



ONTARIO CATHOLIC SCHOOL TRUSTEES' ASSOCIATION

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MEMO TO: Chairpersons & Directors of Education
- All Member Boards & School Authorities

FROM: Patrick V. Slack, Executive Director

RE: Ontario Appeal Court Ruling on Bill 160

The Appeal Court has ruled that Bill 160 is constitutionally valid, except for the issue concerning the ability of spouses of board employees to run as trustees. This issue was left for another day.

It is yet to be determined if there will be an appeal to the Supreme Court. The Supreme Court has traditionally granted leave to appeal in cases involving s.93(1) of the *Constitution Act*.

I attach a synopsis of the Court ruling. Please insert the material at Tab D in your copy of the OCSTA binder "*Current Issues Affecting Catholic Education*".

ATTACHMENT
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Regis O'Connor
President

Donald Petrozzi
Vice-President

Patrick V. Slack
Executive Director

SUPPLEMENT TO SECTION D, "ISSUES AROUND BILL 160"

Issue No. 1

Can you explain the significance for the Catholic school system of the decision of the Ontario Court of Appeal (April 27, 1999) concerning the Education Quality Improvement Act (Bill 160)?

Elements of a Response

- ◆ In essence the Ontario Court of Appeal ruled that the funding provisions of Bill 160 are constitutional. The purpose of the constitutional guarantees as found in Section 93 of the *Constitutional Act, 1867* is to assure that educational resources will be distributed in a fair and non-discriminatory fashion to the separate school community. Bill 160 achieves that end.

The Court pointed out that as far as funding is concerned the constitutional guarantees require that Catholic schools receive equitable funding and have the flexibility to use the funding in pursuing the distinctive goals and objectives of the Catholic school system. The Court said that having the right to tax was not absolutely necessary to achieve this end or purpose.

In the words of the Court:

“It is the existence of funding not the specific method used to provide it, that ensures the survival of the separate school system and permits those responsible for it to take the expenditure decisions that are required to ensure its denominational character. For these objectives to be achieved there is no need that the funding be provided by way of taxes imposed by separate school boards on their supporters.” (para. 48 pg. 19)

Issue No. 2

It has been suggested that this decision of the Ontario Court of Appeal is threatening to the future of our Catholic school system.

Elements of a Response

- ◆ In Ontario's secular society there is little doubt that our Catholic school system is threatened by many movements and groups in our society which continuously press for only one school system.

However, the April 27, 1999 decision of the Ontario Court of Appeal regarding the EQIA (Bill 160) in no way erodes the Catholic school system.

Indeed the Ontario Court of Appeal in its decision had this to say:

“There is nothing in the record to suggest that limitations on the spending powers of separate school boards prejudicially affect any right or privilege of these boards which is necessary to give effect to denominational guarantees. The spending limits simply do not appear to damage the continuing viability of the separate school system, or its ability to provide suitable education with the denominational character.” (para 76)

In even stronger fashion this Court invoked the opinion of Mr. Justice Cumming who, in the original trial, had this to say:

“The prescriptive elements of the new funding model will direct boards spending to a considerable degree. However, there is nothing to suggest that Catholic boards will be prevented from taking denominational matters into account of all aspects of their operations, such as teacher hiring, curriculum, programs and in respect of capital facilities.” (para 77)

- ◆ It might be added that the most serious threat to the future of the Catholic school system will be if we fail to maintain and foster a visibly distinct school system. This distinctiveness must be seen in a wide variety of ways which underline our unique characteristics and features. Among the most significant of these characteristics and features are the stated and explicit expectations the partners in Catholic education have of one another whether they be parents, trustees, students or professional educators.

Issue No. 3

It has been suggested that through the EQIA the government will attempt to micromanage Catholic schools and that this would violate our rights and the possibility of maintaining our unique and distinctive way of educating.

Elements of a Response

- ◆ Both the Lower Court and the Appeal Court addressed this question directly. The conclusion of both Courts was that, although the EQIA imposes a regulatory regime on both public school boards and separate school boards and thereby limits their ability to make some spending decisions, this in no way prevents the Roman Catholic community from exercising the management and control necessary to maintain the denominational character of its schools. The Court's ruling on this question was clear. They supported the Lower Court ruling of Mr. Justice Cumming:

“... he concluded that there was no evidence of a prejudicial affect on a denominational right because of the restrictions and the power of financial management imposed by the EQIA.”

The Appeal Court further indicated in their judgement that both in terms of curriculum matters and spending matters the provisions of the EQIA does not prejudicially affect the rights of separate school boards.

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