



REPORT TO

AD HOC BY-LAW SUB COMMITTEE

PROPOSED CHANGES TO TCDSB OPERATING BY-LAW NUMBER 175

WHEN YOU OBEY THE LORD YOUR GOD BY OBSERVING HIS COMMANDMENTS AND DECREES THAT ARE WRITTEN IN THIS BOOK OF LAW, BECAUSE YOU TURN TO THE LORD YOUR GOD WITH ALL YOUR HEART AND WITH ALL YOUR SOUL. DEUTERONOMY 30:10

Created, Draft	First Tabling	Review
October 19, 2020	October 27, 2020	Click here to enter a date.

Paul Matthews, General Legal Counsel

RECOMMENDATION REPORT

Vision:

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

Mission:

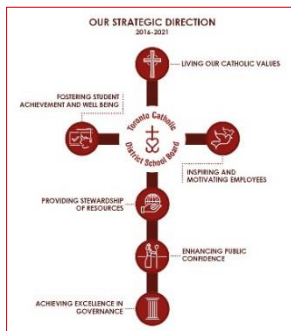
The Toronto Catholic District School Board is an inclusive learning community uniting home, parish and school and rooted in the love of Christ.

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

Brendan Browne, PhD
 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 recommends to the Ad Hoc By-Law Review Committee changes to the Toronto Catholic District School Board Operating By-Law 175 (as amended on April 21, 2016). These proposed changes have arisen from multiple committee meetings.

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 Toronto Catholic District School Board Operating By-Law 175 (as amended on April 21, 2016) as advised on January 9, 2020 at the *Student Achievement and Well-Being, Catholic Education and Human Resource Committee* meeting. This report will also outline an additional revision proposed by staff.

C. BACKGROUND

1. The *By-Laws Review Ad-Hoc Committee* met to discuss and review various articles of the Toronto Catholic District School Board Operating By-Law 175 (as amended on April 21, 2016) and instructed staff to review matters discussed at the meeting and report back to the committee.

The committee met on the following dates:

- February 19, 2019,
 - April 10, 2019 and;
 - May 13, 2019 and;
 - September 9, 2019 and;
 - October 7, 2019 and;
2. **January 9, 2020** – The final draft to update the Toronto Catholic District School Board Operating By-Law 175 (as amended on April 21, 2016) was approved at the *Student Achievement and Well-Being, Catholic Education and Human Resource Committee meeting* (Attached at Appendix A are the draft By-Laws approved at the January 9, 2020 meeting. Changes approved

at that meeting are **greyed out**) At the meeting, the committee proposed a number of additional changes for the Toronto Catholic District School Board Operating By-Law 175 (as amended on April 21, 2016).

D. EVIDENCE/RESEARCH/ANALYSIS

- I. At the *Student Achievement and Well-Being, Catholic Education and Human Resource Committee* meeting, the committee proposed twenty-three (23) changes for the Toronto Catholic District School Board Operating By-Law 175 (as amended on April 21, 2016). Those changes and staff response to proposed changes are as follows:

1. Proposal: Add new sections: Purpose of Bylaws:

1. These By-laws are enacted by the Board of Trustees with support of the Director of Education or designate;
2. The By-laws govern the actions of Trustees in Board and Committee meetings and promote democratic decision-making through debate; and
3. The By-laws will be in adherence with applicable legislation, including the *Education Act*, *Municipal Act*, and *Municipal Conflict of Interest Act*.

Staff/Parliamentarian Response: Staff and the Parliamentarian recommend the proposed changes.

2. Proposal: Temporary Suspending a Provision in the Bylaws

The Board may temporarily suspend one of the By-laws' provisions on a one-time basis, with a two-thirds (2/3) majority vote of the members present, unless prohibited by the Act or other legislation.

A temporary suspension of a By-laws' provision will expire no later than at the end of the meeting. The following provisions cannot be suspended:

- (a) Two-thirds (2/3) majority vote of the members present required to suspend provision(s) of the Bylaws;
- (b) Amendments to the Bylaws;
- (c) No New Business at Special Meetings;

- (d) Quorum for Board and Committee Meetings;
- (e) Open (Public) Session;
- (f) Closed (Private) Session;
- (g) Notice of Motion; and
- (h) Motion to Reconsider

The Board and Committees of the Board that rise and report may suspend a provision of the Bylaws.

