



Ombudsman Report

**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**

**Paul Dubé
Ombudsman of Ontario**

March 2024

Complaint

- 1 My Office received a complaint relating to closed meetings held by the Parry Sound Building Committee (the “Committee”) of the Near North District School Board (the “Board”) on December 14, 2022, January 12, 2023, and February 6, 2023.
- 2 The complaint alleged that the Committee’s *in camera* discussions during these meetings did not fit within any of the closed meeting exceptions under the *Education Act*¹ (the “Act”) and should have occurred in open session. The complaint also alleged that on December 14, 2022 and January 12, 2023, the Committee did not provide the public with information about the subject matters to be discussed *in camera* and did not report back when it returned to open session.
- 3 My investigation determined that the Committee discussed matters *in camera* on December 14, 2022, January 12, 2023, and February 6, 2023 that did not fit within the *Education Act*’s open meeting exceptions.
- 4 However, the Committee did not contravene the *Education Act* or the Board’s Governance Manual and by-laws by not providing the public with information about the matters to be discussed in closed session and by not reporting back about the matters discussed in closed session on December 14, 2022 and January 12, 2023.
- 5 Finally, my investigation found that the Committee held electronic meetings on December 14, 2022, January 12, 2023, and February 6, 2023 with no option for the public to attend them in-person, contrary to section 6(1) of O Reg 463/97, *Electronic Meetings and Meeting Attendance*, under the *Education Act*.

Ombudsman jurisdiction

- 6 Since September 1, 2015, the Ontario Ombudsman has the authority to carry out impartial and independent reviews and investigations of complaints concerning the administrative conduct of school boards, including complaints concerning meetings held by a board of trustees or a committee of a board.

¹ RSO 1990, c E.2.

- 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*.
- 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 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.
- 9 My Office previously investigated closed meetings held by the Near North District School Board. In "Lessons Not Learned: Transparency of Near North District School Board's decision to close Widdifield Secondary School after the 2016-2017 Pupil Accommodation Review process" ["Lessons Not Learned"], I found, among other things, that private discussions between trustees about a school consolidation and closure were not permitted under the *Education Act*.² I made 14 recommendations, all of which were accepted by the Board.

Investigative process

- 10 On April 13, 2023, my Office advised the Board of my intent to investigate this complaint.
- 11 My Office reviewed relevant portions of the Board's Governance Manual, which contains the Board's by-laws, policies, and administrative guidelines; the Parry Sound Building Committee's Terms of Reference; and personal notes of the meetings made by a Board staff member. We also reviewed

² Ontario Ombudsman, *Lessons Not Learned: Transparency of Near North District School Board's decision to close Widdifield Secondary School after the 2016-2017 Pupil Accommodation Review process* (July 2019) at para 4 [*Lessons Not Learned*], online: <https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/reports-on-investigations/2019/lessons-not-learned>.

the open and closed meeting agendas, reports, and minutes for the December 14, 2022, January 12, 2023, and February 6, 2023 meetings, and a video recording of the open and closed portions of the January 12, 2023 meeting.³

- 12 My Office interviewed the Chair of the Committee, the Chair of the Board of Trustees, the Board's Superintendent of Business, the Executive Assistant to the Director of Education at the time, and the Director of Education. My Office also spoke with the Director of the Ministry of Education's Capital Program Branch and an Education Officer with the Ministry's Field Services Branch.
- 13 My Office received full co-operation in this matter.

Parry Sound JK-12 school project

- 14 The Near North District School Board is planning to construct a JK-12 school on the site of the Parry Sound High School, which is already owned by the Board.⁴
- 15 The Board conducted a pupil accommodation review in relation to this project during the 2012-2013 school year. A pupil accommodation review is the community engagement process used by school boards when considering consolidating or closing a school. The Board accepted the Accommodation Review Committee's recommendation to close the Parry Sound High School and two elementary schools in McDougall Township.⁵
- 16 In 2017, the Ministry of Education introduced a moratorium on pupil accommodation reviews. Accommodation review decisions made prior to this announcement were not subject to the moratorium.

³ My Office was told that the Committee did not record its December 14, 2022 and February 6, 2023 meetings.

