

**A Brief by the Manitoba Association of School Trustees (MAST) to the  
Law Amendments Review Committee on Bill 42,  
*The Public Schools Amendment and Consequential Amendments Act***

**July, 2000**

***Introduction***

The Manitoba Association of School Trustees is strongly opposed to Bill 42. If enacted, the legislative changes proposed by the *Public Schools Amendment and Consequential Amendment Act* will have a major—and overwhelmingly negative—impact on Manitoba's public school system. Although MAST has repeatedly communicated its concerns to representatives of the government, the Bill that was brought before the Legislature on June 22 is a fundamentally flawed piece of legislation. For the sake of Manitoba's education system, we hope that the Law Amendments Review Committee will recognize the validity and importance of MAST's concerns. We thank you for the opportunity to express today, on behalf of Manitoba school boards, our profound opposition to this Bill.

As you may know, MAST membership includes all of Manitoba's public school boards. Given the importance of this issue, we requested specific endorsement of our position from individual boards. Although the timeline has been very short, 39 school boards have explicitly endorsed the organizing principles of the following presentation. In addition, 94 individual municipal councils have endorsed our position. Further support for this position has been provided by the Manitoba Chamber of Commerce, the Canadian Federation of Independent Business, and the Manitoba Association of School Business Officials. In the four weeks of summer since this bill was introduced, over 130 locally elected boards and councils along with three major provincial associations have signed statements opposing this bill.

On June 22 the Minister of Education and Training stated that he was proud to "introduce a bill that deals with collective bargaining and puts the interests of our children first." We agree with the Minister's assertion that the interests of our children, and their educational needs, must come first. Our public school system exists for that very purpose. The *Public Schools Act* provides the framework within which the powers of school boards and the legitimate interests of teachers and other employees are balanced to ensure that our central purpose, serving our children, is achieved. Our analysis of Bill 42 will demonstrate that it fails to meet the Minister's criteria of "putting the interests of our children first."

The Minister further stated that this new collective bargaining process will be fair to both teachers and school boards, and sustainable. For more than 40 years, Manitoba students have benefited from a collective bargaining system in which binding arbitration is used to settle disputes between teachers and school boards. Over the years this process has been modified. The most recent changes in 1996 were designed to rebalance a process that was becoming seriously skewed in favour of the teachers' union, to the detriment of students

and communities. Bill 42 not only undoes the changes that were introduced in 1996; this bill goes much further to skew the collective bargaining process to the advantage of the teachers' union.

Our presentation which follows will substantiate our convictions that this bill is neither fair nor sustainable. Most importantly, it is not the interests of children that are being put first.

***This bill compromises the educational interests of Manitoba children by shifting decision-making authority away from elected community representatives, and to the teachers' union and arbitrators.***

A school board exists to translate its community's hopes and aspirations for its young people into a sound and sustainable education system. School boards also manage that system. School boards have a dual responsibility to their students and to their taxpayers. Their mandate requires that they balance the responsibility to provide the best possible education for their students with the responsibility to manage their resources effectively and efficiently, and to recognize the impact of increased school taxes on their communities.

In the preamble of Bill 42, government affirms this role by stating that "democratic local school divisions and districts play an important role in providing public education that is responsive to local needs and conditions." However, the legislation then proceeds to contradict itself by undermining school boards' ability to fulfill one of their most important responsibilities, managing the human and financial resources of their communities.

The collective bargaining process determines teacher compensation and teacher working conditions, which account for the majority of school board expenditures. When this process breaks down, binding arbitration is used as the final dispute resolution mechanism.

The system of collective bargaining and binding arbitration is premised on two assumptions: the good faith of the parties involved—school boards and teacher associations—and the integrity of the arbitrator(s). For the most part, these assumptions hold true, but not always. In one notable instance, the good faith of a local teacher association was called into question when it decided against approving a negotiated settlement in favour of arbitration. The arbitration board awarded a higher salary increase than that agreed upon through the negotiation process, and included five additional major union proposals for change to the collective agreement.

