

## **Catholic Dimension - Legally Speaking - Fall 2001**

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### **Bill 16 contains a potpourri of risks and benefits for Catholic Education**

On May 7, 2001, the Minister of Learning, Dr. Lyle Oberg, introduced Bill 16, The School Amendment Act 2001 for first reading. The Bill was given second reading May 8, detailed government amendments were introduced May 24 and it entered "Committee of the Whole" May 28, where the Bill sat at adjournment of the spring session of the Legislature. It is proposed to be returned to the fall session of the Legislature in November 2001, for completion of Committee of the Whole, third reading and Royal Proclamation.

The Bill is wide ranging and addresses charter schools, reporting employment action against teachers, and the dissolution of the School Buildings Board, but three issues raise fundamental constitutional implications for Catholic schools:

1. Equalization of the tax assessment base between Catholic and Public ratepayers;
2. Reorganization of Francophone Regional Authorities; and
3. Expansion of Separate school jurisdictions by methods other than 4x4 formation.

#### **Equalization of the Tax Assessment Base**

In June, 2000, the Living Waters Catholic Board commenced an action against the Town of Whitecourt and the Province of Alberta with respect to the prejudicial effect of unequal taxation assessments. Amendments in Bill 16 are intended to remedy this problem by advancing the assessment calculation for Separate school ratepayers to the same date and amount as for Public school ratepayers so they will be equal. Upon passage of Bill 16, the amount of property tax paid will no longer be greater for Separate school supporters than for Public school supporters. Equal taxation treatment is critical to a fair and equitable approach to education in Alberta.

#### **Francophone Regional Authorities**

In June, 2000, the Calgary Catholic Board entered into both a short term and long term arrangement with the Southern Alberta Francophone Authority to allow Catholic Francophone parents in southern Alberta to provide for their children an education which was constitutionally protected both linguistically and denominationally. As part of this resolution, a request was made that the Minister of Learning establish an investigative task force for the purpose of recommending legislative amendments to the School Act, so as to create distinct legal entities which would entrench both separate Catholic and Francophone educational rights. The Francophone governance amendments in Bill 16 are a response to that call for legislative change.

In the original version of Bill 16, the preamble to the School Act reaffirmed the commitment of Alberta to the provision of Separate school education as part of the publicly funded education system

and recognized the provision of Francophone education with a "unique responsibility and the authority to ensure that both minority language educational rights and the rights and privileges with respect to Separate schools guaranteed under the Constitution of Canada are protected...". Bill 16 provides that Francophone Catholics are entitled to claim "minority status" both with respect to their linguistic rights under section 23 of the Charter and their denominational rights under section 17 of the Alberta Act.

In southern Alberta, Bill 16 preserves the existence of Separate Catholic and Public Francophone boards as negotiated in June 2000.

In northern Alberta it establishes three Francophone authorities. Each authority would designate schools as either "Separate" or "Public" and the Separate Francophone schools would serve those persons who are of the "same faith, whether Protestant or Roman Catholic, as the minority of all individuals living in the boundaries of a region..."

This arrangement would be terminated when the Public Francophone school electors in a region exceeded 30% of all Francophone electors and there were at least 500 students registered in the Public Francophone schools. In that case, the Minister may dissolve the single authority and establish two distinct Francophone education regions, one Public and the other Separate. This agreement came about through the aegis of the ACSTA, and in June 2001 was signed off by all the involved Catholic parties.

The amendments to Bill 16 presented by the government on May 24, significantly altered the Francophone authority arrangement for northern Alberta. These amendments propose that the ratio of Francophone members on an authority was to be proportionate, as between Public and Separate members, to the population, and that at least one member must be a Public school member and one member a Separate school member on each authority.

In addition, it allowed for the Separate school members of the Francophone regional authority to be a distinct corporation or legal entity, with the responsibility and authority to ensure that the rights and privileges with respect to Separate schools guaranteed under the Constitution were protected. This distinct legal entity would be responsible for all Catholic education in Catholic Separate schools, would have exclusive control over all denominational aspects and non-denominational aspects of Separate schools, the right to fully permeate faith in all aspects of the schools and the right to preferential hiring of central administration, school administration and teachers. This creation of a distinct legal entity providing Catholic education in Catholic Separate schools, fully permeated by faith, is a significant recognition of Separate school rights in the Francophone context. The entrenchment of Separate school constitutional rights for Francophones would now, based upon the amendments presented, be on an equal footing with the constitutional rights of Catholic Separate Anglophones in Alberta.

