

1986

c 21 Education Amendment Act, 1986 (No. 1)

Ontario

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CHAPTER 21

An Act to amend the Education Act

Assented to June 24th, 1986

Whereas section 93 of the *Constitution Act, 1867* embodies one of the essential conditions which facilitated the creation of a united Canada in 1867 by guaranteeing to Roman Catholics in Ontario certain rights and privileges with respect to denominational schools; and whereas the Roman Catholic separate schools have become a significant part of the school system in Ontario; and whereas it has been public policy in Ontario since 1899 to provide for public funds to support education in the Roman Catholic separate schools to the end of Grade 10; and whereas it is recognized that today a basic education requires a secondary as well as an elementary education; and whereas it is just and proper and in accordance with the spirit of the guarantees given in 1867 to bring the provisions of the law respecting Roman Catholic separate schools into harmony with the provisions of the law respecting public elementary and secondary schools, by providing legislative recognition of and funding for secondary education by Roman Catholic separate schools; and whereas the foregoing facts were affirmed by the Premier of Ontario in his statement to the Legislative Assembly on the 12th day of June, 1984;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 (1) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section 17, 1982, chapter 20, section 2, 1982, chapter 32, section 1 and 1984, chapter 60, section 1, is further amended by adding thereto the following paragraphs:

35a. "Planning and Implementation Commission" means the Planning and Implementation Commission continued under section 136r;

42a. "public board" means a board of education or a secondary school board established under section 69;

.

46a. "Roman Catholic school board" means a separate school board that has made an election under section 136a or 136f that has been approved by the Minister;

.

48a. "salary" means all payments and benefits paid or provided to or for the benefit of a person who is designated under section 136-l;

.

59a. "separate school board" means a board that operates a separate school for Roman Catholics;

.

65a. "support staff" means staff other than supervisory officer staff or teaching staff.

2. The said Act is amended by adding thereto the following sections:

Secondary School Education

Election re
secondary
school

136a.—(1) A separate school board may elect to perform the duties of a secondary school board for the area of jurisdiction of the board.

By-law

(2) An election under subsection (1) shall be by by-law approved by the Minister.

Approval

(3) The Minister may approve a by-law under subsection (2) upon receiving the advice of the Planning and Implementation Commission that the Commission is of the opinion that the first annual implementation plan formulated by the separate school board for the purpose of providing secondary school education and filed with the Commission will permit the separate school board to provide secondary school education and will promote the best interests of public education in Ontario.

(4) The secretary of a separate school board that makes an election under subsection (1) shall forthwith transmit to the Ministry a copy of the by-law certified by the secretary. Transmittal

(5) Upon approval of a by-law by the Minister, the Ministry shall transmit notice of the approval to the board that passed the by-law and shall transmit a copy of the by-law and notice of approval, Notice

- (a) to the Planning and Implementation Commission;
- (b) to the secretary of every board of education that has jurisdiction in the same area as the separate school board;
- (c) to the clerk of every municipality all or part of which is within the area of jurisdiction of the separate school board; and
- (d) to the appropriate assessment commissioner.

136b.—(1) An election under section 136a is effective on the first day of the school year specified in the by-law approved by the Minister. Effective date

(2) A by-law approved by the Minister after the 30th day of June in a year shall not take effect before the school year that commences in the next following year. Election after 30th day of June

136c. A Roman Catholic school board has all the powers and shall perform all the duties that are conferred or imposed by this Act on a secondary school board in respect of the secondary school grades for which the Roman Catholic school board is entitled to share in the legislative grants. Powers and duties of Roman Catholic school board

136d.—(1) A Roman Catholic school board and a public board may enter into an agreement to provide secondary school instruction of pupils of the one board in a school or schools operated by the other board, upon payment of fees by the board requesting the instruction to the board that provides the instruction. Agreement for education at other school

(2) The fees for the provision of the instruction shall be calculated in accordance with the regulations. Calculation of fees

136e.—(1) A Roman Catholic school board is entitled to share in the legislative grants for secondary school purposes. Legislative grants

- Conditions (2) The payment of legislative grants to a Roman Catholic school board is subject to the conditions prescribed by the regulations.
- Apportionment and distribution (3) The apportionment and distribution of legislative grants to a Roman Catholic school board is subject to the regulations.
- Compliance (4) The payment and apportionment of legislative grants to a Roman Catholic school board is subject to compliance by the Roman Catholic school board with sections 136a to 136y.
- Transitional **136f.**—(1) Where, before the coming into force of this Act, the Planning and Implementation Commission has reported to the Minister upon the implementation plan of a separate school board and has advised the Minister that the plan is appropriate for funding for the school year commencing in 1985, the separate school board is entitled to share in the legislative grants for secondary school purposes as of the first day of the school year commencing in 1985.
- Conditions (2) The entitlement under subsection (1) is subject to,
- (a) the separate school board electing by by-law to perform the duties of a secondary school board;
 - (b) the approval of the Minister; and
 - (c) subsections 136e (2) to (4).
- By-law (3) The separate school board shall forthwith after the coming into force of this section pass the by-law and transmit to the Ministry a copy certified by the secretary of the board.
- Application of s. 136a (3, 5) (4) Subsections 136a (3) (approval) and (5) (notice) apply with necessary modifications in respect of an election under this section to perform the duties of a secondary school board.
- Application of s. 136b (2) (5) Subsection 136b (2) (election after 30th day of June) does not apply in respect of a by-law under this section.
- Deemed designated persons (6) Section 136-l applies with necessary modifications in respect of the entitlements of persons designated by a public board and employed by the separate school board after the Commission has reported to the Minister under subsection (1) but before the coming into force of this section.
- Secondary school grades **136g.**—(1) For the first school year in respect of which an election is effective, the entitlement of a Roman Catholic school board under section 136e applies in respect of the sec-

ondary school grade or grades, not exceeding grades nine and ten, in which the board is providing instruction in the immediately preceding school year and in respect of the next higher grade.

