

IN THE MATTER OF *The Cornwall Public Inquiry*

AND IN THE MATTER OF An Application for Full Standing in Parts I and II of the Cornwall Public Inquiry on behalf of the Catholic District School Board of Eastern Ontario.

**Application of the Catholic District School Board of Eastern Ontario
Seeking Standing in the Cornwall Public Inquiry**

NOTICE OF APPLICATION

TAKE NOTICE that the Catholic District School Board of Eastern Ontario will bring an Application on Tuesday, the 3rd day of October, 2006, at 709 Cotton Mills Street, Cornwall, at 2:00 p.m. or so soon as this Application may be heard for standing in these proceedings as set out herein.

1. The Applicant, the Catholic District School Board of Eastern Ontario, makes application for:
 - (i) Full standing with respect to Parts I and II of the Cornwall Public Inquiry with respect to those issues which directly affect the interests of the Catholic District School Board of Eastern Ontario.
 - (ii) All rights and privileges afforded to a party with standing.

2. This Application will set out the grounds for the Application for Standing, including the historical background to the creation of the Catholic District School Board of Eastern Ontario; the statutory obligations and responsibilities of the Catholic District School Board of Eastern Ontario; the unique interests as a Roman Catholic School Board; and how the Catholic District School Board of

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Eastern Ontario meets the criteria for standing as set out in the *Rules of Practice and Procedure*, the *Terms of Reference*, and the *Public Inquiries Act*.

3. The Grounds for the application are:

Background

- (i) The Catholic District School Board of Eastern Ontario (“CDSBEO” or “the Board”) is an English-language separate district school board within the meaning of the *Education Act*, R.S.O. 1990, c. E.2, as amended (“the *Act*” or “the *Education Act*”) and the Regulations.
- (ii) The CDSBEO was established under the *Education Act* and its regulations following the enactment of the *Fewer School Boards Act*, S.O. 1997 c. 3 (“Bill 104”), which provided for the reduction in the number of school boards and the establishment of district school boards in Ontario. *Bill 104* further provided that English-language separate district school boards would govern the provision of elementary and secondary English-language instruction in Roman Catholic separate schools.
- (iii) Pursuant to Regulation 185/97, the *English Language Separate District School Board 52* was established. The Board became responsible for English language instructions in elementary and secondary Roman Catholic Separate Schools in the counties of Lanark; Leeds and Grenville; Prescott and Russell; and Stormont, Dundas and Glengarry, which incorporated the geographic areas of the following municipalities: Brockville, Cornwall, Gananoque, Prescott and Smiths Falls.
- (iv) In accordance with section 6 of Regulation 486/01 under the *Education Act*, the *English-language Separate District School Board No. 52* became “*The Catholic District School Board of Eastern Ontario*”. (See section 7, paragraph 26 of Regulation 486/01.)

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- (v) The CDSBEO was created from the amalgamation of the English Section of the former school Boards of Stormont, Dundas and Glengarry County Roman Catholic Separate School Board, the Lanark, Leeds and Grenville County Roman Catholic Separate School Board, and the Prescott-Russell County Roman Catholic English-Language Separate School Board.
- (vi) At amalgamation, the "Conseil de District des Écoles Séparées de Langue Française No. 65", which later became "Conseil Scolaire de District Catholique de l'Est Ontarien" ("CSDCEO") by virtue of Regulation 486/01 of the *Education Act*, was the successor for the French Sections of the Stormont, Dundas and Glengarry County Roman Catholic Separate School Board and the Lanark, Leeds and Grenville County Roman Catholic Separate School Board. The CSDCEO now serves the counties of Stormont, Dundas, Glengarry, Prescott and Russell.
- (vii) The CDSBEO's catchment area consists of an area of approximately 12,165 square kilometers, including the Municipality of Cornwall. An illustration of the Board's catchment area is now attached as schedule "A".
- (viii) The Board currently operates 40 elementary schools and 10 secondary schools for approximately 15,000 students and employs approximately 850 teachers and 450 support staff.
- (ix) Both the elementary and secondary panels of the CDSBEO and its predecessor Boards have been publicly funded since the mid-1980's and the passage of an *Act to Amend the Education Act*, ("Bill 30") which confirmed the right to full funding for Roman Catholic Separate High Schools in Ontario. Prior to *Bill 30*, Roman Catholic Separate High Schools were not fully funded in the secondary panels.

