

**CATHOLIC FRANCOPHONE GOVERNANCE ADVISORY COMMITTEE  
RECOMMENDATIONS FOR LEGISLATIVE CHANGE**

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# CATHOLIC FRANCOPHONE GOVERNANCE ADVISORY COMMITTEE RECOMMENDATIONS FOR LEGISLATIVE CHANGE

## I. INTRODUCTION

The *School Amendment Act, 1993, Bill 8* provided for the establishment and dissolution of Francophone Education Regions. Alberta was divided into seven regions:

- Northwest Francophone Education Region No. 1,
- Northeast Francophone Education Region No. 2,
- East Central Francophone Education Region No. 3,
- North Central Francophone Education Region No. 4,
- Central Francophone Education Region No. 5,
- South Central Francophone Education Region No. 6 and
- Southern Francophone Education Region No. 7.

In February 1994, Honourable Halvar Jonson, former Minister of Education, created the initial three Francophone authorities:

- Northwest Francophone Educational Authority No. 1,
- East Central Francophone Educational Authority No. 3 and
- North Central Francophone Educational Authority No. 4.

Co-ordinating councils were established for the remaining four regions to promote Francophone education.

Schools were transferred to the three authorities primarily from Roman Catholic boards but the Francophone authorities were public authorities providing Catholic religious instruction and exercises under Section 33 of the *School Act*. Over the years, North Central Francophone Regional Authority No. 4 commenced providing services to Francophones in St. Albert, Lethbridge, Red Deer, Wainwright and Fort McMurray.

In January 2000, the seven regions were reduced to four regions:

- Northwest Francophone Education Region No. 1,
- Greater North Central Francophone Education Region No. 2,
- East Central Francophone Education Region No. 3 and
- Greater Southern Francophone Education Region No. 4.

At the same time, the Minister established the Greater Southern Francophone Education Authority No. 4.

The Greater Southern Alberta Francophone Regional Authority No. 4 commenced negotiations for the transfer of:

- Queens Park public Francophone school from the Calgary Board of Education,
- the public Francophone École LaVérendrye in Lethbridge from the Greater North Central Francophone Regional Authority No. 2 and
- the Catholic École Sainte-Marguerite-Bourgeoys from the Calgary Roman Catholic Separate School District No. 1.

As the Calgary Separate School Board would not transfer its school to other than a Francophone Roman Catholic separate school board, the Minister initiated a mediation process in early June.

On June 26, 2000 Calgary Catholic Board and the Francophone Regional Authority signed an agreement that put in place a short-term accommodation for the governance of Francophone Catholic education in Calgary. Prior to the negotiation of the short-term agreement, both parties signed an agreement whereby they would "...undertake to petition the Minister of Learning...to enact legislative amendments to the *School Act* so as to create distinct legal entities which entrench both constitutional rights fully..."

On November 22, 2000 Dr. Lyle Oberg, Minister of Learning, established the Catholic Francophone Education Governance Advisory Committee (the Advisory Committee). The Advisory Committee was mandated to suggest legislative changes to define governance of Francophone education respecting constitutional rights for minority faith education protected by Section 17 of the *Alberta Act, 1905* and French language education rights as guaranteed by Section 23 of the *Canadian Charter of Rights and Freedoms*.

## **1. Mandate of the Advisory Committee**

The task of the *Committee* was to make recommendations for legislative change to the Minister by February 28, 2001 and to provide Dr. Oberg with any further reports or information as required in a form acceptable to the Minister. The provincial election delayed the report until April 11, 2001.

## **2. Membership of the Advisory Committee**

The members are:

Denis Ducharme, MLA, Bonnyville-Cold Lake (Chairman)  
Elouise Johnson, Alberta School Boards Association  
Maurice Campeau, Alberta Catholic School Trustees' Association  
Vital Ouellette, Association canadienne-française de l'Alberta  
Pierre Desrochers, Fédération des conseils scolaires francophones de l'Alberta  
Sylvie Mercier, Fédération des parents francophones de l'Alberta

In addition, the Advisory Committee received consultative and administrative assistance from the following people:

Gérard Bissonnette, Director, French Language Services Branch

Diane Gagnon, Senior Legislative Consultant, Legislative Services Branch  
Valerie Keates, Director, Governance & Program Delivery Branch  
Paul Rouleau, Barrister & Solicitor, Heenan, Blaikie, Toronto, Ontario

### **3. Activities Carried Out by the Advisory Committee**

The Advisory Committee studied background materials relating to the existing legislation pertaining to Francophone Education; numbers of students presently enrolled in Francophone authority schools and in French language programs operated by public or separate boards; the Francophone governance model in Ontario; the long-term agreement; Ministerial orders for the establishment of the southern authorities; unfiled affidavits of Bishop Henry of Calgary and Archbishop Collins of Edmonton relating to Canon Law; a draft affidavit of Gérard Bissonnette outlining the history of Francophone education in Alberta; the *Language Education Policy for Alberta*, November 1988; *Report of the French Language Working Group*, May, 1991; and the *Francophone Governance Implementation Handbook*, March 1994.

