FORWARD TOGETHER

WELCOME
Trustee Roles and Responsibilities

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Corporate Structure

The Corporation

• A Board is a legal person, created as a corporation under the authority of the *Education Act*.

58.5 (1) *Every district school board is a corporation and has all the powers and shall perform all the duties that are conferred or imposed on it under this or any other Act.*
Corporate Governance

The Governors

• Board of Trustees, chosen by the local electorate, in accordance with the Municipal Elections Act, the Education Act (S.58.1) and Regulation 412/00.

• Govern according to Sections 169.1 (Board responsibilities) and S.218 (Trustee responsibilities) of the Education Act.
Role of Director of Education

The CEO

- S.283(1) A director of education is the chief education officer and the chief executive officer of the board by which he or she is employed.
- (2) The chief executive officer of a board shall, within policies established by the board, develop and maintain an effective organization and the programs required to implement such policies.
- Director is also Secretary of the Board (must ensure proper notice, minutes, call special meetings).
Role of Director of Education (cont’d)

The CEO (cont’d)

• Selected by the Board of Trustees, and appointed to the office, subject to the approval of the Ministry of Education. (S.280(1))

• Accountable to the Board of Trustees.

• Holds office unless they cease to be eligible, resign, or are removed by the Board of Trustees.
Supervisory Officers

• S.O.’s report to the Director, and are accountable to the Board of Trustees through the Director.

• S.199 “Every officer appointed by a board is responsible to the board through its chief executive officer for the performance of the duties assigned to him or her by the board.”
Board of Trustees

• Authority of each individual Trustee: none.
• Board of Trustees govern collectively: to the extent authorized by the Education Act.
Board of Trustees Duties

S.169.1 Board Responsibility for Student Achievement and Effective Stewardship of Resources.

Every Board shall be responsible for:

(a) Promote student achievement and well-being;
(a.1) Promote a positive and inclusive school climate;
(a.2) Promote the prevention of bullying;
(b) Effective stewardship of board’s resources;
(c) Delivery of effective and appropriate educational programs;
Board of Trustees Duties (cont.)

(d) Develop and maintain policies and organizational structures that
(i) promote the goals referred to in clauses (a) to (c), and
(ii) encourage pupils to pursue their educational goals;
(e) Monitor and evaluate effectiveness of (d);
Board of Trustees Duties (cont.)

(f) develop a multi-year plan (for three or more years) aimed at achieving the goals referred to in clauses (a) to (c);

(g) annually review the plan referred to in clause (f) with the board’s director of education; and

(h) monitor and evaluate the performance of the board’s director of education, in meeting,

(i) his or her duties under this Act or any policy, guideline or regulation made under this Act, and

(ii) any other duties assigned by the board.
Means

In the Boardroom:

• Board “speaks through its resolutions”, following debate and vote which take place in accordance with Act, By-law, Rules of Procedure, and policies.

• Director bound to implement board resolutions.
Means (cont.)

• Board resolutions are legally binding on corporation. Discussion of an issue is not.

• Fundamental Rule of Procedure: Minority view has the right to be heard. Majority view has the right to govern.

• Hold the system accountable through the Director, for implementation of resolutions, and through regular monitoring of evidence of student achievement and other S.169.1 responsibilities.
Means (cont.)

- Maintain communications with community, and in particular S.169.1(4).

   *Every board shall take steps to,*

   (a) *bring the plan referred to in clause (1)(f) (multi-year plan) to the attention of supporters and employees of the board; and*

   (b) *report to supporters and employees of the board about progress in implementing the plan referred to in clause (1)(f).*

- Monitor Board effectiveness and governance processes.
Trustee Duties

Section 218.1 of the *Education Act*:

A member of a board shall,

(a) carry out his or her responsibilities in a manner that assists the board in fulfilling its duties under this Act, the regulations and the guidelines issued under this Act, **including but not limited to the board’s duties under section 169.1**;

(b) attend and participate in meetings of the board, including meetings of board committees of which he or she is a member;

(c) consult with parents, students and supporters of the board on the board’s **multi-year plan** under clause 169.1(1)(f);
Trustee Duties (cont.)

(d) bring concerns of parents, students and supporters of the board to the attention of the board;
(e) uphold the implementation of any board resolution after it is passed by the board;
(f) entrust the day to day management of the board to its staff through the board’s director of education;
(g) maintain focus on student achievement and well-being; and
(h) comply with the board’s code of conduct.
Common Law Duty

• Trustees have a fiduciary duty to the corporate board of education: ie. the interests of the board must be paramount.

• A fiduciary stands in a position of trust, confidence and responsibility.

