



ONTARIO PUBLIC
SCHOOL BOARDS'
ASSOCIATION

Leading Education's Advocates

Presentation to the

Standing Committee on Social Policy

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

October 26, 2009



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OPSBA SUBMISSION REGARDING BILL 177
An Act to amend the Education Act with respect to student achievement, school board governance and certain other matters

Introduction

The Ontario Public School Boards' Association (OPSBA) represents public district school boards and public school authorities across Ontario. Together our members serve the educational needs of almost 70% of Ontario's elementary and secondary students. The Association advocates on behalf of the best interests and needs of the public school system in Ontario. OPSBA believes that the role of public education is to provide universally accessible education opportunities for all students regardless of their ethnic, racial or cultural backgrounds, social or economic status, individual exceptionality, or religious affiliation.

OPSBA welcomed the Ministry of Education's initiative, *Modernization of School Board Governance*. Through the Association, public school trustees across the province were actively engaged in contributing to the deliberations of the Minister's Governance Review Committee (GRC). OPSBA was pleased that many of the Association's recommendations are incorporated in the report *School Board Governance: A focus on Achievement*. The report affirmed the importance of school boards as an effective and vital level of governance for promoting democracy and civic engagement at the local level.

OPSBA appreciates the opportunity to present this submission to the Standing Committee on Social Policy regarding Bill 177, an Act to amend the *Education Act* with respect to student achievement, school board governance and certain other matters.

In OPSBA's February submission to the Governance Review Committee we stated that:

"There is deep consensus among OPSBA's member boards that setting the conditions that will provide a high quality education for every student to succeed in school and in life is the absolute first priority of a school board. It is why trustees, without exception, run for office. Optimum conditions for successful learning and teaching environments are all about partnership and support. The current government has consistently adopted a collaborative

approach to working with boards, engaging them in education policy development and providing resources to boost opportunities for, and reduce barriers to, high levels of achievement for all students. Our Member Boards want to see that openness to partnership and meaningful collaboration continue to be the hallmark of the relationship between school boards and the Ministry of Education.”

OPSBA supports the need for greater clarity around each partner’s respective roles, responsibilities and accountabilities – those of the Ministry of Education, the School Board, Trustees, and the Director of Education. Efforts to share and promote this information broadly, with other municipal jurisdictions, with other levels of government, and with the public at large will be beneficial to strengthening collaboration and enhancing public confidence in public education. Trustees take pride in representing their constituencies and fulfilling the important role of bringing the issues and concerns of their local communities to board discussions and decision-making.

OPSBA emphasizes, as well, that many boards are currently engaged in exemplary governance practices that ensure that policies and procedures are in place to measure the efficiency of both the school board as an institution and evaluate the Board of Trustees as a governing body.

Comment on Specific Provisions of Bill 177

With regard to the legislative provisions tabled within Bill 177, we have highlighted the following sections as areas that merit specific support or, in some cases, require further consideration. These are listed in the order they appear in the actual Bill.

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

OPSBA strongly supports the addition of this preamble to the Bill. It identifies a shared view of the common purpose of all the partners in education and is a strong and positive statement of a societal responsibility.

REGULATIONS: RESPONSIBILITIES OF BOARD ETC.

4. Section 11 of the Act is amended by adding the following subsection

(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.

OPSBA recommends that Bill 177 be amended to include a formalized commitment to consultation with trustee organizations whenever regulations arising from this proposed section of the Education Act are considered or amended.

PARENT INVOLVEMENT COMMITTEES

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.

OPSBA supports the establishment of Parent Involvement Committees as advisory bodies. This largely reflects current practice in terms of board-wide representation of the interests of local school councils. School boards should be consulted about proposed regulations in this area, including how the concept of these committees aligns with comparable committees that already exist in boards.

