

Submission to
The Minister of Education

Re:

**Bill 177 – Student Achievement and
School Board Governance Act, 2009**

September 23, 2009



Ontario Catholic School
Trustees' Association



Ontario Catholic School
Trustees' Association

OUR MISSION

Inspired by the Gospel, we provide leadership, service and a provincial voice for Catholic School Boards in promoting and protecting Catholic education.

OUR VISION

In keeping with our Mission, the Ontario Catholic School Trustees' Association:

OPERATIONAL VALUES

- **Embodies** and promotes the values and traditions of our Catholic faith in all Association activities.
- **Respects** the principles of democratic and accountable governance.

POLITICAL ADVOCACY

- **Protects** the constitutional right of the Catholic community to govern, control and manage Catholic schools.
- **Promotes** education in our province that reflects the Catholic principles of social justice.
- **Advocates** for government recognition of the distinctive nature of Catholic education.
- **Advocates** for provincial policy, legislation and funding support that enable Catholic boards to provide quality Catholic education.
- **Influences** the strategic and political direction of the Ontario government and opposition parties regarding issues that impact Catholic education.

INFORMATION & SERVICES

- **Provides** faith formation and professional development resources and opportunities for its members.
- **Provides** to member boards information and services that recognize their diverse circumstances and needs.

COMMUNICATIONS & PUBLIC RELATIONS

- **Develops** effective structures that enhance communication and working relationships among OCSTA and its member boards.
- **Communicates** with member Boards and Catholic partners regarding relevant educational issues and OCSTA activities.
- **Promotes** public understanding of and support for Catholic education.
- **Celebrates** and **highlights** Catholic education's significant and continuing contribution to Ontario society.

PARTNERSHIPS

- **Stimulates** ongoing visioning of how Catholic education partners can collaborate to serve the interests of Catholic education.
- **Builds** significant partnerships within and beyond the Catholic community in support of Catholic education.

INTRODUCTION

Founded in 1930, the Ontario Catholic School Trustees' Association (OCSTA) represents the province's 29 English-language Catholic district school boards. Collectively, these school boards educate over 600,000 students from junior kindergarten to grade 12.

Inspired by the Gospel, the Mission of OCSTA is to provide leadership, service and a provincial voice for Catholic school boards in promoting and protecting Catholic education. The Association works to protect the mission of Catholic boards, which is to create in every Catholic school a faith community where religious instruction, religious practice, value formation and faith development are integral to every area of the curriculum.

OCSTA welcomed the Ministry of Education initiative *Modernization of School Board Governance*. Catholic trustees from across Ontario participated actively in the consultations conducted by the provincial Governance Review Committee. We were pleased with the overall tone and direction of the Governance Review Committee report *School Board Governance: A Focus on Achievement*, which affirms the critical importance of the role played by democratically elected school trustees in the governance of elementary and secondary education in Ontario.

OCSTA appreciates this opportunity to provide comments in regard to *Bill 177, the Student Achievement and School Board Governance Act, 2009*.

It must be acknowledged at the outset that many school boards are currently engaged in good and often exemplary governance processes that, taken together with sound administrative practices on the part of boards' senior officials, create a solid framework for a vital and successful elementary and secondary school system.

Following are the Associations' comments with regard to a number of the provisions found in Bill 177.

PURPOSE

Strong public education system

0.1 (1) A strong public education system is the foundation of a prosperous, caring and cohesive society.

Purpose of Education

(2) The purpose of education is to provide students with the opportunity to realize their potential and develop into highly skilled, knowledgeable, caring citizens who contribute to their society.

Partners in education sector

(3) All partners in the education sector have a role to play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province's publicly funded education system.

OCSTA supports the addition of this preamble to the Education Act. It identifies a shared view of the common purpose of all the partners in education.

We are disappointed, however, that the preamble makes no specific reference to the fact that the publicly funded school system in Ontario is in fact made up of four distinct and equal school systems – English-public, English-Catholic, French-public and French-Catholic. In order to reflect that reality, OCSTA recommends

that Sec. 0.1(3) of the Bill be amended to read:

“All partners in the education sector have a role to play in enhancing student achievement and well-being, closing gaps in student achievement and maintaining confidence in the province’s four publicly funded school systems.”

REGULATIONS: ROLES, RESPONSIBILITIES, POWERS AND DUTIES OF BOARDS, ETC.

**4. Section 11 of the Act is amended by adding the following subsection:
Regulations: responsibilities of boards, etc.**

(2) The Lieutenant Governor in Council may make regulations governing the roles, responsibilities, powers and duties of boards, directors of education and board members, including chairs of boards.

Through these Standing Committee hearings, our Association and others have had the opportunity to comment on the specific changes to the roles and responsibilities of boards, trustees, chairs and directors of education that Bill 177 includes. New Sec. 11 of the Education Act (Sec. 4 of Bill 177), however, leaves wide open the possibility of further changes to these roles and responsibilities being made by regulation at any point in the future.