⁴ Near North District School Board, *Parry Sound JK-12 Build Community Feedback Report* (14 April 2023) at 11, online: <<https://www.nearnorthschools.ca/wp-content/uploads/2023/04/Parry-Sound-Build-Community-Feedback-Report-2023-04-13-1.pdf>>.

⁵ Lygia Dallip, *New Parry Sound JK - 12 School Project - Final Report* (29 July 2021) at 5 [*New Parry Sound JK - 12 School Project*], online: <<https://www.nearnorthschools.ca/wp-content/uploads/2021/08/Dallip-report.pdf>>.

Parry Sound Building Committee

- 17 The Parry Sound Building Committee was established by resolution at a regular meeting held by the Board of Trustees on March 24, 2015. According to its Terms of Reference, the Committee's purpose is to "... monitor the project costs, spending and timely completion of construction [of the JK-12 school]."
- 18 The Committee's Terms of Reference state that the Committee is composed of three trustee representatives, the Superintendent of Business, and the Superintendent of Education, and that the Chair of the Board may attend Committee meetings, with full voting rights.

The Ministry of Education's communications embargo

- 19 On December 16, 2022, the Assistant Deputy Minister of the Ministry of Education's Capital and Business Support Division sent the Board a letter that approved its requests for additional funding and to proceed to tender for the construction of the new Parry Sound JK-12 school. The Ministry told the Board that the information contained in the letter was strictly confidential and subject to a "communications embargo." This communications embargo was lifted on April 20, 2023.
- 20 On January 5, 2023, a Board staff member emailed the Ministry's Capital Program Branch to ask whether the communications embargo required that any discussions about funding by the Board of Trustees or a committee of the Board take place in closed session.
- 21 On January 10, 2023, a Branch Manager told the staff member that their understanding was correct.
- 22 However, during our investigation, the Ministry's Capital Program Branch told my Office that this answer was not accurate, and that the Ministry does not prohibit school boards from discussing information related to a request or an approval to proceed to tender in an open meeting.
- 23 On March 2, 2023, a Board staff member wrote to the Ministry's Capital Program Branch and asked for clarification as to which open meeting exception the Board should rely upon to discuss "embargoed information" in closed session. The Branch did not answer this question in writing.

- 24 On March 3, 2023, a Board staff member spoke with an Education Officer with the Ministry's Field Services Branch and asked the same question. The Education Officer told the staff member that embargoed information should not be discussed in open session.
- 25 The Ministry's Capital Program Branch informed my Office that changes to the Ministry's Capital Priorities Grant Program for the 2023-24 school year will result in fewer communications embargoes in the future. The Ministry is developing training materials for their staff related to these changes, which will include guidance on how to respond to questions about communications embargoes and requests for clarification on what information school boards may discuss publicly.
- 26 On November 17, 2023, the Ministry sent school boards and school authorities an updated communications protocol for capital projects, as well as an accompanying memorandum highlighting updates to the this protocol. Both the memorandum and the communications protocol state that communications embargoes do not apply to discussions at school board meetings, among other things.

December 14, 2022 meeting

- 27 The Committee held a meeting via Zoom on December 14, 2022, beginning at 1:03 p.m. The Committee quickly moved into closed session, but it did not cite a specific closed meeting exception from the *Education Act*, nor did it provide the public with information about the subject to be discussed in closed session.
- 28 According to the closed meeting agenda, which was not shared publicly, the purpose of the closed session was to approve previous closed session minutes and to receive a project update and accompanying report.
- 29 During the closed session, the Committee approved closed meeting minutes from its June 30, 2022 meeting. Board staff then provided the Committee with an update on the Parry Sound JK-12 school project and the Ministry of Education's capital funding process. Staff also discussed a written report, which referred to the Board's expected proceeds of disposition from the sale of school sites. My Office was told that the Board's future negotiations regarding the disposal of these sites could be affected if the value of these properties was discussed publicly.