DUTIES AND POWERS OF BOARDS

Board responsibility for student achievement and effective stewardship of resources

169.1 (1) Every board shall,

- (a) promote student outcomes specified in regulations made under section 11.1;
- (b) ensure effective stewardship of the board's resources;
- (c) deliver effective and appropriate programs to its pupils;
- (d) develop and maintain policies and organisational structures that: (i) promote the goals referred to in clauses (a) to (c), (ii) promote the well-being of the boards' pupils and (iii) encourage pupils to pursue their educational goals;
- (e) develop multi-year plans aimed at achieving the goals referred to in clauses (a) to (c)
- (f) monitor the performance of the board's director of education , or the supervisory officer acting as the board's director of education, in meeting his or her obligations under the plans referred to in clause (e); and
- (g) Annually review the plans referred to in clause (e) with the board's director of education or the supervisory officer acting as the board's director of education

Multi-year plans

(2) A multi-year plan is a plan for three or more school years

Measures in plans

(3) Every board shall ensure that the plans referred to in clause (1) (e) include measures respecting the allocation of resources to improve student outcomes that fall below the outcomes specified in regulations made under section 11.1

Communication

(4) Every board shall take steps to,

- (a) bring the plans referred to in clause (1)(e) 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 plans referred to in clause (1)(e)

Effective Stewardship

(5) Every board shall,

- (a) effectively use the resources entrusted to it;
- (b) use the resources entrusted to it for the purposes of delivering effective and appropriate education; and
- (c) manage the resources entrusted to it in a manner that upholds public confidence

As reflected in our submission to the GRC, as key Education Partner in this province, OPSBA appreciated the opportunity to participate in a review of roles and responsibilities of Boards, individual Trustees, Chairs and Directors of Education. Under section 169.1, OPSBA feels it important to add an additional clause to the list of board responsibilities. OPSBA recommends that the following be added between clauses (d) and (e):

(_) Monitor and evaluate both the effectiveness of policies passed by the Board in achieving the Board's goals and the efficiency of implementation of the policies passed by the Board.

On June 30th of this year, the Ministry issued a consultation paper on Provincial Interest Regulations (pursuant to Bill 78 (2006)). This document dealt with many aspects of this section of Bill 177. OPSBA provided a detailed response to the consultation paper and will highlight here some of the observations in our response that are relevant to this section of the current Bill. As an Association of public school boards we continue to emphasize our commitment to a primary focus on students and their success, to school board accountability, and to transparent reporting to parents, community and Ontario taxpayers. These are key values for us and the cornerstones of our commitment to an excellent system of public education.

The consultation paper addressed in detail what would be required of school boards including provisions proposed in this section of Bill 177. It did not include content about the corresponding responsibilities of the Ministry of Education or the government at large. For instance, not listed as issues that have considerable impact on a school board's scope to deliver effective outcomes related to student achievement, are: frequently changing provincial education policies, the number of policies issued, overcentralization, an overemphasis on specific absolute outcome aspects of EQAO, delays in a comprehensive approach to education funding, the labour relations climate and an element of micromanagement by the province which is reinforced by the nature and detail of the proposed elements for a board's Annual Report. There is an obvious challenge in engaging in effective multi-year planning while absorbing new Ministry initiatives and a "pilot testing" approach to aspects of education funding. It could certainly be argued that an obligation to engage in multi-year planning should be matched by an obligation on the part of the government to engage in corresponding multi-year funding.

OPSBA strongly recommends that a section be added to Bill 177 that clearly states that the obligations under 169.1 (1)(a) and (c) are joint responsibilities shared by the Ministry and the Board.

While school boards are committed to responsibility for "student outcomes", "effective stewardship" and "student well-being" they expect reciprocal responsibility from other levels of government to be part of the equation and clearly defined. In addressing well-being of children and youth, where is the acknowledgement of shared responsibility for the significant issue of

mental health, for example, not just with regard to its impacts on student achievement and on schools but also the role of schools in responding effectively and the availability of resources in the school and in the community to do so? In the same vein, if student outcomes regulated under Section 11.1 rely solely on absolute EQAO scores as a key measure, without taking into account the prevailing socio-economic and other demographic factors in a school's or a school board's catchment area, and without taking into account the element of improvement in scores, we are relying on measures that are narrow and do not give an accurate picture. A key issue here is that school boards are being held solely accountable for things that they cannot deliver in isolation. There is an urgent need for a collaborative partnership with all agencies and levels of government built around a 'children's agenda.'

In dealing with the consultation paper we have had to address the proposed consequences of a School Board being unable to meet regulated outcomes which could ultimately include supervision of a school board. The prospect of such an action undermines democratically elected members of school boards, holding them solely responsible for areas of success which, as noted above, involve the support and collaboration of other partners.