Statutory Obligations

- (x) The *Education Act* provides for the compulsory attendance at an elementary or secondary school (as applicable) for every child between the ages of six (6) and sixteen (16) years (see section 21 of the *Education Act*).
- (xi) The *Act* further provides that every resident pupil has a right to attend a school in a school section, separate school zone or secondary school district, as the case may be, in which the person is qualified to be a resident pupil. (See subsection 32(1) of the *Act*.)
- (xii) Sections 170 and 171 of the *Education Act* set out the duties and powers of the Board including the following:
- to provide instruction and adequate accommodation during each school year for the pupils who have a right to attend a school under the jurisdiction of the Board;
 - to appoint for each school that it operates a Principal and an adequate number of teachers, all of whom shall be members of the Ontario College of Teachers; and
 - on becoming aware that a teacher or temporary teacher who is employed by the board has been charged with or convicted of an offence under the *Criminal Code (Canada)* involving sexual conduct and minors, or of any other offence under the *Criminal Code (Canada)* that in the opinion of the Board indicates that pupils may be at risk, take prompt steps to ensure that the teacher or temporary teacher performs no duties in the classroom and no duties involving contact with pupils, pending withdrawal of the charge, discharge following a preliminary inquiry, stay of the charge or acquittal, as the case may be.

- (xiii) The *Education Act* further sets out the responsibilities of the Principal of a school which includes *inter alia*: maintaining order and discipline in the school, to give assiduous attention to the health and comfort of the pupils, and to refuse to admit to the school or classroom a person whose presence in the school or classroom would in the principal's judgment be detrimental to the physical or mental well-being of the pupils (see section 265 of the *Education Act*).
- (xiv) Regulation 474/00 under the *Education Act* also precludes a person from remaining on school premises if his or her presence is detrimental to the safety or well-being of a person on the premises, in the judgment of the Principal, a Vice-Principal or another person authorized by the Board to make such a determination.
- (xv) Principals and teachers employed by the CDSBEO and other people who perform professional or official duties with respect to children owe a duty to report a child in need of protection pursuant to subsection 72(2) of the *Child and Family Services Act* R.S.O. 1990, c. C11, *as amended*, including circumstances where there are reasonable grounds to suspect that "the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child". (See section 72(1)3 of the *Child and Family Services Act*).
- (xvi) In recognition of these statutory duties, the CDSBEO is party to a coordinated community response in Eastern Ontario with respect to child protection.

Denominational Rights

- (xvii) Subsection 93(3) of the *Constitution Act, 1867* provides for constitutional protection of denominational rights to a Roman Catholic education in Ontario. It provides:

93. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:--

(3) Where in any Province a System of Separate or Dissident Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education.

(xviii) Accordingly, it is *ultra vires* the rights of the Province to impose obligations which are prejudicial to the rights of denomination schools which have existed since Confederation. These rights are exempt from review under section 29 of the *Canadian Charter of Rights and Freedoms*.

(xix) The *Education Act* recognizes protections for English-language *Separate* District School Board and provides in sections 52 and 53 of the *Act*:

- (a) A Roman Catholic School Board may establish and maintain programs and courses of study in religious education for pupils in all schools under its jurisdiction.
- (b) A parent or guardian of a child attending a Roman Catholic school and a member of the Board that operates the school may visit the school.
- (c) A member of the Assembly may visit a Roman Catholic school in the member's constituency.
- (d) A member of the clergy of the Roman Catholic Church may visit a Roman Catholic school in the area where the member has pastoral charge.

(xx) On June 30, 2006, the Upper Canada District School Board (UCDSB) was granted full standing with respect to Parts I and II of the Cornwall Public Inquiry. The UCDSB application for standing was specifically directed to the interests of "*publicly funded educational institutions*".

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- (xxi) The CDSBEO is not only a publicly funded educational institution but has distinct ascertainable interests as an English-language *Separate* District School Board which is relevant to the Commission's mandate.
- (xxii) The evidence heard at the Cornwall Public Inquiry by the current Director of Education for the Upper Canada District School Board, David Thomas, was that he was appearing before the Public Inquiry on behalf of the Upper Canada District School Board and "not...on behalf of any other school board".

