



## **Ombudsman Report**

**Investigation into a complaint about meetings  
held by the Greater Essex County  
District School Board**

**Paul Dubé  
Ombudsman of Ontario**

**June 2024**

## Complaint

- 1 My Office received a complaint relating to meetings held by the Board of Trustees (the “Board”) of the Greater Essex County District School Board (the “School Board”). Specifically, the complaint raised concerns that the School Board’s decision to prohibit members of the public from attending Board meetings in person for a period of time contravened section 207(1) of the *Education Act*<sup>1</sup> and section 6(1) of Ontario Regulation 463/97, *Electronic Meetings and Meeting Attendance* under the *Education Act*.
- 2 The complaint also raised concerns that during closed meetings on June 6, 2023 and June 20, 2023, the Committee of the Whole (the “Committee”) discussed whether members of the public should be prohibited from attending Board meetings in person, and that these discussions may not have fit within the *Education Act*’s closed meeting exceptions.
- 3 My investigation found that due to safety and security concerns, the School Board limited in-person attendance at meetings between June 14, 2023 and September 19, 2023. Once the School Board had implemented a safety plan, it resumed in-person attendance at its meetings, as required by section 6(1) of Ontario Regulation 463/97, *Electronic Meetings and Meeting Attendance*.
- 4 My investigation also determined that the Committee’s *in camera* discussions about limiting in-person attendance at meetings on June 6, 2023 and June 20, 2023 fit within the *Education Act*’s open meeting exceptions.

## Ombudsman jurisdiction

- 5 The Ontario Ombudsman has oversight of hundreds of public sector bodies, including provincial government organizations, municipalities, and publicly funded universities. Since September 1, 2015, my Office has the authority to review and investigate complaints concerning the administrative conduct of school boards, including complaints concerning meetings held by a board of trustees or a committee of a board. You can read my previous decisions on, and interpretations of, the *Education Act*’s open meeting rules here: [www.ombudsman.on.ca/what-we-do/topics/education/investigations-and-reviews-school-board-meetings](http://www.ombudsman.on.ca/what-we-do/topics/education/investigations-and-reviews-school-board-meetings).
- 6 The Ombudsman’s mandate also includes reviewing complaints about the services provided by children’s aid societies and residential licensees, and the provision of French language services under the *French Language Services Act*.

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<sup>1</sup> RSO 1990, c E.2.

Read more about the bodies within our jurisdiction here:  
[www.ombudsman.on.ca/have-a-complaint/who-we-oversee](http://www.ombudsman.on.ca/have-a-complaint/who-we-oversee).

- 7 In addition, my Office is the closed meeting investigator for more than half of Ontario's 444 municipalities. As the province's default closed meeting investigator, my Office is responsible for determining whether a municipality has complied with the open meeting requirements outlined in the *Municipal Act, 2001*.<sup>2</sup>
- 8 My Office has investigated hundreds of closed meetings since 2008. To assist municipal councils, staff, and the public, we have developed an online digest of municipal closed meeting cases. This searchable repository was created to provide easy access to the Ombudsman's decisions on, and interpretations of, the open meeting rules. While the open meeting requirements in the *Municipal Act* differ from those in the *Education Act*, school boards can consult the digest to inform their discussions and decisions on whether certain matters can or should be discussed in closed session, as well as issues related to open meeting procedures. Summaries of the Ombudsman's previous decisions can be found in the digest: [www.ombudsman.on.ca/digest](http://www.ombudsman.on.ca/digest).

## Investigative process

- 9 On September 11, 2023, my Office advised the School Board of our intent to investigate this complaint.
- 10 My Office reviewed relevant portions of the School Board's governance by-laws, personal notes made by a School Board staff member, relevant correspondence, and the School Board's website. We also reviewed the open and closed meeting agendas, reports, and minutes for the June 6 and 20, 2023 meetings.
- 11 My Office interviewed all ten members<sup>3</sup> of the Board of Trustees<sup>4</sup>, the School Board's Superintendent of Business and Treasurer, the current Director of Education, and the Executive Assistant to the Director of Education. We also spoke with the Director of Education for the 2022-2023 school year (the "former Director of Education").
- 12 My Office received full co-operation in this matter.

