

Catholic Dimension - Legally Speaking - Fall 2003

Kevin P. Feehan
Dentons Canada LLP

Catholic impact in Commission report

On October 7, 2003, Alberta's Commission on Learning released "Alberta's first in-depth examination of its education system in more than thirty years."

The report addressed a multitude of educational issues from early childhood education, class sizes, technology, aboriginal and special needs children to teacher professional development, collective bargaining, adequate funding and school buildings.

However, the following three issues impact Catholic school rights:

1. Joint facilities (Recommendation 21);
2. Regionalization or amalgamation (Recommendation 83); and
3. Property taxation (Recommendation 94).

Recognition of Catholic School Rights

The Commission recommended that "parents should continue to have choices in public and separate schools, francophone schools, alternative programs, charter schools, distance learning, virtual and private schools, and home schooling" (pp. 8, 9, 37 & 79). It specifically recognized that "separate and francophone school boards have certain rights under the Constitution." (p. 137).

The report also recognized that educational choice has significant benefits including encouragement of educational responsiveness to the expectation of parents and identified "Catholic education [as] an important alternative and choice for students and parents" (p. 181).

Joint Facilities

Commission recommendation 21 encouraged the shared use of facilities, programs and services among school jurisdictions (pp. 9 and 76), while acknowledging "the sensitivity involved in mandating public and separate school jurisdictions... to share facilities" and noting particularly "Catholic school boards ... concern ... about preserving their Catholic vision and mission" (p. 76). It pointed to the following joint facilities:

1. Trillium Centre in Sherwood Park;
2. Mother Teresa School in Sylvan Lake;
3. Mother Teresa School in Edmonton, which involves a separate school and numerous community and health organizations;
4. The Grande Prairie Community Knowledge Campus; and
5. The Rocky Tri-Campus in Rocky Mountain House.

The latter two are examples where community campuses involve public and separate schools.

Catholic separate schools are constitutionally entitled to a fundamental degree of "separateness" from the public school system and entitled to preserve, maintain and foster a distinct fully-permeated Catholic identity. It is for this purpose that the Alberta Catholic School Trustees' Association unanimously adopted the document *Catholic School Facilities in Alberta* on January 24, 2003. This document recognizes that Catholic schools have a distinct and unique culture and philosophy. This is defined and characterized as Christ-centered, an instrument of the church, focused on the development of the whole human person, committed to the enculturation of life and faith, and permeated in every aspect by Christ's gospel.

The Fundamental Principles in the document indicate that free-standing Catholic schools on separate sites remain the standard for Catholic educational facilities. Community partnerships are supported providing that no Catholic board is pressured into a partnership or joint-use arrangement that would restrict the board's ability to fulfill its mandate to provide fully Catholic Education.

ACSTA does not consider precedent-setting those models referenced in the Commission report and opposes the joint use of school buildings with public boards where that joint use undermines or interrupts the full permeation of Catholic values and beliefs.

Regionalization or Amalgamation

The Commission report recommends provincial incentives and support to school jurisdictions wishing to consider voluntary regionalizations and amalgamations (pp. 15 and 136). It reports that amalgamations to date have not produced significant cost savings, but have increased the range of services that larger boards are able to provide to students.

The Commission specifically noted the constitutional rights of separate and francophone school boards in the area of amalgamation and regionalization, but at the same time encouraged smaller francophone and separate boards to explore pilot projects and consider potential amalgamations where such combination of services would enhance student opportunities.

It is clear that the province may not alter the boundaries of separate school jurisdictions, nor force amalgamations or regionalizations without constitutional compliance. The constitutional provision in that regard is *Northwest Territories Ordinances, 1901, Chapter 29, The School Ordinance, Section 48*, which provides that no separate school district may have its boundaries altered or be regionalized or amalgamated unless "it has been satisfactorily shown that the rights of ratepayers under Section 14 of the *North-West Territories Act* to be affected thereby will not be prejudiced and that the proposed changes are for the general advantage of those concerned."

Section 14 of the *Northwest Territories Act, 1886*, as amended in 1898, protects the rights of separate school ratepayers to establish and operate separate schools and be liable only to tax assessments as they impose upon themselves.

It is clear from these constitutional protections that amalgamation or regionalizations of separate boards may only be accomplished with the consent of those boards, if the regionalization or amalgamation does not adversely affect the rights of separate school electors and if they are for the benefit of all concerned.

Property Taxation

The Commission report recommends that all "school boards [be allowed] to requisition their local residents [an additional] 10 percent of the amount raised through provincial education property taxes" (pp. 17 and 150). In doing so, it says that "the current system of having the province collect and redistribute education property taxes should be maintained" (p. 150).

It is assumed that this provision will take the place of the special school tax levy, authorized by plebiscite to a maximum of three percent of the budget of the school district for a maximum three years (*School Act, s.191*). Currently, separate boards are entitled to "opt out" of the Alberta School Foundation Fund (*School Act, s.171(2)-(7)*), directly requisition affected municipalities from the separate school tax base and be "topped up" to the provincial average "amount per student" (*School Act, s.176(3)(4)*).

Although the Commission recommendation is not specific with respect to separate school rights, it must be assumed that in accordance with constitutional case law, (*PSBAA v. Alberta; S.C.C. 2000*), this scheme of allowing separate school boards to maintain their assessment base would remain in force, so that the "additional 10 percent" would exist concurrently with and in addition to the "opt out/top up" scheme currently envisioned by the *School Act*.