publicly about the good work of a particular organization, soliciting donations for fundraisers can be seen as an improper use of the Member's influence, contrary to Rule 6.6 of the Code.

Q. Can the Integrity Commissioner provide advice on the interpretation of Board Policy on election year rules?

A. The Integrity Commissioner is not the office to provide interpretation of Board Policy. Board staff should be consulted to provide Trustees with guidance on the interpretation of Board policies.

From time to time, the Integrity Commissioner will recommend changes be made to Board policies in light of the inconsistencies found following a Code complaint investigation.

The Integrity Commissioner is available to provide Trustees with guidance on the application of the Code rules to the actions and behavior of a Trustee. For clarification on Board policy, Trustees are encouraged to respectfully approach Board staff for guidance, on what the policy means and its application. While there may still be some lingering discomfort among staff regarding Trustees asking them certain questions and that discomfort is borne of past practices and bullying, staff is the point of contact for obtaining clarification on Board Policy.

Q. In response to my questions to a Senior staff person, they

responded that they believed they were communicating clearly with me and that my approach to a few things, but most importantly budget, felt disrespectful. I would like to receive information about French Immersion Transportation ahead of the next Board meeting so that I can bring forward my questions and concerns. I did not receive the information and I don't want to request the information again and get a Code complaint against me. Can I ask for clarification without going against the Code?

A. As the Board's Accountability Officer and given the importance of budget discussions, I did view the last Budget Committee meeting online. Respectfully to the parties, I am not privy to closed meeting discussions, however, I did not identify any comments that you made during the Committee meeting that triggered any Code provisions. I recall you having asked staff for clarification on how to provide input and what form that may take. I heard staff's thoughtful response that a lot of work was put into the recommendations and that staff was open to feedback from Trustees.

Based on the information that you have provided to me, on its face, your request for further information and/or clarification from staff on the budget item, does not trigger the Code of Conduct Rule 6.9 with respect to Conduct Respecting Staff Members.

Q. Trustees have received school board budget reductions information in a "secure site". My constituents have been asking for this information. Is this public information? I have asked staff if I can release this information to the public and I have not received a response. Would release of this information be a breach of the Code of Conduct or another policy?

A. I am not certain the exact nature of the comprehensive budget information that you requested from the Board's senior staff. However, there is a distinction between information that the public has a right to receive (through publicly available information or through an access to information request) and information that the Board as a whole can receive, as part of their decision-making. As part of the approval of the budget, your staff, through the Director of Education, provides the Board with information upon which to determine approvals for the year ahead. If the Board requires clarification on items in order to make an informed decision, staff may provide a more detailed report, which may be in closed session or open session, depending on the content of the information.

Drawing a parallel from the public access requests and

appeals of denials of public requests for information, sometimes staff will have to locate, extract and prepare information responsive to public requests for information (IPC order MO-1989). Excessive delays and prohibitive fees defeat the purpose of access to information laws. I am sure that the experts the Board engaged to deliver the professional development session to Trustees [this evening] will be in a position to clarify information flow and access to information for Trustees v routine disclosure of TDSB held information to the public. Generally speaking, Trustees can receive all information, save limited exceptions ie personnel information about an employee and the Board can receive all information on a need to know basis. While providing a line by line itemization of the budget and where there have been reductions, would be onerous on staff, asking where approved budget cuts were applied overall, is a legitimate question that a member of the public can pose through the FOI process. It would be up to the institution's professional access to information staff to determine how the information is held, whether relevant and public information can be extrapolated, how long this would take and the cost of responding to the request. As Dr. Cavoukian (former IPC of Ontario) often stated: "access delayed is access denied". Dr. Cavoukian and her staff at the IPC advocated for institutions to create documents and information holdings with access as the default, such that publicly available information could be readily extracted from information holdings to provide timely information to the public without the need to go through the cumbersome FOI process.

Q. Can I give a reference letter for a TDSB teacher applying for both a TDSB position and an external school board position?

1. A. As I have said in training sessions and one-on-one discussions with Trustees, the Board Member Code of Conduct is not in place to preclude Trustees from effectively serving their constituents or to interfere with your rights as a private citizen. It is my position as Integrity Commissioner that a Trustee should not provide reference letters or letters of support if she/he does not have substantive information about the individual (i.e. a ward resident or staff you have never actually met or with whom you have very little dealing). If, however, you know the staffer, you may write a letter of reference confining your references to situations where you have relevant personal experience with the candidate. The letter should not be on TDSB letterhead.

You should not write or provide a letter of reference for a person seeking a teaching (or other) position at the TDSB.

CLOSING REMARKS

As I have reported in my 2017 and 2018 Annual Reports, access to Board data and information holdings is vital to informed decision-making by Board Trustees. To this end, I have reported in the past years that 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, as well as, requests from Trustees for information that is not covered by confidentiality, is permitted under the Code. There should be an understanding on the part of Board staff that all information shall be disclosed to Trustees in accordance with approved procedures. To that end, Board staff have consulted with my Office on the development of a procedure to address the ‘how’ and ‘from whom’ Trustees may access Board information. I look forward to the completion of this process which remains outstanding and which will provide Trustees the clarity to understand the process to be followed to obtain Board-held data.

It is encouraging to see that the Board has taken the first steps to identify how it is doing and what type of Board it is going to be. The current Board is halfway through the term of the officials who were elected in 2018. I am pleased to see that this Board has taken the first courageous steps towards the task of grappling with difficult questions around governance, access to information, communications, equity and Board self-assessment. One important question to be addressed is whether the Toronto District School Board will be an equity informed Board or an equality based Board and how will the Board measure its performance and its success in reaching its agreed upon goals. In order to live out the premises of the tools and procedures that the Board is in the process of developing, the Board needs to nurture a culture of listening respectfully, kindness towards colleague Trustees when deliberating ideas, approving continued professional development opportunities and committing to learning, together with the completion of periodic governance and Board performance audits to stay on track.

This Board is powerfully diverse in its geographical, socio-economic, gender identification, age, race, indigenous origin and religious plurality. Integral to the effectiveness and relevance of the Code of Conduct regime that this Office oversees and how the rules will be interpreted by this Office, will be if the Board decides to have a discussion around whether the Board’s decision-making prioritizes process over its values, whether the various values override

the Board’s processes or if there is a safe space where shared values and fair processes intersect. The Board is on the cusp of engaging a new Director of Education, as well as developing several new governance tools, all while working in the new normal of virtual meetings and communicating. This is an opportune time for the Board to apply a course correct and regroup to confirm that the stated values and approved processes accurately reflect the vision of the Board. It is on a common understanding of what the Board states as its values, that the rules of the Code of Conduct will be applied and interpreted in respect of the conduct of individual Board Trustees.

The Board Member Code of Conduct is an ethics document containing approved rules upon which Board 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 Trustees, the values, vision, processes and rules of the Board must be understood and respected by all Trustees. If what is in place needs to change, meaningful discussions like the ones taking place right now at the Board should continue. However, while these discussions take place, the Code and procedural rules remain in force and will be applied by this Office. I am proud to serve a Board of Trustees that has demonstrated a willingness to have difficult discussions, move out of their comfort zone and engage in honest self-assessment. The future may be uncertain, but the Trustees of the Toronto District School Board are working hard to live out and make relevant, integrity, accountability and diversity.

Respectfully submitted,



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Integrity Commissioner



OFFICE OF THE INTEGRITY COMMISSIONER ANNUAL REPORT

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