(2) The entitlement of a Roman Catholic school board under section 136e applies in respect of grade nine or grade ten, or both, provided for the first time in the first school year in respect of which the election of the Roman Catholic school board is effective.

Grades nine and ten

(3) For each subsequent school year, the board's entitlement under section 136e applies in respect of the same secondary school grades as in the previous school year and in respect of the next higher grade until the entitlement applies in respect of all secondary school grades.

Additional grades

136h.—(1) A Roman Catholic school board is entitled to share in the legislative grants as provided in section 136e in respect of a secondary school established and operated under Part XI by a public board and transferred to and operated by the Roman Catholic school board.

French language schools

(2) The entitlement under subsection (1) is in addition to the entitlement under section 136g (secondary school grades).

Entitlement

136i.—(1) No member shall be elected by separate school electors to a public board that has the same or part of the same area of jurisdiction as a Roman Catholic school board.

Membership on public board

(2) Subsection (1) applies in respect of the regular election under the *Municipal Elections Act* in the year 1988 and to elections held under that Act after the year 1988.

Application
R.S.O. 1980,
c. 308

(3) After the end of the first calendar year in which a Roman Catholic school board performs the duties of a secondary school board in accordance with an election under section 136a or 136f, no member elected by separate school electors and no separate school supporter or separate school elector is eligible to be a member of a public board that has the same or part of the same area of jurisdiction as the Roman Catholic school board.

Eligibility of separate school elector

136j.—(1) Every separate school supporter paying rates on property in the area of jurisdiction of a Roman Catholic school board is exempt from the payment of all rates imposed for secondary school purposes of a public board to the same extent that the person is exempt from payment of rates imposed for public elementary school purposes.

Payment of public secondary school rates

Application
of subs. (1)

(2) The exemption under subsection (1) commences in respect of the year following the year in which the election of the Roman Catholic school board becomes effective under section 136b.

Application

(3) Subsections (1) and (2) apply on and after the 1st day of January in the year next following the year in which this section comes into force.

Estimates
and rates
for separate
secondary
school
purposes

136k.—(1) The provisions of this Part that apply to the preparation and adoption of estimates and the levying and collection of rates or taxes for separate school purposes apply with necessary modifications for secondary school purposes in respect of a Roman Catholic school board.

Elementary
and
secondary
estimates

(2) Every Roman Catholic school board shall continue to prepare and adopt the estimates required of it for elementary school purposes and must prepare and adopt estimates for secondary school purposes in the same manner as is required of a public board.

Application

(3) Subsections (1) and (2) apply on and after the 1st day of January in the year next following the year in which this section comes into force.

Mandatory
joint
committees

136ka.—(1) If the area of jurisdiction of a public board is substantially the same as the area of jurisdiction of a Roman Catholic school board or if their common area of jurisdiction includes the whole of a municipality, the two boards shall establish a joint committee.

Multiple
committees

(2) If a board is required under subsection (1) to establish more than one joint committee, the board shall ensure that at least one member of each such joint committee is a member of the other joint committee or committees.

Combined
joint
committee

(3) If a Roman Catholic school board is required to establish more than one joint committee and all of the public boards concerned agree, the boards concerned may establish a single combined joint committee instead of the joint committees required under subsection (1).

Composition

(4) Each joint committee and combined joint committee shall consist of such number of members as the boards concerned may agree upon and, if the boards are unable to agree, shall be composed of,

- (a) three members of each public board concerned, appointed by their respective boards; and

- (b) three members of the Roman Catholic school board, appointed by that board.

(5) If a board that appoints members to a joint committee or a combined joint committee is required to have a French-language section or a French-language education council, at least one appointee of that board shall be a member of such section or council.

French-language
representative

(6) Subsection (5) applies with necessary modifications if a board is required to have an English-language section or an English-language education council.

Idem

(7) Nothing in Part XI-A or XI-B applies so as to restrict the participation of a member of a joint committee or combined joint committee in any meeting of the committee or so as to prevent the member from voting on any matter at a meeting of the committee.

Idem

(8) A member of a joint committee or a combined joint committee shall hold office during the term of the members of his or her respective board and until a new board is organized and a successor is appointed or elected, as the case may be.

Term of
office

(9) Subsection 74 (7) and subsections 75 (1), (2) and (3) apply with necessary modifications to a joint committee or combined joint committee.

Application
of ss. 74 (7)
and 75 (1-3)

(10) The boards concerned shall make available to the joint committee or combined joint committee such personnel and services as the boards consider necessary for the proper functioning of the joint committee or combined joint committee.

Personnel
and services

(11) A joint committee or combined joint committee shall hold public meetings to report upon its work.

