



**Submission to the Standing Committee
on Social Policy regarding Bill 98,
*Better Schools and Student Outcomes Act, 2023***

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Introduction

The Ombudsman of Ontario is appointed under the *Ombudsman Act* as an independent and impartial Officer of the Ontario Legislature.¹ The Ombudsman has the authority to review and formally investigate the administrative conduct of more than 1,000 public sector organizations, including the province's 72 school boards and 10 school authorities, as well as provincial and demonstration schools. The Ontario Ombudsman's expertise lies in administrative fairness and thorough investigation of individual and systemic issues.

Complaints to the Ombudsman are confidential and our Office's reviews and investigations are conducted in private. Through our review and investigation of complaints, we often identify best practices and suggestions to improve processes and strengthen local governance and accountability. In addition to resolving individual complaints, my Office makes recommendations to improve the administration of Ontario's school boards. Most school boards appreciate the information we provide and are happy to implement improvements locally.

For example, in 2017, my Office investigated complaints about school busing in Toronto's largest school boards and made 42 recommendations for improvement.² In 2019, my investigation into a board's pupil accommodation review process resulted in 14 recommendations for improvement.³ All of these recommendations were accepted by the boards in question.

Since gaining jurisdiction over school boards on September 1, 2015, my Office has received nearly 6,000 complaints about school boards, including 280 complaints regarding boards of trustees. Most of these concerns relate specifically to the conduct of individual trustees and to how school boards investigated and imposed sanctions regarding alleged breaches of codes of conduct. For example:

- A trustee complained that the board's appointed integrity commissioner launched an investigation into their conduct without first attempting to resolve the matter informally, as set out in the board's code of conduct.

¹ RSO 1990, c O.6.

² Ombudsman of Ontario, "The Route of the Problem: Investigation into the Toronto District and Toronto Catholic District school boards' oversight of student transportation and their response to delays and disruptions at the start of the 2016-2017 school year" (August 2017), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2017/the-route-of-the-problem>>.

³ Ombudsman of Ontario, "Lessons Not Learned: Transparency of Near North District School Board's decision to close Widdfield Secondary School after the 2016-2017 Pupil Accommodation Review process" (July 2019), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2019/lessons-not-learned>>.

- Candidates running in trustee elections complained about incumbents' use of board resources in their re-election campaigns and that there was no effective mechanism to enforce rules against such conduct.
- Community members complained about trustees not disclosing conflicts of interest and voting on matters that affect them financially.
- Trustees from three different boards complained about being banned from attending board meetings. One complained that the school board had barred them from board meetings indefinitely, while two others were barred from meetings for a six-month period.
- A trustee complained that a board's investigation of a code of conduct complaint was conducted by a subcommittee of the board rather than by a neutral third party.
- Another trustee complained that the third-party investigator appointed by the board did not share adequate details of the code of conduct complaint against them or give them the opportunity to participate meaningfully in the investigation.
- Community members complained about a trustee's public comments that they perceived to be discriminatory, the adequacy of the school board's investigation, and the transparency of its complaints process. We suggested that the board appoint an integrity commissioner and publicize the complaints process, which it did.
- Community members complained that members of the public were unable to make complaints about violations of the board's trustee code of conduct.
- A trustee complained that other members of the board were verbally harassing them and weaponizing the code of conduct against them.

Based on our experience in this area, we made submissions to the Ministry of Education in 2017 and 2021,⁴ and proposed important enhancements to trustee accountability, including:

⁴ Ombudsman of Ontario, "Submission to the Ministry of Education's consultation regarding school board governance" (October 2021), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/submissions-to-government/2021/submission-to-the-ministry-of-education%E2%80%99s-consultation-regarding-school-board-governance>>.

- Mandatory codes of conduct with standardized prescribed topics;
- Mandatory integrity commissioners who are independent from the board;
- Accessible code of conduct complaint processes for members of the public;
- Improved procedures for the handling and investigation of code of conduct complaints;
- That integrity commissioners should be empowered to consider alleged violations of the *Municipal Conflict of Interest Act*, consistent with the oversight existing at the municipal level; and
- Consistent sanctions and remedial measures for breaches of a code of conduct.

Following my 2017 submission, the province implemented one of my most important proposals and adopted Ontario Regulation 246/18, which requires that every school board have a code of conduct.

In 2021, the Ministry of Education invited my office to participate in a consultation regarding school board governance, and I reiterated many of my prior suggestions for improving trustee accountability.

I am encouraged by the government’s efforts in Bill 98 to enhance local governance and accountability by strengthening the trustee code of conduct framework. Bill 98 is responsive to several proposals I have previously made, such as providing for independent integrity commissioners to investigate code of conduct complaints. The Bill also provides the Minister with the authority to prescribe standardized codes of conduct and matters to be addressed by codes of conduct. Finally, the Bill clarifies what sanctions can be applied for breaches of codes of conduct and establishes clear limits and timelines.