A further amendment to the preamble of Bill 16 has now been promised by the Minister of Learning, which would ensure that the principles of Francophone educational governance are distinct from, not transferable to, nor a precedent for, the English language educational system. This amendment will ensure that the future of English language Catholic education will not evolve towards the

Francophone authority model but will continue with distinct Catholic Separate boards and Public boards.

### **Expansion of Separate School Jurisdictions**

Bill 16 proposes a framework, although no specific machinery, for expansion of Separate school jurisdictions by methods other than 4 x 4 expansion.

It provides that the Minister may by Ministerial Order, establish Separate school regions in Alberta. The Minister has already preliminarily approved a map of Alberta setting out all of the Separate school regions covering the province. Each Separate school region may have within it only one Separate school district. The Minister has promised further amendments to Bill 16 to allow a Separate school board to deliver Separate school education within the boundaries of the Separate school region by further Ministerial orders. How the Minister exercises authority to allow for broader delivery of Separate school education will be addressed in regulation.

Of concern, however, is that Bill 16, as given second reading, contains amendments which would permit all Separate school electors in the province of Alberta to be given a choice between being residents of the local Public school district or the Separate school district. Such a scheme of allowing Separate school electors in Alberta to choose between their local Separate and Public school jurisdictions is a significant change from the status quo.

The Alberta Act, 1905 preserved the provisions of the Northwest Territories Ordinances, 1901, which required that all persons of the minority faith be residents of a Separate school jurisdiction once it had been established in their area. This scheme was known as the "majority of the minority" system, whereby the majority of Catholics in an area would determine the residency of all Catholics in that area. The constitutionality of this system of determining Separate school residency was upheld in Alberta in *Re: Schmidt and Calgary Board of Education*, 1976. The Bill 16 proposal as it stands would provide choice to all Separate school electors, whether or not the majority of Separate school electors had determined to support the Separate School District. This introduces the concept of "individual choice" as opposed to collective choice in determining Separate school residency.

In addition, Bill 16, as given second reading, raises a question as to whether a person may only be shown as assessable for Separate school purposes if he or she is both a member of the faith of those who established the district and has signed an election commitment to support the district.

In response to the Alberta Catholic School Trustees' Association campaign against the proposed changes in the "choice" provisions of the School Act, the Minister has promised the removal of all "choice" provisions from Bill 16. It remains to be seen whether Committee of the Whole and third reading will accomplish removal of this proposed amendment which would alter a fundamental building block of Separate school jurisdictions in Alberta.

### **A Question of Timing**

It appears that Bill 16 will be debated in Committee of the Whole again in November 2001. The Legislature will be asked to address all of the government amendments proposed on May 24, 2001,

and further promised amendments both with respect to Francophone education and the "choice" provisions of the Bill, at that time. Third reading is expected quickly after completion of Committee of the Whole.

Bill 16 proposes that the amendments addressing the equalization of the tax assessment base are proclaimed retroactive to January 1, 2001, amendments with respect to establishment of Separate School Regions would be given delayed proclamation, at a date yet to be determined, and remaining amendments with respect to Francophone regional authorities would be effected upon Royal Proclamation, presumably within days of third reading.

### **A Potpourri of Risks and Benefits**

As it stands before amendments, Bill 16 is certainly a potpourri of risks and benefits. It finally solves a serious discrimination against Separate school ratepayers in equalizing the assessment base and the amount of tax paid so that it is now equivalent to that of Public school ratepayers in the same area. It establishes distinct legal entities for the purpose of protecting the constitutional rights of Catholic Francophones in northern Alberta and provides equal treatment for Catholic Francophones to the current constitutional protection being enjoyed by Catholic Anglophones in the Province of Alberta. It provides for new Separate School Regions in addition to preserving the traditional method of 4 x 4 formation. However, unless reversed by further promised government amendments, it may fundamentally change the constitutional compact by transferring a collective choice of Catholics in a region to create and support a Separate school board, with an individual choice of individual Catholics to either support their local Separate board, or their local Public board.

Only time will tell whether Bill 16 brings denominational and linguistic harmony to the educational scene in Alberta, or results in further challenges to be overcome by Separate school supporters.