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<sup>2</sup> SO 2001, c 25

<sup>3</sup> In the French version of this report, the masculine version of "trustee" has been used by default and does not indicate the gender of the specific trustees who were interviewed.

<sup>4</sup> My Office did not interview the Board's Student Trustees. Pursuant to section 55(2) of the *Education Act*, a student trustee is not a "member" of a district school board or a school authority.

## Method of attendance

- 13 The complaint raised concerns that the School Board prohibited members of the public from attending Board meetings in person between June 14, 2023 and September 19, 2023.

## Background

- 14 The Board's usual practice is to hold its meetings in the boardroom of its administrative building, which is owned by the School Board. Members of the public can typically observe these meetings through physical attendance in the public gallery or by watching them live on YouTube.
- 15 It has been reported by the media that members of the public have spoken against the School Board's "Gender Identity and Expression Policy" at meetings.<sup>5</sup> The policy states that a school should not disclose a student's gender identity, chosen name, or pronouns to the student's parent or guardian without the student's consent.<sup>6</sup>
- 16 Interviewees told my Office that beginning in late 2022, increasingly concerning behaviours, including yelling, derogatory comments, object throwing, and death threats have been directed at School Board staff members and Board trustees, including during Board and committee meetings. Some interviewees, including the Chair of the Board of Trustees, told my Office that these behaviours have made it challenging for the Board to maintain order at meetings, and that trustees, School Board staff, students, and members of the public have reported feeling unsafe.
- 17 The current Director of Education, as well as the Vice Chair at the time of these meetings, told my Office that around May 2023, the School Board hired an additional security guard to attend its meetings due to these disruptive behaviours.
- 18 On June 14, 2023, the School Board publicly announced on its website and Facebook page that effective immediately and until further notice, in-person attendance at Board meetings would be limited to staff and trustees, and that members of the public could watch its meetings live on YouTube. The announcement noted that the School Board made this decision in order "...

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<sup>5</sup> Jason Viau, "Tension continues in Windsor-Essex schools over policies around gender identity", *CBC News* (15 June 2023), online: <<https://www.cbc.ca/news/canada/windsor/lgbtq-policies-schools-1.6874725>>.

<sup>6</sup> Greater Essex County District School Board, "Gender Identity and Expression – Student Records", (22 June 2021), online: <<https://www.publicboard.ca/en/about-gecdsb/Policies-and-Regulations/Regulations/Gender-Identity-and-Expression---Student-Records-R-AD-65.pdf>>.

to allow for the orderly and expeditious completion of regular business meetings in a safe and secure setting for staff and members of the board.”

- 19 Interviewees informed my Office that the School Board put these limitations in place between June 14, 2023 and September 19, 2023 in order to ensure the safety and security of staff members, trustees, students and members of the public in the boardroom.
- 20 Shortly after this decision was made, the Board’s Vice Chair at the time, and another trustee, publicly stated that people had felt threatened at previous meetings.<sup>7</sup>
- 21 The former Director of Education, the Superintendent of Business and Treasurer, and the Board’s Chair all referred my Office to the School Board’s legal obligations under the *Occupational Health and Safety Act*<sup>8</sup> in support of the Board’s decision to limit in-person attendance at meetings.
- 22 The former Director of Education, along with a trustee, also referred to the Ontario Human Rights Commission’s statement on the recent increase in violence directed towards education officials,<sup>9</sup> and the Chair of the Board referred to a similar letter published by the Council of Ontario Directors of Education.<sup>10</sup>
- 23 The Chair, the Vice Chair at the time, and the current Director of Education told my Office that the School Board was aware of the provision in Ontario Regulation 463/97, *Electronic Meetings and Meeting Attendance* (the “Regulation”) under the *Education Act*, which requires the Board and its committees to allow members of the public to physically attend all meetings. However, they told my Office that the School Board determined that it needed to prioritize public safety over compliance with the Regulation.
- 24 During the summer of 2023, the School Board, in consultation with local police, created a safety plan and implemented additional security measures related to Board meetings. The safety plan was received by the Board at a special meeting on September 11, 2023. At this meeting, the Board voted to resume in-person public attendance at its meetings effective September 19, 2023. While the safety