The Advisory Committee held its first meeting on January 3, 2001 and identified the need to retain an outside constitutional law expert to provide advice and to assist in developing the recommendations. While each group had access to their own legal counsel for advice, all agreed that Mr. Paul Rouleau of Heenan Blaikie in Toronto was an acknowledged expert in the field and had also advised the Ontario government in enacting legislation for Ontario Francophone education that respected both rights.

The Advisory Committee held further meetings on January 17, 18, 24, 25, April 2, 3 and 10. On January 17, the Greater Southern Public Francophone Regional Authority made a one-hour presentation to the Committee outlining their concerns for ensuring independent Francophone public schooling in Alberta.

### **4. Guiding Principles**

The Committee adopted the following Guiding Principles for their deliberations.

- 1 The legislative changes must lead to a model which respects constitutional rights for minority faith education protected by Section 17 of the *Alberta Act, 1905* and French language education rights as guaranteed by Section 23 of the *Canadian Charter of Rights and Freedoms*. In addition the model must withstand challenges pursuant to Section 2 of the *Charter*.
- 2 The model must not set a precedent which could diminish present structures ensuring minority denominational rights.
- 3 The present level of autonomy permitted by four francophone regions will be respected.
- 4 The model will encourage and facilitate collaboration, co-operation and cohesiveness in the Francophone community. This is a critical outcome envisaged in the *Mahé judgment* as an outcome of the implementation of francophone governance. The development and evolution of the Francophone community cannot be compromised by models which

would unduly put the denominational and non-denominational components of the Francophone governance model in competition and conflict with each other.

- 5 The model must be cognizant of the "numbers warranting" factor.
- 6 The model must ensure the delivery of quality educational programs and services.

## II. RECOMMENDATIONS

The Ducharme Committee supports a model that retains the existing structure of four Francophone Regions with four Francophone Authorities. The temporary solution in Calgary of a Catholic Separate Francophone Regional Authority and a Public Regional Authority would be returned to a single Regional Authority as now exists in the three other Francophone Regions.

The Committee believes it is necessary to find an Alberta solution that recognizes both section 17 and section 23 constitutional rights. An Ontario solution cannot be imported to Alberta where there are fewer than 3,500 students in Francophone schools. Other provincial models of one separate board and one public board are unacceptable to the Francophone community and seen as potentially very divisive within the community as indicated by the Guiding Principles the Committee adopted outlined on page 5 of this Report.

The following are recommendations for changes to the *School Act*:

<b><i>Proposed Amendment</i></b>	<b><i>Reasons for Change</i></b>
<p data-bbox="57 995 193 1024"><b><i>Preamble</i></b></p> <p data-bbox="57 1077 673 1378">Add a new paragraph that indicates the Francophone Authority's unique responsibility to ensure linguistic and cultural rights for all Francophones and to uphold the minority denominational rights for Roman Catholic Francophones. To further indicate that this model does not in any way diminish existing minority denominational rights.</p>	<p data-bbox="705 995 1286 1300">The Preamble provides the underlying philosophy for courts to use in making decisions under the <i>School Act</i>. The Alberta Catholic School Trustees Association has asked that any Francophone model not diminish the present structures ensuring minority denominational rights. (Guiding Principle 2)</p> <p data-bbox="705 1348 1314 1610">Adding this preamble emphasizes the unique role of Francophone Authorities as a 'blended' Authority ensuring denominational, linguistic and cultural rights for Francophones. It ensures that the rights of the English separate boards are maintained exactly as they are under the <i>School Act</i>.</p> <p data-bbox="705 1658 1266 1734">This is a 'made in Alberta' solution that fits Alberta's particular circumstances.</p>