Public
meetings

(12) A joint committee or combined joint committee is responsible for exploring opportunities for transferring facilities, leasing facilities or sharing services, facilities, resources and staff, and may make recommendations in respect of the implementation of programs for such purpose.

Recommendations

(13) A public board and a Roman Catholic school board shall consider any recommendation submitted to it in writing by a joint committee or combined joint committee and shall not refuse its approval without having given the committee an opportunity to be heard by the board or by the board and any committee of the board to which such recommendation is referred.

Consideration
of
recommendations
by
boards

Reconsideration of recommendations

(14) If a recommendation requires the approval of two or more boards to be effective and one or more of the boards concerned rejects the recommendation, the board or boards that approved the recommendation may make representations to the board or boards that rejected the recommendation, in which case the board or boards that rejected the recommendation shall reconsider the recommendation and may approve or reject it.

Annual report

(15) Each joint committee and combined joint committee shall report annually upon its proceedings and the disposition of its recommendations to the public board, the Roman Catholic school board and to the Planning and Implementation Commission which shall review and comment upon the reports as part of its annual report to the Minister.

Teaching and other staffs

136-1.—(1) A public board that has jurisdiction in an area that is also the area or part of the area of jurisdiction of a Roman Catholic school board shall designate, in accordance with the regulations or by agreement between the boards, the persons on its supervisory officers staff, elementary teaching staff, secondary teaching staff and support staff whose services will not be required by the public board consequent upon the election of the Roman Catholic school board to perform the duties of a secondary school board.

Contents of regulations and agreements

(2) The regulations or agreement referred to in subsection (1) shall provide for,

- (a) the exchange of enrolment and other data between the boards so as to enable the public board to make the calculations necessary to determine the designation referred to in subsection (1);
- (b) methods for encouraging voluntary transfers of public board teachers and supervisory officers to positions with the Roman Catholic school board and for treating a person so transferred as a designated person with all rights and entitlements provided by this Act; and
- (c) a right of first refusal, on the basis of seniority, for designated persons with respect to positions that become vacant in the public board.

Idem

(3) The regulations or agreement referred to in subsection (1) may contain provisions in addition to those required by subsection (2), including provisions related to the encouragement of the secondment and assignment of services of teach-

ers and supervisory officers of the public board to positions with the Roman Catholic school board.

(4) No agreement under subsection (1) renders inoperative any provision in a collective agreement unless the branch affiliate or affiliates concerned agree in writing to an amendment to the collective agreement.

Collective agreements

(5) In determining the designations referred to in subsection (1) and in implementing its employment policy thereafter, the public board shall endeavour to maintain and promote affirmative action with respect to the employment of women on its teaching staff.

Affirmative action

(6) The public board shall make the designations referred to in subsection (1) in each of the first ten school years during which the Roman Catholic school board performs the duties of a secondary school board but not later than the date prescribed by the regulations for each year.

Yearly designations

(7) The teaching contract, employment contract or employment relationship, as the case may be, of a person designated by a public board under subsection (1) is transferred to, and assumed by, the Roman Catholic school board referred to in subsection (1) effective the 1st day of September next following the date upon which the public board makes the designation or upon such earlier date as the boards concerned may agree upon.

Transfer of employment

(8) A Roman Catholic school board to which the teaching contract, employment contract or employment relationship of any person is transferred under subsection (7) shall employ the person in a position substantially similar to the position in which the person was employed by the public board immediately before the transfer.

Similar employment

(9) If the Roman Catholic school board has no position as provided in subsection (8) for the designated person on the appropriate staff of the board, the designated person is entitled to receive training assistance, as prescribed by the regulations, for an alternate position on the appropriate staff, and the Roman Catholic school board shall maintain the person in its employ, provide the assistance and offer to the person employment in a position appropriate to either his or her previous or newly acquired qualifications.

Training assistance

(10) If a designated person objects to the transfer of employment to the Roman Catholic school board for reasons of conscience, he or she may so advise the public board and, unless it is of the opinion that the objection is not made in

Objectors

good faith, the public board shall designate another person in place of the person making the objection.

Seniority

(11) Subject to any collective agreement in effect, the public board shall designate, on the basis of seniority, the persons on its support staff whose services will not be required by the public board consequent upon the election of the Roman Catholic school board to perform the duties of a secondary school board.

Transmittal
of lists

(12) Each public board that designates persons under this section shall transmit to the Planning and Implementation Commission in each year but not later than the date for each year fixed by the Commission, a list of the names and positions of persons that it has designated.

Compensation
rate

(13) A designated person employed by the Roman Catholic school board has the right to an annual rate of salary of not less than the annual rate of salary that would have applied to the person if the person had continued in the employ of the public board in the first year that the person is employed by the Roman Catholic school board but if the annual rate of salary of the position in which the person is employed by the Roman Catholic school board is lower than such first-mentioned annual rate of salary, the designated person is not entitled to any increase in annual rate of salary until the annual rate of salary of the position becomes equal to such first-mentioned annual rate of salary.

Seniority and
employment
status

(14) A designated person employed by the Roman Catholic school board has the right to commence the employment with seniority and with probationary or permanent status with the Roman Catholic school board equal to the seniority and the probationary or permanent status the designated person would have had if the designated person had continued to be employed by the public board.

