

Submission on Bill 177 —

**Student Achievement and
School Board Governance Act, 2009**

Ontario Legislative Standing Committee on Social Policy
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(CUPE) Ontario

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The Canadian Union of Public Employees (CUPE) Ontario is pleased to make this submission to the Standing Committee on Social Policy on Bill 177, the Student Achievement and School Board Governance Act, 2009. We have a significant interest in Bill 177, the Student Achievement and School Board Governance Act, 2009. CUPE is a major stakeholder in Ontario's public school system, representing more than 50,000 support staff that work in English and French public and Catholic school boards. Our members are dedicated employees who work in every conceivable support position in our schools. They are also among the 220,000 CUPE members in this province who are parents or grandparents of students in the system and who are committed and passionate advocates for a thriving public education system.

Last year, CUPE worked in partnership with school board associations and the government to reach historic four-year labour agreements. The ministry says about the provincial discussion tables that "one of our great successes as a government has been to rebuild positive relationships with the education sector." We believe that Bill 177 has the potential to undermine these relationships by weakening further the role of trustees, one that has been continually eroded by the centralization of education funding and policy that was begun by the Harris government. After enduring legislation that was designed to weaken their influence on local school affairs, the most egregious being the axing of trustee salaries after struggling to interpret a confusing funding formula and enormous curricular and legislative changes, trustees are deserving of more credit and support than Bill 177 provides. Rather than nurturing its partnership with stakeholders, Bill 177 weakens one of them by suggesting that trustees cannot be trusted to carry out the duties that the vast majority of them have been doing quite admirably.

CUPE Ontario believes that Bill 177 represents a major misstep by a government that has brought many positive reforms to our education system and undone much of the damage wrought by the previous government. The overall tone of Bill 177 seems punitive towards trustees. We wonder if it doesn't represent an overreaction to the misdeeds of a few. We implore the government to rethink the need for this legislation and not head further down a path that is unnecessary to take.

Bill 177, as currently written, gives the Government of Ontario unprecedented powers over the affairs of school boards. This raises our concern about the types of relationships it is trying to forge among its partners. Specifically, our main concerns with Bill 177 are the following:

- the Bill redefines the role of trustee;
- the type of results or indicators for which trustees will be held accountable—under threat of effective removal from office via provincial supervision of the board;
- the use of regulatory power to implement these significant changes.

In attempting to give itself new powers over the affairs of school boards, the government is raising our concern about the type of relationships it is trying to forge among its partners. Specifically, our main concerns with the Bill are about its redefining the role of trustee, the type of results or indicators for which trustees will be held accountable—under threat of effective removal from office via provincial supervision of the board—and the use of regulatory power to implement these significant changes. We appreciate that the government has legitimate concerns over the conduct of some school trustees, but we disagree that this Bill will achieve the desired results.

Roles and Duties of Trustees

Our concern about the proposed changes to the roles of trustees is best summed up by the public school board association which takes issue with “a pervasive theme in many of the provisions that diminishes the role of trustees and erodes their status as individuals democratically elected to office and as a board of trustees.”

There can be no question this Bill would dramatically alter the roles of trustees that have evolved dramatically since the inception of our system in the 19th Century. From an early role, where trustees dominated the affairs of school boards with little interference from the provincial government, we are shifting to a system where trustees have less and less significant influence on how the province mandates that school boards be run. While history has shown there have been good reasons for provincial governments to play a major role in our public school systems, and usually with good results, there is a concern among many education stakeholders, CUPE included, that the pendulum is swinging too far in the direction of provincial control over education. Ontario’s education system has been well served by the democratic role played by dedicated local politicians; Bill 177 has the potential to not only diminish that role to the point of irrelevance, but also to discourage many talented individuals who would otherwise have run for the office of trustee.

Where the Bill would amend s. 218.1 of the *Act*, Duties of board members, there are two problematic clauses, both of which will mark departures in the roles trustees have traditionally played in our public school system. It requires, at (d), board members to “support the implementation of any board resolution after it is passed by the board,” and at (e), to “refrain from interfering in the day to day management of the board by its officers and staff.”

Under the amalgamation of school boards over a decade ago, school boards cover much larger geographic areas, with many boards now comprised of rural, urban, affluent and financially-struggling districts. Trustees come to the board table representing diverse needs of constituents. A trustee representing inner city wards will lobby at the board for different resources than a trustee representing a better off neighborhood or rural constituents, and to demand that she cease lobbying for her constituents’ needs because the majority has decided other groups are more deserving

of precious resources is to ask, in effect, that trustee to cease representing her constituents.

Introducing some notion of “cabinet solidarity” to school boards governance is a major departure from traditional trustee roles and, if implemented, it could stifle democratic debate at the local level. The Minister has objected to this interpretation saying, in the House, that “Trustees could obviously explain to their constituents that they may not have supported the decision at the board table and they may continue to disagree, but that, once the decision has been made, they should uphold that decision fully.” The Minister seems to be putting trustees in an impossible position by suggesting that they can “continue to disagree” with board positions while, at the same time, upholding the board’s decision fully. It would leave them open to charges of hypocrisy since they are elected to represent and reflect the issues, concerns and interests of their constituents.

s. 218(4)(e) reinforces the interpretation that Bill 177 will stifle local democratic debate by declaring that only the board chair will act as a spokesperson to the public on behalf of the school board. While acknowledging the desirability of coherent board communications to the public, we disagree that the board should not articulate dissenting opinions where there was strong disagreement among board members. Where board decisions reflect strong regional or other divisions, trustees on the losing side of board resolutions have a duty to their constituents to continue the battles about which, in many cases, they campaigned for office. School closing debates are a good example: trustees, representing inner city areas, may fight to prevent closure of downtown schools as board resources shift to suburban areas, and they cannot be expected to remain silent on board decisions to close schools in their jurisdictions. To ask them to do so, alienates them from their constituents and sets them up for political failure.

