

## Catholic Dimension - Legally Speaking - Fall 2002

Kevin P. Feehan  
Dentons Canada LLP

### Responding to expansion requests

On May 23, 2002, the Minister of Learning, Dr. Lyle Oberg, signed "the Separate School Regions Establishment and Provision of Services Order," dividing most of Alberta into 15 Separate School Regions, to be served by an identified Catholic separate school district or division, and providing a mechanism for separate boards to provide services within the regions.

#### School Amendment Act 2001

On May 7, 2001, Minister Oberg introduced Bill 16, the School Amendment Act 2001 for first reading. The Bill was given second reading May 8, government amendments were introduced May 25, and entered Committee of the Whole on May 28 where the Bill sat at adjournment of the Spring session. The Fall session of the Legislature began November 12, 2001 and on November 13, Minister Oberg introduced Government Amendment No. 2 to Bill 16. One of the amendments was critical to the issue of expansion of separate school services. At the request of the Alberta Catholic School Trustees' Association, the following section was added to the School Act:

22.2(1) The Minister may do one or both of the following by order:

- (a) establish any portion of Alberta as a Separate School Region;
- (b) provide for services by a separate school board in a Separate School Region.

This amendment contemplated a Ministerial Order establishing Separate School Regions, assigning one separate school district or division to each region, and providing a mechanism for the board to "provide for services... in (the) region."

#### Establishment of Separate School Regions

The Ministerial Order established most of Alberta within Separate School Regions, except the lands within Northland School Division, the St.Paul area and St.Albert/Sturgeon area. The question of the establishment of Separate School Regions in these areas, and the possible future expansion of Catholic separate school services in these areas has not been precluded and is a matter for future discussion and negotiation. The Ministerial Order established the boundaries between Separate School Regions, described by reference to public school districts, divisions and regional divisions and assigned one separate board to be "the only separate board for the Separate School Region."

#### Provision of Catholic Separate Services

The Ministerial Order provides a reasoned, consultative process for the expansion of separate school services into the Separate School Regions. If separate school electors in a region wish to have lands added to the established separate board and wish to receive services from that board, they are entitled to make a written request to the board for expansion of services. Upon receipt of such a request, the board must provide the public board and the Minister with a written notice advising that

the request has been made. The public board then has 45 days to respond to that notice. They may provide the separate school board with a notice of support or with a notice "setting out any concerns it has about the request."

If the public board has concerns about the request, the two boards must hold an in camera meeting within 15 days of the public board response, to discuss the concerns and negotiate a mutually acceptable resolution of these concerns. Within 15 days of the meeting the separate board must convene a public hearing, chaired by a party agreed to by the two school boards or appointed by the Minister.

After the in camera meeting and the public meeting, the minutes of which must be sent to the Minister, the Minister is then entitled to add land to the separate district or division pursuant to section 239 of the School Act if he is satisfied that the addition of the land does not prejudice the right of separate school ratepayers in the expansion area and is for the general advantage of those concerned.

Any dispute arising between the separate and public boards as result of those lands being added to the separate school district or division may by mutual agreement be addressed through cooperation, consultation, dispute avoidance and resolution, mediation or arbitration.

In this way, the Ministerial Order contemplates a consensus-driven approach to the expansion of the separate school services, allows for dialogue between the separate and public boards, firstly in private and then in public, and provides a consultative mechanism which avoids the often divisive atmosphere associated with traditional 4x4 formation of separate school districts. In this way, the Minister has set out a "kinder, gentler" method of Catholic Education to every Catholic student in Alberta.

### **No Effect on traditional 4x4 Formation or Rolled Up 4x4 Formation**

The Ministerial Order specifically provides that it does not affect traditional 4x4 formation which is constitutionally protected and remains unamended in sections 212 through 221, Division 2 of Part 8 of the School Act.

The Ministerial Order contemplates a method of expansion of Catholic Education, which is supplemental, and in addition to, the traditional constitutionally protected 4x4, by creating an extra-constitutional expansion process. The constitutionally protected 4x4 method of separate school formation remains exactly as mandated in section 93(1) of the Constitution Act 1867, section 17(1) of the Alberta Act 1905, and sections 41 through 45 of Chapter 29 of the Northwest Territories Ordinances 1901, and therefore maintains the constitutional formation process.

### **Rolled-Up 4x4s**

In addition to the Ministerial Order, a specific provision will be added to the Separate School Handbook which contemplates that traditional 4x4 expansion can be accomplished by the use of "rolled-up 4x4s." That is, if separate school electors wish to hold a single 4x4 formation census, meeting and vote in multiple adjoining historical public school districts, "the Minister may rearrange the public school district into a single larger public school district for the purpose of forming a new

separate school district." In that way, several adjoining 4x4s may be formed simultaneously, rather than having individual 4x4 formation occur, have those new separate school districts amalgamated together, and then have them regionalized into an existing separate school district or division.

### **Three methods of growth**

In conclusion, the Ministerial Order contemplates three distinct methods of growth for separate school boards: the traditional, constitutionally-entrenched 4x4 formation; the roll-up 4x4 formation wherein larger contiguous areas may be formed in one process and; the new consultative process of separate school expansion and delivery of services within Separate School Regions. ACSTA strongly endorses a reasoned, consensus-based, consultative approach to the delivery of Catholic separate education for every Catholic child in Alberta. It is hoped that consultative expansion of services, as allowed in the new Ministerial Order, will be the preferred method of a broader delivery of Catholic Education in the province.