In responding to the GRC consultation earlier this year, OPSBA fully supported the need for School Boards to report on their performance to their communities and to the Ministry of Education in a manner that is clear, transparent and easily understood. At that time, our Association elaborated as follows:

“Boards should be held accountable for doing everything in their power to provide programs and services to help students succeed and providing a culture that focuses on student success. Every possible effort should be made through their budget decisions. Any accountability framework needs to recognize that students come from different environments, have different support bases and learn at different rates. An accountability system of rates of achievement based on numerical results of snapshot standardized tests will not tell the whole story of students' achievements in school. Boards should determine or be fully involved in determining standards and parameters of achievement that would apply to their own board.

Boards should be measured by what they are accountable for:

- *Quality education for all students. This encompasses helping students reach their full potential and incorporates character education; it means that education is as concerned with students becoming participating and successful members of society as it is with academic achievement.*
- *Excellence in student achievement*
- *Fiscal accountability – effective and efficient use of allocated funding*
- *Providing a safe and caring learning environment*

It is important to emphasize that the measure of student success goes far beyond goals such as the percentage of students achieving Level 3 or 4 on EQAO testing. Frequently for students who are striving to overcome challenges, moving from Level 1 to Level 2 is an outstanding achievement and a triumph for those students and their teachers. Broad measures also include engagement of students in learning, the pace of credit accumulation,

reducing achievement gaps for vulnerable students, success in graduation whether or not it is achieved within four years, student involvement in their communities and in humanitarian activities, school climate. For the most part, these are qualitative matters and not subject to numerical measures. Success in these areas frequently requires local solutions and it is important that Boards have a reasonable level of local flexibility and corresponding flexible funding to enable them to do an effective job.

Reporting out should be a regular process and involve methods of communication that are meaningful for parents and members of the community. School boards would benefit from Ministry support and funding in their efforts to implement high quality reporting to the public. Test scores such as those generated by EQAO should be reported but the discrete areas they cover need to be carefully explained. Care should be taken that they are not used as a standalone measure to make political judgement. There is ample evidence of this happening through the use of this information by “think tanks” that rank schools and consequently do universal public education a great disservice.”

As noted above, public reporting of superficial results often creates an unhealthy adversarial competition between boards, can actually undermine public confidence, and harmfully affects the staff of the school boards that are being publicly assessed on extremely narrow information.

School Boards would like to see an approach to reporting that promotes communication and dialogue with the public, focuses on significant “outcomes” areas and gives boards an opportunity to highlight key initiatives, activities and programs that provide a picture of the culture and climate of the board’s schools. This kind of approach would go further in enhancing public confidence in public education than a document that is a report on “issues” and leaves the public wondering if any good work is being done.

When we responded to the consultation paper on Provincial Interest Regulations we were dealing with a level of detail that is not explicit in this section of Bill 177 but, because it is relevant to the import of this provision, it is important to point out that we do not support an approach that would seek to measure, through annual reports, such elements as:

- ***Issues where success is dependent on another party: e.g. partnership with municipalities, participation in consortia, filing of grievances by unions***
- ***The inclusion of suspension rates: The Education Act, Regulations and PPMs which govern Safe Schools require that School Boards provide safe and protected environments for students to learn in. A measure that calls for a reduction in suspensions may very well lead to a situation where Boards needing to comply with the requirement to reduce suspension rates increase the level of risk for students by not suspending students who have met the criteria for a suspension. This is a safety issue.***
- ***Year over year increases in specialized programs: The Student Success /Learning to 18 initiative is funding the expansion of High Skills Majors in schools and not all applicants for expansion are funded. As this is a high cost program, without full funding boards cannot undertake implementation and expansion. This being the case, a measure of annual growth is unrealistic and does not necessarily equate directly to quality of experience for students.***

- *Annual increases in Co-op education: Opportunities cannot grow infinitely and in some boards there is great difficulty in securing co-op placements for students. This is especially true when local industry closes or leaves town which is happening in many parts of the province. The measure of co-operative education success is the quality of the experiences for students not the volume of placement.*

This does not mean that School Boards would avoid including information about many of these programs in their reports to the public. On the contrary, School Boards will be pleased to describe for parents and the general public the diversity of opportunities and innovative programs available in the Board. The objection is to any unrealistic effort to measure them year over year.

