



REPORT TO

## CORPORATE SERVICES, STRATEGIC PLANNING AND PROPERTY COMMITTEE

### BILL 68 – UPDATE ON CHANGES TO THE MUNICIPAL CONFLICT OF INTEREST ACT

“A new command I give you: Love one another. As I have loved you, so you must love one another. By this everyone will know that you are my disciples, if you love one another.” John 13:34-35 NIV

Created, Draft	First Tabling	Review
February 14, 2019	March 21, 2019	<a href="#">Click here to enter a date.</a>
Paul Matthews, General Legal Counsel		
<b>RECOMMENDATION REPORT</b>		

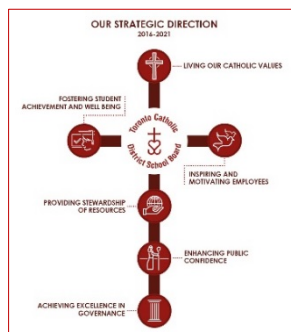
**Vision:**

*At Toronto Catholic we transform the world through witness, faith, innovation and action.*

**Mission:**

*The Toronto Catholic District School Board is an inclusive learning community uniting home, parish and school and rooted in the love of Christ.*

*We educate students to grow in grace and knowledge to lead lives of faith, hope and charity.*



Rory McGuckin  
Director of Education

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Associate Director  
of Academic Affairs

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Associate Director of Facilities,  
Business and Community  
Development, and  
Chief Financial Officer

## A. EXECUTIVE SUMMARY

This report:

1. Advises that after discussion with the Ontario Ombudsman and various municipal Integrity Commissioners in the Greater Toronto Area, it has been determined that school board trustees do not have access to an Integrity Commissioner appointed by the City of Toronto.
2. Recommends that Ontario Catholic School Trustee Association (“OCSTA”) retain the services of an Integrity Commissioner on behalf of the 29 member Catholic Boards for a two (2) year trial period
3. Staff recommends that the Corporate Services Committee endorse the proposal (attached at APPENDIX A) to OCSTA from the Chair of the Board and that the Chair of the Board be requested to speak to such proposal at the OCSTA AGM.

*The cumulative staff time required to prepare this report was 3 hours*

## B. PURPOSE

The purpose of this report is to clarify and correct advise previously given to the Board with respect to Bill 68 and changes to the *Municipal Conflict of Interest Act* (“MCIA”)

## C. EVIDENCE/RESEARCH/ANALYSIS

1. At the February 21, 2019 Regular Board meeting of the Board of Trustees received a report on changes to the MCIA, effective March 1, 2019.
2. The report and the advice with respect to changes in the MCIA considered at that meeting was that trustees would have access to an Integrity Commissioner appointed by the city of Toronto. That advice has been determined to be inaccurate. School board trustees will not have access to an Integrity Commissioner appointed by the city of Toronto.

3. The relevant section of the MCIA is subsection 9(2)(b) which provides that if a judge has determined that a “member of a local board” has violated the MCIA, the judge may consider whether the member “disclosed the pecuniary interest and all relevant facts known to him or her to an Integrity Commissioner in a request for advice from the commissioner under the *Municipal Act, 2001* or *The City of Toronto Act, 2006* and acted in accordance with the advice, if any provided to the member by the commissioner”.
4. The term “local board” is defined in the MCIA to include school boards. If section 9(2)(b) of the MCIA was interpreted to include the definition of “local boards” as defined in the MCIA, school trustees would have access to the Integrity Commissioner appointed by the city.
5. After discussion with the Ontario Ombudsman, and various municipal Integrity Commissioners in the Greater Toronto Area, it has been determined that the definition of “local boards” as found in the MCIA is not the applicable definition to be used in interpreting section 9(2)(b) of the MCIA but rather the definition of “local boards” as defined in the *Municipal Act*. The definition of “local boards” in the *Municipal Act* expressly excludes school boards.
6. So what can a judge consider when she has determined that a trustee has violated the MCIA? The judge can consider sections 9(2)(a) and 9(2)(c) of the MCIA. Those sections provide:
 

**(2) Same** – in exercising his or her discretion under subsection (1) the judge may consider, among other matters, whether the member or former member

  - (a) took reasonable measures to prevent the contravention
  - (c) committed the contravention through inadvertence or by reasons of an error in judgment made in good faith
7. In determining whether a trustee took “reasonable measures” (s.9(2)(a)) or acted in “good faith” (s.9(2)(c)) a court would likely give some consideration to a trustee who did consult with an Integrity Commissioner.
8. As has already been stated. Trustees do not have access as of right to the Integrity Commissioner appointed by the City of Toronto, but the TCDSB may wish to privately retain an Integrity Commissioner to advise individual trustees on conflict matters.

9. Eric Roher, of Borden Ladner Gervais, advises that he has consulted with three municipal Integrity Commissioners in Ontario, two of whom advise that they have been privately retained by a school board.
10. As the revisions to the MCIA under Bill 68 have expressly recognized integrity commissioners as having specialized expertise in providing advice with respect to conflicts under the MCIA, the Board may wish to retain the services of an Integrity Commissioner directly or jointly with other school boards or through OCSTA.
11. Staff have confirmed with the executive director of OCSTA that the deadline for submitting resolutions to the OCSTA annual general meeting (“AGM”) from member boards or a proposal from an individual trustee member has passed.
12. A trustee entitled to vote at the OCSTA AGM is entitled to raise for discussion at the AGM “any matter with respect to which the member would have been entitled to submit a proposal at the AGM (had the deadline for submitting a proposal not passed).

#### **D. STAFF RECOMMENDATION**

Staff recommends that the Corporate Services Committee endorse the proposal (attached at APPENDIX A) to OCSTA from the Chair of the Board and that the Chair of the Board be requested to speak to such proposal at the OCSTA AGM.

**Proposal by: Trustee Rizzo on behalf of the Toronto  
Catholic District School Board**

**To: Ontario Catholic School Trustee Association (OCSTA)  
Annual General Meeting (AGM)**

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Whereas OCSTA represents all 29 publically funded Catholic School Board in the Province of Ontario;

And whereas Bill 68 – The Modernizing Ontario’s Municipal Legislation Act, 2017 – was recently enacted which, among other things, amended the *Municipal Conflict of Interest Act* (MCIA);

And whereas school trustees frequently require advice respecting their obligations under the MCIA;

And whereas Bill 68 has expressly recognized integrity commissioners as having specialized expertise in providing advice to trustees with respect to conflicts under the MCIA;

And whereas OCSTA may wish to consider retaining the service of an integrity commissioner on behalf of all member boards.

Therefore be it resolved that OCSTA retain the services of an Integrity Commissioner on behalf of the 29 member Catholic Boards for a two (2) year trial period;

And be it further resolved that if OCSTA funding is not currently available to retain an Integrity Commissioner, that member boards be charged a supplemental fee on a prorated basis to fund the position;

And be it further resolved that this proposal be referred to the appropriate OCSTA committee for a report on timelines and possible implementation.