



J. Paul Dubé, Ombudsman

March 13, 2024

Camillo Cipriano
Director of Education
Niagara Catholic District School Board
427 Rice Road
Welland ON L3C 7C1

Sent by email: Camillo.Cipriano@ncdsb.com

Dear Director Cipriano,

Re: Open meeting complaints

My Office received two complaints relating to meetings held by the Board of Trustees (the “Board”) of the Niagara Catholic District School Board (the “School Board”). One complaint alleged that during a closed meeting on June 7, 2023, the Board improperly discussed whether members of the public would be required to show identification in order to attend a Board meeting on June 20, 2023. The complaint also raised concerns that the Board did not provide the public with information about the matters to be discussed *in camera* on June 7, 2023.

My Office also received two complaints that the School Board required members of the public to show identification in order to attend the Board's June 20, 2023 meeting, which the complainants felt was contrary to the *Education Act's* open meeting requirements. One complaint also raised concerns that they believed this meeting was not livestreamed.

I am writing to share the outcome of my review of these complaints.

Ombudsman's role and authority

The Ombudsman is an independent and impartial Officer of the Ontario Legislature. My Office has the authority to address complaints about public sector bodies, as well as services provided by children’s aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*.

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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, including complaints concerning meetings held by a board of trustees or a committee of a board.

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*.¹

My Office has reviewed 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 municipal open meeting rules. While the open meeting requirements in the *Municipal Act* differ from those in the *Education Act*² (the "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.

Ombudsman review

On September 7, 2023, my Office advised the Niagara Catholic District School Board of my intent to investigate these complaints. My Office reviewed the open and closed meeting materials, relevant correspondence, the School Board's website, and the School Board's By-Laws Policy (the "By-Laws"). We also reviewed correspondence, pictures, and videos submitted by a complainant. My Office interviewed the School Board's Director of Education, Controller of Facilities Services, Supervisor of Protective Services, a Communications Specialist, and the Chair of the Board.

¹ SO 2001, c 25.

² RSO 1990, c E.2.

June 7, 2023 meeting

The Board of Trustees held a special meeting in the boardroom of its Catholic Education Centre (the “Education Centre”) on June 7, 2023, beginning at 5:00 p.m. After the Board held an opening prayer and approved the meeting agenda, it passed a resolution at 5:04 p.m. to move into closed session. The Board did not cite a specific closed meeting exception from the *Education Act*, nor did it provide the public with information about the subject to be discussed in closed session. During this closed session, the Board discussed a code of conduct complaint and a lawyer provided the Board with legal advice. The Board then returned to open session at 5:36 p.m. and passed resolutions to approve the recommendations outlined in “Item 1” and “Item 1.1” of the Board’s *in camera* agenda. The Board then held a “moment of silent reflection for life”, and adjourned the meeting at 5:40 p.m.

Analysis

June 7 closed session discussion

My Office received a complaint alleging that on June 7, the Board improperly discussed, while *in camera*, whether members of the public would be required to show identification in order to attend a specific future meeting.

Section 207 of the *Education Act* requires that all meetings of a board of trustees and a committee of the board be open to the public, subject to prescribed exceptions. My Office did not find any evidence to suggest that during the June 7, 2023 closed meeting, the Board discussed whether members of the public would be required to show identification in order to attend a Board meeting on June 20, 2023. Rather, the Board received legal advice about an ongoing code of conduct matter.

Information about matters to be discussed in closed session

We also received a complaint that the Board did not provide the public with information about the matters to be discussed *in camera* on June 7, 2023.

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During our investigation, the School Board confirmed that the Board did not provide the public with information about the matters to be discussed in closed session, which is consistent with its usual practice.

Unlike the *Municipal Act, 2001*, the *Education Act* does not require that a board of trustees or committee pass a resolution in open session to authorize a closed session, nor does it require the Board to provide information about the matters to be discussed in closed session. The School Board's By-Laws do not require the Board to pass a resolution in open session to authorize a closed session, nor do they require the Board to provide information about the matters to be discussed in closed session.