OCSTA finds it unacceptable however, that a simple regulatory change, with or without consultation, could alter the critically important governance role of duly elected school trustees and school boards. Providing for significant consultation between the Ministry and school boards as education regulations are written can be helpful. Changes affecting governance, however, deserve the public scrutiny and opportunity for comment that is inherent in the legislative process in the House.

OCSTA recommends that Section 4, regarding regulations on responsibilities of board, be removed from Bill 177.

PARENT INVOLVEMENT COMMITTEES

5. Section II of the Act is repealed and the following substituted:

17.1 The Lieutenant Governor in Council may make regulations requiring boards to establish parent involvement committees and providing for the composition, mandate and functions of the committees.

OCSTA supports the establishment of Parent Involvement Committees. Catholic school boards highly value the input of parents in the education of their children. Parents' active involvement in their own child's learning experiences contributes most significantly to the child's academic success.

DUTIES OF BOARD MEMBERS

The clarification of roles and responsibilities of the education partners – school board, trustees and Directors of Education - provided in Bill 177 is timely. OCSTA is pleased that the proposed legislation affirms the importance of the role of democratically elected trustees. We would note, however, that the list of their duties is by no means exhaustive. Trustees from each of the four publicly funded systems carry many additional responsibilities, including those which arise from the distinctive nature and mandate of the four systems.

New Section 169.1 of the Education Act (Section 16 of Bill 177) requires boards to further the province's educational agenda, as specified in regulations made under Section 11.1, by developing, reviewing, resourcing and communicating to their supporters and employees comprehensive multi-year plans to achieve these provincial ends. This is a clear shift toward an increasingly centralized focus. It is essential that all school boards be adequately resourced to accomplish not only the Ministry's goals but also those inherent to their own mandate and the needs of the local community that elected them. Boards must not be restricted in any way from pursuing their own local goals, as defined in their system mission and vision and as developed in collaboration with their own constituents. Funding allocations must be sufficient and sufficiently flexible to allow boards to pursue and achieve their distinctive objectives.

OCSTA has serious concerns about new clause 218.1(d) and (e) of the Act (sec. 26 of Bill 177), which reads as follows:

218.1 A member of a board shall,

(d) support the implementation of any board resolution after it is passed by the board;

As a matter of law, a Trustee has a fiduciary duty to the board of which he/she is a member. This fiduciary obligation requires a trustee to act honestly and in good faith, and to be loyal to and act in the best interest of the board.

Given this well understood obligation, clause 218.1(d) is unnecessary and we believe, inappropriate. It goes well beyond the existing fiduciary responsibility and is inconsistent with the concept of freedom of expression.

Clause 218.1(d) provides for no exception, and thus, on its face, would appear to prohibit a member from moving a motion for reconsideration of any resolution previously approved by the board. Given the responsibility of a trustee to bring to the board table the needs and point of view of their local constituents, which can vary across the board's jurisdiction and change over time, this is unacceptable.

OCSTA recommends that Sec. 218(d) regarding the duty of a member of a board to support the implementation of any board resolution after it is passed by the board, be removed from Bill 177.

Clause 218.1 of the Bill states that a member of a board shall,

(e) refrain from interfering in the day to day management of the board by its officers and staff;

OCSTA agrees with the Governance Review Committee that the appropriate role of the board of trustees is in setting strategic directions, making policies and monitoring policy implementation, and not in becoming involved in the day-to-day operations of the board. However, OCSTA would prefer a more positive restating of that intention.

**OCSTA recommends that the language of 218.1(e) be amended to read:
“entrust the day-to-day management of the board to the Director of Education”.**

CODE OF CONDUCT

Many school boards currently have in place some form of Code of Conduct for trustees. This is reflective of the deep sense of responsibility and public accountability with which trustees regard the trust that has been placed in them by the electorate. Generally, boards make every effort to deal with and resolve issues of conduct that arise within normal board processes, without formal investigation or action.

OCSTA supports provincial guidance regarding a code of conduct. We look forward to participating in the process by which provincial guidelines will be determined. It is essential that the Bill recognize the need for local boards to retain the autonomy to adopt or add to the provincial template as appropriate for their distinctive mandate and local circumstances and to decide on appropriate sanctions should the code of conduct be breached.

ENFORCEMENT OF CODE OF CONDUCT

218.3 (1) A member of a board who has reasonable grounds to believe that a member of the board has breached the board's code of conduct may bring the alleged breach to the attention of the board.

(2) If an alleged breach is brought to the attention of the board under subsection (1), the board shall make inquiries into the matter and shall, based on the results of the inquiries, determine whether the member has breached the board's code of conduct.