<p><i>New Section</i></p> <p>A deeming provision that in this Part the separate rights are those of the Roman Catholics as they are the minority denominational faith within the Region.</p>	<p>The legislation needs to designate the Roman Catholics as the minority in order for the denominational rights provided under s. 17 of the <i>Alberta Act, 1905</i> to English minority Catholics is provided to Francophone Catholics who do not lose their minority rights as evidenced by their right to 2 votes – one for their Roman Catholic separate board and one for the Francophone Authority if they have a child enrolled in an Authority’s school.</p>
<p><i>Section 223.1</i></p> <p>Amend this section to indicate that the order establishing the Region would require that linguistic, cultural and denominational rights must be ensured.</p>	<p>The Region will have a blended authority with all members being responsible for the academic, linguistic and cultural aspects of Francophone education and the Roman Catholic members being solely responsible for all denominational aspects of education in the designated Catholic schools.</p>
<p><i>Section 223.3(2)</i></p> <p>Subsection (2) would need to be amended to allow the Minister to form a blended Regional Authority composed of 7 members for each Region. Roman Catholics would be the majority with representation for public members as follows:</p> <ul style="list-style-type: none"> <li>• Up to 15% public electors – 1 member</li> <li>• 16% to 30% public electors –2 members</li> <li>• 31% and over triggers a second board provided there are 500 students registered in the public schools.</li> </ul> <p>Add a subsection that would allow an authority to ask the Minister to vary the number of members.</p>	<p>At present 80% or more of Francophones in Alberta are Roman Catholic. The Committee has suggested 7 member authorities with proportional representation from the public electorate.</p> <p>There was a need expressed to allow the legislation to contemplate at some later date the public numbers exceeding 500 students in a Region and thus triggering a second board.</p> <p>Solely Catholic electors would elect the Catholic members. Only non-Catholic electors would elect the public members.</p> <p>All members would be responsible for the academic, linguistic and cultural aspects of all the schools and the overall operation of the Region.</p> <p>An Authority may believe that 7 members are too many for its context and circumstances.</p>

<p><i>New Section (s.223.31) Designation of schools</i></p> <p>The Regional Authority must designate each school as either a Roman Catholic separate school or a public school.</p> <p>The Catholic members of the Regional Authority are solely responsible for all denominational aspects of the Catholic separate schools and students and would constitute a distinct corporation solely for these purposes.</p> <p>As the Catholic members are deemed to be the religious minority in the Region, they would have all the protection and rights of a separate board under s. 17 of the <i>Alberta Act, 1905</i>.</p> <p>The public members would be responsible for their schools. Where there was no school, they would provide public students attending Catholic schools with programs to replace Catholic religious instructions and exercises.</p>	<p>Part 8.1 of the <i>School Act</i> would need to be expanded to specifically include all the provisions necessary to ensure the denominational rights of Roman Catholics.</p> <p>The Catholic trustees elected by Catholic electors would be responsible for all the denominational aspects relating to Catholic students.</p> <p>This section of the statute would give separate Francophone schools all the legal rights of a separate board, i.e. the right to discriminate in the hiring and firing of employees and to have the Catholic religion permeate all aspects of school life.</p> <p>To ensure the same denominational rights for Francophone Roman Catholics as are available to English Roman Catholics in separate schools</p>
<p><b><i>Section 223.4 Amended</i></b></p> <p>Add the requirement that only Roman Catholic electors are able to vote for the Roman Catholic members.</p> <p>Non-Roman Catholics would vote for the public school member.</p> <p>S.223.4(1)(a)(ii) should be amended to give voting rights to the parents of ECS children by deleting the words "...a student..."</p>	<p>Only Catholics would elect the Catholic members. Non-Catholics would elect the public member(s). In an interfaith marriage both parties would be able to vote for an Authority member. Non-Catholics with children in the Catholic school and Catholics with children in the public school would still vote for a member of the Authority. This mirrors what happens in English public and separate school board elections.</p> <p>Electors would include the parents of ECS children. Under the <i>School Act</i>, the term 'student' does not include ECS children.</p> <p>Representations may be made to the Minister to expand the electorate to include Authority staff, former students or others by way of an</p>

	Order in Council under s. 223.4(1)(b).
<p><i>Section 223.4(2)</i></p> <p>This subsection would need to be amended to indicate that only Roman Catholic electors could nominate a candidate for election as a Catholic member and only non Roman Catholic electors could nominate a candidate for election as a public member.</p>	<p>Since only Catholic electors may vote for the Catholic members of the Authority, then only Catholic electors may nominate a Catholic candidate. Conversely only non-Catholic electors may nominate a public candidate.</p> <p>The returning officer would need to verify the religion of the nominators of the Catholic members and that the nominators of the public member are not Catholics.</p>
<p><i>Section 223.4(3)</i></p> <p>This subsection would need to be expanded to include the requirement to be a Roman Catholic if running to be a Roman Catholic member of the Authority and a non Roman Catholic if running to be a public member.</p>	<p>This subsection allows persons who are not electors under subsection (1) to run for office and thus allows for the possibility of a non-Francophone being elected provided he/she is properly nominated by 5 electors.</p> <p>Francophone Authority electors would continue to have 2 votes, as all Albertans remain the residents of either a public or separate board based on geography and religion.</p>