We understand from the consultation paper on Provincial Interest Regulations that “effective stewardship” is seen as encompassing:

balanced budget; appropriate resource allocation to support student achievement goals set out in the board’s multi-year plan; good governance practices (compliance with trustee provincial code of conduct; board agendas inclusion of items specific to student achievement; professional and effective board meetings, etc); whether it has met the targets in its capital plan and plans for the disposition of surplus properties; collaborative relationship with coterminous boards (i.e. joint agreements with coterminous boards and local municipalities; participation in consortia for the purchase of services); staff turnover and absenteeism

As noted earlier, School Boards see themselves as being accountable for the effective and efficient use of funding provided by the Ministry of Education in an environment that strives to provide quality education for all students. The observation we would make here parallels our comments about measures in an annual report. Success in some of the elements set out in this definition is dependent on co-operation with the Ministry and other parties and, therefore, not completely within the control of the School Board.

An obvious and overarching factor in a School Board’s capacity to meet the requirements of this section is having adequate and appropriate funding from the Ministry of Education to cover all the obligations relegated to School Boards as well as program, policy and political support to meet the full range of needs of the children and youth for whom we carry a shared responsibility.

There is inherent difficulty with movement towards defining or wording the obligations the Ministry is imposing on school boards with regard to student achievement. While it is OPSBA’s understanding that a member of the public would not have a cause of action for breach of a statute; a duty or obligation imposed by a statute may help define the standard of care in an action for negligence. Currently, the law does not recognize education malpractice as a cause of action. However, it is conceivable that proposed new duties such as "promote well-being of the board’s pupils or encourage pupils to pursue their educational goals" could augment or provide context to human rights complaints or special education complaints. Since Bill 177 as written imposes the obligation for program delivery solely on the shoulders of the Boards, it will be the Boards, and not the Ministry, that will bear the burden of any potential action.

DUTIES OF BOARD MEMBERS

218.1 A member of a board shall,

- (a) attend and participate in meetings of the board, including meetings of board committees of which he or she is a member;
- (b) consult with parents, students and supporters of the board on the board's multi-year plans under clause 169.1(1)(e);
- (c) bring concerns of parents, students and supporters of the board to the attention of the board;
- (d) support the implementation of any board resolution after it is passed by the board;
- (e) refrain from interfering in the day to day management of the board by its officers and staff;
- (f) maintain focus on student achievement and well-being; and
- (g) comply with the board's code of conduct.

In principle OPSBA supports Section 218.1 and sees the described duties of board members as consistent with the role they currently perform. However, the following issues require consideration.

With regard to sub-section (a), further clarification should be made here to reconcile this provision with the provision contained in Section 218.3.3 which allows a Board to prohibit a Member from participating in meetings,

Sub-section (c) raises the question of cause for action against a trustee by parents or others who believe that the Trustee has been negligent in raising concerns with the Board. This would place an onus on trustees that no other elected official shares. While we agree that this is the duty of a Trustee, the recourse for non-performance is through the ballot-box, not the courts. It would be helpful if this were made clear. The current wording can be read as an obligation on Trustees to raise at Board meetings any and all concerns expressed by parents. This would potentially place a significant burden on the board. It is also noted that there is no obligation placed on a Trustee to consider any concern from a member of the community who is not "a supporter of the board". OPSBA suggests that Trustees have an obligation to consider concerns raised by supporters of co-terminous boards as well as supporters of their Board and suggests that "supporter of the board" be changed to "member of the community".

In subsection (d) we believe the word "uphold" rather than "support" better reflects the recommendations of the Governance Review Committee. As elected officials, trustees should be able to communicate and explain board decisions, including why they may not have voted for a particular decision. We expect all trustees to uphold any final board decision. We support language that balances freedom of expression while reinforcing responsibilities. However, this proposed section should provide an exception for any parliamentary procedure to move for reconsideration, rescinding, or amending of a resolution. We support language that balances freedom of expression while reinforcing responsibilities. Freedom of expression, within the boundaries of parliamentary law which offers reasonable protections to the minority as well as the majority is an essential feature of the exercise of an elected trustee's role.

Sub-section (e) is unnecessarily negative in tone. A more respectful approach would be the use of positive language such as “entrust the day-to-day operations... to the Director of Education and senior staff.” Having said this, the role of Trustee in bringing forward parental and student concerns as specified in subsection (c) will entail some interaction with the Director, Supervisory Officers, and School Administrators. While we agree that this interaction is not one of engaging in the day-to-day management of the Board, Trustees often provide a valuable perspective to the Director and other staff in addressing parental and student concerns. As previously noted, trustees provide an important link between local communities and the school board, bringing the issues and concerns of their constituents to board discussions and decision-making.

