



## REGULAR BOARD

## STUDENT TRUSTEE POLICY T.02 AMENDMENT RECOMMENDATION

*"For I know that my Redeemer lives, and that at the last he will stand upon the earth;" Job 19:25*

### Drafted

February 9, 2023

Antonella Ceddia, Executive General Counsel

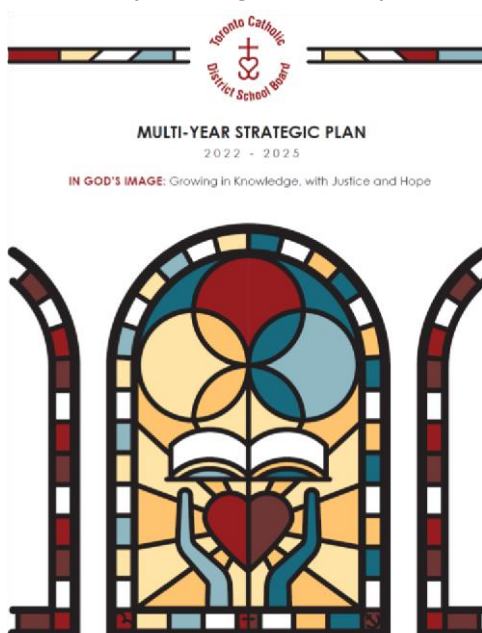
### Meeting Date

March 23, 2023

### RECOMMENDATION REPORT

**Vision:** *IN GOD'S IMAGE: Growing in Knowledge, with Justice and Hope.*

**Mission:** *Nurturing the faith development and academic excellence of our Catholic learning community through the love of God, neighbour, and self.*



Brendan Browne  
Director of Education

Adrian Della Mora  
Associate Director of Academic  
Affairs & Chief Operating Officer

Derek Boyce  
Associate Director of Corporate  
Services and Chief Commercial Officer

Ryan Putnam  
Chief Financial Officer & Treasurer

## **A. EXECUTIVE SUMMARY**

This report recommends that TCDSB Student Trustee Policy, T.02., be amended to remove the requirement that student trustees be Roman Catholic.

**The cumulative staff time required to prepare this report was 2 hours.**

## **B. PURPOSE**

1. The recommended amendment would bring Policy T.02 in compliance with the *Education Act* and the *Charter of Rights and Freedoms*, following the recent decision of the Ontario Divisional Court in *Kandaharian v. York Catholic District School Board*.

## **C. BACKGROUND**

1. On October 6, 2022, the Superior Court of Justice (Divisional Court) released its decision and reasons in *Kandaharian v YCDSB*.
2. *Kandaharian* was a legal challenge initiated by a student of the YCDSB. The student, Daria Kandaharian, challenged the validity of a YCDSB Policy that required that student trustees be Roman Catholic.
3. The Divisional Court struck down the policy requirement that student trustees be Roman Catholic.

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

### *The Court's Decision*

1. In *Kandaharian*, the Divisional Court found that the YCDSB had no legal authority under the *Education Act* and Ont. Regulation 7/07 to impose a religiousbased qualification for student trustee. As such, the policy requirement was outside the jurisdiction of the YCDSB and could not stand.
2. The YCDSB relied on its special status and powers under s. 93(1) of the *Constitution Act*, 1867. The Court found that s. 93(1) provides constitutional protection to Roman Catholic separate schools in Ontario to the extent of the rights they had at the time of Confederation. The Court found that this protection did not extend to the student trustee position. The position was created

by the Legislature in 1997 and so was not a right or privilege held by the YCDSB at Confederation.

3. In the absence of protection provided by s. 93 (1), the Court held that the YCDSB policy was not immune from a challenge that it discriminated based on religion, contrary to s. 15 (1) of the *Charter of Rights and Freedoms*. Section 15 (1) of the *Charter* provides every person with the right to equal treatment without discrimination based various enumerated grounds, including religion.
4. The Court found that the requirement that student trustees be Roman Catholic breached s. 15 (1) of the *Charter* and that this infringement was not a reasonable limit on the right to be equal treatment without discrimination. As such, the policy requirement that student trustees be Roman Catholic was unconstitutional.
5. The Court struck the policy requirement as being outside of the Board's jurisdiction and contrary to the Charter of Rights and Freedoms..

#### TCDSB Policy T.02

6. TCDSB Policy T.02 requires that candidates for student trustee must be Roman Catholic (see regulation 10(i) of Policy T.02).
7. The Court held that such a requirement is outside of a school board's jurisdiction and unconstitutional because it is an unjustified infringement of s. 15(1) of the *Charter of Rights and Freedoms*.
8. To bring T.02 in compliance with the *Education Act* and the *Charter of Rights and Freedoms*, the requirement that student trustees be Roman Catholic should be removed from Policy T.02.
9. Recommendations in this report were reviewed at the March 7, 2023 meeting of the Governance and Policy Committee.

## **E. GOVERNANCE AND POLICY COMMITTEE RECOMMENDATION**

1. The Governance and Policy Committee recommends that Student Trustee Policy, T.02, be amended by striking out the words "Roman Catholic" from Regulation 10(i), as in Appendix A to this report.
2. The Governance and Policy Committee further recommends that an information session be provided to our Education Partners – Catholic Parent Involvement Committee (CPIC) and Ontario Association of Parents in Catholic Education (OAPCE) to explain the legal basis for the policy change.