- 30 According to the meeting minutes, staff noted that this discussion was taking place in closed session to protect the confidential nature of a funding request that the Board had submitted to the Ministry of Education, as well as the integrity of the tendering process. Staff noted that the Ministry's usual practice was to ask school boards to keep funding requests confidential until a joint public funding announcement could be made.
- 31 The minutes indicate that Committee members then asked questions and made comments on a wide variety of topics related to the Parry Sound JK-12 school project, including the school's site drawings; the expected timeline for the Board to receive a response to its funding request; the lack of community support for the project, which included a discussion of the requirement that the Board build the new school and dispose of two elementary schools in order to receive funding; and disparities facing students living in Parry Sound and North Bay, which included a discussion of whether the Widdifield Secondary School site in North Bay could be sold and the proceeds of its disposition directed towards this new school.
- 32 When asked why this broad range of topics needed to be discussed *in camera*, a Committee member told my Office that the Board had submitted a funding request to the Ministry of Education, and that the Board needed to receive a response before it could publicly discuss this request.
- 33 The Committee then returned to open session. The Committee did not report back to the public regarding its *in camera* discussions. The Committee then considered various other matters in open session and adjourned the meeting at 2:08 p.m.

Analysis

- 34 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.⁶ A committee meeting may be closed when 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;

⁶ s 207.

- 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.⁷
- 35** A meeting of a board of trustees or committee must also be closed when discussing an ongoing investigation under the *Ombudsman Act*.⁸
- 36** The Board’s By-law 106, “Meetings in Private Session” restates the Act’s closed meeting exceptions.
- 37** As I stated in my report “Lessons Not Learned”, “[t]here are no exceptions to the open meeting requirement for frank conversation or generally referring to confidential information. In order to justify closed meeting consideration of a subject, it must squarely fit within one of the exceptions to the open meeting rule.”⁹

Exception for acquisition or disposal of a school site

- 38** Section 207(2)(c) of the *Education Act* allows a meeting to be closed to the public when the subject matter under consideration involves the acquisition or disposal of a school site. The *Education Act* states that the term “acquire” includes the purchase or lease of a school site¹⁰ and the term “disposal” includes the sale or lease of a school site.¹¹
- 39** I have previously found that this exception applies only to discussions involving “the acquisition or disposal of a school site”, and that the decision to dispose of a school site is distinct from the decision to close it.¹²
- 40** In “Lessons Not Learned”, the Board’s closed meeting discussion did not fall under this exception, as “[t]here was no property being transferred and no bargaining position to protect during these discussions.”¹³

⁷ s 207(2).

⁸ s 207(2.1).

⁹ *Lessons Not Learned*, *supra* note 2 at para 134.

¹⁰ s 195(1).

¹¹ s 194(3).

¹² *Lessons Not Learned*, *supra* note 2 at para 135.

¹³ *Ibid.*

- 41 In the present case, the Board already owns the site on which the proposed school will be located. Accordingly, none of the Committee's *in camera* discussions related to the acquisition of a school site.
- 42 However, the Committee also discussed a written report that referred to the expected proceeds of disposition from the sale of other school sites. My Office was told that the Board's future negotiations regarding the disposal of these sites could be affected if the estimated value of the properties was discussed publicly. In the circumstances, the Board had a bargaining position to protect in relation to the sale of these properties. Accordingly, this portion of the Committee's *in camera* discussion fit within the exception for the acquisition or disposal of a school site.
- 43 The Committee's discussion also noted that the Board is required to dispose of two elementary school sites in the Municipality of McDougall. It has been publicly reported that the Board accepted the Accommodation Review Committee's recommendation to close these two elementary schools.¹⁴ There was no discussion about the potential sale prices or process for these properties, and my Office did not find any evidence to suggest that the Board's bargaining position could be affected if the general discussion about the disposal of school sites was held in open session. Accordingly, this portion of the discussion did not fit within the exception for the acquisition or disposal of a school site.
- 44 Lastly, the Committee also discussed whether the Widdifield Secondary School site in North Bay could be sold and the proceeds of disposition used for this project. My Office did not find any evidence to suggest that the Board has plans to dispose of the Widdifield school site. Instead, this discussion was speculative in nature and did not pertain to an actual land transaction that is pending or has been proposed. Accordingly, this portion of the discussion did not fit within the exception for the acquisition or disposal of a school site.

