



REPORT TO

**BY-LAWS REVIEW AD HOC COMMITTEE**

**TCDSB OPERATING BY-LAW REVISIONS**

Do not follow the crowd in doing wrong. When you give testimony in a lawsuit, do not pervert justice by siding with the crowd – exodus 23:2

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Paul Matthews, General Legal Counsel

**RECOMMENDATION REPORT**

**Vision:**

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

**Mission:**

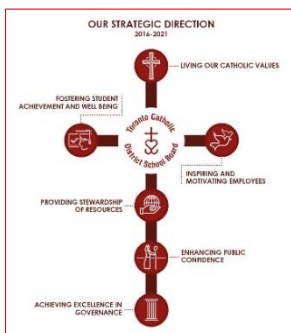
*The Toronto Catholic District School Board is an inclusive learning community uniting home, parish and school and rooted in the love of Christ.*

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

Rory McGuckin  
Director of Education

D. Koenig  
Associate Director  
of Academic Affairs

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



## **A. EXECUTIVE SUMMARY**

This report provides recommendations to the committee on various issues with respect to the Board's operating by-law.

*The cumulative staff time required to prepare this report was 6 hours*

## **B. PURPOSE**

The purpose of this report is to propose revisions to the Board's Operating By-Law Number 175 (as amended at April 21, 2016).

## **C. BACKGROUND**

At the February 19, 2019 meeting of the By-Laws Review Ad-Hoc Committee meeting, the committee discussed various articles of the Board's operating by-law and instructed staff to review matters discussed at that meeting and report back to the committee at its meeting on April 10, 2019.

## **D. EVIDENCE/RESEARCH/ANALYSIS**

### **1. Committee Proposal**

The committee proposed to delete the word "supporters" from Articles 2.2.3 and 2.2.4. Article 2.2.3 and 2.2.4 currently read:

*"In addition to any other duties under the Act or this By-Law or otherwise, each Trustee shall:*

2.2.3 *consult with parents, students, and supporters of the TCDSB on the Multi-Year Plan;*

2.2.4 *bring concerns of parents, students, and supporters of the TCDSB to the attention of the Board of Trustees;*

## **Staff Response**

Staff recommends that there be no change to articles 2.2.3 and 2.2.4. All of article 2.2 is the exact language found in the *Education Act* (the “Act”) which prescribes the duties of board members.

## **2. Committee Proposal**

Article 5.17 currently provides:

*“A vacancy, however caused, on a Committee, or in the office of the Chair or Vice-Chair of any Committee, shall be filled by election by the Board of Trustees at the earliest practicable time but in any event not later than the second Meeting after the vacancy occurs.”*

The committee recommended that this article be amended to appoint additional members to committees.

## **Staff Response**

Staff recommends that there be no change to this article. The number of trustees on all committees is prescribed by the current by-law.

For example, Article 5.3 prescribes:

- i) that all trustees are members of the Corporate Services and Student Achievement Committees.
- ii) that the Governance and Policy Committee shall include five (5) trustees.

Article 5.6 prescribes that:

*“membership of Ad-Hoc committees shall be a fixed number of Trustees, being no more than one-third of the Board of Trustees”.*

Staff recommends that any proposed change to the number of trustees on a committee be specifically stated in the article that prescribes the number of trustees for that particular committee, rather than the proposed amendment to Article 5.17 which deals with vacancies on committees.

**3. Committee Proposal**

The committee proposed to edit the language of Article 5.6 to provide that “ex-officio’s” are not to be members of ad-hoc committees and that it be mandatory that there be an equal distribution of trustees on committees.

**Staff Response**

Staff makes no recommendation whether the Chair and Vice-Chair of the Board should be ex-officios members of ad-hoc committees. That is a policy choice to be made by the Board of Trustees after considering the recommendation of this committee. If this committee recommends to the Board that the Chair and Vice-Chair of the Board not have ex-officio status on ad-hoc committees, Articles 5.12 and 5.13 are the articles that would require amendment, not Article 5.6.

**4. Committee Proposal**

The committee asked staff to review article 10.8 to determine whether that article adequately protected the rights of the Special Education Advisory Committee (“SEAC”).

**Staff Response**

Article 10.8 has proven very effective in protecting the rights of SEAC. The section essentially provides that before the Board of Trustees can make any change to “policy, program or services... related to special education services or delivery”, the Board must consider any response from SEAC. For this reason, staff recommends that Article 10.8 not be changed.

**5. Committee Proposal**

Staff were asked to review time limits with respect to Articles 10.9.19 and 10.10.17 which deal with Inquiries and Miscellaneous at Board and Committee meetings respectively.

**Staff Response**

Currently there is no time limit governing the amount of a time a trustee is permitted to speak when making an inquiry or providing miscellaneous information. Article 12.5 limits speakers to three (3) minutes when debating motions of receipt and referral in response to inquiries and miscellaneous. The committee may wish to impose a time limit of two (2) or three (3) minutes applicable to the making of the inquiry or providing information. Article 10.9.19 dealing with inquiries and miscellaneous made at Board meetings should be amended to require that the matter be “urgent” to be consistent with that requirement for inquiries and miscellaneous made at committee meetings under 10.10.17.

## **6. Committee Proposal**

The committee asked staff to amend Article 18.1 *Reimbursement for Costs and Expenses Related to Municipal Conflict of Interest Proceedings* to state more explicitly that a trustee who has been found not to have contravened Article 5 of the *Municipal Conflict of Interest Act* will be reimbursed.