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<sup>7</sup> “Safety concerns’ prompt Windsor-Essex school board to close public gallery”, *CBC News* (16 June 2023), online: <<https://www.cbc.ca/news/canada/windsor/public-school-board-meetings-1.6880006>>.

<sup>8</sup> RSO 1990, c O.1.

<sup>9</sup> “OHRC statement on Code obligations of education officials”, *Ontario Human Rights Commission* (16 February 2023), online: <[https://www.ohrc.on.ca/en/news\\_centre/ohrc-statement-code-obligations-education-officials](https://www.ohrc.on.ca/en/news_centre/ohrc-statement-code-obligations-education-officials)>.

<sup>10</sup> Council of Ontario Directors of Education, “Upholding Human Rights and Restoring Civility in Public Discourse” (6 June 2023), online: <[http://www.ontariodirectors.ca/downloads/CODE\\_OP\\_ED\\_FINAL-Rev-June\\_6\\_2023.pdf](http://www.ontariodirectors.ca/downloads/CODE_OP_ED_FINAL-Rev-June_6_2023.pdf)>.

plan was being developed and approved, the Board and its committees held a number of meetings between June 14, 2023 and September 19, 2023 with no option for the public to observe them in person, although they could watch them live online.

- 25 Following the September 11, 2023 meeting, the Board's then-Vice Chair publicly stated that two trustees had received death threats, including a threat of a shooting, before the public gallery was closed to the public.<sup>11</sup>
- 26 Interviewees told my Office that a protest took place outside of the School Board's administrative building on September 20, 2023, and that during this protest, a window in the Board's private meeting room was shattered and one or more people defecated outside of the building in view of staff members' offices. Nonetheless, the Board has continued to allow members of the public to attend meetings in person.

## Analysis

- 27 The School Board cited its obligations under the *Occupational Health and Safety Act* (the "OHSa") as a reason for its decision to limit in-person public attendance at meetings for a period of time.
- 28 Section 25(2)(h) of the OHSa states that an employer shall take every precaution reasonable in the circumstances for the protection of a worker. The Ontario Labour Relations Board has stated that this section "[...] is sweeping in its scope and potentially goes beyond and in addition to any specific regulation because it is not possible to anticipate every circumstance in the wide variety of workplaces through Ontario."<sup>12</sup>
- 29 Section 2(2) of the OHSa further states, "[d]espite anything in any general or special Act, the provisions of this Act and the regulations prevail." The Ontario Labour Relations Board has stated that, "[u]ltimately, what the [OHSa] requires is a balance between the risk of harm, and the ability to carry out necessary public and private functions."<sup>13</sup>

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<sup>11</sup> Dave Waddell and Brian MacLeod, "School board meetings open to public again, after two trustees received death threats", *CBC News* (13 September 2023), online: <<https://windsorstar.com/news/public-school-board-reopens-meetings-to-in-person-attendance>>.

<sup>12</sup> *United Food and Commercial Workers Canada, Local 175 v Hazel Farmer*, 2020 CanLII 104942 (ON LRB) at para 36, online: <<https://canlii.ca/t/jcf1x>>.