Sick leave
credits

(15) Sick leave credits standing to a designated person's credit with the public board shall be transferred to the plan maintained by the Roman Catholic school board at the time the person's employment is transferred under subsection (7).

Credit for
total accumu-
lation

(16) If the number of sick leave credits transferred exceeds the total number of sick leave credits that may be accumulated under the plan to which they are transferred, the designated person shall be given credit in the plan for the number transferred but is not entitled to accumulate further sick leave credits under the plan unless the plan is amended to permit a greater accumulation.

(17) Subject to subsection (16), a designated person employed by a Roman Catholic school board is entitled to accumulate and to use sick leave credits in accordance with the plan maintained by the Roman Catholic school board.

Accumulation
and use of
sick leave
credits

(18) Upon termination of employment with the Roman Catholic school board, a designated person is entitled to payment of an amount calculated in accordance with,

Gratuity

- (a) the collective agreement that applied in respect of the designated person on the last date that the designated person was employed by the public board; or
- (b) the policy of the public board as of the last date that the designated person was employed by the public board,

as the case requires, as though the designated person had been in the continuous employ of the public board.

(19) In lieu of the payment under subsection (18), the designated person is entitled to require payment of an amount calculated in accordance with,

Idem

- (a) the collective agreement that applies in respect of the designated person on the last date that the designated person is employed by the Roman Catholic school board; or
- (b) the policy of the Roman Catholic school board as of the last date that the designated person is employed by the Roman Catholic school board,

as the case requires.

(20) The amount of the payment under subsection (18) or (19) shall be shared by the public board and Roman Catholic school board in the ratio that the number of years of service of the designated person with each board bears to the total number of years of service of the designated person with such boards.

Idem

(21) Section 4 of the *Human Rights Code, 1981* applies to designated persons employed by a Roman Catholic school board in respect of their employment, advancement and promotion by the Board, notwithstanding section 23 of the said Code.

Employment,
advancement
and
promotion
1981, c. 53

Definition

(22) In this section, "seniority" means seniority as agreed upon between the public board that employed the designated person and the organization that entered into a collective agreement with the public board in respect of the designated person, or, where there is no collective agreement, in accordance with the policy of the public board.

Deemed designated persons

(23) This section applies with necessary modifications in respect of entitlements of teachers who were employed by a public board that has jurisdiction in an area that is also the area or part of the area of jurisdiction of a Roman Catholic school board and who subsequent to a report to the Minister by the Commission under subsection 136f (1) but before the coming into force of this section accepted employment with the Roman Catholic school board.

Hiring after ten-year period

136-la.—(1) For the purpose of maintaining the distinctiveness of separate schools, the Roman Catholic school board may require as a condition of employment that teachers hired by the board after the ten school year period mentioned in subsection 136-l (6) agree to respect the philosophy and traditions of Roman Catholic separate schools in the performance of their duties.

Application of 1981, c. 53

(2) Subject to subsection (1), and despite section 23 of the *Human Rights Code, 1981*, section 4 of the said Code applies to ensure that such teachers employed by a Roman Catholic school board will enjoy equal opportunity in respect of their employment, advancement and promotion by the board.

Repeal

(3) If it is finally determined by a court that subsection (1) or (2) prejudicially affects a right or privilege with respect to denominational schools guaranteed by the Constitution of Canada, subsections (1) and (2) are repealed, it being the intention of the Legislature that the remaining provisions of the Act are separate from and independent of the said subsections.

Staff dispute resolution

136m.—(1) A dispute in respect of the designation of or the failure to designate a person on the teaching or other staffs of a public board or in respect of any matter arising under section 136-l in the employment relationship between a designated person and a Roman Catholic school board may be resolved by a grievance arbitration in accordance with this section.

Parties

(2) The parties to the arbitration are the public board or the Roman Catholic school board, as the case requires, and the person or, if the person is employed in accordance with the

terms of a collective agreement, the organization that represents the person under the collective agreement.

(3) Either party to the dispute may notify the other party in writing of intention to submit the dispute to arbitration.

Notice to arbitrate

(4) The notice shall contain the name of the first party's appointee to an arbitration board.

Name of appointee

(5) The second party shall, within five days after receiving the notice, notify the first party either that the second party accepts the appointee as a single arbitrator or notify the first party of the name of the second party's appointee to the arbitration board.

Response

(6) The two appointees shall, within five days after the appointment of the second of them, appoint a third person who shall be the chairman of the arbitration board.

Chairman

(7) If the second party fails to give notice accepting a single arbitrator or appointing a second arbitrator, or if the two appointees fail to appoint a chairman, the appointment shall be made by the Education Relations Commission upon the request of either party to the dispute.

Failure to act

(8) The single arbitrator or the arbitration board, as the case may be, shall hear the parties and issue a decision.

Hearing

(9) The decision of a majority is the decision of the arbitration board, but if there is no majority, the decision of the chairman is the decision of the arbitration board.

Majority

(10) The decision is final and binding upon the parties to the dispute and upon the person in respect of whom the dispute has been arbitrated and who is represented by the organization that is a party.

Decision is final

(11) A party to an arbitration proceeding shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Examination of documentary evidence

(12) A single arbitrator or a member of an arbitration board shall not have taken part before the hearing in an investigation or consideration of the subject-matter of the hearing.

Prior knowledge

(13) A single arbitrator or a member of an arbitration board shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or party

Notice of communication

or the representative of a party except upon notice to and opportunity for all parties to participate.