Arbitration is generally viewed by the public as an unbiased means of resolving disputes. School boards respect the integrity of arbitrators to whom they present their cases, but we must also recognize their humanity, their fallibility and the political process through which they are appointed.

Of particular concern to school boards is the precedent-setting nature of arbitration awards. Arbitrators set precedents that influence both future arbitrations between other school boards and teacher associations, and the outcome of collective bargaining that does not proceed to arbitration. Arbitration introduces into collective agreements matters that had never been freely negotiated between school boards and teachers.

There are many of examples of clauses that, although now common in collective agreements, were first introduced by arbitrators. Two of these are interest on retroactive pay and noon-hour supervision clauses. Both of these resulted in substantial costs to school boards. Most recently, in June of this year, the first maternity leave provision that provides for a comprehensive, supplemental employment plan was introduced by an arbitrator. If such a plan were to be introduced province-wide, a conservative estimate of its cost is \$3.2 million, based on 1999 maternity leave statistics. This same amount of money could pay the salaries of an additional 64 classroom teachers, who could enhance the educational experience for hundreds of school children. Enhanced maternity benefits are not an area where most school boards would choose to spend scarce dollars, particularly in light of the potential for the cost of this benefit to increase dramatically with changing teacher demographics.

School boards are elected by their communities; arbitrators are not. Arbitrators should not have the authority to impose decisions upon elected school boards that undermine the boards' authority to manage their community schools. We believe that allowing arbitrators to make determinations that would routinely require school boards to increase taxes amounts to taxation without representation, a concept that is anathema to a democratic society.

***We strongly support the existing Public Schools Act, which provides for reasonable limitations on arbitrators in areas of management rights, and requires arbitrators to consider the ability of school boards to pay in making awards. The existing legislation balances this limitation by giving teachers the right to grieve school board decisions in areas precluded from arbitration.***

The legislative amendments introduced in 1996's Bill 72 sought to rectify the deterioration that had become increasingly evident in the collective bargaining process, and the concurrent shift in the balance of power in favour of the teachers' union. One of the major components of Bill 72 was contained in Section 126(2). That section listed items that were not referable for arbitration: the selection, appointment, assignment, and transfer of teachers and principals; the method for evaluating the performance of teachers and principals; the size of classes in schools; and the scheduling of recesses and the mid-day break. These items are often referred to collectively as "management rights."

Why are school boards so concerned with questions of "management rights?" These concerns are grounded in the nature of school boards' dual responsibility to students and taxpayers.

School boards need the flexibility to manage human resources in the manner that best serves the interests of their students. In some instances, this may involve changing a teacher's classroom assignment, varying a teacher's workload, or transferring a teacher to a different school. School boards have an obligation to ensure that the teachers and principals that they employ are performing their duties in a capable manner; they do this through an evaluation process. Boards are responsible for the safety of the students in their schools; in order to ensure that students are adequately supervised at all times, they need to schedule recesses and other breaks appropriately.

Premier Gary Doer himself acknowledged the importance of management rights this past March, when speaking about pending negotiations with the Manitoba government Employees' Union. When asked about MGEU concerns about the use of casual employees and contracting out, and general staffing levels, Premier Doer replied that "the decisions to be made on staffing levels are not going to be bargained away. Those are management rights that aren't even on the table—we're responsible for those." In regards to management rights, school boards are asking for no more and no less than what the Premier himself has declared essential for dealing with provincial employees.

In introducing Bill 42, the Minister of Education and Training stated that current collective bargaining provisions "were designed to disadvantage teachers." To the contrary, current legislation balances the rights of employer and employee by requiring that school boards act fairly in administering their policies related to items not referable to arbitration. Should a school board not act fairly, the legislation gives teachers the right to launch a grievance under the collective agreement.