<sup>13</sup> *Ibid.*

30 Under the *Education Act*, all meetings of a board of trustees and a committee of the board must be open to the public, subject to prescribed exceptions.<sup>14</sup>

31 Section 6(1) of Ontario Regulation 463/97, *Electronic Meetings and Meeting Attendance* under the *Education Act* states,

The meeting room of the board or of a committee of the board, as the case may be, shall be open to permit physical attendance by members of the public at every meeting of the board or of the committee of the board.

32 In March 2020, the Regulation was amended to create exceptions to its in-person requirements, none of which apply to the meetings on June 6 and 20, 2023.<sup>15</sup>

33 The Ontario Court of Appeal has noted that a school board has the authority to regulate its meetings to ensure "... decorous conduct by all attending the meeting" and to prevent behaviour that would "...detract from the effectiveness of the meeting and have an adverse effect on ... free and uninhibited discussion."<sup>16</sup>

34 In a recent report to the Near North District School Board<sup>17</sup>, I found that a committee of the board held meetings electronically with no option for the public to attend them in person. Unlike the present case, my Office found no evidence to suggest that safety concerns were the reason for limiting in-person attendance at the committee's meetings. I found that these meetings did not comply with the requirements in section 6(1) of the Regulation, and were contrary to law in accordance with section 21(1)(a) of the *Ombudsman Act*.<sup>18</sup>

35 My Office also received a similar complaint that the Durham District School Board limited in-person attendance at meetings for a period of time due to increasingly concerning behaviour directed at staff members and trustees. In a letter to the school board, I acknowledged that after reviewing its safety protocols and implementing additional security measures, the school board had resumed in-

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<sup>14</sup> s 207(1-2.1).

<sup>15</sup> The Regulation states that its in-person requirements do not apply in circumstances where all of the Board's schools are closed pursuant to particular orders made by the Minister of Education, a medical officer of health, the Chief Medical Officer of Health, or the Lieutenant Governor in Council: ss 6.1(2) and 7.

<sup>16</sup> *Radio Chum 1050 Ltd et al v Board of Education for City of Toronto*, 1964 CanLII 609 (ON CA) at 1, online: <<https://canlii.ca/t/gwf61>>.

<sup>17</sup> Ontario Ombudsman, *Investigation into a complaint about meetings held by the Near North District School Board's Parry Sound Building Committee on December 14, 2022, January 12, 2023, and February 6, 2023* (March 2024), online: <<https://www.ombudsman.on.ca/what-we-do/topics/education/investigations-and-reviews-school-board-meetings/investigation-into-a-complaint-about-meetings-held-by-the-parry-sound-building-committee>>.

<sup>18</sup> RSO 1990, c O.6

person attendance at its meetings pursuant to the Regulation's in-person meeting requirements.<sup>19</sup>

- 36 With respect to the present case, my Office was told that disruptive behaviours threatened the security and order of Board of Trustee meetings. The School Board limited in-person attendance at meetings until it could implement a safety plan. Members of the public were, however, able to observe all Board meetings live online. My Office did not receive any complaints raising concerns that members of the public were not able to access these electronic meetings.
- 37 Once the School Board had implemented a safety plan, it resumed in-person attendance at meetings, effective September 19, 2023. I commend the steps that the School Board has taken to resume in-person public attendance at meetings, pursuant to the Regulation's in-person meeting requirements.

## June 6, 2023 meeting

- 38 The complaint raised concerns that during a closed meeting on June 6, 2023, the Committee of the Whole discussed limiting in-person attendance at meetings, and complained that these discussions may not have fit within the *Education Act's* closed meeting exceptions.
- 39 The Board of Trustees held a meeting in the boardroom of the School Board's administrative building on June 6, 2023, beginning at 5:30 p.m. After the Board of Trustees approved the meeting agenda, the Committee of the Whole moved into closed session.
- 40 My Office's review found that the Committee discussed limiting attendance at meetings during an oral report from the Board's Chair and during the trustee question period.