Other closed meeting exceptions

- 45 My Office also considered whether the remainder of the Committee's discussions fit within any of the Act's other closed meeting exceptions.
- 46 The Committee did not discuss matters pertaining to the security of the Board's property; intimate, personal or financial information about a specifically identified individual; employee negotiations; or litigation.

¹⁴ *New Parry Sound JK - 12 School Project*, *supra* note 5 at 5.

Accordingly, the remainder of the Committee's discussions did not fit within the Act's closed meeting exceptions.

- 47 We also considered whether the Committee could have reviewed the valuation of two specified school sites separate from its broader discussion about the building project. In *St. Catharines v. IPCO*, the Divisional Court found that it is unrealistic to expect municipal councils to split up discussions between open and closed sessions where it would “detract from free, open and uninterrupted discussion.”¹⁵ However, if the topics can be separated, council is expected to return to open session for those portions of the discussion that do not fit within an open meeting exception.¹⁶
- 48 The Committee's discussion of the valuation of two school properties was a small and distinct part of its discussion about the Parry Sound JK-12 school project. Accordingly, the Committee could have parsed the discussion between open and closed session without creating an unreasonable interruption to the conversation.

January 12, 2023 meeting

- 49 The Committee held a meeting via Zoom on January 12, 2023 beginning at 4:30 p.m. After reviewing the agenda in open session, the Committee moved immediately into closed session. The Committee did not cite a specific closed meeting exception from the *Education Act*, nor did it provide the public with information about the subject to be discussed in closed session.
- 50 According to the closed meeting agenda, which was not shared publicly, the purpose of the session was to receive an update on the Parry Sound JK-12 school project from Board staff.
- 51 During the closed session, staff provided the Committee with an update on the JK-12 school project and shared information about project costs. Staff confirmed that the Ministry of Education had accepted the Board's funding requests and that the Board could proceed with the tender process. Staff provided information about the approved funding requests, noting that the Ministry had approved the Board's proposal related to the proceeds of disposition from particular school sites. My Office was told that the Board's future negotiations regarding the disposal of these sites could be affected if this amount was discussed publicly.

¹⁵ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 at para 42, online: <<https://canlii.ca/t/fkqfr>>.

¹⁶ *Bruce (County of) (Re)*, 2022 ONOMBUD 7 at para 64, online: <<https://canlii.ca/t/jpbf9>>.

- 52 According to the meeting minutes, staff told the Committee that the Ministry had imposed a “communications embargo” on public discussions relating to these matters, and only trustees and key staff members could discuss the information at that time.
- 53 After receiving these updates, Committee members asked questions and made comments about a variety of topics, including whether working drawings of the new school could be shared with the Committee; the importance of updating the community on this project; whether the Board could retain one of the schools in the Municipality of McDougall in order to avoid the use of portables at the new school; and the importance of ensuring transparency with the public.
- 54 In response to the question about whether the Board could retain one of the schools in the Municipality of McDougall, staff stated that the Ministry of Education’s funding approval was conditional on the Board disposing of the two schools in the Municipality of McDougall and utilizing the proceeds of disposition for the construction of the new school.
- 55 Representatives of the Board told my Office that they understood that the Ministry of Education’s communications embargo required that discussions relating to funding and the tender process for the construction of the new school take place in closed session.
- 56 The Committee then returned to open session. My investigation found that the Committee did not report back to the public regarding its closed session discussion. The Committee then considered various other matters in open session and adjourned the meeting at 5:28 p.m.

Analysis

Exception for acquisition or disposal of a school site

- 57 As previously noted, Section 207(2)(c) of the *Education Act* allows a meeting to be closed to the public when the subject matter under consideration involves the acquisition or disposal of a school site.
- 58 As noted above, the Board owns the site on which the proposed new school will be located, and thus, none of the Committee’s *in camera* discussions related to the acquisition of a school site.

