



J. Paul Dubé, Ombudsman

BY EMAIL

March 10, 2023

Board of Trustees
c/o Nancy Crawford, Chair
Toronto Catholic District School Board
80 Sheppard Ave East
Toronto, ON M2N 6E8

Dear Members of the Board of Trustees,

Re: Closed meeting complaint

My Office received a complaint regarding a closed meeting held by the Board of Trustees (the “Board”) for the Toronto Catholic District School Board on October 27, 2022. The complaint alleged that the Board’s closed meeting agenda was not made public and that the open meeting agenda did not list the items that were discussed in closed session. The complaint also alleged that the Board did not provide sufficient information about the subject matter of its October 27, 2022 closed session discussions when it reported back in open session.

I am writing to share the outcome of my review of this complaint. For the reasons set out below, my Office has determined that the Board’s October 27, 2022 meeting agendas met the requirements set out in the *Education Act*¹. In addition, my review has determined that the Board complied with the Toronto Catholic District School Board’s Operating By-Law Number 175 (the “Operating By-Law”) and my Office’s best practices when it reported back to the public following its closed session discussions on October 27, 2022.

¹ R.S.O. 1990, c. E.2.

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Ombudsman's role and authority

The Ombudsman is an independent and impartial Officer of the Ontario Legislature. Since September 1, 2015, the Ontario Ombudsman has the authority to carry out impartial and independent reviews and investigations of complaints concerning the administrative conduct of school boards. In addition, my Office is the closed meeting investigator for more than half of Ontario's 444 municipalities. As the province's default closed meeting investigator, my Office is responsible for determining whether a municipality has complied with the open meeting requirements outlined in the *Municipal Act, 2001*.

My Office has investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of closed meeting cases. This searchable repository was created to provide easy access to the Ombudsman's decisions on, and interpretations of, the open meeting rules. While the open meeting requirements in the *Municipal Act* differ from those in the *Education Act*, school boards can consult the digest to inform their discussions and decisions on whether certain matters can or should be discussed in closed session, as well as issues related to open meeting procedures. Summaries of the Ombudsman's previous decisions can be found in the digest: www.ombudsman.on.ca/digest.

Review

My Office reviewed the open and closed meeting materials, including the meeting minutes, agendas, and reports, and watched relevant portions of the video recording of the open meeting. We also reviewed relevant sections of the Toronto Catholic District School Board's Operating By-Law and spoke with the Toronto Catholic District School Board's Recording Secretary and the Executive General Counsel/Head of Legal Services.

October 27, 2022 meeting

The Board of Trustees held a meeting on October 27, 2022. Consistent with its typical practice, the Board first met in closed session at 6:00 p.m. At 7:00 p.m., the Board resolved to move into open session and began its public meeting as scheduled. After discussing various matters, the Board subsequently returned to closed session, and then returned to open session.

My review found that during the first closed session, the Board reviewed a report pertaining to a property matter. My review indicates that during the second closed session, the Board considered a report pertaining to a labour relations matter, received a personnel update from the Director of Education, and discussed inquiries and other issues.

Following the closed sessions, the Board provided the following public reports regarding its closed session discussions:

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Tel./Tél. : 416-586-3300 / 1- 800-263-1830 - Complaints Line | Ligne des plaintes
Facsimile/Télécopieur : 416-586-3485 TTY/ATS: 1-866-411-4211
www.ombudsman.on.ca

Reports from Private Session

MOVED by Trustee Li Preti, seconded by Trustee de Domenico, that the following report from Trustee Tanuan, be received.

In PRIVATE Session – dealt with a property matter and passed a motion to resolve back after PUBLIC Session.

Reports from Private Session

MOVED by Trustee Crawford, seconded by Trustee Martino, that the following report from Trustee Tanuan be received.

In PRIVATE Session – discussed labour matters, received a personnel update from the Director and discussed Inquiries.

The Board then considered various other matters in open session and adjourned the meeting.