In *Farber v. Kingston*, the Ontario Court of Appeal noted that a municipal council's resolution to go into a closed meeting should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.³ Publicly stating the issue to be discussed in closed session enhances the transparency of local democracy and ensures that decision-makers are accountable when they discuss matters behind closed doors.

In the future, I encourage the Board to adopt the best practice of providing the public with meaningful information about the matters to be discussed *in camera*. In addition, I encourage the Board to adopt the best practice of indicating which exception it intends to rely on for each matter discussed in closed session, as I have previously encouraged municipal councils to do.⁴ These practices provide the public with meaningful information about the issues to be discussed *in camera* and inspire confidence that the meeting is being properly closed.

June 20, 2023 meeting

My Office received two complaints that the School Board required members of the public to show identification in order to attend the June 20, 2023 Board meeting in

³ *Farber v. Kingston (City)*, 2007 ONCA 173 at para 21, online: <<https://canlii.ca/t/1qtzl>>.

⁴ See, for example: Letter from the Ontario Ombudsman to the City of Pickering (23 September 2020), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2020/city-of-pickering>>.



person. Both complainants said that they were denied entry to the meeting room for this meeting. One complainant also alleged that the meeting was not livestreamed.

Background

During a regular Board meeting on May 23, 2023, student artwork in the Education Centre was vandalized. The media reported that protests were expected to take place outside of the Education Centre during the next regular Board meeting on June 20, 2023.⁵ The School Board publicly stated that it was concerned about the health, safety, and well-being of School Board staff, trustees, and members of the public at the June 20, 2023 meeting.⁶

Due to these concerns, the School Board cancelled the “Student Achievement Celebration” scheduled to be held on June 20, and asked staff at the Education Centre to work from home that day. In advance of the meeting, senior members of the School Board’s administration and the Chair of the Board met with the Niagara Regional Police Service and a security firm to discuss a safety plan for the meeting.

Sign-in procedures

The Board of Trustees held a regular meeting in the Education Centre’s boardroom on June 20, 2023 beginning at 6:30 p.m. Police officers and private security guards were stationed inside and outside of the Education Centre during the meeting. According to the media, the police estimated that approximately 350 to 400 individuals attended the protests.⁷

⁵ Don Redmond, “Protest anticipated at Niagara Catholic trustees meeting over Pride-flag motion”, *insauga* (20 June 2023), online: <<https://www.insauga.com/protest-anticipated-at-niagara-catholic-trustees-meeting-over-pride-flag-motion/>>.

⁶ Victoria Nicolaou, “LGBTQ protest, motion vote went as anticipated for Niagara Catholic: board chair”, *St. Catharines Standard* (21 June 2023), online: <https://www.stcatharinesstandard.ca/news/niagara-region/lgbtq-protest-motion-vote-went-as-anticipated-for-niagara-catholic-board-chair/article_b1d8cf76-d096-5b46-90f8-1fe7b3440d3e.html>.

⁷ *Ibid.*





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The School Board's typical practice is to require members of the public to sign into meetings for in-person attendance by providing their name and telephone number. Both the School Board's Supervisor of Protective Services and the Controller of Facilities Services told my Office that individuals had signed into previous meetings using fake names, such as "Mickey Mouse." The Chair of the Board of Trustees and the Director of Education said that on the recommendation of the Niagara Regional Police Service, the School Board required all members of the public, including School Board employees, to show identification listing their name and address in order to attend the June 20, 2023 meeting in person. This protocol was implemented to ensure that people provided their real names and addresses, which could then be used to follow up with them, if needed, due to safety or security concerns (for example, after this meeting, the School Board issued a trespass notice to an individual because of their "aggressive and belligerent" conduct during the meeting). The School Board was flexible with respect to the type of identification provided, and did not require government-issued or photo identification. As an example, the Director of Education told my Office that an individual showed the label on their asthma inhaler to verify their name.

My Office reviewed posters that were posted outside of the Education Centre and which stated, "ALL VISITORS ARE REQUIRED TO SHOW IDENTIFICATION AND SIGN IN BEFORE ENTERING." However, neither the meeting agenda nor the School Board's website were updated to inform members of the public that they would be required to show identification in order to attend this meeting in person.

