

***Presentation to the Law Amendments Review Committee on
Bill 14, The Public Schools Modernization Act***

***Made by the Manitoba Association of School Trustees
June, 2002***

Introduction

On behalf of the Manitoba Association of School Trustees, I welcome this opportunity to present MAST's views on Bill 14, *The Public Schools Modernization Act*, to the Law Amendments Review Committee.

Ostensibly, the purpose of this legislation is to give force to the school board amalgamations announced by the Minister of Education, Training and Youth in November 2001. However, Bill 14 will do much more than that. It will fundamentally alter the balance of power in our public education system, increasing the decision-making authority of the central ministry, and reducing that of local school boards and the communities they represent. We also believe that Bill 14 will weaken our education system, and for that reason, we are calling upon the Government to withdraw, or at the very least, amend substantially, this legislation.

Bill 14: Unnecessary Legislation

The Manitoba Association of School Trustees believes that, to the extent that Bill 14 is intended to give force to the school division and district amalgamations announced by the Minister in November 2001, it is unnecessary legislation.

Section 7(1) of the *Public Schools Act* gives the Minister the authority, by regulation, to "amalgamate any two or more school divisions or school districts," providing that a public consultation precedes any such amalgamation. On June 17, 2002, a Manitoba court ruled that the boundaries review conducted by the commission headed by William Norrie in the early 1990's constitutes the required public review for the purposes of the on-going amalgamations. MAST believes that, given this ruling, the provincial government has all the needed authority under existing legislation to conclude the current round of amalgamations, and would urge that it to do so.

The current Section 9(7.2) of the *Public Schools Act* specifies what is to be included in a regulation made under Section 7(1). These are in fact the same matters that are covered in the proposed Regulation 61/2002, the School Division and School District Amalgamation Regulation, namely the fact of establishment, the name and number, the boundaries or area, the number of wards, and the number of trustees of a newly formed division.

There may be areas where current legislation does not clearly empower the Minister to make decisions necessary to the amalgamation process. For example, the *Public Schools Act* does not seem to envision a circumstance where decisions will need to be made about the division of assets and liabilities. This may be particularly significant in those situations where one division or district is being divided, and the resulting parts amalgamated with two or more neighbours. However, current legislation does give the Minister the authority to reinstate the Board of Reference, which could then deal with these and other outstanding matters in an expedient fashion. The Board of Reference was the mechanism used to realize the successful St. Boniface/Norwood and Tiger Hills/Pembina Valley amalgamations in 1998; there is no reason to think that it could not be as effective and efficient under the present circumstances.

MAST's recommendation that the government proceed with amalgamations under existing legislation should not be construed as support for those amalgamations. The position of school boards and MAST remains unchanged: amalgamations should be voluntary, and should occur only where there is community support and demonstrable benefit to students. We do not believe that the amalgamations mandated by the government meet these tests. Having said that, however, MAST does recognize the government's authority to act in this regard, and school boards are doing everything in their power to meet the as-yet-unclear timelines of the amalgamation process. We are recommending that the government proceed with amalgamations under existing legislation because this appears to be the most straightforward and efficient way to give effect to the inevitable establishment of new school divisions, a process that to date has been fraught with ambiguity and confusion.

Therefore, the Manitoba Association of School Trustees recommends:

- **that the Government of Manitoba withdraw Bill 14; and**
- **that the Board of Reference be reinstated to decide any matters relating to amalgamation that are not otherwise covered by Ministerial regulatory authority under the existing provisions of the *Public Schools Act*.**

Bill 14: Flawed Legislation

Should the government choose to disregard our recommendation to withdraw Bill 14, MAST would like to make a number of further recommendations for additions, deletions, and amendments that we feel would strengthen the legislation.

Bill 14 Section 7(5)—Amending *PSA* Section 9(7)

Effect: To eliminate the right to appeal the substance of an award made by the Board of Reference to the Court of Queen’s Bench. The existing right to appeal would be replaced by the right to apply for a judicial review, which deals with process by which an award is made, rather than the substance of that award.

Recommendation: That Bill 14 be amended by striking Section 7(5) and consequential amendments so as to retain citizens’ right of appeal concerning Board of Reference awards as provided in the current *PSA* Section 9(7).

Rationale: The right to appeal is a fundamental element of a democratic society. We must not take lightly any attempt to limit unduly consideration of matters that are important to us, such as matters relating to public education. Given that the award of a Board of Reference constituted under an amended *Public Schools Act* may be quite detailed and extensive—see, for example, the potential content of an award made in regards to amalgamation contained in the proposed *PSA* Section 9(6.2)—it seems only reasonable that affected parties have a right to appeal any such decision to a higher body. The current right to appeal has rarely been used, but that is all the more reason to retain that right in revised legislation. This protection of fundamental rights has not proven to be an unduly onerous strain on our judicial system, but it is an important symbol of the principles we as a society value.