CODE OF CONDUCT & ENFORCEMENT OF CODE OF CONDUCT

218 .2 (1) The Minister may make regulations providing for a code of conduct for board members, including but not limited to regulations,

(a) respecting rules that may be adopted under subsection (3);

(b) respecting the powers, duties and functions of the chair and other officials of the board in matters related to the code of conduct.

Same

(2) The code of conduct provided for under subsection (1) applies to every board and every board member.

Same

(3) A board may adopt additional rules as part of its code of conduct for its members and in that case the code of conduct as supplemented by the additional rules applies to the board and its members.

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.

Same

(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.

Same

(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.

Same

(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.

A number of school boards currently have Code of Ethics and Code of Conduct policies and we believe that these Codes contribute to confidence in public education and respect for the integrity of the trustees in the community.

OPSBA supports provincial guidance regarding code of conduct and understands that a clear board supported process needs to be in place concerning sanctions and how they are imposed and enforced and by whom. This would help with an expected level of consistency from board to board. Such processes must also incorporate due regard for the elected role of trustees.

We anticipate that exercise of these provisions would apply to serious breaches or violations of either the Provincial Code of Conduct and/or the individual Board's Code of Conduct. Generally, School Boards make diligent efforts to resolve issues within the normal processes of the Board before they would become the subject of the kind of formal investigation and action contemplated in this provision. OPSBA understands that further refinement and clarification of how such a provision would be administered will be found in the regulations and would ultimately be contained within individual board Code of Conduct policies.

As stated in our submission to the Governance Review Committee, "trustees support the concept of an external third party who is not subject to political interest and who will step in once everything has been done at the local board level to resolve an alleged breach of conduct. This will respect the principle of finding of fact and consideration of appropriate consequences by a party that carries no political interest." We support the Governance Review Committee's recommendation #20 that stated "Boards of trustees should be able to appoint an external neutral party to investigate alleged violations of the code of conduct or to hear appeals with respect to a sanction and to advise the board accordingly."

We urge that there be consideration of the import of requiring the board to conduct an investigation when one of its members brings forward the allegation of breach of conduct. In certain circumstances this member could not be included in discussions aimed at determining whether a breach has occurred, assessing any sanction to be applied, or voting on the matter.

With regard to First Nation trustees, while revised Regulation 462 deems them to be equivalent to elected trustees, they also have a responsibility to the First Nation community that appointed them. If a First Nation trustee is the subject of an allegation of misconduct the First Nation community, and specifically the Chief and Council, that appointed them should have a role in any decision that is made. There should be an understanding and written protocol between the First Nation government and the Boards or Ministry with regard to any decision to remove any First Nation Trustee from the Board. There is a unique government to government aspect in this case.

OPSBA does not support a reduction of the honorarium as one of the possible sanctions. The sanction of a reduction of honorarium has no parallel in the Standing Orders of Parliament and does not apply to any other elected official. We recommend that the Bill contain language that makes clear that in the case of meetings regarding the Code of Conduct the trustee in question would not be subject to the restrictions of the Municipal Conflict of Interest Act.

With regard to the sanction, "Barring the member from attending all or part of a meeting of the board or a meeting of a committee of the board," our understanding would be that this "forced absence" from a meeting would be a recognized exception to the Education Act provision that a

trustee may be removed after missing three consecutive meetings. We suggest adding wording or an amendment that reflects that this exception exists.

Our overarching concern with this section is any diminishment of the importance of recognizing that a trustee position is an elected position which carries with it the understanding that the electorate will decide at election time its support for the effectiveness of a trustee and, at the same time, recognizes that it is important for a collective body to be able to set and enforce norms of acceptable behaviour.

ADDITIONAL DUTIES OF CHAIR

218.4 In addition to any other duties under the Act, the chair of a board shall
(f) convey the views and decisions of the board to the board's director of education or the supervisory officer acting as the board's director of education;

OPSBA recognizes that a Chair of a School Board holds two unique and important roles. First, the Chair acts as a procedural safeguard that maintains and protects the integrity of the School Board and the second, as official spokesperson who publicly represents the School Board.

OPSBA understands the rationale for the duty identified in (f) but urges that the words “views and” be deleted. Retaining the word “views” puts a Chair in the position of interpreting the views of fellow members of the Board in their absence. This could create unnecessary confusion, if not controversy, and the Chair, therefore, should only be charged with conveying a final decision.

