

Catholic Dimension - Legally Speaking - Spring 2012

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Bills, Thrills, and Chills

The Spring session of the Alberta Legislature, cut short by the election writ of Monday, March 26th, saw the introduction of two Bills which will affect Catholic education, neither of which have, at time of writing, been made law.

Bill 2: Education Act, received first reading on February 14th, second reading on March 8th, amendments were passed in Committee-of-the-Whole on March 14th and 21st, further amendments were proposed on March 22nd and this Bill died on the Order Paper on the dropping of the election writ, suffering a similar fate to its predecessor, Bill 18: Education Act. Bill 4: St. Albert & Sturgeon Valley School Districts Establishment Act was given first reading on February 22nd, second reading on March 13th, passed Committee-of-the-Whole on March 19th, received third reading on March 20th, Royal Assent on March 21st, and will come into force on Proclamation.

Catholic educators have five questions with respect to Bill 2, despite the preamble which confirms that the “education system ... honours the rights guaranteed under the Constitution of Canada in respect of ... minority denominational education”. The first is with respect to the eligibility of separate school residents to vote or run for public school trustee (section 74(4)) or for francophone public school trustee (section 135(4)). While separate school residents maintain their residence in a separate school division and their declaration that they are of the minority faith, they are granted the additional right to vote and run for public school trustee, if they so choose. No rights are lost to separate school electors, but this provision is controversial because of its potential to cause political division and discord, and because this additional right granted to separate school electors will inevitably lead to a request for public school electors that they be given the right to vote and run for separate school trustee, which would be constitutionally and legislatively unlawful.

The second question with respect to Bill 2 is with the establishment provisions for new school districts (sections 98 to 109, replacing sections 212 – 220 of the School Act colloquially known as the “4 x 4” provisions). A new model for establishment, the “flower-petal” formation, allows the Minister to determine the establishment area for a new separate school district to be the area of the original public school district, together with those districts which are “contiguous to the public school district” and “located in the separate school region”, thus constituting the “flower petal”. While innovative, interesting, and certainly worth trying, the Education Act should also maintain the right to traditional “4 x 4” formation, constitutionally mandated, should a “flower petal” establishment be unsuccessful.

Thirdly, there is a concern with shared facilities. Bill 2 would allow the Minister to order a separate school board to make space available in a Catholic school to the students of a public school board

(section 192(2)). In the amendments introduced but not passed on March 22nd, this provision was to be deleted, and that deletion will be important as any new bill proceeds through the legislative process.

Fourthly, section 58(2) of Bill 2, like section 50(2) of the School Act, and section 11.1(2) of the Alberta Human Rights Act, allows a parent to request that a student be excluded from religious instruction. Consideration should be given to an exemption for Catholic schools where religious instruction and exercises comprise the totality of the entire school day and permeate Catholic theology, philosophy, practices and beliefs, the principles of the Gospel and teachings of the Catholic Church in all aspects of school life.

Similar to the concern over “shared facilities” is the concern over “blended boards”. Section 112(1) of Bill 2 allows the Minister to establish a school division consisting of “any number of public school districts, separate school districts, and school divisions”. Once again, the concept of a “blended board” was to be deleted in amendments to Bill 2 introduced but not passed on March 22nd, and once again care will have to be taken to insure that deletion in any new iteration of Bill 2 post election.

Home schoolers have expressed a particular concern over section 16 of Bill 2, which concern is supported by many Catholic school boards in Alberta. This section introduces into the School Act a mandatory application in schools of the Canadian Charter of Rights and Freedoms and the Alberta Human Rights Act. Home schoolers argue that they should not be bound by all Court decisions under the Charter or the Human Rights Act, particularly in the areas of ethics, morality, religion and sexual education. They argue that these are areas of family values, taught in the home, and should not be policed by government. A return to the current provisions of section 3(1) of the School Act, or an amendment to section 16 of Bill 2 to simply prohibit teaching doctrines of racial or ethnic superiority or persecution, religious intolerance, social change through violent action, or disobedience of the laws, may be appropriate.

After the spring election, it will be important for Catholic electors and home schoolers, to continue to press the provincial government for these changes to Bill 2, in any re-drafted Education Act, to preserve the richness and integrity of Catholic school beliefs and teachings in the school system.

Sister legislation to Bill 2 this spring was Bill 4: St. Albert and Sturgeon Valley School Districts Establishment Act, a Bill called the “St. Albert flip”, by which the St. Albert Catholic Public board would become a separate school board, the St. Albert Protestant Separate board would become a public school board, and the Sturgeon School District would expand into the areas of Morinville and Legal, as a public school board underlying the new Greater St. Albert Catholic separate school board.

Technically, the “flip” would be accomplished by creating a new St. Albert Public District: The St. Albert Public School District No. 565 (ss. 3 & 4) with the existing board of trustees, and dissolving the St. Albert Protestant Separate School District. This section may be controversial to those who claim

separate school constitutional rights for the Protestant population of St. Albert, but the Act contains a provision (s. 11) which invokes Crown immunity, providing that no liability will attach to the Crown or the Minister and no action or proceedings may be brought against the Crown or the Minister as a result of this flip.

The flip is facilitated on the Catholic side by “rolling-up” all of the Catholic public districts including St. Albert, Legal, and Thibault (Morinville) Catholic public school districts into a single large Catholic public school district for easier “flip” into the new St. Albert Catholic separate district (s. 5). After the Catholic public “roll-up”, the Catholic separate districts in the Sturgeon Valley; Bellerose, Guilbault, Cardiff, and Cunningham Catholic separate school districts, are to be added to the Catholic public school district, and the current board of trustees for St. Albert Catholic public is to become the new board of trustees for the St. Albert Catholic separate board (s. 6). The original Catholic separate districts would then be dissolved (s. 7) and the Sturgeon School Division would be expanded into the areas now covering Morinville and Legal, to provide for a public school jurisdiction underlying the Morinville and Legal geography and the new St. Albert Catholic separate school district (s. 8).

All tax assessment notices will also be “flipped” to reflect the new public or separate designations (s. 9), and the Minister has been given very broad discretion to adjust “the assets or liabilities of the board” and make regulations for “any matter that the Minister considers to be unforeseen” (s. 10 & 12).

Of interest, while Bill 4 has received Royal Assent, it has not yet, at the time of writing, been proclaimed into law. It will be important to assure proclamation, so as to allow for a transfer of a public school in Morinville from the new Catholic separate board to the Sturgeon board, as an answer to the several Human Rights complaints filed by secular-schooling parents in Morinville, and to allow for administration of the new school facilities and districts for a September, 2012 school year.

Taken together, Bills 2 and 4 contain both “thrills” and “chills” for Catholic education. Catholic educators must be diligent and observant to insure that the heart and soul of Catholic education is preserved, and that Catholic educators will be able to provide wholly permeated education, under the management control of Catholic educators and trustees. That will only be assured by the diligent and careful monitoring of these Bills or their successor Bills, as they progress forward after the spring election.