However, important aspects of my previous proposals remain outstanding. There might be potential for some of these to be addressed in future regulations under the *Education Act*. I wish to highlight for the Standing Committee several key amendments to Bill 98 that would further strengthen the proposed code of conduct framework for trustees.⁵

Eligibility to make a code of conduct complaint

The *Education Act* provides that only trustees have a legislated right to make complaints under a school board’s code of conduct. Most school boards have

⁵ RSO 1990, c E.2.

incorporated this limitation into their own codes of conduct. Bill 98 would maintain this limitation and only grant trustees the right to make code of conduct complaints.

This is in contrast to the scheme established by section 223.4(1) of the *Municipal Act, 2001*, which enables members of the public to make code of conduct complaints about municipally elected officials.⁶ This helps ensure that the public can hold elected municipal officials accountable for their actions. It is difficult to see why locally elected school board trustees should be treated differently. **Accordingly, Bill 98 should be amended to expand eligibility for code of conduct complaints to include members of the public. The Standing Committee may wish to look to the wording of section 223.4(1) of the *Municipal Act, 2001* for such an amendment.**

Conflict of interest complaints

My Office has received complaints alleging that individual school board trustees have improperly participated in matters and exercised influence in situations where they have a conflict of interest. The *Municipal Conflict of Interest Act* sets out obligations for members of municipal council relating to direct and indirect pecuniary interests. The *Municipal Act, 2001* empowers municipal integrity commissioners to conduct inquiries into alleged violations of the *Municipal Conflict of Interest Act* under certain circumstances. This process gives electors and others acting in the public interest an accessible alternative to court proceedings for determining whether a municipal councillor has complied with the legislated conflict of interest rules.

School board trustees are also subject to the *Municipal Conflict of Interest Act*. Bill 98 presents an opportunity for the *Education Act* to ensure that integrity commissioners at school boards have the same ability to conduct inquiries into allegations of contraventions of the *Municipal Conflict of Interest Act*.

An amendment to Bill 98 to expand the school board integrity commissioner’s role to cover conflicts of interest under the *Municipal Conflict of Interest Act* could be drafted in wording similar to that found in section 223.3(1)(3) of the *Municipal Act, 2001*.

⁶ SO 2001, c 25, s 223.4(1): “This section applies if the Commissioner conducts an inquiry under this Part, (a) in respect of a request made by council, a member of council or a member of the public about whether a member of council or of a local board has contravened the code of conduct applicable to the member; [...]” [Our emphasis]

My Office’s jurisdiction to review code of conduct complaints

My Office’s mandate includes reviewing and investigating complaints about the administrative conduct of school boards, which includes school board accountability officers like integrity commissioners. As a recourse of last resort, my Office helps ensure that these mechanisms work as intended and provide administratively fair resolutions for code of conduct complaints.

My Office has a similar mandate with respect to municipal accountability officers, including municipal integrity commissioners. In the municipal context, the *Ombudsman Act* provides that my Office can review complaints about municipal sector integrity commissioners once:

- The integrity commissioner has refused to investigate the matter;
- The integrity commissioner has conducted and completed an investigation; or
- The time for bringing a complaint to the integrity commissioner has expired.

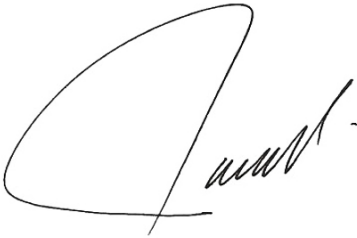
These provisions of the *Ombudsman Act* (ss. 14(4.3) and (4.4)) confirm my Office’s jurisdiction as a last resort in this area.

Bill 98 does not specifically confirm my Office’s ability to review complaints about school board integrity commissioners. My authority to review the conduct of commissioners may depend on the circumstances relating to their appointment. As appeal panels would be appointed by the Deputy Minister of Education, these bodies would clearly come within our authority. It may be helpful for the Bill to explicitly confirm that my Office has oversight with respect to school board integrity commissioners. School boards, trustees, and members of the public should have confidence and certainty about when they can contact my Office if they have concerns about the administrative conduct of school board integrity commissioners.

Clarification of my authority could be accomplished through Bill 98 by adding a consequential amendment to s.14(4.4) of the *Ombudsman Act* or an amendment to the *Education Act* drafted in language similar to ss.14(4.3) and (4.4) of the *Ombudsman Act*.

Conclusion

I commend Bill 98's goal of strengthening school board oversight for the benefit of Ontario's public education system. Robust codes of conduct and integrity commissioner processes play a vital role in ensuring public confidence in elected school board officials. I appreciate the Standing Committee's consideration of my comments.



Paul Dubé
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