(3) If the board determines under subsection (2) that the member has breached the board's code of conduct, the board may impose one or more of the following sanctions:

- 1. Censure of the member.*
- 2. Reduction of the honorarium payable to the member under section 191.*
- 3. Barring the member from attending all or part of a meeting of the board or a meeting of a committee of the board.*
- 4. Barring the member from sitting on one or more committees of the board, for the period of time specified by the board.*

It must be pointed out that the authority for school boards proposed in section 218.3(3) significantly exceeds the authority of any other publicly elected body in the province, including Parliament.

The power of a board to sanction one of its members should be subject to some limit. Any sanction imposed must be reasonable and reasonably related to the nature and severity of the breach.

OCSTA does not support a reduction in a trustee's honorarium as an appropriate sanction for a breach of the board's code of conduct. OCSTA understands the need for sanctions that are meaningful. However, we are concerned that this aspect of the Bill would give a power to trustees that is not available in the legislature or municipal councils. It singles out trustees as having more power than is given to senior levels of government. OCSTA believes that trustees would exercise these powers with caution and fairness. However, any law once enacted is subject to abuse.

For this reason, OCSTA recommends that section 218.3 (3) item 2, regarding reduction in the honorarium as a possible sanction, be removed from Bill 177.

OCSTA is also concerned with the possibility that a board could use this sanction to actually remove one of its members from the office of trustee. Subsection 228(1)(b) of the Education Act provides that a member of a board vacates his or her seat if he or she absents himself or herself without being authorized by resolution from three consecutive regular meetings of the board. Implicit in this provision is the concept of the voluntariness of the absence. If a board were to use the sanction to bar a member who has breached the code of conduct from one or more board meetings, such event or events could result in the disqualification of the member.

OCSTA recommends that Bill 177 be amended to provide that

- i) as a sanction for a breach of the board's code of conduct, the board's authority to bar a member is limited to one single regular meeting of the board; and**
- ii) any resolution barring a member from a regular meeting of the board shall be entered in the minutes, and, regardless of actual text, shall be deemed to include board authorization for the absence of the trustee.**

218.3(4) A meeting of a board shall not be closed to the public under subsection 207(2) only because a sanction is or may be imposed at the meeting.

OCSTA agrees with the need for elected trustees to be held accountable to their constituents and for board processes to be transparent. Nonetheless, we believe it would be inappropriate, and in fact contrary to the privacy rights of the member generally, the principle inherent in clause 207(2)(b) of the Education Act, and within the context of the Municipal Freedom of Information and Protection of Privacy Act, for board discussions about an alleged breach of the Code of Conduct to disclose publicly personal information about a member of the board or any other person named in Section 207(2) of the Education Act. Such matters would have to be discussed in private session.

OCSTA recommends that Bill 177 be amended to include the following:

That a meeting of a board shall be closed to the public in the event that there may be disclosure of intimate, personal or financial information in respect of the member.

OCSTA supports the Governance Review Committee's Recommendation #20, which states, "Boards of trustees should be able to appoint an external neutral party to investigate alleged violations of the code of conduct or hear appeals with respect to a sanction and to advise the board accordingly."

In the absence of a formal appeal procedure at the local board level, a member found by a board to have contravened the Code of Conduct would be forced to seek redress from an improper finding or inappropriate sanction through a judicial review – an onerous and very costly proposition for the trustee. Fairness suggests that a more accessible process be made available.

Provision for the appointment of a neutral third party is not currently part of Bill 177. OCSTA proposes that the Regulations that will be enacted under the authority of section 218.2 **require** that boards build into their Code of Conduct a process whereby such a person is automatically engaged to assist in the investigation of an alleged contravention of the Code, and in the hearing of a possible appeal of a sanction. This would substantially strengthen the transparency and objectivity of the entire process.

OCSTA recommends that school boards be required by regulation to engage the services of a neutral third party to assist in the investigation of an alleged contravention of the Code of Conduct, and in the hearing of a possible appeal of a sanction.

DUTIES OF BOARD CHAIR

Sec. 218.4 of the Bill appropriately describes many of the duties of the Chair of the Board. One of the primary responsibilities of the Chair not listed, however, is the responsibility to lead the board in maintaining its focus on its specific Mission and Vision. In collaboration with its local community, each school board develops its Mission and Vision as the guideposts toward which all of their policies and activities point. The board Chair has a key role to play in keeping the board on track in this regard.

OCSTA recommends that a new subsection g) be added to Sec. 218.4 of the Bill, to indicate that the Chair of the board shall provide leadership in maintaining the focus on the board's specific Mission and Vision.

LENGTH OF TIME TO FILL TRUSTEE VACANCY

Clause 221 (1) (a) of the Act (Sec. 27 of Bill 177) is amended by striking out “within 60 days” and substituting “within 90 days”.