## Chair's report

- 41 According to the closed meeting minutes, the Chair of the Board provided a brief oral report that led the Committee to pass a resolution to limit in-person attendance at Board meetings. In her report, the Chair noted that trustees and staff members had expressed concerns about their safety and security at Board meetings.

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<sup>19</sup> Letter from the Ontario Ombudsman to the Durham District School Board (29 November 2023), online: <<https://www.ombudsman.on.ca/what-we-do/topics/education/investigations-and-reviews-school-board-meetings/durham-district-school-board-review-of-a-meeting-on-june-5,-2023>>.



- 42 A trustee then stated that students with diverse identities did not feel safe attending meetings. Another trustee suggested that the Board should determine the reasons why parents had expressed “strong feelings” in the meeting room, and another member noted that many people in the gallery were not parents of students with the School Board.
- 43 Interviewees told my Office that members discussed feeling unsafe and threatened at board meetings. In particular, two trustees discussed having received death threats, including one threat of a shooting.
- 44 According to the meeting minutes, it was noted that the livestream provided the public with access to observe the meetings, and that the Board was required to uphold the Ontario *Human Rights Code*. The Committee commented that people in the boardroom’s public gallery were not safe, and that other bodies, such as municipalities and police services boards, had replaced in-person public attendance at meetings with virtual attendance.
- 45 A motion was put forward to close the meeting room’s public gallery and to continue to allow members of the public to observe meetings live online. The Committee discussed this motion and the nature of the concerns facing the Board. The motion was then amended to state that it would be reviewed in six months, and the resolution ultimately passed. The Committee then discussed how this decision would be communicated to the public, and clarified that the gallery would be closed for both Board and standing committee meetings.

### Trustee question period

- 46 According to the closed meeting minutes, student trustees then left the meeting, and, pursuant to its usual practice, the Board continued to meet in closed session to offer trustees an opportunity to discuss questions pertaining to five topics: Security, personal information, property, negotiations, and ongoing or prospective litigation.
- 47 According to the meeting minutes, the Committee discussed a question under the topic of “security” about if the Board wanted “to trade security for the reputation of the Board.” The meeting minutes noted that a trustee was concerned that by limiting in-person public access to meetings, parents would feel the need to “protest and withdraw their kids from our Board.” Interviewees told my Office that these statements were essentially an attempt to revisit and reverse the Committee’s previous decision to close the public gallery. Another member reminded this trustee that a resolution to close the public gallery had already passed. This trustee also stated that members of the public could watch meetings

through the livestream, and also had the ability to directly contact trustees, superintendents, and the Director of Education.

- 48 Three interviewees told my Office that the Committee also discussed various protests, including one that was to take place outside of the School Board's administrative building during the Board's June 20, 2023 meeting. However, the majority of interviewees did not recall any discussion of protests during this meeting, and this topic was not reflected in the meeting minutes.
- 49 The Committee of the Whole then discussed other questions unrelated to the complaint my Office received, and subsequently returned to open session. In open session, the Board passed a resolution to approve "Item H.4 from the Chair's report" from the Committee's closed session meeting, which was the resolution to close the public gallery. The Board of Trustees considered various other matters in open session and adjourned the meeting at 10:15 p.m.

## Analysis

- 50 Section 207(1) of the *Education Act* states that all meetings of a board of trustees and a committee of the board shall be open to the public. Section 207(2) allows for meetings of a committee of a board, including a committee of the whole board, to be closed to the public where the subject matter under consideration involves:
- a. the security of the property of the board;
  - b. the disclosure of intimate, personal or financial information in respect of a member of the board or committee, an employee or prospective employee of the board or a pupil or his or her parent or guardian;
  - c. the acquisition or disposal of a school site;
  - d. decisions in respect of negotiations with employees of the board; or
  - e. litigation affecting the board.
- 51 A meeting of a board of trustees or a committee of the board must also be closed when discussing an ongoing investigation respecting the board under the *Ombudsman Act*.<sup>20</sup>

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<sup>20</sup> s 207(2.1).