Participation
in decision

(14) No member of an arbitration board shall participate in a decision of the board unless the member was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, a decision of the board shall not be given unless all members so present participate in the decision.

Release of
documentary
evidence

(15) Documents and things put in evidence at an arbitration hearing shall, upon the request of the person who produced them, be released to the person by the board within a reasonable time after the matter in issue has been finally determined.

Collective
agreement

(16) If there is a collective agreement between the parties to the dispute and the collective agreement does not provide for arbitration of such a dispute, the collective agreement shall be deemed to include subsections (1) to (15).

Vacancy on
arbitration
board

136ma.—(1) If a member of an arbitration board is unable to enter on or to carry on his or her duties so as to enable a decision to be made within sixty days after the date of appointment of the chairman, or within such longer period of time as may be fixed in writing by the arbitration board and consented to by the Education Relations Commission, or ceases to act by reason of withdrawal or death before the arbitration board has completed its work, a replacement shall be appointed by the person or body that appointed the member, and the arbitration board shall continue to function as if such member were a member of the arbitration board from the beginning.

Chairman
unable
to act

(2) If the chairman of an arbitration board is unable to enter on or to carry on his or her duties so as to enable a decision to be rendered within sixty days after his or her appointment, or within such longer period of time as may be fixed in writing by the arbitration board and consented to by the Education Relations Commission, or ceases to act by reason of withdrawal or death, the Education Relations Commission shall give notice thereof to the members of the arbitration board who shall within seven days of the giving of the notice appoint a person to be the chairman and if the appointment is not so made by the members, it shall be made by the Education Relations Commission, and after the chairman is appointed the arbitration shall begin anew.

Arbitrator
unable
to act

(3) If an arbitrator is unable to enter on or to carry on his or her duties so as to enable a decision to be rendered within

sixty days after his or her appointment, or within such longer period of time as may be fixed in writing by the arbitrator and consented to by the Education Relations Commission, or ceases to act by reason of withdrawal or death, the Education Relations Commission shall give notice thereof to the parties who shall within seven days of the giving of the notice appoint a person to be the arbitrator and if the appointment is not so made, it shall be made by the Education Relations Commission, and after the arbitrator is appointed the arbitration shall begin anew.

136mb. For the purpose of the arbitration and in order to reach a decision in respect of the dispute, the arbitrator or arbitration board,

Matters that may be considered by arbitrator or arbitration board

- (a) may inquire into and consider any matter that the arbitrator or arbitration board considers relevant to the arbitration; and
- (b) subject to such conditions as the arbitrator or arbitration board may establish, may permit persons who are not parties to the arbitration to participate at the hearing of the matter.

136mc. The arbitrator or arbitration board shall complete the consideration of the dispute and shall report the decision to the parties, the Education Relations Commission and the Planning and Implementation Commission in writing within sixty days after the giving of notice of the appointment of the arbitrator or within sixty days of the appointment of the chairman of the arbitration board, as the case may be, or within such longer period of time as may be fixed in writing by the arbitrator or arbitration board and consented to by the Education Relations Commission.

Report of arbitrator or arbitration board

136md. Each of the parties to an arbitration shall pay one-half of the fees and expenses of the arbitrator or, in the case of an arbitration board, of the members and chairman of the arbitration board, except that if one of the parties is a natural person and not an organization the public board or Roman Catholic school board that is the other party shall pay all of the fees and expenses of the arbitrator or of the members and chairman of the arbitration board.

Arbitration fees and expenses

136me. The *Arbitrations Act* does not apply to an arbitration of a dispute mentioned in section 136m, except if there is no agreement with respect to the fees of the arbitrator or of the members and chairman of an arbitration board, the fees prescribed under that Act shall be charged.

Application of R.S.O. 1980, c. 25

Pupils in
public
secondary
schools

136n.—(1) A pupil in a public secondary school that is operated by,

- (a) the public board of which the pupil is a resident pupil; or
- (b) a public board to which the public board of which the pupil was qualified to be a resident pupil pays fees in respect of the pupil,

is entitled to continue to be a pupil in the public secondary school notwithstanding that the pupil or the parent or other person who has lawful custody of the pupil becomes exempt from payment of rates imposed for public secondary school purposes by reason of an election made under section 136a or 136f by the Roman Catholic school board that has jurisdiction in whole or in part in the same area of jurisdiction as that of the public board that,

- (c) operates the secondary school of which the pupil was a resident pupil at the time of the election by the Roman Catholic school board under section 136a or 136f; or
- (d) pays fees to the public board that operates the secondary school attended by the pupil.

Payments to
public board

(2) A Roman Catholic school board shall make payments to a public board that has substantially the same or part of the same area of jurisdiction as the Roman Catholic school board of amounts of money in respect of the secondary school pupils who are qualified to be resident pupils of the Roman Catholic school board for secondary school purposes who exercise their right under subsection (1).

Calculation

(3) The time or times at which and manner in which the payments required by subsection (2) shall be made, the method of calculation of the amounts of the payments, and the basis for determination of the numbers of pupils in respect of whom the payments are required shall be that prescribed by the regulations.

No fees
chargeable

(4) A public board shall not charge a fee to a Roman Catholic school board in respect of a pupil who exercises the right set out in subsection (1).