- 59 However, during this meeting, a Board staff member discussed the Board's intended use of expected proceeds of disposition from the sale of identified school sites. My Office was told that the Board's future negotiations regarding the disposal of these sites could be affected if this figure was publicly discussed. In the circumstances, the Board had a bargaining position to protect in relation to the sale of these properties. Accordingly, this portion of the Committee's *in camera* discussion fit within the exception for the acquisition or disposal of a school site.
- 60 During the session, the Committee also discussed the requirement to use the proceeds of disposition from two schools to fund the Parry Sound K-12 school project. However, there was no discussion of the estimated proceeds, nor any ongoing negotiations. Accordingly, my investigation did not find any evidence to suggest that that the Board's bargaining position could be affected if this general discussion about the disposal of school sites was held in open session, and therefore, this portion of the discussion did not fit within the exception for the acquisition or disposal of a school site.

Other closed meeting exceptions

- 61 My Office considered whether the remainder of the Committee's discussions fit within any of the Act's other closed meeting exceptions.
- 62 The Committee did not discuss matters pertaining to the security of the Board's property; intimate, personal or financial information about a specifically identified individual; employee negotiations; or litigation. Accordingly, the remainder of the Committee's discussions did not fit within the Act's closed meeting exceptions.
- 63 Further, the Committee's discussion about expected proceeds of disposition from the sale of identified school sites was a small and distinct part of its discussion about the Parry Sound JK-12 school project. Accordingly, the Committee could have parsed the discussion between open and closed session without creating an unreasonable interruption to the flow of conversation.

February 6, 2023 meeting

- 64 The Committee held a meeting via Zoom on February 6, 2023 beginning at 3:00 p.m. The Committee discussed a number of items in open session and received a presentation by the Board's Capital Projects Manager regarding drawings of the proposed JK-12 school. The Committee then moved into closed session. The open meeting minutes state that the Committee noted in open session that it was moving into closed session to discuss a "financial item."
- 65 According to the closed meeting agenda, which was not shared publicly, the purpose of the session was to approve previous closed session minutes and to discuss a Board communication.
- 66 After approving previous closed meeting minutes, a Board staff member provided updates to the Committee on the Parry Sound JK-12 school project, and noted that a Capital Analyst with the Ministry of Education's Capital Program Branch had recently confirmed that the communications embargo was still in effect. Staff then provided the Committee with an update on the tender process.
- 67 According to the meeting minutes, the Committee then discussed the drawings of the proposed school, which had been presented in public session. The minutes state that this discussion occurred in closed session because "[...] the committee may have questions that relate to budget/financial items."
- 68 Committee members then asked questions and made comments about a variety of other topics pertaining to the proposed JK-12 school, including the amount of play space available; the school's kitchen access; and whether the closure of McDougall Public School could be delayed due to population growth within the area.
- 69 In response to the question about whether the closure of McDougall Public School could be delayed, staff noted that the funding requirements imposed by the Ministry of Education required the Board to dispose of the two schools in the Municipality of McDougall, one of which was McDougall Public School.
- 70 Representatives of the Board told my Office that they understood that the Ministry of Education's communications embargo required that discussions relating to funding and the tender process for the construction of the new school take place in closed session.

- 71 The Committee then returned to open session. The Committee considered various other matters in open session and adjourned the meeting at 4:05 p.m.

Analysis

Exception for acquisition or disposal of a school site

- 72 As previously noted, section 207(2)(c) of the *Education Act* allows a meeting to be closed to the public when the subject matter under consideration involves the acquisition or disposal of a school site.
- 73 As noted above, the Board owns the site on which the proposed new school will be located, and thus, none of the Committee's *in camera* discussions related to the acquisition of a school site.
- 74 During this closed session, Board staff again informed Committee members that the Ministry of Education required the Board to dispose of the two schools in the Municipality of McDougall. There was no discussion about specific property valuations or ongoing negotiations, and my investigation did not find any evidence to suggest that the Board's bargaining position could be affected if this general discussion about the disposal of school sites was held in open session. Accordingly, this portion of the discussion did not fit within the exception for the acquisition or disposal of a school site under section 207(2)(c) of the *Education Act*.

Other closed meeting exceptions

- 75 My Office considered whether the Committee's discussions fit within any of the Act's other closed meeting exceptions.
- 76 The Committee did not discuss matters pertaining to the security of the Board's property; intimate, personal or financial information about a specifically identified individual; employee negotiations; or litigation. Accordingly, the Committee's discussions did not fit within the Act's closed meeting exceptions.