OCSTA acknowledges with gratitude the change from a 60 to 90 day period within which a school board can complete the process required for filling a vacant seat through an appointment process. This change will better accommodate the administrative and scheduling realities of board operations.

NUMBER OF TRUSTEES ON A SCHOOL BOARD

Subsection 9 (Sec. 10 of Bill 177) provides that the number of trustees on a district school board, exclusive of appointments, will be the number determined for the regular election in 2006.

OCSTA strongly endorses this amendment which will stabilize the number of trustees to be elected to each district school board at the number elected in the 2006 municipal elections. During past municipal elections, inaccuracies in the voters' list in regard to the designation of school support have raised the possibility of boards losing a trustee inappropriately. The provisions of Bill 177 will help to rectify that problem. A full and accurate record of school support will remain important, however, in order for a board to be able to demonstrate growth in the number of electors and therefore qualify for an additional trustee.

OCSTA and our member school boards look forward to receiving further information regarding the specific demographic or geographic profile a board would be required to demonstrate in order to qualify for an additional trustee position.

DEBENTURES ISSUED BY BOARDS

29. The Act is amended by adding the following section:

242.1 This Act, as it read immediately before the day the Student Achievement and School Board Governance Act, 2009 received Royal Assent, continues to apply with respect to debentures issued by boards before that day.

OCSTA supports the removal of the ability of a school board to issue debentures and to have all school board debenture borrowing come through the Ontario Financing Authority (OFA). OCSTA understands that the power to issue debentures is removed from the Act but delegated to a regulation with details to be determined.

OCSTA understands that boards will still have the ability to borrow funds in order to finance the cost of permanent improvements because the Bill does not make any changes to the borrowing power of boards. Also, the Bill preserves the ability of the Lieutenant Governor in Council to prescribe by regulation that boards may issue additional debt instruments (including debentures) should the need arise in future.

31(7) Section 247 of the Act is amended by adding the following subsection:

Without limiting the generality of clause (3) (a), in making regulations under that clause, the Lieutenant Governor in Council may delegate specified responsibilities related to the borrowing of money and the incurring of debt by the board for permanent improvements to the Minister or any other body the Lieutenant Governor in Council considers appropriate for those purposes.

OCSTA understands that this new section is a technical amendment related to the intentions to lay the groundwork for regulatory amendments that support boards borrowing from the OFA for permanent improvements. OCSTA supports this first step towards updating the regulation to reflect the current policy that all borrowing should come through the OFA.

AUDIT COMMITTEES

OCSTA supports in principle the establishment of board audit committees to act in an advisory capacity to the board of trustees. Such committees are already in place and working well in many boards.

OCSTA looks forward to playing an active role in the consultation on the Ontario Regulation that will specify the composition, minimum number of meetings, scope of responsibilities and reporting structure of these committees. As regulations are written, it will be important to allow individual school boards sufficient flexibility to structure the board's committee in a manner that best meets the local needs and circumstances.

CONCLUSION

OCSTA appreciates this opportunity to comment on Bill 177, – the Student Achievement and School Board Governance Act, 2009. If passed, this Bill will have a very significant impact on the roles, responsibilities, powers and duties of school boards.

As a result of this Bill, the provincial education agenda will become an even greater focus of board activities at all levels. It is difficult to assess the full impact of this requirement when the Provincial Interest Regulation has not yet been written. Even when it is complete, it, like all regulations, remains open to change by this or future governments.

The initial 60-day consultation on the provincial interest regulation consultation paper allowed OCSTA to formulate a preliminary response. From a provincial policy perspective, such consultation is critical, since the Ministry of Education needs the information and cooperation of school boards to have effective regulations. OCSTA looks forward to working with the Ministry as further discussion regarding the provincial interest regulation occurs.

SUMMARY OF RECOMMENDATIONS

OCSTA recommends that Section 4, regarding regulations on responsibilities of board, be removed from Bill 177.

OCSTA recommends that Sec. 218(d) regarding the duty of a member of a board to support the implementation of any board resolution after it is passed by the board, be removed from Bill 177.

OCSTA recommends that the language of 218.1(e) be amended to read:
“entrust the day-to-day management of the board to the Director of Education”.

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OCSTA recommends that Bill 177 be amended to provide that

- iii) as a sanction for a breach of the board’s code of conduct, the board’s authority to bar a member is limited to one single regular meeting of the board; and
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OCSTA recommends that school boards be required by regulation to engage the services of a neutral third party to assist in the investigation of an alleged contravention of the Code of Conduct and in the hearing of a possible appeal of a sanction.

OCSTA recommends that a new subsection g) be added to Sec. 218.4 of the Bill, to indicate that the Chair of the Board shall provide leadership in maintaining the focus on the board’s specific Mission and Vision.

Ontario Catholic School Trustees' Association
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