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend the proposed changes. To suspend the by-laws except in exceptional circumstances can lead to needless complexity, confusion and unforeseen consequences. To do so could also permit a majority of the Board of Trustees to disadvantage the minority on any particular matter. Robert's Rules of Order does permit suspension of the by-laws in very limited circumstances.

The one by-law which often interferes with the will of the Board is Article 12.6 which limits time on debate on a matter to 30 minutes with two possible 15 minute extensions. Rather than permitting the by-law to be suspended, it is suggested that article 12.6 be amended to permit additional 15 minute extensions, but require a higher trustee vote threshold to approve such extensions. It is recommended that a third and fourth extension be permitted. It is further recommended that to extend for a third 15 minute extension, a vote of 2/3 of all trustees eligible to vote be required, and for a fourth extension, a 4/5 vote of all trustees eligible to vote be required.

3. Proposal: Acknowledgement of Traditional Lands

All Board and Committee meetings will include an acknowledgement of the Traditional Territories/Ancstral Lands of Aboriginal peoples recited by the Chair or Vice-Chair of Committees.

Staff/Parliamentarian Response: Staff and the Parliamentarian recommend the proposed changes.

4. Proposal: When By-Laws and Legislation Are Silent – Robert’s Rules of Order Applicable

Every effort will be made to ensure these By-Laws are up-to- date with the most current legislative requirements. In circumstances where the By-Laws are found to be inconsistent with or contradict any Legislative Act or Regulation, the Statute will prevail.

The current edition of Robert’s Rules of Order may be followed if both the relevant Legislative Acts and By-Laws are silent.

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend the proposed changes. Article 8.3 already provides that Robert’s Rules apply and those rules confirm the rules only apply if neither the Toronto Catholic District School Board Operating By-Law 175 (as amended on April 21, 2016) or a statute does not provide otherwise.

5. Proposal: Review Cycle

The By-laws will be updated as required and reviewed at a minimum every four (4) years.

Staff/Parliamentarian Response: Staff and the Parliamentarian recommend the proposed changes.

6. Proposal: Audio/video Recording of Meetings

Every Committee/Board meeting (private and public) shall be recorded.

Staff/Parliamentarian Response: Staff and the Parliamentarian recommend the proposed changes.

7. Proposal: Dissolution of Committees

The Board may dissolve any Committee at the organizational meeting or by resolution at any time as required, subject to adhering to applicable legislation.

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend the proposed changes. The Toronto Catholic District School Board Operating By-Law 175 (as amended on April 21, 2016) already permit dissolution of Committees at Articles 5.2, 5.8 and 5.11.

8. Proposal: Changes/Amendments to Bylaws

Advance notice is to be given at a previous Committee/Board meeting for consideration to amend the Bylaws at a subsequent meeting. Two-thirds majority vote of all Board members is required to make changes to the Bylaws.

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend the proposed changes. Article 16.1 already provides the same rule as suggested in the proposed amendment.

9. Proposal: Minority Report

A record of a member's view or opposition related to a certain recommendation at the Committee of the Whole, Standing Committee, Statutory Committee, Special Committee or a Subcommittee, which is included in the subsequent Committee report to the Board, may be added to the Order Paper.

A Minority Report is the way to present an alternate recommendation or record of a member's view at Committee/Board for information and review;

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend the proposed changes. The concept of minority reports is intended for large assemblies or legislative bodies. It is not intended for smaller bodies such as the TCDSB which has only 12 members. To adopt this proposed amendment would permit the minority report in support of the previously defeated motion to be debated all over again. If a Trustee is opposed to a motion she can argue that point in debate. If the opposed defeated motion is made at a committee, the Trustee in the minority can vote against the motion again when it comes to the full Board of Trustees for a vote.

10.Proposal: Recorded Votes

All votes of Committee and Board shall be recorded.

Staff/Parliamentarian Response: Staff and the Parliamentarian recommend the proposed changes however, no amendment is required as Article 13 already requires a recorded vote on all matters with 6 options for doing so.

11.Proposal: Reports

Trustees must receive reports 24 hours prior to being considered by Committee or Board.

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend this proposal. Staff makes every effort to include all reports on the published agenda for all meetings, however in exceptional circumstances, it is sometimes necessary that reports are provided to Trustees less than 24 hours prior to a meeting.