Method of attendance

- 77 The Committee held meetings on December 14, 2022, January 12, 2023, and February 6, 2023 over Zoom with no option for the public to physically attend.
- 78 Section 6(1) of *O Reg 463/97, Electronic Meetings and Meeting Attendance* (the “*Regulation*”), 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.
- 79 The *Regulation* also requires that school boards develop and implement a policy providing for the use of electronic meetings.¹⁷ This policy is required to state, among other things, that at every meeting of a committee of the board, except for a committee of the whole board, the Committee Chair and the Director of Education or their designate shall be “physically present” in the meeting room of the committee.¹⁸ Alternatively, if the Chair or their designate attend a meeting electronically, at least one additional member of the committee must be present in the committee room.¹⁹
- 80 In March 2020, the *Regulation* was amended to create exceptions to these in-person requirements, none of which apply to the meetings on December 14, 2022, January 12, 2023, and February 6, 2023.²⁰ Accordingly, by holding these meetings electronically with no option for the public to physically attend, the Committee breached section 6(1) of the *Regulation*. Members of the public were, however, able to attend these three meetings by Zoom, and my Office did not receive any complaints raising concerns that members of the public were not able to access these electronic meetings.

¹⁷ s 2(1).

¹⁸ s 5(2).

¹⁹ *Ibid.*

²⁰ The *Regulation* states that these 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.

Information about matters to be discussed in closed session

- 81 My Office received a complaint that the Committee did not provide the public with information about the matters to be discussed at the December 14, 2022 and January 12, 2023 closed sessions.
- 82 Unlike the *Municipal Act, 2001*, the *Education Act* does not require that a board of trustees or committee pass a resolution in open session to authorize a closed session, nor does it require the Board to provide information about the matters to be discussed in closed session.
- 83 Section 1 of the Board's By-law 106, "Meetings in Private Session", states that the Board may go into closed session through a duly moved and approved Board motion. The by-law does not otherwise prescribe minimum requirements for the content of this resolution.
- 84 The Committee passed resolutions in open session to authorize the December 14, 2022 and January 12, 2023 closed sessions, thereby meeting the requirements of section 1 of By-law 106. The Committee's resolutions did not cite closed meeting exceptions from the *Education Act* and did not provide the public with information about the subject to be discussed in closed session.
- 85 In *Farber v. Kingston*, the Ontario Court of Appeal noted that a municipal council's resolution to go into a closed meeting should provide a general description of the issue to be discussed in a way that maximizes the information available to the public while not undermining the reason for excluding the public.²¹ Publicly stating the issue enhances the transparency of local democracy and ensures that decision-makers are accountable when they discuss matters behind closed doors. In the future, I encourage the Committee to adopt the best practice of providing the public with meaningful information about the matters to be discussed *in camera*.
- 86 In addition, I encourage the Committee to adopt the best practice of indicating which exception it intends to rely on for each matter discussed in closed session, as I have previously encouraged municipal councils to do.²² These practices provide the public with meaningful information about the

²¹ *Farber v. Kingston (City)*, 2007 ONCA 173 at para 21, online: <<https://canlii.ca/t/1qtz>>.

²² See, for example: Letter from the Ontario Ombudsman to the City of Pickering (23 September 2020), online: <<https://www.ombudsman.on.ca/resources/reports,-cases-and-submissions/municipal-meetings/2020/city-of-pickering>>.

issues to be discussed *in camera* and inspire confidence that the meeting is being properly closed.

Report back

- 87 I also received a complaint that the Committee did not report back following its closed sessions on December 14, 2022 and January 12, 2023.
- 88 There is no requirement under the *Education Act* or the Board's Governance Manual and by-laws for the board of trustees or committees of the Board to report back in public after the conclusion of a closed meeting.
- 89 I have recommended reporting back as a best practice in the municipal context²³ as well as in a letter to the Toronto Catholic District School Board²⁴ to increase the transparency of the closed meeting process.
- 90 A report back may consist of a general discussion in open session of subjects considered in closed session, together with information about any decisions, resolutions, and directions given to staff.²⁵ In other cases, the nature of the discussion might allow for considerable information about the closed session to be provided publicly.²⁶ Reporting back after each closed session provides meaningful information to the public about the issues discussed *in camera* and inspires confidence that the meeting has been properly closed.²⁷
- 91 In the future, I encourage the Committee to adopt the best practice of reporting back meaningful information, where possible, on what was discussed *in camera*.