DEBENTURES ISSUED BY BOARDS

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.

OPSBA sees this provision as removing the ability of a School Board to issue debentures (i.e. raise their own debt by issuing a bond) and to have all school board debenture borrowing come through the Ontario Financing Authority (OFA). OPSBA understands that the power to issue debentures is removed from the Act but delegated to a regulation with details to be determined.

OPSBA understands that School 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.

Section 247 of the Act is amended by adding the following subsection:

Same

(3.1) 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.

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

AUDIT COMMITTEE

253.1 (1) Every district school board shall establish an audit committee.

Regulations

(2) The Minister may make regulations governing the composition, functions, powers and duties of audit committees established under subsection (1).

Same

(3) A regulation made under subsection (2) may provide for a district school board's audit committee to include individuals who are not members of the board.

Same

(4) A regulation made under subsection (2) may provide that a district school board's audit committee has all the powers of an auditor under section 253.

Same

(5) A regulation under this section may be general or particular.

OPSBA supports the establishment of audit committees as outlined by the Ministry including qualified public representatives as members of the committee. We note that an effective audit committee would hold at least three meetings a year.

OPSBA has been briefed on the Ministry's proposed regional model for internal audit. OPSBA would recommend that school boards be permitted to opt out of the regional model, maintain their proportional share of Ministry funding for internal audit and be required to establish an internal audit function in accordance with the Ministry's guideline and requirements.

OPSBA would recommend that Ministry staff not be involved in the internal audit of school boards.

LABOUR RELATIONS MATTERS

2. (1) The definition of "co-instructional activities" in subsection 1(1) of the Act is repealed.

Subclause 277.2 (4)(b)(ii) of the Act is amended by striking out "including but not limited to programs involving co-instructional activities".

OPSBA recommends that the language of subclause 277.2(4)(b)(ii) remain unchanged so that it is clear that the withdrawal of co-instructional activities continues to be included in the definition of "strike". If the definition of "strike" remains unchanged then the definition of "co-instructional activities" in subsection 1(1) of the Act should not be repealed but amended to put a period after the words "school functions" at the end of the definition and delete the remainder of the sentence being "but does not include activities specified in a regulation made under subsection (1.2)".

ADDITIONAL DUTIES OF DIRECTOR OF EDUCATION

283.1 (1) In addition to his or her other duties under this Act, the director of education shall,
(f) immediately upon discovery bring to the attention of the board any act or omission by the board that in the opinion of the director of education may result in or has resulted in a contravention of this Act or any policy, guideline or regulation made under this Act; and
(g) if a board does not respond in a satisfactory manner to an act or omission brought to its attention under clause (f), advise the Minister of the act or omission.

OPSBA fully supports that the Director of Education is hired by the Board of Trustees, is the sole employee of the Board of Trustees, reports directly to the Board and is accountable to the Board of Trustees. We agree that the Director should first communicate with the Board of Trustees as stated in (f). However, we agree with the Governance Review Committee in matters outlined in (g) that the flow of information should be between the Director and the Deputy Minister of Education. We note as well that this provision needs to be correlated with Section 218.1 requiring trustees to support the decision of the Board. It would be reasonable to assume that an individual trustee might not support the decision of the Board in a case where the Director of Education has advised the Board that its decision is a contravention of the Education Act.

Conclusion

Bill 177 has drawn a great deal of attention from stakeholders in the education sector. Reaction to the Bill has been complicated by the release of the Ministry's consultation paper on Provincial Interest Regulations which flow from earlier amendments to the *Education Act* made in 2006. There is, without doubt, overlap between the two pieces of legislation and, taken together, they raise significant issues for school boards which could be characterized as increases in responsibility and accountability for school boards accompanied by stark diminishment of school board authority. This is why, in our response to Bill 177 and in our earlier response to the consultation paper on Provincial Interest Regulations, we have emphasized the need for support, collaboration and partnership among all levels of government in an environment where we all have a shared and vested interest in making sure that all children in the province have every opportunity to succeed in school and in life.

We anticipate timely consultation with regard to regulations that will flow from this proposed legislation.

Thank you for the opportunity to share OPSBA's comments on Bill 177.

Colleen Schenk
President
Ontario Public School Boards' Association