***Bill 42 proposes changes which will give teachers preferential treatment that no other employee group receives.***

While MAST is fundamentally opposed to the principles represented by Bill 42, we would also like to address a number of specific problematic clauses that will have far-reaching implications. While we have limited ourselves to five substantial issues in this presentation, other problematic issues will undoubtedly emerge if this hastily conceived legislation is implemented.

**Fairness and Equity**

The teachers' union has long claimed that there is a need for change to the collective bargaining provisions of the *Public Schools Act* to give teachers the same rights as other employees in the province. The most expedient and fairest way to do this would be to include teachers under the *Labour Relations Act*, with the sole exception that binding arbitration rather than strike/lockout be the final dispute resolution mechanism. Instead, Bill 42 identifies a number of explicit exceptions to the application of the *Labour Relations Act* to teachers. Rather than "treating teachers like all other employees", Bill 42 ensures that teachers will be treated like no other employee group.

In discussions with the government about proposed changes to the collective bargaining provisions of the *Public Schools Act*, MAST expressed a willingness to have teachers included under provisions of the *Labour Relations Act*. However, since those discussions, the government has introduced Bill 44, the *Labour Relations Amendment Act*. This bill proposes major changes to the *Labour Relations Act* that, to the extent they impact on the public school system, would not be in the best interests of Manitoba's students. MAST will be enumerating its concerns about Bill 44 in a separate presentation to the Law Amendments Review Committee. At this time, we would simply like to go on record as objecting to the application of certain provisions of the proposed *Labour Relations Act* to teacher collective bargaining.

### **Definition of Teacher**

The definition of "teacher" contained in Bill 42 differs from that contained in current legislation in that the requirement for a teacher to hold an "individual form of contract" has been removed. All that is required under the new definition is that the individual be employed by a school board and hold "a valid and subsisting teacher's certificate or limited teaching permit." This definition would apply to substitute teachers, which means that the provisions of the collective agreement would be extended to this group. Casual employees such as substitute teachers are seldom provided with access to such collective agreement provisions as seniority and lay-off, which are normally reserved for longer term employees.

### **Inclusion of Principals in the Bargaining Unit**

Under Bill 42, principals and vice-principals are included as part of the bargaining unit through legislation. Inclusion of management personnel is more properly a matter for the Manitoba Labour Board to decide, as is the case with employers and unions under the *Labour Relations Act*. School boards should have the same right and opportunity as other employers to have this matter addressed through this mechanism.

### **Transitional Clauses on Class Size and Composition**

We have already stated our opposition to the elimination of the provisions of Section 126(2), which lists items that may not be referred to arbitration. In fact, one of these items—class size and composition—continues as an exclusion, albeit temporarily, in Bill 42. That temporary nature concerns us deeply.

A transitional clause of Bill 42 calls for the appointment of a Commission to consider whether a provincial policy concerning class size and composition should be established, and speaks to the composition and reporting process for any such Commission. This transitional clause concludes with the requirement that, six months after the tabling of the Commission's report, the section of the *Public Schools Act* that excludes class size and composition from arbitration will be repealed.

By including a "sunset clause" in Bill 42, the legislation at best jeopardizes the ability of school boards and teacher associations to deal with this issue in the near future. It also all but guarantees that any agreements that are reached will be one year in duration, as teacher associations will be anticipating upcoming and favourable legislative amendments, and will not want to be bound by any pre-existing agreement when those amendments are proclaimed. This contrasts with the multi-year agreements that have become the norm in both the private and the public sectors, including education, and which result in less disruption and greater economies for all involved. At worst, the legislation compromises the objectivity of the proposed Commission, in that it assumes that the Commission's findings are a foregone conclusion—it does not allow for the possibility that the Commission could determine that the *status quo* with regard to class size and composition should continue.