²³ *Loyalist (Township) (Re)*, 2020 ONOMBUD 4 at para 26, online: <<https://canlii.ca/t/j9ksh>>.

²⁴ Letter from the Ontario Ombudsman to Toronto Catholic District School Board (10 March 2023), online: <<https://www.ombudsman.on.ca/what-we-do/topics/education/investigations-and-reviews-school-board-meetings/toronto-catholic-district-school-board-review-of-a-meeting-on-october-27,-2022>>.

²⁵ *Loyalist*, *supra* note 23 at para 27 and *Amherstburg (Town of) (Re)*, 2022 ONOMBUD 11 at para 70 [*Amherstburg*], online: <<https://canlii.ca/t/jr5rc>>.

²⁶ *Ibid.*

²⁷ *Amherstburg*, *supra* note 25 at para 71.

Opinion

- 92 It is my opinion that the Near North District School Board's Parry Sound Building Committee discussed matters *in camera* on December 14, 2022, January 12, 2023, and February 6, 2023 that did not fit within the *Education Act's* open meeting exceptions. These meetings were held electronically with no option for the public to attend them in person, which does not comply with the requirements in section 6(1) of *O Reg 463/97, Electronic Meetings and Meeting Attendance*. Each of these meetings was contrary to law in accordance with section 21(1)(a) of the *Ombudsman Act*.²⁸
- 93 In reaching this conclusion, I acknowledge that the Committee relied, at least in part, on information provided by the Ministry of Education about the communications embargo and the application of the *Education Act's* open meeting rules. My Office will be following up with the Ministry with respect to its commitment to provide staff with clear guidance on how to respond to questions about communications embargoes and the *Education Act's* open meeting requirements.
- 94 I make the following recommendations to assist the Near North District School Board's Parry Sound Building Committee in fulfilling its obligations under the *Education Act* and enhancing the transparency of its meetings:

Recommendation 1

All members of the Near North District School Board's Parry Sound Building Committee should be vigilant in adhering to their individual and collective obligation to ensure that the Committee complies with its responsibilities under the *Education Act* and the Board's Governance Manual and by-laws.

Recommendation 2

The Near North District School Board's Parry Sound Building Committee should ensure that any discussions that take place in closed session properly fit within one or more of the exceptions set out in the *Education Act*.

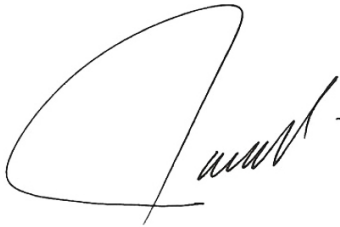
Recommendation 3

The Near North District School Board's Parry Sound Building Committee should ensure that its meetings are held in compliance with *O Reg 463/97, Electronic Meetings and Meeting Attendance*, under the *Education Act*.

²⁸ RSO 1990, c O.6.

Response

- 95 The Near North District School Board was given the opportunity to review a preliminary version of this report and provide comments to my Office. The Ministry of Education was also given the opportunity to review and comment on portions related to the Ministry's processes. All comments received were considered in the preparation of this final report.
- 96 In its response, the School Board affirmed its commitment to implementing my recommendations, and noted that it intends to engage a Special Advisor with the Ministry to assist it in improving its governance framework and practices. I commend the School Board's commitment to improving the accountability and transparency of its meeting practices.
- 97 In its response, the Ministry of Education informed my Office that in November 2023, it updated its Communication Protocol for capital projects. Going forward, any communications embargoes that otherwise may be in place will not apply to school board meeting discussions, amongst other things. This means that school boards will no longer be in the difficult position of potentially having to choose between complying with the Ministry's embargo and the *Education Act's* open meeting requirements.



Paul Dubé
Ombudsman of Ontario

Ce rapport est aussi disponible en français