12.Proposal: Identification at Meetings

Trustees and staff will be identified by name plates, ward numbers and positions that are visible to the public.

Any new senior staff will be introduced by the Director of Education following roll call. All staff making presentations to the Board will be introduced by the Director of Education prior to the presentation.

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend the proposed changes. Staff and the Parliamentarian agree with the content of the suggested amendment, however we are of the view that this does not require inclusion in the By-Laws as this is already what the Board does, which is consistent with standard parliamentary practice.

13.Proposal: Purpose of Organizational Meeting

The purpose of the organizational meeting is to:

- (a) Elect the Chair and Vice-Chair of the Board;
- (b) Establish and review terms of reference and committee structure of the Board, Statutory Committees and Advisory Committees;
- (c) Appoint members to Committees of the Board;
- (d) Elect the Chair and Vice-Chair of Committees of the Board; and
- (e) Appoint members to represent the Board on external organizations.

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend the proposed changes; The proposed amendment is consistent with Article 3 which has served the Board without issue for many years.

14.Proposal: Student Trustees 2.5.1

Student Trustees are not municipally elected members of the Board but are elected by their peers. They are an important role in representing the interests of students through their participation in meetings of CSLIT, the Board and its Committees. As outlined in the *Education Act* (The Act) and its regulations including *Ontario Regulation 7/07*, Student Trustees:

- (a) Attend Board and Committee meetings but may not exercise a binding vote on a matter;
- (b) May request that a matter before the Board be put to a recorded vote;
- (c) Must disclose any conflict of interest to the Board or Committee. During the discussion of the matter that gives rise to conflict, the Student Trustee cannot participate in the discussion, attempt to influence the vote of Board members, cannot suggest a motion or exercise a non-binding recorded vote;
- (d) May not move or second motions but are entitled to suggest a motion to be moved by a member;
- (e) May attend closed session except on issues of personnel. Student Trustees may attend in camera (private) sessions but must not disclose or release to any member of the public, any confidential information acquired by virtue of their office or during private session, in accordance with the Act and *Ontario Regulation 7/07*.
- (f) Student Trustees may not participate electronically in meetings that are closed to the public in accordance with the Act.

Staff/Parliamentarian Response: Staff and the Parliamentarian recommend the proposed changes, notwithstanding that the content of the proposed amendment is prescribed by Section 55 of the Act and further prescribed in *Ontario Regulation 7/07*. It would be useful for stakeholders to have this proposed new section available in the By-Laws.

15.Proposal: Add to Definitions

“Code of Conduct” means the Trustee Code of Conduct for the Toronto Catholic District School Board;

“Conflict of Interest Registry” means the registry of Trustees’ conflict of interest declarations, established in accordance with the Municipal Conflict of Interest Act;

“Integrity Commissioner” means the Integrity Commissioner appointed by the Board of Trustees;

“Urgent” means the a situation or threat of a situation that is time sensitive in nature which may adversely affecting health, safety or well being or resulting in financial damage or loss or other harm to the TCDSB and to the Board of Trustees of the TCDSB, an employee, or student, if the matter is not dealt with before the next scheduled meeting; and which by its serious nature requires an immediate response

Staff/Parliamentarian Response: Staff and the Parliamentarian recommend the proposed changes for the definitions for; Code of Conduct, Conflict of Interest Registry and Integrity Commissioner.

Staff and the Parliamentarian do not recommend the proposed changes to the definition of “Urgency”; the Board’s By-Laws already have a definition of urgency in Article 1.1 which has been used without issue for some time.

16.Proposal: Change / add to existing Bylaws: Committee of the Whole Board

1.2 Committee of the Whole Board For 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. A Committee with a membership composition that includes all Board members with full participation and voting privileges. A Committee of the Whole meeting may be held in open (public) or closed (private) session;

Staff Response: Staff and the Parliamentarian do not recommend the proposed changes. Article 1.2 already provides a definition for Committee of the Whole Board.

17.Proposal: New Article:

DUTIES Roles and Responsibilities of the Board of Trustees

The Board of Trustees is the collective governing body of the Toronto Catholic District School Board (TCDSB). Its decision-making authority rests with the entire Board of Trustees and not with individual Trustees.

As outlined in section 169(1) of the Act, the Board of Trustees is expected to govern in a manner that is responsive to the needs of all students in the Toronto Catholic District School Board. Individual Trustees must balance their role as representatives of the ward constituents who elected them with their responsibilities as members of the Board of Trustees as a whole.