Metropolitan
Toronto

(5) Payments required to be made by the Metropolitan Separate School Board under subsection (2) to a board of education for an area municipality in The Municipality of Metropolitan Toronto shall be made to The Metropolitan Toronto

School Board and The Metropolitan Toronto School Board shall take the payments into account in approving the estimates of the boards of education and in making its estimates under the *Municipality of Metropolitan Toronto Act*.

R.S.O. 1980,
c. 314

(6) For the purposes of section 209, a payment under subsection (2) shall be deemed to be an estimated expenditure of the Roman Catholic school board for secondary school purposes and an estimated revenue for secondary school purposes of the public board that receives the payment.

Accounting

(7) A regulation made for the purposes of this section,

Regulations

(a) may be of general application or may apply only to such board or boards as are set out in the regulation; and

(b) may set out for different boards different times and manners in which payments shall be made, different methods of calculating the amounts of the payments and different bases for determining the number of pupils in respect of whom payments are required.

136o.—(1) A person who is qualified to be a resident pupil in respect of a secondary school operated by a public board is entitled to be a pupil in a secondary school operated by a Roman Catholic school board if the area of jurisdiction of the public board is in whole or in part the same as the area of jurisdiction of the Roman Catholic school board.

Right
to attend
separate
secondary
school

(2) A person who is qualified to be a resident pupil in respect of a secondary school operated by a Roman Catholic school board is entitled to be a pupil in a secondary school operated by a public board if the area of jurisdiction of the Roman Catholic school board is in whole or in part the same as the area of jurisdiction of the public board.

Right
to attend
public
secondary
school

(3) The public board shall pay the fee to which the Roman Catholic school board is entitled for providing secondary school education under subsection (1), and the Roman Catholic school board shall pay the fee to which the public board is entitled for providing secondary school education under subsection (2).

Fee

(4) The fee to which a board is entitled under this section is the lesser of the fee set by the board or the fee calculated in accordance with the regulations.

Amount

(5) Upon written application, a Roman Catholic school board shall exempt a person who is qualified to be a resident

Exemption
from
religious
studies

pupil in respect of a secondary school operated by a public board from programs and courses of study in religious education if,

- (a) the person is enrolled in a program that is not otherwise available to the person in a secondary school operated by a public board within the area of jurisdiction of the Roman Catholic school board;
- (b) it is impractical by reason of distance or terrain or by reason of physical handicap, mental handicap or multi-handicap for the person to attend a secondary school operated by a public board; or
- (c) the person is enrolled in an instructional unit of the Roman Catholic school board under Part XI.

Idem

(6) A person who is qualified to be a resident pupil in respect of a secondary school operated by a public board who attends a secondary school operated by a Roman Catholic school board for a reason other than the one mentioned in clause 136o (5) (a), (b) or (c) is considered to have enrolled in all of the school's programs and courses of study in religious education.

Additional exemptions

(7) In addition to the exemptions provided for in subsection (5), no person who is qualified to be a resident pupil in respect of a secondary school operated by a public board who attends a secondary school operated by a Roman Catholic school board shall be required to take part in any program or course of study in religious education where a parent or guardian of the person, or the person where the person is an adult, applies in writing to the Roman Catholic school board for exemption of the person therefrom.

Interpretation

136p. Other provisions of this Act shall be construed with necessary modifications in order to give effect to and be consistent with sections 136a to 136y.

Enforcement

136q. A right or duty under sections 136a to 136y may be enforced by order of the Divisional Court upon application to the court.

Planning and Implementation Commission

Commission continued

136r.—(1) The Planning and Implementation Commission established under clause 9 (a) is continued and shall be composed of not more than eight members appointed by the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council shall designate a chairman and a vice-chairman from among the members of the Commission.

Chairman
and vice-
chairman

(3) The members of the Commission shall be appointed for such terms as may be determined by the Lieutenant Governor in Council and may be reappointed for further terms.

Term of
office

(4) If the chairman is absent or unable to act or if there is a vacancy in the office of chairman, the vice-chairman shall act as and have all the powers of the chairman.

Authority of
vice-chairman

(5) The members of the Commission shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council.

Remuneration
and expenses

(6) A majority of the members of the Commission, including the chairman or vice-chairman, constitutes a quorum.

Quorum

(7) The Commission, in its name, may be a party to any application before the Divisional Court.

Applications
before
Divisional
Court

(8) The Ministry shall provide the Commission with such staff and accommodation as the Minister considers necessary for the purposes of the Commission.

Staff and
accommoda-
tion

136s.—(1) The Planning and Implementation Commission shall advise the Minister in respect of specific means by which the extension of the Roman Catholic school system to include secondary school education may best be carried out.

Advice to
Minister

(2) The Commission shall make an annual report to the Minister and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Annual
report

(3) In addition to its annual report, the Commission may report to the Minister at any time and shall report to the Minister in such form and manner, with such information and at such times as the Minister requires.

Additional
reports

(4) For the purpose of preparing its advice and reports to the Minister, the Commission shall consult with organizations that have a direct interest in the subject-matter of the particular advice and report, organizations and persons that the Commission considers it appropriate to consult and organizations and persons specified by the Minister.