### **The Arbitration Process and Timelines**

The scheme of collective bargaining provided in Bill 42 encourages the determination of collective agreements through arbitration. Sections 100 to 103 do not expressly contain the conciliation and mediation provisions of the *Labour Relations Act*. MAST is concerned that, following the 90-day negotiation period, either teacher associations or school boards could dictate a move to arbitration, even if the other party wished to try conciliation first. MAST recommends that express wording be included in Part VIII of the *Public Schools Act*, which would parallel the *Labour Relations Act*, and which would state that conciliation and mediation is available for 60 days beyond the bargaining period, to enable conciliation or mediation meetings to occur prior to moving to arbitration.

The 90-day bargaining period in itself is not sensitive to the bargaining history between school boards and teacher associations. Teacher associations rarely submit opening proposals in a timely fashion. Once school boards respond and serious negotiations begin, it is often several months after the expiry date of the collective agreement. Under the present legislation, teacher associations must provide notice in April to commence negotiations for collective agreements effective July 1, 2000. To our knowledge, not one school division has yet received opening proposals.

MAST strongly recommends a negotiation period of at least nine months from the time notice to commence bargaining is received. Even though collective agreement expiry dates other than June 30 can now be negotiated, most will likely continue with the June 30 date. Historically, no bargaining is conducted during July and August, and the number of negotiation meetings during April, May and June are limited by other commitments of both teachers and trustees.

We also believe that there is a need for a transition provision in Bill 42 as it relates to arbitration proceedings for the current round of collective bargaining between teacher associations and school boards. Notices to commence bargaining given in April 2000 should be deemed to have been given, at the very earliest, on the date Bill 42 receives Royal Assent. This would afford school boards and teacher associations a realistic

opportunity to achieve a collective agreement through negotiation rather than moving very quickly to arbitration.

MAST is also concerned about the complete removal of the provincial government from the administration of the arbitration process. Bill 42 contemplates the submission by the two parties of different lists of items in dispute, and an additional role for the arbitrator in determining what items are actually in dispute. MAST recommends that the Minister of Labour be an intermediary in at least forwarding a list of items in dispute to the arbitrator.

In its presentation to Law Amendments in 1996 MAST requested a provision to allow school boards to request a vote of the teachers be taken to determine whether the employees accept or reject the employers last offer prior to arbitration. MAST believes such a provision promotes openness and responsibility for the bargaining outcomes by both parties and is requesting that legislation be amended to include such a provision.

### ***Conclusion***

***Bill 42 proposes a bargaining process, which increases power for the teachers' union, and strips school boards of their authority to manage resources efficiently, while encouraging arbitration awards that Manitoba taxpayers cannot afford. This bill will thereby accelerate the rise in education costs and will drive up property taxes significantly for years to come.***

In speaking to Bill 42 in the Legislature, the Minister of Education and Training noted that, in its most recent funding announcement, the government increased funding to the public school system by \$30 million. After a period of restraint and cutbacks, school boards certainly appreciate any new dollars they receive. However, with rising costs, a funding increase of this magnitude enables most boards to maintain the status quo, at best.

As we have shown, past arbitration awards have already contributed to substantial increases in education costs in Manitoba. If Bill 42 is passed into law, many new dollars would be needed to fund the types of changes that could result from arbitrators' decisions on the items currently excluded from arbitration. Two examples from the classroom demonstrate just how large that impact could be. If the provincial average for pupil-teacher ratio were to be reduced by one, the cost to the education system province-wide would be \$30 million. Likewise, if each teacher in the province were to be granted an additional 15 minutes per day of preparation time, the cost to hire the additional staff needed as a result of this change would be another \$30 million. Those dollars would have to come either from a substantial increase in provincial funding for education or, failing that, substantially increased local property taxes.

In conclusion, we have shown that Bill 42 fails to meet the Minister of Education and Training's objectives of "introduc(ing) a bill that deals with collective bargaining and

puts the interests of our children first", and also fails to establish a fair and sustainable collective bargaining process.

***For the sake of our students, our public schools, and our communities, do not pass Bill 42.***