### **Staff Response**

Staff is in agreement with the committee’s proposal.

## **7. Committee Proposal**

The committee asked staff to review the by-laws which prohibit debate on a motion at the Board or Committee meeting at which the Notice of Motion is first introduced. The current by-law effectively means that there is a 30 day delay between the submission of a Notice of Motion and the meeting at which the motion is debated.

### **Staff Response**

The rationale for the “30 day rule” is to give trustees, stakeholders and staff adequate notice that the matter has been proposed so that by the time the matter is debated 30 days later, all trustees, stakeholders and staff will have had a 30 day period of time to prepare for the debate on the matter. The rule protects the Board from hastily considering a matter without an adequate opportunity for preparing to debate the matter. However, there may be matters of an urgent nature that a trustee requests be debated at the next meeting of all trustees, which most frequently occurs the week following the week in which

the Notice of Motion was introduced. It is important to note that there are currently two articles that permit a matter to be placed on the agenda of a board meeting other than by a trustee utilizing the Notice of Motion method as prescribed by Article 10.4.4.

Article 10 also provides:

*“No matter shall be placed on the draft Agenda or Order Paper of a Meeting of the Board of Trustees:*

*10.4.9 unless with the majority affirmative vote of all Trustees eligible to vote on the matter; or*

*10.4.10 unless it is a matter that, in the opinion of the Director, requires action by the Board of Trustees as a matter of urgency.*

Article 10.4.9 currently permits the Board of Trustees to put any matter on the agenda of a meeting without utilizing the Notice of Motion provisions prescribed by Article 10.4.4. Further, pursuant to Article 10.4.10 any trustee can request that the Director place an “urgent matter” on an agenda without utilizing the Notice of Motion mechanism. In staff’s view both of these provisions provide mechanisms for the Board to consider urgent matters without waiting “30 days”.

It is important to note that Article 5.18 already provides for the referral of any matter, from the Board of Trustees (including a notice of motion) to any committee, regardless of the terms of reference of any committee.

*5.18 Notwithstanding anything contained in the By-laws, the Board of Trustees, upon the majority vote of all Trustees eligible to vote on the matter, shall have the power to refer any matter to any Committee, regardless of the terms of reference of any Committee.*

If however, the By-Laws Review Committee want the by-laws to provide that a Notice of Motion submitted to a standing committee be debated without waiting “30 days” for matters of urgency, staff recommends that by-law 10.7 and 10.8 be amended to provide that for matters of urgency a Notice of Motion appearing on a standing committee agenda may be referred to any other standing committee or to the Board of Trustees subject to a majority of trustees at the Board or committee meeting to which the matter was referred, consenting to its referral.

**8. Committee Proposal**

The committee requested staff input with respect to delegations.

**Staff Response**

Article 10.4 makes no reference to delegations at Board meetings. Pursuant to the delegations policy T.14, there is discretionary authority by the Chair of the Board and Director of Education to permit delegations at regular board meetings. Article 10.4.6 should be amended to include a reference to delegations on the order paper of a regular meeting of the Board of Trustees.

**9. Committee Proposal**

The committee asked staff, can the category “matters received and referred to staff” be added to all agendas?

**Staff Response**

All matters referred to staff for a report are listed on the pending list which would seem to make adding a category “matters received and referred to staff” unnecessary.

**10. Committee Proposal**

The committee asked staff, can a trustee ask a question arising from the minutes of previous meetings?

**Staff Response**

A trustee may ask questions about minutes of a meeting which appear on the agenda of the current meeting for approval. Minutes previously approved by the Board not appearing on the agenda may be questioned by the trustee making an inquiry under the inquiry and miscellaneous provision of the by-law.

## 11. Suspension of the Board's operating By-Law

The issue of the Board's ability to "suspend" the operation of its by-laws was not an issue that was raised by this committee at its last meeting. However, this issue has arisen from time to time in the board room and for that reason, staff's recommendation is provided below.

### Staff Recommendation

The reason why it is not advisable for an organization to provide for the suspension of its operating by-laws is because to do so may impair the democratic rights of its members. The Toronto Catholic District School Board's operating by-laws do not permit their suspension. The by-laws of York Catholic District School Board and the Toronto District School Board do not permit the "suspension" of their by-laws. The procedural by-law of the Dufferin-Peel Catholic District School Board does not permit its "suspension" except with respect to the rules for emergency debate, which requires the approval of  $\frac{2}{3}$  of trustees present.

The Parliamentarian has advised that under Robert's Rules, the by-laws cannot be suspended no matter how large the vote in favour of doing so or how inconvenient the rule in question may be, with one exception.

The exception is with respect to rules of order. A rule of order – rules which set out how the meeting is run – may be suspended by a  $\frac{2}{3}$  vote of trustees present. It is in order to suspend the time limit rules to permit more discussion on a motion, but would not be in order to suspend a rule to limit debate. This is because by permitting more time for debate on a motion it alters a rule of order in a way which neither violates the law, nor abridges the democratic rights of any of the members.

Suspending the by-laws with respect to rules of order is a procedure staff thinks the Board would be well advised to avoid. The portion of Robert's Rules in question gives rise to confusion and requires a careful parsing of what is or is not a rule of order. It would be wiser to provide specific tools in the by-laws to address further extensions of time than to confuse matters with continued use of suspension of the rules.



**E. STAFF RECOMMENDATION**

Staff recommends that the committee consider the advice given in this report and provide the Director of Education with instructions on amending the Board's Operating By-Law Number 175 (as amended at April 21, 2016).