Consultation

Matters
to be
considered by
Commission

(5) For the purpose of preparing its advice and reports to the Minister, the Commission shall establish criteria in respect of and, in accordance with the criteria, shall evaluate,

- (a) plans formulated by Roman Catholic school boards to provide secondary school education;
- (b) plans formulated by public boards in relation to the extension of the Roman Catholic school system to include secondary school education;
- (c) plans for new or altered areas of jurisdiction of Roman Catholic school boards in relation to separate secondary schools;
- (d) the effect on the employment of supervisory officers, teachers and other persons employed in secondary schools consequent upon the extension of the Roman Catholic school system and the plans formulated by Roman Catholic school boards and public boards in relation to the employment of such persons; and
- (e) any other subject specified by the Minister.

Non-
application
of subss.
(4, 5)

(6) Subsections (4) and (5) do not apply in respect of annual reports.

Non-
application
of
R.S.O. 1980,
c. 446

(7) The *Regulations Act* does not apply to criteria established under subsection (5).

Implemen-
tation
plans

136t.—(1) The Planning and Implementation Commission may require a Roman Catholic school board to formulate and file with the Commission each year an implementation plan setting out details of education programs, facilities, and supervisory officers, teaching staff and other staff required by the board for the purpose of providing the secondary school education until the Roman Catholic school board has filed implementation plans in respect of all secondary school grades.

Public
board

(2) The Commission may require a public board that is affected or that is likely to be affected by the provision of secondary school education by a Roman Catholic school board to formulate and file with the Commission annually, not later than the date specified by the Commission, a plan setting out details of changes in education programs, facilities and supervisory officers, teaching staff and other staff that will be or that are likely to be necessary in response to the provision of

secondary school education by the Roman Catholic school board.

(3) The Commission may specify the format to be used in plans to be filed by Roman Catholic school boards and public boards and may specify time limits for the filing of plans requested by the Commission.

Format

(4) Every Roman Catholic school board and every public board shall comply with a request by the Commission for the formulation and filing of a plan under subsections (1) to (3).

Compliance

(5) The *Regulations Act* does not apply to any matter specified under subsection (3).

Non-application of
R.S.O. 1980,
c. 446

136u.—(1) For the purpose of ensuring that it receives adequate information, the Planning and Implementation Commission may hold public meetings in respect of the provision of secondary school education by individual Roman Catholic school boards.

Public meetings

(2) Where the Commission decides to hold a meeting mentioned in subsection (1), the Commission shall give notice of the meeting to the organizations it is required to consult, to such other persons or organizations as the Commission specifies and shall give public notice of the meeting.

Notice

136v.—(1) Where the Planning and Implementation Commission is of the opinion that the implementation plans of one or more Roman Catholic school boards and one or more public boards that have jurisdiction in the same or part of the same area of jurisdiction as the Roman Catholic school board or boards do not together provide a method that meets the criteria set out in subsection (2), the Commission shall so notify the boards and shall specify for them the matters that must be resolved in order to meet the criteria.

Negotiations

(2) The criteria are that the method,

Criteria

- (a) must permit the Roman Catholic school board to provide viable secondary school education;
- (b) must promote the best interests of public education in Ontario;
- (c) must ensure the viability of the secondary school program offered by the public board especially in single secondary school communities; and

- (d) must ensure, in a community that has only one secondary school operated by a public board, that the secondary school will continue to be operated by the public board despite the election to provide secondary education by a Roman Catholic school board having jurisdiction in the community, unless the public board decides otherwise.

Good faith

(3) Upon receipt of the notice, the boards shall negotiate in good faith in respect of the matters specified by the Commission in order to meet the criteria set out in subsection (2).

Assistance
by
Commission

136w.—(1) A public board or a Roman Catholic school board, or the Minister, may request the Planning and Implementation Commission to arrange or assist in, or both, negotiations between or among the boards respecting any one or more of,

- (a) the transfer of the use of real or personal property;
- (b) the transfer of the ownership of real or personal property; or
- (c) the joint use or ownership of real or personal property.

Appointment
of mediator

(2) The Minister, on the recommendation of the Planning and Implementation Commission, may appoint a mediator to confer with one or more public boards and one or more Roman Catholic school boards and to endeavour to effect an agreement between or among the boards on the matters that the Commission has specified must be resolved between them.

Duties of
mediator

(3) The mediator shall confer with the boards and endeavour to effect an agreement and shall report the result to the Minister.

Duties of
boards

(4) Each board shall co-operate with the mediator and shall provide forthwith to the mediator such information as is requested by the mediator, and the mediator may request the provision of such information as the mediator considers relevant to the matters to be resolved.

Remuneration
and expenses

(5) The mediator shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council, and, subject to the approval of Management Board of Cabinet, the reasonable expenses incurred in the course of his or her duties.

Appointment
of tribunal
to resolve
matters

136x.—(1) If a mediator reports to the Minister that the mediator was unable to effect an agreement, the Minister shall

appoint a tribunal of not more than three persons to hear and decide the matters that must be resolved.

