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**PRIVILEGED AND CONFIDENTIAL**

November 21, 2016

**Delivered by Email and Regular Mail**

Ms. Angela Kennedy

Chair of the Board

Toronto Catholic District School Board

80 Sheppard Avenue East

Toronto, Ontario

M2N 6E8

Dear Ms. Kennedy:

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| **Re:** | **Trustee Expenditures Policies and Practices** |

We are writing in response to your request for an opinion regarding the scope and application of the Toronto Catholic District School Board’s (the “Board”) Trustee Services and Expenditures Policy (the “Policy). Specifically, you have asked us whether trustees are permitted under the Policy and applicable legislation to donate any surplus funds allocated for expenses to local schools, rather than reimburse the surplus funds to the Board.

**BACKGROUND**

We understand trustees at the Board receive an annual budget for expenses associated with the execution of their role as trustees. The rules and regulations regarding the reimbursement of expenses are outlined in the Policy.

We further understand that the Board provides trustees with a lump sum payment in order to reimburse them for out-of-pocket expenses required to carry out their responsibilities as a member of the Board. The lump sum payment is provided proactively and is expected to cover any expenses for the upcoming year. However, from time to time, the trustees do not use the entire lump sum payment over the course of the year. As such, it has become Board practice for trustees to donate any surplus funds to a local school(s). We understand that there currently no policy or procedure in place for determining the allocation of these surplus funds.

Legal Analysis

***Education Act***

Section 191.2 of the *Education Act* (the “Act”) provides as follows with respect to expenses for members of the Board:

#### Expenses

#### Other expenses

**[(3)](http://www.ontario.ca/fr/lois/loi/90e02" \l "s191p2s3)** A board may establish a policy under which a member of the board may be reimbursed for all or part of his or her out-of-pocket expenses reasonably incurred in connection with carrying out the responsibilities of a board member.

#### Same

**(4)** A board may, in accordance with a policy established by it under subsection (3), reimburse a member for his or her out-of-pocket expenses reasonably incurred in connection with carrying out the responsibilities of a board member.

As such, it is within the discretion of the Board to draft and implement a policy pursuant to which a trustee may be reimbursed for all out-of-pocket expenses.

***Broader Public Sector Expenses Directive***

**Under the *Broader Public Sector Accountability Act, 2010* (the “BPSAA”), the Management Board of Cabinet has issued the Broader Public Sector Expenses Directive (the “Directive”). The Directive provides high-level principles, such as accountability, transparency, value for money and fairness, upon which expense policies should be based. The Directive requires every public sector organization to establish rules for all individuals in the organization with respect to travel, meal and hospitality expenses.**

**The purpose of the Directive is to set out the requirement for a designated broader public sector organization to establish rules where expenses are reimbursed from public funds. However, both the BPSAA and the Directive delegate the establishment of the rules and their specifications to broader public sector organizations, such as the Board.**

***Trustee Services and Expenditure Policy***

The Policy governs the manner in which the Board shall provide equipment and support services, reimburse trustees for professional development activities and specified out-of-pocket expenses required to carry out their responsibilities as a member of the Board. The Policy confirms that “Only expenses expressly permitted in this policy will be eligible for compensation.”

The Policy enumerates several categories of expenses, which are permitted for reimbursement, as follows:

* Equipment (home based computer, cell phone, filing cabinet, etc.);
* Support services (newsletters, courtier delivery, photocopying, etc.);
* Professional development (educational publications, conference registration, individual memberships in educational organizations, etc.);
* Travel on Board business; and
* Additional out of pocket expenses (Community and/or student recognition, fees for information requests, etc.).

In addition, all trustee expenses “will be posted quarterly to the Board Web Site and reported publicly to the appropriate Committee of the Board…” in accordance with the Policy.

Finally, the section entitled General Provisions in the Policy states as follows:

1. No transfer of funds is permitted between the various budgets established to support Trustee Services and Expenditures.
2. Unspent funds in the Trustee Services Budget cannot be carried forward to the next Trustees’ budget year.

The Policy provides that the budget year for trustee expenses is from December 1 until November 30th the following year.

**Analysis and Conclusion**

The Policy specifically provides that expense funds shall not be carried over to a subsequent year. The Policy does not contemplate what happens when there are funds leftover on November 30 of any given budget year. However, the Policy clearly states that trustees may only be reimbursed for expenses “expressly permitted” by the Policy and the Policy provides extensive examples to illustrate the nature of expenses that may be reimbursed, such as equipment, support services and professional development.

In our view, the Policy as currently drafted does not permit trustees to donate any surplus in his or her expense budget to a local school(s) because such a donation is not specifically contemplated in the Policy. Further, such a donation cannot reasonably be interpreted to fall into one of the enumerated categories of expenses under the Policy.

In light of the above, we recommend including specific language in the Policy to address the procedures to follow when a trustee has a surplus in his or her expense budget at the end of a year in order to reduce ambiguity. The Board may, for example, elect to have the surplus expense funds returned to the Board on November 30, or shortly thereafter, of each year.

The Board may alternatively consider permitting the surplus expense funds to be donated to a local school(s) under the Policy. Any such amendment to the Policy must take into account the Board’s requirements under the BPSAA and the Directive to ensure **accountability, transparency, value for money and fairness.**

**In our view and in light of the provisions of the Act, the BPSAA and the Directive, it would be prudent to require that** surplus expense funds be returned to the Board. The purpose of the expense funds is to off-set “out-of-pocket expenses” in accordance with the Act and should include such items as **travel, meals, hospitality, or analogous expenses, in accordance with the Directive. Any donations made to local schools likely do not fall within such categories and, as such, are likely beyond the scope of the Policy, the Directive and section 191.1 of the Act. To this end, donations made to local schools, in our view, may not be classified as “out-of-pocket expenses” and should not be reimbursed under the current Policy.**

We trust the foregoing comments are satisfactory for your purposes; however, if you have any further questions in this matter, please do not hesitate to contact us.

Yours very truly,

**BORDEN LADNER GERVAIS LLP**

Eric M. Roher

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