## *Exception for security of the property of the board*

- 52** Section 207(2)(a) of the *Education Act* allows a meeting to be closed to the public when the subject matter under consideration involves the security of the property of the board. The *Education Act* does not define “security” for the purposes of this section.
- 53** In the municipal context, the Information and Privacy Commissioner<sup>21</sup> (the “IPC”) and my Office<sup>22</sup> have found that the exception for the security of the property of the municipality should be given its plain meaning: The phrase applies to the protection of property from physical loss or damage, such as vandalism or theft, and the protection of public safety in relation to that property. Discussions of sensitive information do not fall within this exception.<sup>23</sup> In addition, my Office has found that “Whether the exception applies depends on the actual subject matter discussed, rather than the potential ramifications of discussing a subject in public.”<sup>24</sup>
- 54** The IPC has found that in order for this exception under the *Education Act* to apply, a school board must establish that (a) it owns identified property, either corporeal or incorporeal; and (b) the subject matter being considered is the security of that property, in the sense of taking measures to prevent loss or damage to the property.<sup>25</sup> The IPC has further stated that this exception “... would seem to be designed to allow boards to conduct closed meetings where an open meeting could result in the board’s property (corporeal or incorporeal) being put at risk.”<sup>26</sup>
- 55** As noted above, the School Board owns the administrative building in which Board meetings are held. During the Chair’s report, trustees discussed feeling unsafe and threatened at meetings in the administrative building, and two trustees discussed death threats against them. The Committee then discussed a motion to close the public gallery. We were told by most interviewees that the resolution was passed in order to ensure the safety and security of staff members, trustees, students and members of the public in the boardroom.

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<sup>21</sup> *Toronto (City) (Re)*, 2009 CanLII 60399 (ON IPC) [*Toronto*] at 51, online: <<https://canlii.ca/t/26g14>>.

<sup>22</sup> *Amherstburg (Town of) (Re)*, 2018 ONOMBUD 8 at para 43 [*Amherstburg*], online: <<https://canlii.ca/t/hvmv1>>. See also: *Port Colborne (City of)*, 2015 ONOMBUD 32 at para 84 [*Port Colborne*], online: <<https://canlii.ca/t/gtp7c>>.

<sup>23</sup> *Amherstburg*, *supra* note 21 at para 51.

<sup>24</sup> *Port Colborne*, *supra* note 21 at para 86.

<sup>25</sup> *Toronto District School Board (Re)*, 2015 CanLII 51500 (ON IPC) at paras 24-26, online: <<https://canlii.ca/t/gkqgh>>.

<sup>26</sup> *Ibid* at para 32.

- 56 In addition, interviewees told my Office that discussions during the Committee’s closed session question-and-answer period, where a trustee further asked about limiting in-person attendance at meetings, pertained to the Committee’s previous decision to close the public gallery.
- 57 Accordingly, the Committee’s discussions about limiting in-person attendance at meetings fit within the exception for the security of the property of the board. These discussions related to safety concerns and the protection of public safety in relation to the administrative building’s boardroom.

## June 20, 2023 Meeting

- 58 The complaint also raised concerns that during a closed meeting on June 20, 2023, the Committee of the Whole discussed limiting in-person attendance at meetings, and complained that these discussions may not have fit within the *Education Act’s* closed meeting exceptions.
- 59 The Board of Trustees held a meeting at the School Board’s administrative building on June 20, 2023, beginning at 5:00 p.m. Members of the public could not attend this meeting in person.
- 60 It was reported by local media that more than one hundred people protested outside of the administrative building during this meeting.<sup>27</sup>
- 61 After approving the meeting agenda, the Committee of the Whole passed a resolution to move into closed session.
- 62 My Office’s review found that the Committee discussed the issue of in-person attendance at meetings several times during the closed session: During an oral report from the Board’s Chair, a discussion of business arising from the June 6, 2023 closed meeting minutes, and at two separate points during the trustee question period.