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- (xxiii) The CDSBEO, as a *publicly funded separate School Board*, seeks full standing in Part I with respect to "the institutional response of the justice system and other public institutions including the interaction of that response with other public and community sectors in relation to...allegations of historical abuse of young people in the Cornwall area, including the policies and practices then in place to respond to such allegations...in order to make recommendations directed to the further improvement of the response in similar circumstances".
- (xxiv) The CDSBEO, as a *publicly funded separate School Board*, seeks full standing in Part I with respect to "the institutional response of the justice system and other public institutions including the interaction of that response with other public and community sectors in relation to...the creation and development of policies and practices that were designed to improve the response to allegations of abuse...in order to make recommendations directed to the further improvement of the response in similar circumstances".
- (xxv) The CDSBEO seeks full standing in Part II with respect to the Commission's inquiry "into and report on processes, services or programs that would encourage community healing and reconciliation in Cornwall".

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- (xxvi) On August 8, 2006, the CDSBEO was requested to provide documents and information which Commission counsel deemed to be relevant to the mandate of the Cornwall Public Inquiry. Such documents included, *inter alia*, Board Policies, board records, student and employment records relevant to the various time frames being examined by the Inquiry.
- (xxvii) The Inquiry has heard evidence concerning, *inter alia*:
- (a) the relationship between the Separate School Board and the clergy;
 - (b) Protocols between various public institutions who have standing in this Inquiry and the CDSBEO, to address children in need of protection;
 - (c) The development and operation of the Child Protection School Handbook, A Coordinated Response in Eastern Ontario for the Counties of Lanark, Leeds-Grenville, Prescott-Russell and Stormont, Dundas & Glengarry, effective August 2002.
- (xxviii) In accordance with its on-going obligations to pupils under the *Education Act* and the *Child and Family Services Act*, and in light of the specific documentary disclosure requested of the Board with respect to issues relevant to the mandate of the Inquiry, the CDSBEO has relevant interests which are directly and substantially affected by Part I of this Inquiry.
- (xxix) The CDSBEO was also asked to meet with the advisory panel appointed pursuant to Part II in *the Cornwall Public Inquiry*. Representatives of the Board met with the advisory team on or about September 13, 2006.
- (xxx) Given the Board's role in the healing process, and its on-going responsibilities to pupils in the Cornwall community, the CDSBEO submits that it is sufficiently affected by Part II of the Inquiry and, in light of its rights and obligations as a *Separate* School Board, these responsibility are a distinct ascertainable interest essential to the mandate of Part II.

CRITERIA FOR STANDING

- (xxxi) The CDSBEO respectfully submits that it has met the criteria for Standing in Part I of the Inquiry, namely that (a) it is directly and substantially affected by Part I of the Inquiry and (b) it represents a distinct ascertainable interest and perspective that is essential to the Commissioner's mandate in Part I which warrants separate representation before the Inquiry. (See section 8 of the *Rules of Practice and Procedure of the Inquiry*.)
- (xxxii) The CDBSEO further submits that it has met the criteria for standing in Part II of the inquiry, namely that (a) it is sufficiently affected by Part II of the Inquiry and (b) it represents a distinct and ascertainable interest and perspectives that is essential to the Commissioner's mandate in Part II, and which warrants separate representation before the Inquiry. (See section 54 of the *Rules Practice and Procedure of the Inquiry*.)
- (xxxiii) The Applicant further relies on section 5(1) of the *Public Inquiries Act* which provides that:
- A commission shall accord to any person who satisfies it that the person has a substantial and direct interest in the subject-matter of its inquiry an opportunity during the inquiry to give evidence and to call and examine or to cross-examine witnesses personally or by counsel on evidence relevant to the person's interest.*
- (xxxiv) Wherefore, the CDSBEO respectfully submits that it should be granted full standing with respect to Parts I and II of the Cornwall Public Inquiry with respect to those issues which directly affect the interests of the Board and all rights and privileges afforded to a party with standing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 29th DAY OF SEPTEMBER, 2006.



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SCHEDULE "A"