• Duty is not to parents, students or constituents.
Duty of Care includes:
• knowledge;
• loyalty;
• confidentiality;
• avoid conflict of interest;
• act within scope of statutory authority.
Trustee Duty of Care

• Standard of Care: Must act honestly, in good faith and in the best interests of the board.
• Must act within scope of authority, or can be personally liable.
• Not liable for errors in judgment. May rely on reports where it is reasonable to do so.
• “Reasonably prudent person in similar circumstances.”
Checks and Balances

Trustees held accountable through:
• Election;
• Insurance;
• Code of Conduct;
• Municipal Conflict of Interest Act;
• Education Act and Ministry of Education
• Municipal Freedom of Information and Protection of Privacy Act
• personal liability under various statutes;
• Ombudsman;
• Director of Education;
Insurance

Insurance includes acts of negligence while acting within the scope of their authority.

Does not cover:

- penalties, fines;
- punitive damages;
- criminal code convictions;
- wilful neglect or default;
- intentional acts of dishonesty.
Code of Conduct

*Education Act*

- 218.2(1) A board may adopt a code of conduct that applies to the members of the board.

*Reg. 246/18*

- Every Board **shall** adopt a Code of Conduct by no later than May 15, 2019, and shall make its Code available to the public.
- A Board shall review its Code no less than every 4 years.
Code of Conduct Breach

If the board determines after investigating that a Trustee 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. Barring the member from attending all or part of a meeting of the board or a meeting of a committee of the board.
3. Barring the member from sitting on one or more committees of the board, for the period of time specified by the board. (S.218.3(3))
Municipal Conflict of Interest Act

- A Trustee with a direct, indirect or deemed pecuniary interest – must disclose the interest, not take part in the discussion or vote, or attempt to influence the vote.
- An elector (not a fellow Trustee) may allege a conflict, and apply for a court ruling.
- Court can order: Restitution, vacate seat, and/or disqualified from holding office for up to 7 years.
Powers of the Minister

Minister can appoint an investigator and ultimately assume control where a Board:
• fails to approve a balanced budget;
• is operating at a deficit;
• fails to pay any debentures;
• defaults on a debt or financial liability.

Note: personal liability for Trustees who approved applying funds contrary to Ministerial authorization or order. (S.257.45(3))
Powers of the Minister (cont.)

The Minister of Education may also direct an investigation into general school board operations, including:

- program and curriculum matters;
- class size;
- trustee compensation;
- items that promote provincial interest in education; and
- spending.

(S.230.12(3))
Powers of the Minister (cont.)

Reg. 43/10 – Further Ministerial authority to review:

- academic achievement of students;
- student health and safety;
- good governance of the school board;
- performance of the board and of the director of education in carrying out their responsibilities under the Education Act; and
- parent involvement.
Minister’s recommendations
S.14(1) After considering the report, the Minister may,

(a) issue any directions to the Board he or she considers necessary to address any material deficiencies in the Board’s performance revealed by the report; and

(b) require the Board to submit an expedited plan to address any material deficiencies in the Board’s performance revealed by the report.
Statutory Penalties

Trustees can be held personally liable for statutory breaches, including under:

• CASL;
• Occupational Health and Safety Act;
• Municipal Freedom of Information and Protection of Privacy Act
• Employment Standards Act;
• Human Rights Code;
• Access for Ontarians with Disabilities Act;
• Child Care and Early Years Act;
• Broader Public Sector Accountability Act.
They need not be of like mind. They may hold strong conflicting views. They may debate with vigour, and occasionally with rancour. There is no rule requiring trustees to like each other. But they do have one overarching responsibility – a shared public duty to advance the work of the Board to which they had the privilege of being elected.”

**Ombudsman Act**

- *Ombudsman Act* includes Ombudsman authority to investigate any decision or recommendation of a school boards.
- Investigation can be initiated by a complaint, or by Ombudsman.
- Investigation includes power to summons an individual to give evidence and produce documents.
- Following investigation, the Ombudsman may make recommendations to Board, and shall report same to Ministry of Education.
Director of Education

• S.283.1(1) Director has an obligation to bring to Board’s attention any act or omission which may or has resulted in a contravention of the Education Act, or any policy, guideline or regulation made under the Act.

• Duty of Director to advise Deputy Minister if no Board response.
MFIPPA

- Any person found willfully contravening the Act can be liable for a fine of up to $5,000.
- Includes contents of students’ OSR’s.
Summary - Trustee Rights

Right to:

• notice of meetings;
• attend meetings;
• sufficient information to make informed decisions;
• speak;
• vote.
Trustee Limits

Trustees do not have authority to:

• direct staff;
• order reports;
• access or disclose personal information of students or staff;
• become involved in the day to day management of the board to staff;
Trustee Limits (cont’d)

• share confidential system information;
• make contractual commitments on behalf of the Board;
• make commitments to parents/guardians;
• act contrary to a board resolution after it has passed;
• convene a meeting;
• make public statements on behalf of the Board.
Thank you