The total number of people who wanted to attend this meeting in person exceeded the meeting room's maximum capacity of approximately 108 people. People who were granted access to the meeting room were provided with numbered badges to ensure that the meeting room did not exceed its maximum capacity. An overflow line formed outside of the meeting room, and when someone left the meeting room, the School Board allowed the next person in line to enter it. The Chair of the Board of Trustees said that two individuals were denied entry to the meeting room because they refused to verify their identities by showing identification. The School Board does not have any written records documenting these incidents. The Chair of the Board of Trustees and the Supervisor of Protective Services told my Office that no one who signed in and showed identification was denied entry to the meeting room, except when it was at capacity.

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Individuals also had the option of observing the meeting live on the School Board's website without the need to provide identifying information. The Controller of Facilities Services said that members of the public who were at the Education Centre were able to use the School Board's Wi-Fi network in order to observe the meeting online.

Analysis

Sign-in procedure

As noted above, under the *Education Act*, all meetings of a board of trustees and a committee of the board must be open to the public, subject to prescribed exceptions.⁸ The Ontario Court of Appeal has affirmed that a school board has the authority to regulate its meetings to ensure “decorous conduct by all attending the meeting” and to prevent behaviour that would “detract from the effectiveness of the meeting and have an adverse effect on...free and uninhibited discussion.”⁹

Although decided in a different context, I have previously noted that municipalities must be careful about placing conditions on the public's ability to freely access and observe open meetings, since the intent of the open meeting provisions of the *Municipal Act* is to permit people to observe the political process.¹⁰ However, my Office has also found that the open meeting requirements in the *Municipal Act* do not preclude a municipal council from taking appropriate measures to preserve security and maintain the order of council meetings.¹¹ Further, as I noted in my May 2017 report, “Counter Encounter: Investigation into a complaint about the Township of Red Rock”, an employer is justified in seeking to protect its staff from harassment from members of the public, consistent with its obligations under the *Occupational Health and Safety Act*.¹²

⁸ s 207(1-2.1).

⁹ *Radio Chum 1050 Ltd et al v Board of Education for City of Toronto*, 1964 CanLII 609 (ON CA) at 1, online: <<https://canlii.ca/t/gwf61>>.

¹⁰ *Alberton (Township of) (Re)*, 2023 ONOMBUD 11 at para 27, online: <<https://canlii.ca/t/jz4gd>>.

¹¹ *Ibid* at para 28; *London (City of) (Re)*, 2016 ONOMBUD 4 at para 51, online: <<https://canlii.ca/t/gt8dh>>.

¹² Ontario Ombudsman, *Counter Encounter: Investigation into a complaint about the Township of Red Rock* (May 2017) at para 59, online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2017/counter-encounter>>.



The School Board required members of the public to show identification in order to attend this meeting in person due to security concerns arising from the protests that took place outside of the Education Centre during the meeting. This practice was recommended to the School Board by the Niagara Regional Police Service, and was intended to ensure that people signed into the meeting using their real names and addresses, which could then be used to follow up with individuals, if needed, due to safety or security concerns.

School boards have the authority to regulate their meetings to preserve safety and security and to maintain order, but must be careful about placing overly restrictive conditions on the public's ability to freely access and observe open meetings. I recently found that similar security measures implemented by the Durham District School Board for in-person attendance at meetings were reasonable, given the documented safety concerns facing the School Board.¹³

In this case, members of the public could freely access and observe the June 20, 2023 meeting online without the need to provide any identifying information. I am satisfied that the School Board's security measures for in-person attendance at the June 20, 2023 meeting were reasonable in the circumstances, given the safety concerns of the School Board.

In the future, I encourage the Board to adopt the best practice of clearly communicating any security protocols and conditions for entry in its public notice of the meeting.

The School Board also told us that two individuals were denied entry to the meeting room because they refused to show identification, but the School Board does not have any written records documenting these incidents. I encourage the School Board to adopt the best practice of creating and maintaining records of any instances where individuals are denied entry to a meeting room.