## Chair’s report

- 63 According to the closed meeting minutes, the Chair of the Board of Trustees provided an oral update during this closed meeting, which, among other

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<sup>27</sup> Kathleen Saylor, “Gender identity policy divides crowds outside Windsor school board’s first closed meeting”, *CBC News* (20 June 2023), online: <<https://www.cbc.ca/news/canada/windsor/windsor-essex-public-school-boards-closed-meetings-1.6882455>>.

information, included details related to the Committee's decision to limit in-person attendance at meetings.

- 64** Specifically, the meeting minutes stated that during the second half of her update, the Chair expressed concern that information from the previous closed session may have been discussed publicly, noting that several trustees had responded to inquiries regarding the Committee's decision to limit in-person attendance at meetings. The Chair reminded trustees that they did not have the right to share personal opinions or feelings about closed session discussions. The Chair told my Office that the purpose of the report was to remind trustees of their confidentiality obligations.

### Business arising from previous meeting minutes

- 65** The Committee subsequently approved minutes from the June 6, 2023 closed session meeting and discussed business arising from the minutes, including the Committee's June 6 decision to close the public gallery.
- 66** A motion was then put forward at the June 20, 2023 meeting to create a safety plan "...to protect both staff, trustees and the public that attend our board meeting and that it be in place by the first regularly scheduled board meeting in September."
- 67** The mover of the motion discussed the original resolution from the June 6 meeting, and noted that the Board needed to clearly outline the steps it was taking to create a safe environment and to develop a safety plan.
- 68** The Committee then discussed who would be involved in the development of the safety plan and the timing and process for implementing it. Interviewees told my Office that the Committee discussed if the public gallery should be closed to the public, how long it should be closed for, and the process for reopening it to the public. According to the meeting minutes, it was noted that the safety plan should be developed as soon as possible due to ongoing safety concerns.
- 69** A trustee told my Office that the Committee discussed its general expectations of the types of security measures, including physical changes to the building and personnel changes, which should be included in the safety plan. This trustee also told my Office that the Committee identified specific areas in the administrative building where trustees could experience threats to their safety.
- 70** In addition, a staff member told my Office that the Committee discussed the protests that were occurring outside of the administrative building during this meeting, and that this led to a discussion of the School Board's existing security protocols and procedures.

- 71 The Committee then passed the resolution and discussed other matters that did not relate to the complaint my Office received.

### Trustee question period

- 72 The closed meeting minutes state that the student trustees then left the meeting, and, pursuant to its usual practice, the Board continued to meet in closed session to offer trustees an opportunity to discuss questions pertaining to five topics: Security, personal information, property, negotiations, and ongoing or prospective litigation.
- 73 According to the closed meeting minutes, the Committee discussed a question under the topic of “security” about whether or not the Board would hold a special meeting prior to the first regularly scheduled meeting in September in order to approve a safety plan.
- 74 Interviewees told my Office that the Committee discussed the timing and process for developing, approving, and implementing the safety plan. The Committee then discussed that the public gallery would remain closed until there was a safety plan in place.
- 75 A motion was put forward to schedule a special Board meeting to rescind the previous resolution to close the public gallery and approve a safety plan. This motion was defeated, and it was noted that the public gallery would remain closed and the safety plan would be presented to trustees at the September 19, 2023 meeting.
- 76 The Committee later discussed a question under the topic of “ongoing or prospective litigation” about if the School Board had sought a legal opinion with respect to the closure of the public gallery.
- 77 My Office’s review found that during this portion of the meeting, the former Director emphasized that the School Board needed to prioritize safety at meetings. She further noted that the School Board had already publicly communicated that the public gallery would be closed for the current meeting, and that my Office could become involved in this matter.
- 78 The Committee returned to open session at 7:10 p.m. Shortly thereafter, the Board of Trustees passed a resolution to approve “Item D.1” from the Committee of the Whole’s closed session. The Board of Trustees considered various other matters in open session and adjourned the meeting at 8:35 p.m.

