Ontario Ombudsman's Office Marks One Year Of School Board Oversight

October 24, 2016

On August 18, 2016, the Ontario Secondary School Teachers' Federation welcomed Ontario Ombudsman Paul Dubé as its keynote speaker at the Summer Leadership Conference in Ottawa. The timing of the speech is significant, as September 2016 marks one year since the Office of the Ontario Ombudsman (the "Office") assumed responsibility for overseeing Ontario's school boards. Mr. Dubé described this oversight relationship as having been long-awaited by the Office:

[…] successive ombudsmen have called for oversight of the broader public sector ever since our office was established in 1975. In fact, we have always received complaints about municipalities, universities, and school boards, but we have not had the mandate to look into them until this year.

The Office's oversight over Ontario's 72 school boards came into effect on September 1, 2015, following the passage of Bill 8, the *Public Sector and MPP Accountability and Transparency Act.* Bill 8 introduced various changes that, as described in Ontario's legislature, were intended to "strengthen accountability and oversight" in various areas of the public sector — including the regulation of public sector compensation and the extension of the Office's oversight powers to municipalities and universities[1] in addition to school boards. In light of this change, the Office became the sixth Canadian ombudsman's office to oversee school boards.

Like these oversight powers, Mr. Dubé is, himself, new to the Office.[2] Accordingly, the progression of his term as Ontario's Ombudsman will dovetail with the development of a new relationship between school boards and the Office.

Addressing his experience with school board oversight during his first months at the Office, Mr. Dubé described a strong working relationship in the making – largely owing to open lines of communication between school boards and the Office to ensure that complaints are dealt with efficiently and expediently:

Since September first, we have received almost 700 complaints about school boards. I'm happy to report that so far, we have received excellent co-operation from most boards, which has allowed us to resolve many difficult issues. […] About one-third of all complaints are resolved by our staff simply providing information and referrals.

Mr. Dubé's keynote address illustrated his intentions that such dialogue and open lines of communication remain a keystone of his tenure as Ontario's Ombudsman. He indicated that the Office would remain open to involvement and input from school boards as *stakeholders,* with the corresponding expectation that school boards will familiarize themselves with the role of the Office and its processes:

I have made it a priority to get out to events like this, as often as possible, to meet and educate stakeholders and help them get to know what an Ombudsman does and how we work. And also to learn from stakeholders about the issues you deal with, and the challenges you face in your day-to-day work.

The Office expects that schools and school boards, as part of their role in this new partnership, will take the lead in developing processes and policies to address complaints, with the Office playing a supporting role as needed in more serious matters. As set out by the Office in its website message to those seeking to file a complaint respecting a school or school board:

The Ombudsman is an office of last resort, so you should attempt to resolve your complaints directly with the school board first. You may wish to discuss your concerns with a teacher, vice-principal or principal. If that does not resolve the matter, you may wish to speak with a school board superintendent or other board official.

Schools and school boards are well-advised to take proactive measures that ensure appropriate internal processes are established to receive and address any complaints that would otherwise be brought to the Office for investigation. To the extent that this is achieved, school boards may retain control over the development of solutions and policies that, where necessary, address issues raised by their stakeholders and community members. Even in cases where individuals bypass such internal processes and bring complaints directly to the Ombudsman, school boards with established processes will be better equipped to take the lead in generating solutions when the Office calls. As stated by Mr. Dubé:

We are not judges or enforcers – we review facts, and recommend solutions.

In general, the Office is able to address complaints regarding special education supports, school board policies, customer service provided by board staff and other matters within the purview of individual school boards. Although the Office's authority under Ontario's *Ombudsman Act* allows it to carry out investigations and make recommendations accordingly, these recommendations are not binding and the Office cannot overturn the decisions of school boards or otherwise issue penalties. However, the *Ombudsman Act* nevertheless requires school boards to co-operate with the Office in responding to a complaint. School boards contacted by the Office regarding complaints are well-advised to work with the Office to resolve the complaint, while recognizing that the resolution that is adopted need not be the specific resolution proposed by the Office.

Where complaints are made specifically against school boards, the Office will apply the following process:[3]

- The Ombudsman will assess all complaints and refer them to local school board officials for quick resolution, wherever possible.

- If local mechanisms are unsuccessful, the Ombudsman may attempt resolution and may contact the school board for more information.
- If an investigation is necessary, the school board will receive written notice and will be required to provide relevant information and documents.
- If the Ombudsman makes recommendations, the school board will have a chance to respond before any report is made public.
- The Ombudsman will follow up on relevant recommendations to ensure they are implemented and have the desired effect.

The Office also exercises its discretion not to investigate some complaints on the basis of factors that include (i) the age of the complainant; (ii) whether the complainant has sufficient personal interest in the subject matter; (iii)whether or not there is an alternative remedy for the complaint; and (iv) whether the complaint is considered frivolous or vexatious or if the matter involves a broader public policy issue.

School boards may take comfort in the fact that the 700 school board complaints received by the Office in the past year pale in comparison to the 20,000 overall complaints that the Office receives annually. Due to this high volume of complaints received by the Office, all of its teams focus on carrying out triage work to ensure that complaints are dealt with as soon as possible. It can be expected that the Office will value having school boards take the lead in addressing complaints where responsible processes have been developed for this purpose.

There are four areas where developing such processes for the management of complaints would be particularly valuable. According to Mr. Dubé, the most common themes in complaints regarding school boards are: (i) student safety and security; (ii) special education; (iii) school staff; and (iv) busing. Given that these areas generate the bulk of complaints that will otherwise be received by the Office, school boards may take these themes as a starting point for shoring-up policies and processes, as needed, to enable effective solutions to be generated regardless of whether a complaint is received directly from a community member or indirectly through the Office.

In managing their new oversight relationship with the Office, it will be particularly important for school boards to ensure that measures are in place to address issues whose systemic effects may be experienced by multiple students. In his speech, Mr. Dubé described the Office as becoming more involved in matters where trends in complaints indicate a single problem affecting many people. In such instances, the Office may undertake a *systematic investigation* — which entails extensive evidence-gathering and the publication of a public report.

As announced by various news sources on September 9, 2016, the Office has assigned staff to investigate whether such a systematic investigation will be undertaken with respect to a shortage of busing services being made available to students attending school in Toronto and Hamilton.

The Office's present investigation remains an opportunity for school boards to develop a solution to the busing shortages. Whatever the outcome, the interface between school boards and the Office in tackling this issue is likely to be significant to setting the tone for the continued development of this oversight relationship in coming years.

[1] These oversight powers took effect on January 1, 2016.

[2] Mr. Dubé assumed the role of Ontario's Ombudsman on April 1, 2016. He replaced acting Ombudsman Barbara Findlay and his tenure follows that of Ontario's previous full-term Ombudsman, André Marin.

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