Only above changes all clauses remain the same

Staff/Parliamentarian Response: Staff and the Parliamentarian recommend the first part of the proposed changes. It is recommended that the first part of the proposed amendment be adopted which provides that the Board of Trustees is the collective governing body of the TCDSB and that decision making authority resides with the entire Board of Trustees not, with an individual trustee.

Staff and the Parliamentarian do not recommend the second part of the proposed changes. It is recommended that the second part of the proposed amendment dealing with trustees balancing their role as representatives of

ward constituents with the Board of Trustees as a whole not be adopted. This proposed amendment exposes the Board to multiple points of order being argued that a trustee neglected her role as a representative of ward constituents in favour of the Board of Trustees as a whole. Sections 169.1 and 170 of the Act expressly provides a comprehensive scheme outlining the statutory obligations of a Board and school board trustees.

18.Proposal: Change and Add :Director of Education

The Director of Education is the supervisory officer appointed by the Board of Trustees, responsible for the day-to-day management and administration of all schools and departments, and the implementation of policies and directions approved by the Board.

The Director, as stated in sections 169.1, 198 and 283 of the Act, serves as the Chief Education Officer, Chief Executive Officer and Secretary to the Board.

The Director or designate will:

- (a) Preside over the Organizational Meeting until the Chair of the Board is elected;
- (b) Determine the times and location for the meetings of the Board and Committees;
- (c) Keep a full and correct record of the proceedings of every meeting of the Board and Committees;
- (d) Provide copies of any reports requested by the Ministry of Education;
- (e) Provide information to the Integrity Commissioner as deemed necessary in order to conduct an inquiry of a complaint made in accordance with the Trustee Code of Conduct;
- (f) Provide the Integrity Commissioner with unrestricted access to all books, accounts, financial records and communications, files, papers, things or property belonging to or used by the TCDSB that the Integrity Commissioner believes to be necessary for an inquiry of a complaint made in accordance with the Trustee Code of Conduct.

Tie votes on a final ballot will result in another vote to be conducted before drawing lots, as outlined in the Act.

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend the proposed changes; The Act in lengthy sections 198, 279, 280, 283 and 283.1 prescribe in great detail the legal obligations of the Director of Education, and it is not useful that those detailed statutory provisions be duplicated in the By-Laws.

Staff and the Parliamentarian do not recommend the proposed changes with respect to the Integrity Commissioner. It is recommended that the proposed amendments with respect to the Integrity Commissioner not be approved for two reasons. Firstly, the role and responsibilities of an Integrity Commissioner are better located in a Board Policy rather than the By-Laws, and secondly, any by-law adopted with respect to an Integrity Commissioner should not be located in a proposed section dealing with the Director of Education. The Integrity Commissioner has advised that they concur with the Staff/Parliamentarian response.

19.Proposal: Change: Elections

Currently the Board's By-Law provides as follows:

3.12.7 In the case of an equality of votes between two, or among three or more, candidates for any office or position, during three two consecutive ballots, the candidates shall draw lots to fill the office or position

3.12.3 If there are two or more nominations for any position, the vote shall be conducted by secret public ballot, provided that, with the agreement of a majority of Trustees, and the name of the candidate are recorded and announced;

Recommended Change from *Student Achievement and Well-Being, Catholic Education and Human Resource Committee* is as follows:

Election of Board and Committee Chair and Vice-Chair Nominations for Chair and Vice-Chair of the Board and its Committees will be received from members, including through self-nomination.

Staff/Parliamentarian Response: Staff and the Parliamentarian recommend the proposed changes. It is permissible for a Trustee to nominate herself for a position, and that nomination would still require a seconder.

20. A) Proposal: Change: Special Meetings of the Board of Trustees must be considered urgent.

Trustees must be provided with the urgency or emergency of holding a special meeting. Special meetings adhering to the criteria (as described above) may be called by:

4.3.1 at the call of the Director;

4.3.2 at the call of the Chair of the Board of Trustees;

4.3.3 at the written request to the Director from five Trustees on a date fixed by the Director that is within seven days of receipt of the request; and where the item with an explanation is included in the request; and

4.3.4 where the Chair of the Board of Trustees and the Director are in agreement such meeting may be held with twenty-four (24) hours' prior notice delivered to each Trustee.