Analysis

Under the *Education Act*, all meetings of a board of trustees must be open to the public, subject to prescribed exceptions.² Subsection 207(2) of the Act allows for meetings of a committee of a board, including a committee of the whole board, to be closed under certain exceptions.

Article 4.16 of the the Toronto Catholic District School Board’s Operating By-Law similarly states that meetings of the Board of Trustees and committees of the Board of Trustees may be closed to the public when the subject matter under consideration involves any of the exceptions outlined at subsection 207(2) of the *Education Act*. Article 1.2 of the Operating By-Law also states that “[f]or the purposes of this By-Law references in the Act to a committee of the whole board shall be deemed to be references to the Board of Trustees.”

Agenda

The complaint alleged that the Board’s closed meeting agenda was not made public and that the open meeting agenda did not list the items that were discussed in closed session. However, the *Education Act* does not require that boards publicize their closed meeting agendas, nor does it require that boards list the topics of discussion for closed sessions in their open meeting agendas.

² s. 207.

Under subsections 218.4(c) and (d) of the *Education Act*, the Chair of the Board of Trustees is responsible for establishing agendas for board meetings in consultation with the Director of Education, and is to ensure that trustees have the information needed for informed discussion of agenda items. The *Education Act* does not otherwise prescribe minimum requirements for meeting agendas. My Office's review indicates that the Board did prepare open and closed meeting agendas with attachments the October 27, 2022 meeting.

Report back

The complaint alleged that the Board did not provide sufficient information about the subject matter of its October 27, 2022 closed session discussions when it reported back in open session.

Although there is no requirement under the *Education Act* for boards of trustees to report back in public after the conclusion of a closed meeting, my Office has recommended this practice in the municipal context to increase transparency of the municipal closed meeting process.³ A report back may consist of a general discussion in open session of subjects considered in closed session, together with information about any decisions, resolutions, and directions given to staff.⁴ In other cases, the nature of the discussion might allow for considerable information about the closed session to be provided publicly.⁵ Reporting back after each closed session provides meaningful information to the public about the issues discussed *in camera* and inspires confidence that the meeting has been properly closed.⁶

The Operating By-Law does not prescribe a minimum level of detail to be included in a report back in open session about closed session discussions.

In this case, my review indicates that the Board reported back in the public session that it discussed a property matter in the first closed session. Following the second closed session, the Board reported back publicly that it discussed labour matters, received a personnel update from the Director, and discussed inquiries *in camera*. These subsequent reports provided the public with information about the nature of the Board's discussions in the two closed sessions. I commend the Board for adopting this best practice and encourage it to continue providing, as appropriate, information to the public about the outcome of its closed session discussions.

³ *Loyalist (Township) (Re)*, 2020 ONOMBUD 4 at para 26, online: <<https://canlii.ca/t/j9ksh>>.

⁴ *Ibid* at para 27 and *Amherstburg (Town of) (Re)*, 2022 ONOMBUD 11 at para 70 [*Amherstburg*], online: <<https://canlii.ca/t/jr5rc>>.

⁵ *Ibid*.

⁶ *Amherstburg*, *supra* note 4 at para 71.

Conclusion

My review has determined that the Board of Trustees for the Toronto Catholic District School Board met the meeting agenda requirements outlined at subsections 218.4(c) and (d) of the *Education Act* at its October 27, 2022 meeting. In addition, my review has determined that the Board complied with the Toronto Catholic District School Board's Operating By-law and my Office's best practices for reporting back when it provided the public with information about the subject matter of its closed session discussions on October 27, 2022.

I would like to thank the Board for its co-operation during my review. The Toronto Catholic District School Board's Executive General Counsel/Head of Legal Services has confirmed that this letter will be included as correspondence at an upcoming board meeting.

Sincerely,



Paul Dubé
Ombudsman of Ontario

Cc: Brendan Browne, Director of Education, Toronto Catholic District School Board
Antonella Ceddia, Executive General Counsel/Head of Legal Services, Toronto Catholic District School Board
Sophia Harris, Recording Secretary, Toronto Catholic District School Board

Cette lettre est aussi disponible en français