Bill 14 Section 10—Adding a new *PSA* Section 12.2

Effect: To give the Minister the authority to make regulations in a number of areas relating to school board operations subsequent to altering school division boundaries through regulation made under *PSA* Section 7.

Recommendation: That the proposed *PSA* Sections 12.2(b), (c), and (d) be stricken.

Rationale: The first (subsection b) relates to interim school boards. Under this legislation, the Minister would have the authority to establish, by regulation, an interim board for a new school division, that board to serve until the next regular election. We have no objection to the establishment of interim boards. They play a valuable role as the authority and responsibilities of multiple jurisdictions come together as a single new entity. However, we are concerned that under this legislation, the Minister would have the authority to establish the “eligibility and residency qualifications applicable to trustees serving on the interim board.” We firmly believe that it is the amalgamating school boards that should have the authority to determine the make-up of any interim board, as they have done in the present situation, and that interim boards should reflect the same eligibility and residency requirements as do the boards of the constituent divisions.

Subsections 12.2 (c) and (d) would give the Minister authority to make regulations concerning “transitional matters,” including regulations designed to prevent disruption in the education of pupils, and “respecting any other matter that the Minister considers necessary or advisable in connection with the formation, continuation, amalgamation, or dissolution” of school divisions. These provisions are, in our view, too broad and open-ended. For example, there is no time-delineated definition of “transitional,” creating the specter of ongoing Ministerial involvement in what should be local educational decisions long after the effective date of an amalgamation. As well, the phrase “any other matter the Minister considers necessary or advisable” in (d) effectively gives the Minister boundless authority in this area.

Another concern underlying our objections to the contents of the proposed Section 12.2 is that the authority it confers upon the Minister is regulatory authority. The making of regulation is not subject to the same public scrutiny and political debate as is the making of legislation. The making of regulation does not require consultation and discussion; regulations may simply appear one day in the *Manitoba Gazette*, carrying with them the full force of law. With no guarantee that those affected by regulations—in this case, school boards—will have any opportunity to shape those same regulations, we cannot endorse the proposed Section 12.2 of the *Public Schools Act*.

Bill 14 Section 16—Adding a new *PSA* Section 174.1

Effect: To give the Minister regulatory authority to prescribe administrative costs, establish reporting requirements related to administrative costs, and set limits on administrative costs.

Recommendation: That Section 16 of Bill 14 be amended to ensure a greater degree of stability in both the definition of and limits on administrative costs, and that a requirement be included that the definition and limits be established or changed only after significant consultation with educational partners.

Rationale: Our concern with this section is two-fold. Firstly, because the Minister will have the authority to prescribe and limit administrative costs via regulation, we are concerned that school boards may not have the stability they need to facilitate long-range planning. If the definition of administrative costs can be readily changed, school boards may have to adjust their budgets for no other reason than one year's acceptable costs have become unacceptable under a new definition. Until very recently, there was a widely accepted definition of administrative costs contained in FRAME, the department's own standardized accounting system. This definition included costs associated with the board of trustees, as well as the superintendent and secretary-treasurer's offices. For the current year, that definition has been expanded to include additional components, despite concerns expressed by educational partners to the Minister about the legitimacy of classifying certain of these costs as "administrative." We would urge the government to amend Bill 14 to utilize previous years' definition of "administrative costs," and to ensure that future changes are only made in consultation with the educational partners.

Our second concern with this section relates to the limits that the Minister will be able to set on administrative costs. We appreciate that the government's intent with this section is to ensure that the maximum number of dollars be directed toward the classroom. School boards and MAST share this goal. However, while the primary responsibility of school boards is to ensure a quality education for their students, this responsibility cannot be viewed in isolation. They are also responsible for school buildings, and in some cases for transporting those students to those schools. They are responsible and accountable to the communities and ratepayers who they represent. Many of these responsibilities cannot be met without incurring costs, and some of these costs may fall under the broad definition of "administrative costs."

We are concerned that in order to meet government restrictions in the area of administrative costs, school boards may be forced to make cuts in some crucial areas. For example, school boards are required by law to have annual audits of their books. This is rightly defined as an administrative cost. In light of recent concerns about financial accountability in some school divisions, MAST and its partner organizations MASS and MASBO approached the Provincial Auditor for his view on how future problems in this area could be avoided. One recommendation emerging from that discussion was the establishment of minimum audit standards for school divisions. Some school divisions may already meet such standards, but others may not. If school boards are forced to reduce administrative costs to meet an imposed cap, they may seek savings in areas such as audit, legal and other professional services. Instead of ensuring improved accountability through comprehensive approaches and reliance on highly skilled and professional expertise, arbitrary limitations on administrative expenditures may have the effect of eroding the quality of professional services accessed by school boards, and undermine their accountability obligations to their publics.