It is also unreasonable to ask trustees to “refrain from interfering in the day to day management of the board by its officers and staff.” The problem with this language is the word “interfering.” Trustees have a duty to promote the interests of their constituents and, often, these are local concerns about particular students in particular schools. Sometimes their constituents feel ill-equipped to present their own cases to school officials, such as the principal, and ask their trustee to act as go-between.

s. 218.1 (e) can be interpreted to imply that trustees will be required to refrain from performing those traditional roles. We hope that is not the intent of Bill 177 and suggest that the government make it clear that trustees can continue to act as advocates for their constituents by making enquiries on their behalf and helping present their cases. We suggest this would not be “interfering” in board affairs, but helping to smoothly implement them.

The suggestion that trustees be prohibited from interfering in day to day operations also needs to be reconsidered in light of roles that trustees already play in labour relations. Boards are involved in ratifying and, in some cases, negotiating collective agreements, hiring and firing staff, and in grievance procedures and other appeal processes in some boards. This provision appears to prohibit trustees from continuing to perform such

traditional functions. Bill 177 does not make it clear at all to what extent trustees should be involved in labour relations. If it is the intent of the Bill to totally exclude trustees from involvement in labour relations, we suggest that should be made clear so that we, and other affected groups, can comment on the particulars of the proposed legislation.

As a union representing support staff employees, we also have concerns that the proposed s. 218.1 amendments will limit our ability to engage local trustees in campaigns we feel will improve our members' working lives as well as the learning environment for students and teachers. For example, contracting out of cleaning services has, in our view, compromised learning conditions. There are trustees at boards where cleaning is contracted out who agree with our arguments. A trustee who tries to convince her colleagues to return contracted-out services back to the work of our bargaining units appears to be violating the provisions of 218.1, yet, she is, in good faith, promoting the interests of her constituents by advocating for in-house cleaning.

Local democracy thrives where there is engaged and informed public debate. School communities need to hear the opinions of trustees even when they dissent from board policies and decisions. Board decisions, that were controversial or which polarized the communities it served, may well need to be revisited, but this Bill implies that, once a board makes a decision, it is time to move on. To further quote the Minister, "what we're talking about is trying to create a cohesive movement forward once a decision has been made by a board." Who then is left to speak on behalf of those who were negatively affected by decisions of the board? Bill 177 goes too far by asking trustees to take part in a "cohesive movement forward" even when decisions negatively affect their constituents.

Provincial Interest Regulation and Student Success Indicators

The requirement that boards submit balanced budgets has been challenge enough for those struggling to provide services for all of their diverse student and community needs with the financial resources they receive from the government. To now demand that trustees bear responsibility for controversial evaluations of student achievement, given these financial resources over which they have no control, makes the job of trustee nearly impossible.

The government is planning to use the powers Bill 177 will give it to introduce a "provincial interest regulation" under 169.1(1)(a) of the *Act* that would make trustees accountable for EQAO test score targets. This controversial method of evaluation of student performance has drawn the ire of teaching federations, and we agree and support their contention that standardized testing is a poor way of measuring whether or not the public school system gives students the tools they need to succeed later in life. Attaching even more importance to EQAO results than they currently hold; i.e., the threat of provincial supervision for failure to meet the targets, may lead to even more questionable board practices designed to boost test results, with little overall benefit to students.

The government's consultation paper on possible variations of provincial interest regulations conceded that it did not want to rely on EQAO test scores alone to serve as "triggers" of government supervision of board affairs. The paper proposed other potential "triggers" and, while it appears the suggestions are all linked somehow to student achievement, none of them individually, or collectively, seem compelling enough that, failure to meet the targets, would warrant provincial intervention. For example, while daily physical activity and usage of guidance supports are interesting indicators, we would not advocate including them among "triggers" of provincial supervision.

While we are tempted to suggest some indicators or "triggers" of our own, in the end, we conclude that this whole line of thinking is wrong-headed. The government's hesitancy about using EQAO scores alone should have led it to this conclusion. To try to broaden the set of "triggers" to include indicators of student performance that are more remote and controversial, is taking the government down a path it should be avoiding. It is well known that proponents of school choice and other right-wing reforms use quantitative data to lobby for public funding of private school operators and, the more quantitative data that the ministry endorses as indicators of student achievement, the more ammunition it gives to those groups. While we do not dispute the need for objective indicators of student achievement, we do not agree that these indicators are true enough reflections of student achievement that they should be used as "triggers" of provincial involvement in school board governance. It gives these measures more prominence than they deserve and it inhibits the development of more meaningful indicators of student achievement and school board success in serving its community.

The proposal to give the power to issue regulations that will assume such importance to Cabinet and not put them before the House for debate is also worrisome. It contributes to the impression that Bill 177 does not aim to promote the conditions where full and informed discussion can take place.

It is clear that one result of Bill 177 would be trustees who are less engaged partners in this educational mission we all share. They would be less responsive to the needs of their constituents and less able to engage in campaigns, large and small, on their behalf. During this period, when educational partnerships are being renewed, trustees need much more support and encouragement—even incentive to run for office—than this Bill promises. We strongly disagree that the government needs the powers it sets out in Bill 177 to achieve the aims we all share, which are to promote and enhance student achievement and well-being. We urge the government to withdraw this Bill, and head back to the chalkboard to find more meaningful ways to support and sustain trustee involvement in our school system.