## Analysis

### *Exception for security of the property of the board*

- 79 As previously noted, section 207(2)(a) of the *Education Act* allows a meeting to be closed to the public when the subject matter under consideration involves the security of the property of the board.
- 80 In the municipal context, both the Information and Privacy Commissioner<sup>28</sup> and my Office<sup>29</sup> have found that this phrase applies to the protection of property from physical loss or damage, such as vandalism or theft, as well as the protection of public safety in relation to that property. The IPC has also stated that this exception "...would seem to be designed to allow boards to conduct closed meetings where an open meeting could result in the board's property (corporeal or incorporeal) being put at risk."<sup>30</sup>
- 81 As noted above, the School Board owns the administrative building in which Board meetings are held. During the Chair's report, the Chair noted that several trustees had responded to public inquiries regarding the Committee's decision to limit in-person attendance at meetings, and reminded trustees of their confidentiality obligations.
- 82 During the Committee's discussions of business arising from the June 6, 2023 closed meeting minutes, the Committee discussed a proposed motion to create a safety plan. The motion specifically stated that its purpose was to protect School Board staff, trustees, and members of the public at Board meetings, which take place in the administrative building's boardroom.
- 83 A trustee told my Office that during this discussion, the Committee discussed its general expectations of the types of security measures which should be included in the safety plan, such as physical changes to the building and personnel changes. This trustee also told my Office that the Committee identified areas in the administrative building where trustees could potentially experience threats to their safety. In addition, a staff member told my Office that the Committee discussed the protests that were occurring outside of the administrative building during this meeting, and that this led to a discussion of the School Board's existing security protocols and procedures.

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<sup>28</sup> *Toronto*, *supra* note 20 at para 51.

<sup>29</sup> *Amherstburg*, *supra* note 21 at para 43 and *Port Colborne*, *supra* note 21 at para 84.

<sup>30</sup> *Ibid* at para 32.

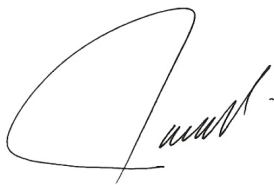
- 84 In addition, during the trustee question period, the Committee discussed the process for creating a safety plan and if the School Board had sought a legal opinion regarding the closure of the public gallery.
- 85 Accordingly, the Committee's discussions about limiting in-person attendance at meetings during the Chair's report and the trustee question period, as well as its discussions of business arising from the June 6, 2023 closed meeting minutes, fit within the exception for the security of the property of the board. These discussions related to safety concerns and the protection of public safety in relation to the administrative building's boardroom.

## Opinion

- 86 The *in camera* discussions of the Greater Essex County District School Board's Committee of the Whole about limiting in-person attendance at meetings on June 6 and June 20, 2023 fit within the *Education Act's* open meeting exceptions.
- 87 My investigation found that the Greater Essex County District School Board limited in-person attendance at meetings for a period of time due to safety and security concerns. Once the School Board had a safety plan in place, it resumed in-person attendance at its meetings. I commend the steps that the School Board has taken to resume in-person public attendance at meetings, as required by section 6(1) of Ontario Regulation 463/97, *Electronic Meetings and Meeting Attendance*.

## Report

- 88 The School Board was given the opportunity to review the preliminary version of this report and provide comments to my Office. All comments received were considered in the preparation of this final report.
- 89 The Chair of the Board of Trustees indicated that my report will be included as correspondence at an upcoming meeting. At that time, it will also be posted on my website at [www.ombudsman.on.ca](http://www.ombudsman.on.ca).



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Paul Dubé  
Ombudsman of Ontario

*Ce rapport est aussi disponible en français*