Bill 14 Section 22—Transitional PSA Amendment

Effect: To require that in the fiscal year of amalgamation, and in each of the next two fiscal years, boards of newly amalgamated divisions submit their budgets to the Minister for review, and revise their budgets in accordance with Ministerial direction.

Recommendation: That Section 22 of Bill 14 be stricken.

Rationale: We are opposed to this provision on two grounds. Firstly, it undermines the authority of school boards as a legitimate, tax-levying level of government. Through their local levy, school boards raise a substantial portion of divisional revenues. They are accountable to their communities for how those funds are used. The remaining revenue is received from the province, in accordance with provisions set out in the funding formula. The funding formula and community accountability, combined with legally required checks and balances such as annual audits, ensure that school boards are setting their budgets and expending revenues in a fiscally responsible manner. Ministerial authority to require specific budget revisions of a school board would not enhance the existing system, but only add another, unnecessary layer of bureaucracy. Moreover, it is difficult to see how decisions taken by this additional layer of bureaucracy that is further removed from communities and their schools, and likely

unfamiliar with local priorities, could reasonably and adequately serve the interests of communities and students at the local level.

Secondly, the provision outlined in 22(1) would create a two-tiered system under which some school boards would be subject to a greater degree of provincial involvement in their day-to-day operations than are others. All school boards are elected by their communities to fulfill the same mandate. They have the same responsibilities under the *Public Schools Act*, and should have the same authority. All school boards are currently required to submit their budgets to the Minister. This submission, combined with the community accountability, structured funding formula, and legislated audit requirements noted above, ensure an appropriate level of both accountability and provincial involvement in school board decision-making. Nothing more is needed. There is nothing to be gained by requiring that certain boards move beyond these parameters by granting the Minister the authority to direct specific revisions to their budgets. We would also like to note that this system of budgetary approval was not deemed to be a required component of the 1998 school board amalgamations; we see no reason to implement it in 2002.

***Public Schools Act* Section 7(2)—Proposed Amendment**

Recommendation: That the current Section 7(2) of the *Public Schools Act* be amended to include a limitation on the time that may pass between the receipt of a boundaries commission report, and the implementation of Ministerial regulation altering school division boundaries under Section 7(1).

Rationale: Bill 14 leaves the current *PSA* Section 7(2) untouched. This Section requires that prior to altering school division boundaries, the Minister strike a review commission to conduct public hearings into the matter. Such a review was conducted in the early 1990's, with the report received in November 1994. The current government has argued that this review meets the legal requirement contained in *PSA* Section 7(2), and that no further review is needed to act on school division boundaries. The courts have upheld this view. MAST would argue that, although the letter of the law may have been observed, the spirit was not. The public that was consulted in the early 1990's is not necessarily the same public that would be heard if consultations were held today, nor do the amalgamation decisions made by the current government reflect the direction recommended by the 1994 Report of the Boundaries Review Commission. Moreover, the Court's recent interpretation of Section 7(2) provides no assurance for school boards and their communities that they will be consulted in the future should the government

pursue further school division/district amalgamations in the province. Therefore, we urge the government to amend Section 7(2) of the *Public Schools Act* to include a time-limit on the applicability of any review, so as to ensure needed transparency and the opportunity for timely public input in any future government action in regards to school boundaries.

Conclusion

In conclusion, I would like to reiterate the view of the Manitoba Association of School Trustees that Bill 14 is unnecessary legislation. If the government's intent is to give effect to the school division amalgamations announced by the Minister in November 2001, the necessary authority to follow through on that announcement already rests with the Minister under current provisions of the *Public Schools Act*. Therefore, MAST urges the government to withdraw this legislation, to reinstate the Board of Reference, and to allow school boards to proceed with these amalgamations using the same mechanisms that have proven to be effective for past voluntary amalgamations.

Failing government action on our primary recommendation to withdraw Bill 14, MAST strongly urges the government to give serious consideration to the detailed recommendations contained within this presentation. By legislating an expanded role for the Minister of Education, Training and Youth in overseeing and directing local decision-making, Bill 14 without amendment will undermine the authority of democratically elected school boards, and thus the local control of education that is a foundation of Canadian society.

We ask that the government listen to our concerns, and amend this legislation in order that it better meet the needs of students, local communities, and the school boards duly elected by the citizens of Manitoba.

Thank you.