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend the proposed change as Article 4.3 of the Boards By-law currently clearly describes the criteria for calling a Special Board meeting.

20. B) Proposal: Add: Special Meetings of the Board of Trustees must be considered urgent

The agenda for a special meeting will include all matters that are to be considered at the meeting, including a brief statement of the items to be considered, and will indicate whether any part of the meeting should be held in public or in private session.

A matter that is not included on the Special Board or Committee meeting agenda cannot be considered, unless it qualifies as emergency business and two-thirds majority of the members present at the meeting wish to consider the matter.

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend the proposed changes. The rules with respect to Special Meetings of the Board at Article 4.3 have worked effectively for the Board. It is recommended that no new additional matters not appearing on the Special Meeting published agenda be permitted.

21.Proposal: Add Attendance at Meetings

A Trustee may be absent for 20 consecutive weeks or less, if the absence is a result of the Trustee’s pregnancy, the birth of the Trustee’s child or the adoption of a child.

Staff/Parliamentarian Response: Staff and the Parliamentarian recommend the proposed changes. It is recommended that adding the proposed amendment with respect to a trustee being absent from three regular meetings of the Board be permitted to allow for an absence of 20 weeks or less for reasons of child-birth or adoption be approved as the proposed amendment is expressly provided for in section 228(2.1) of the Act.

22.Proposal: Add/Change Electronic Participation

The Board will provide the means to participate electronically in Board and Committee meetings in accordance with the provisions of the Act and *Ontario Regulation 463/97 – Electronic Meetings*.

The Board will adopt a process to ensure the security and confidentiality of proceedings held during closed (private) meetings and review the procedures annually.

Members will make every effort to provide notice to Board Services if they intend to participate electronically by 5 p.m. on the day prior to the Board or Committee meeting.

No more than half of Board or Committee meetings in a twelve (12) month period can be chaired electronically in accordance with *Ontario Regulation 463/97 – Electronic Meetings*.

All members participating via teleconference who are not speaking must use the mute function on their device.

Student Trustees may not participate electronically in meetings that are closed to the public in accordance with the Act.

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend the proposed changes. The amendment proposes substantially the same provisions as currently prescribed in *Ontario Regulation 463/97*. However, that regulation requires that school boards adopt a policy with respect to electronic meetings, not that the provisions be included in a Board By-law.

23.Proposal: Membership on Ad-Hoc Committees

Currently the Board's By-Law provides as follows:

5.6 Membership of Ad-Hoc Committees shall be a fixed number of Trustees, being no more than one-third of the Board of Trustees. To the extent possible the Board of Trustees shall ensure equitable distribution of Trustees on Committees and it is strongly recommended that each Trustee shall sit on a maximum of three Ad-Hoc Committees. Committee membership shall include TCDSB staff as determined by the Director and other appropriate individuals as determined by the Board of Trustees from time to time. Trustees will be appointed by the Board when the Ad-Hoc Committee is established or may be appointed at a later time.

Recommended Additions from *Student Achievement and Well-Being, Catholic Education and Human Resource Committee* is as follows:

5.6.2 Neither the Chair nor the Vice-Chair of the Board have ex-officio status on an Ad-Hoc committee. Trustee membership on all Ad-Hoc committees will be listed on the Board's website.

5.10.2 Neither the Chair nor the Vice-Chair of the Board have ex-officio status on a sub-committee. Trustee membership on all sub-committees will be listed on the Board's website.

Staff/Parliamentarian Response: Staff and the Parliamentarian do not recommend the proposed changes. It has proven useful over many years to have the Chair and Vice-Chair of the Board as ex-officio members on many committees with the exception of Statutory Committees.

II. Staff and the Parliamentarian are recommending the following. This proposed amendment has not been considered by the *Student Achievement, Well-Being and Education and Human Resources Committee*.

Currently Article 10.10.17 dealing with Inquiries and Miscellaneous at Committee Meetings *be of an urgent nature*. Currently Article 10.9.19 dealing with Inquiries and Miscellaneous at Regular Meetings of the Board of Trustees are not required be of an urgent nature. It is proposed that Article 10.9.19 be amended to make it consistent with Article 10.10.17.

A. STAFF RECOMMENDATION

Staff recommends that the By-Law Committee recommend to the Board of Trustee the proposed changes as described in this report.