## Constitutional Law Considerations:

Recent decisions of the Supreme Court of Canada on s. 17(1) of the *Alberta Act, 1905* and s. 93 of the *Constitution Act, 1867*, have employed a "purposive approach" that gives provincial legislatures flexibility to alter their education systems, from the structures that were in place at the time of Confederation, or at the time that a province joined Confederation. The rights protected are the broader purposes of those laws. For example, the power of a school board to determine its budget, and to tax its supporters in an amount sufficient to meet that budget, are not constitutionally protected rights despite the presence of such legal powers in pre-confederation legislation. The purpose of the pre-confederation structures was to provide sufficient funding to protect denominational schooling. The Constitution protects the "denominational aspects of education, as well as those non-denominational aspects necessary to deliver the denominational elements".

Any proposal for creating a new governance system for schools in which denominational schooling is delivered, needs to be analyzed from the perspective of whether the changes in governance would prejudicially effect either denominational aspects of education, or those non-denominational aspects which are necessary to deliver those denominational elements. Assuming there are sufficient protections in the model for the protected aspects and elements, there would not appear to be any insurmountable hurdle in principle, for a proposal such as the current one, to pass constitutional muster.

There may be disagreement on the effect of this proposed governance structure, but in keeping with the Guiding Principles, such a 'blended' Francophone authority reflects the current situation in the three northern Francophone Regions that have operated successfully for a number of years. The addition of guaranteed denominational rights for Roman Catholics enhances the existing model that is unique to Alberta. The goodwill exhibited by Catholic school boards when the Francophone Regions were originally established needs to be brought to the discussion of a new model that gives statutory protections for the decision making of representatives of the minority religious group within each Region.

## Summary of Additional Francophone Funding

	1999-2000 School Year			Francophone Proposed Funding May /June 1999
	8040 Greater N C	8050 NorthWest	8060 East Central	
Funding Framework Funding for Sparsity / Distance	\$ 219,542	\$ 351,008	\$ 382,269	\$ 952,819
Additional Francophone Funding for Sparsity/Distance	\$ 1,528,724	\$ 40,360	\$ 278,466	\$ 1,847,550
<b>1 Total Funding for Sparsity / Distance</b>	<b>\$ 1,748,266</b>	<b>\$ 391,368</b>	<b>\$ 660,735</b>	<b>\$ 2,800,369</b>
Funding Framewk Plant & Oper. Maintenance	\$ 744,657	\$ 181,454	\$ 279,275	\$ 1,205,386
Additional Francophone Funding for Plant , Oper. & Mtc.	\$ 282,625	\$ 82,875	\$ 171,275	\$ 536,775
<b>2 Total Funding for Plant Operations, &amp; Maintenance</b>	<b>\$ 1,027,282</b>	<b>\$ 264,329</b>	<b>\$ 450,550</b>	<b>\$ 1,742,161</b>
<b>1+2 Francophone Combined - Sparsity/Distance &amp; POM Funding</b>				<b>\$ 2,384,325</b>
<b>3 Additional System Admin. amount to attain the min \$300,000</b>	\$ -	\$ 179,677	\$ 131,035	\$ 310,712
<b>4 Francisation (similar to English as Second Language) \$677 per eligible student</b>	\$ 125,922	\$ 16,248	\$ 40,620	\$ 182,790
<b>5 Special Needs - Regional Assessment</b>	To be deter.by Boards and approv. by Spec.Educ.			\$ 300,000
Total Funding for Transportation	\$ 1,785,214	\$ 450,104	\$ 481,892	\$ 2,717,210
Funding Framework funding for Transportation	\$ 415,167	\$ 411,198	\$ 390,185	\$ 1,216,550
<b>6 Additional Francophone Funding for Student Transportation</b>	<b>\$ 1,370,047</b>	<b>\$ 38,906</b>	<b>\$ 91,707</b>	<b>\$ 1,500,660</b>
<b>TOTAL for items 1 - 8</b>				<b>\$ 4,678,487</b>