



REPORT TO

## CORPORATE SERVICES, STRATEGIC PLANNING AND PROPERTY COMMITTEE

### ONTARIO SCHOOL BOARDS INSURANCE EXCHANGE INQUIRY

*“Let the peace of Christ rule in your hearts, since as members of one body you were called to peace.  
And be thankful.*

**Colossians 3:15 NIV**

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P. De Cock, Comptroller of Business Services & Finance

#### INFORMATION 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.*



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## **A. EXECUTIVE SUMMARY**

This report explores the notion of providing insurance coverage for employees and students for tort liabilities and considers the use of alternate insurance carriers available in the market.

*The cumulative staff time required to prepare this report was 12 hours*

## **B. PURPOSE**

1. This Information Report responds to a Trustee request through two Board approved motions arising from the Regular Board meeting on September 21<sup>st</sup> 2017.
2. The 1<sup>st</sup> Board motion requested that, “The Board explore coverage for both employees and minor students for tort liability in the course of day to day activities with other insurance carriers including the one used by TDSB.”
3. The 2<sup>nd</sup> Board motion requested that “TCDSB will advise all parents and guardians that there is a real possibility that they may face legal tort liability and legal costs, and should communicate with their insurance companies to add a “rider protection” in their policies or to obtain insurance if they do not have any.”

## **C. BACKGROUND**

1. The background accompanying the Trustee’ request provided the following:
  - A. 77 School Boards/School Authorities are insured with the Ontario School Boards Insurance Exchange (OSBIE).
  - B. The Board insures the liability of its employees but not of its students.
  - C. The TDSB changed insurance carriers in January 2017.
  - D. When employees of the Board cause a claim to be filed by 3<sup>rd</sup> parties, they are generally covered by the Board’s carrier, they are not out of pocket for costs of legal representation and judgements.

2. The TCDSB was one of the founding members of OSBIE in 1987. OSBIE is a reciprocal insurer which means it is a non-profit organization and is owned by its member boards. The insurance coverage offered is tailor made to meet school boards needs and the risk management training and advice is customized specifically for school boards.
3. The TCDSB has equity ownership in OSBIE's \$99 million guarantee fund; and termination will result in the loss of all rights under the subscriber agreement which includes equity in the \$99 million guarantee fund, investments and future rebates of premiums.

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

1. TCDSB was a founding member of OSBIE in 1987 when liability premiums became prohibitively expensive due to adverse market conditions.
2. Currently, TCDSB carries its liability, property, boiler, machinery, crime, vehicle and privacy data liability with OSBIE. TCDSB's current 5-year term with OSBIE expires December 31, 2021.
3. For each of the past 7 years, OSBIE members have received refunds, the most recent being a 35% premium refund resulting in a reduced net premium cost of \$696,963 to the Board.
4. It is difficult to meaningfully compare TCDSB premiums to boards, like TDSB, whose insurance program with commercial insurers carries mandatory deductibles. TDSB has a large liability insurance deductible compared to TCDSB's zero liability deductible. The trade-off for managing the under deductible claims is, TDSB now has to handle increased administration costs associated with in-house processing of claims combined with the absorption of expenses in settling amounts of claims that fall below their deductible. TDSB is currently in the process of hiring a claims manager to assist with the anticipated increase in handling of in-house liability claims processing.

TCDSB's liability policy with its zero deductible, eliminates any need for any in-house liability claims processing and absorption of any below deductible settlement costs.

5. OSBIE's success within the school boards' business environment is a consequence of its competitive premiums and its unique services provided to the education sector.

According to the 2016 SCOR Report of the Insurance industry, OSBIE's expense ratio is the lowest in the industry. (Refer to Appendix A – Pg.8)

6. Although there have been minor policy changes over the years, OSBIE's right to bring in third parties to a claim or cross claim, as is the case for most, if not all, liability insurers, when negligence against their insured party is at question, does not represent any policy change.
7. The OSBIE liability policy provides protection to its staff, board members, and volunteers for situations where their negligence causes injury or property damage to a student or third party, such as injuries caused by icy walkways or parking lots, unrepaired potholes or faulty playground equipment etc.

Other common examples of liability claims that are covered include some of the injuries occurring in gymnasiums, science labs, auto shops and technical training courses.

8. For added protection, as per the Education Act (Section 176.4), Student Accident Insurance, may be purchased by the parents/guardians in September of each year as protection against accidental injuries that are not covered by OHIP or TCDSB's liability insurance policy such as dental injuries.

Students are also protected under their parent/guardian's Homeowner's or Tenants insurance should they be named by Plaintiff's Counsel in a claim or brought into a claim by any a liability insurer.

9. TCDSB's Liability insurance policy, like most, if not all, other insurers' liability policies, does not provide protection for third party and/or student actions that cause injury to others or to property of others. The purchase of tort liability insurance by TCDSB for third parties or students, were it available, and were it prescribed under the Education Act, would be prohibitively costly.
10. On rare occasions, TCDSB will be drawn into a lawsuit although the Plaintiff counsel's primary target may be students of TCDSB. In any claim where students are named as Defendants, the parents/guardians of the students would

be served with a Statement of Claim and would look to their parent/guardian household or tenants' policy for protection, while TCDSB would look to OSBIE. OSBIE's role is to determine if someone's negligence caused the injury or property damage to the person claiming. OSBIE would only cross claim against other parties, including students, if they strongly feel if some or all the negligence for the situation rests with them.

11. In a recent situation, the students had already been named by the plaintiff in the Statement of Claim. By cross claiming against the students, OSBIE acquired the right to cross examine the students at Examinations for Discovery and Trial should the claim proceed to that level. As the Plaintiff's amended Statement of Claim was struck down owing to a time limitation, OSBIE then withdrew its cross claim.
12. OSBIE does not look to draw students in claims against the Board as the Court frowns on the practice of bringing in other parties unnecessarily. The Court would order OSBIE to pay all the legal costs incurred by that party if other parties are drawn into a claim without merit.
13. In response to the 1<sup>st</sup> motion, TCDSB's membership with OSBIE expires after the current term ending December 31<sup>st</sup> 2021. Given that OSBIE's administration costs are significantly lower than "for-profit" insurers, the education industry specific insurer services and TCDSB's substantial equity in OSBIE, it is unlikely to be advantageous for TCDSB to seek out an alternative insurer at the present time.

Any search for an alternative insurer would require TCDSB to go to the market for Requests for Proposals (RFP) in order to remain in compliance with the Broader Public Sector Procurement Directive.

Alternatively, Risk Management staff can survey TDSB and the other non-OSBIE insured School Boards over the next few years before the expiry of the existing OSBIE term regarding their actual premiums history, cost of claims below the deductible amount, and additional administrative staffing required to administer the in-house claims.

14. In response to the 2<sup>nd</sup> motion, TCDSB's Communications and Risk Management Departments will annually provide all Schools in September a recommended insert for School Newsletters reminding parents and guardians of the following:
- a. Advise parents to consider checking the adequacy of their liability insurance through their homeowners'/tenants' insurance policy to cover claims arising out of injuries caused by their child at school.
  - b. Continue reminding parents/guardians that Student Accident Insurance application forms are forwarded to schools for distribution, and can also be purchased on-line at [www.insuremykids.com](http://www.insuremykids.com); which TCDSB's Risk Management continues to strongly promote as an inexpensive form of dental, disability and life insurance.

## **E. CONCLUDING STATEMENT**

This report is for the consideration of the Board.