¹³ Letter from the Ontario Ombudsman to the Durham District School Board (29 November 2023), online: <<https://www.ombudsman.on.ca/what-we-do/topics/education/investigations-and-reviews-school-board-meetings/durham-district-school-board-review-of-a-meeting-on-june-5.-2023>>.



Livestream

One complaint raised concerns that the June 20, 2023 meeting was not livestreamed.

During our investigation, the School Board said that this meeting was livestreamed on its website. The June 20, 2023 meeting agenda also includes the meeting's livestream link. My Office reviewed the signs and handouts that the School Board gave to members of the public outside of the Education Centre, which contained both a QR code and a link to access the meeting's livestream. In addition, the Controller of Facilities Services said us that people were able to access the School Board's Wi-Fi network to observe the meeting online. A School Board staff member indicated that they observed people watching the livestream of the meeting outside the Education Centre. The Director of Education and the Chair of the Board of Trustees said that they were both contacted after the meeting by people who said they had watched the meeting online. My Office reviewed a picture of a computer displaying the meeting's livestream, as well as a screenshot of a text message in which the sender says they "watched" the meeting.

Based on the available evidence, I am satisfied that the June 20, 2023 meeting was livestreamed on the School Board's website.

Meeting room capacity

Although neither complaint specifically raised this concern with my Office, the total number of people who wanted to attend this meeting in person exceeded the meeting room's maximum capacity. The meeting room has a maximum capacity of 108 people, inclusive of trustees, School Board staff members, and members of the public. As noted above, the media reported that the police estimated that approximately 350 to 400 individuals attended the protests held outside the Education Centre. My Office was told that an overflow line formed outside of the meeting room, and that when someone left the meeting room, the School Board allowed the next person in line to enter it.

In the municipal context, my Office has found that a meeting does not violate the open meeting rules if the meeting is open to the usual number of persons, restricted only by the capacity of the room, and there is no evidence that there were unfair restrictions on

attendance.¹⁴ In a report to the municipality of The Nation, I encouraged council for the municipality to adopt the best practice of having a contingency plan to relocate meetings to a larger venue when it is apparent that a high level of public interest may result in greater numbers of people wishing to exercise their right to observe local government in process.¹⁵

The School Board knew that this meeting could potentially attract a significant number of attendees, and implemented a system whereby a new person was admitted to the meeting room each time someone left it. In addition, the School Board livestreamed the meeting, and people were able to access its Wi-Fi network to observe the meeting online. The School Board also posted signs and gave handouts to members of the public outside the Education Centre that contained both a QR code and a link to access the meeting's livestream. I am satisfied that this meeting did not violate the Act's open meeting requirements, as the meeting was open to the usual number of persons, restricted only by the capacity of the room, and there was no evidence to suggest that the School Board was responsible for any unfair restrictions on attendance.

Conclusion

My Office's review did not find any evidence to suggest that during the June 7, 2023 closed meeting, the Board discussed whether members of the public would be required to show identification at the June 20, 2023 meeting. Neither the *Education Act* nor the School Board's by-laws required the Board to provide information about the matters to be discussed in closed session.

Further, I am satisfied that the School Board's security measures for in-person attendance at the June 20, 2023 meeting were reasonable, given the safety concerns of the School Board. Finally, based on the available evidence, my review determined that the June 20, 2023 meeting was livestreamed.

¹⁴ *Clarence-Rockland (City of) (Re)*, 2015 ONOMBUD 1 at paras 43-44, online: <<https://canlii.ca/t/gtp5p>> and *The Nation (Municipality) (Re)*, 2016 ONOMBUD 6 (CanLII) at paras 37-38 [*The Nation*], <<https://canlii.ca/t/gt8dm>>.

¹⁵ *The Nation*, *supra* note 17 at para 45.





J. Paul Dubé, Ombudsman

I would like to thank the School Board for its co-operation during my review. You have confirmed that this letter will be included as correspondence at an upcoming Board of Trustees meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul Dubé', written over a horizontal line.

Paul Dubé
Ombudsman of Ontario

Cc: Danny Di Lorenzo, Chair, Board of Trustees
via email: dannydilorenzo5@gmail.com

Cette lettre est aussi disponible en français

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