(2) The Minister shall designate one of the members of the tribunal to be the head of the tribunal. Head of tribunal

(3) No person is eligible to be a member of a tribunal who is or has been a member of a board that is a party to the proceeding before the tribunal or who is acting or has, within a period of six months preceding the date of the designation of the head of the tribunal, acted as solicitor, counsel or agent of either of the parties. Eligibility of members

(4) If a member of the tribunal is unable to enter on or to carry on his or her duties so as to enable a decision to be made within sixty days after the date of the designation of the head of the tribunal, or within such longer period of time as may be fixed in writing by the tribunal and consented to by the Minister, or ceases to act by reason of withdrawal or death before the tribunal has completed its work, a replacement shall be appointed by the Minister and the tribunal shall continue to function as if the replacement member were a member of the tribunal from the beginning. Replacement of members

(5) The tribunal shall appoint a time and place for a hearing and shall give notice thereof to the parties. Notice

(6) The parties to the hearing are the public board or public boards and the Roman Catholic school board or Roman Catholic school boards that are unable to effect an agreement on the matters that must be resolved between or among them. Parties

(7) In deciding the matters that must be resolved, the tribunal shall endeavour to permit the Roman Catholic school board or Roman Catholic school boards to provide secondary education and shall endeavour to promote the best interests of public education in Ontario. Criteria

(8) The tribunal, in its decision, may provide for, Decision

- (a) the transfer of the use of real property or personal property, or both, from a public board that is a party to a Roman Catholic school board that is a party;
- (b) the transfer of the ownership of real property or personal property, or both, from a public board that is a party to a Roman Catholic school board that is a party;

- (c) the joint use of real property or personal property, or both, by a public board that is a party and a Roman Catholic school board that is a party in such proportions as the tribunal specifies,

or any combination of them.

Delivery of
decision

(9) The tribunal shall give to the Minister its decision in writing, together with written reasons therefor, and the record of the proceeding forthwith after making the decision.

Order by
Minister

(10) The Minister shall issue and transmit to the parties an order in the terms of the decision, together with a copy of the decision and the written reasons for the decision.

Retransfer

(11) Real property that is the subject of an order under subsection (10) is not subject to expropriation by a public board, but upon application the Minister with the approval of the Lieutenant Governor in Council may,

- (a) order the retransfer, subject to such conditions as are specified in the retransfer order, of the use or ownership of all or part of the real property or personal property, or both, that was transferred in accordance with an order under subsection (10);
- (b) by order vary or rescind an order under subsection (10) that provides for the joint use of any real property or personal property.

Application
of
R.S.O. 1980,
c. 148

(12) The *Expropriations Act* does not apply in respect of the transfer or retransfer of real property or personal property in accordance with an order under this section.

Enforce-
ment of
order

(13) The Minister shall cause a copy of an order made under this section to be filed in the office of the Registrar of the Supreme Court, exclusive of the reasons therefor, and the order shall be entered in the same way as a judgment of the Supreme Court and is enforceable as such.

L.G. in C.
may confirm,
vary or
rescind order

(14) Upon the petition of a party to a proceeding under this section, filed with the Clerk of the Executive Council within twenty-eight days after the date of an order by the Minister in the proceeding, the Lieutenant Governor in Council may,

- (a) confirm, vary or rescind the whole or any part of the order; or
- (b) require the Minister to appoint a new tribunal to hold a new hearing of the whole or any part of the

matter upon which the order of the Minister was based.

(15) The order of the Minister after a new hearing ordered by the Lieutenant Governor in Council is not subject to petition under this section.

No further
petition

(16) Upon the filing of a petition, the Minister shall file with the Clerk of the Executive Council the decision and written reasons therefor of the tribunal and a copy of the order of the Minister.

Filing of
documents
on petition

(17) The Lieutenant Governor in Council is not required to hold or to afford to any person an opportunity for a hearing before deciding upon a petition under this section.

Hearing by
L.G. in C.

(18) The head of the tribunal and the other members of the tribunal who are not officers in the Public Service of Ontario shall be paid such remuneration as may be fixed by the Lieutenant Governor in Council and, subject to the approval of Management Board of Cabinet, the reasonable expenses incurred by them in the course of their duties under this Act.

Remunera-
tion and
expenses

136xa. Notwithstanding any other provision of this Act, the ownership of real property used for purposes of a public secondary school shall not be transferred to a Roman Catholic school board before the fifth anniversary of the day this section comes into force and no mediator under section 136w or tribunal under section 136x shall make a decision affecting the ownership of any such real property before that anniversary but this section does not apply so as to prevent such a transfer before that anniversary if the public board and the Roman Catholic school board agree and the Minister approves of the transfer.

Limitation
on real
property
transfers

136xb. The Lieutenant Governor in Council may make regulations,

Regulations

- (a) prescribing any matter that is referred to in sections 136a to 136y as prescribed by the regulations;
- (b) prescribing the method of determining persons to be designated under subsection 136-l (1) and the matters referred to in subsections 136-l (2) and (3);
- (c) requiring public boards and Roman Catholic school boards to confer with the Planning and Implementation Commission and branch affiliates on such matters as may be prescribed.

Conflict

136y. The resolution of a matter between a public board and a Roman Catholic school board under sections 136a to 136xb, except as specifically provided for in those sections, is a nullity if the result is inconsistent with any other Act, any other provision of this Act or a regulation under any Act.

COMPLEMENTARY AMENDMENTS-

3.—(1) Section 126 of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21 and amended by 1984, chapter 60, section 8, is further amended by adding thereto the following subsection:

Secondary school purposes

(9) The assessment of a corporation for separate school purposes under subsections (1) to (8) in respect of a Roman Catholic school board applies in the same manner in relation to secondary school purposes as to elementary school purposes.

(2) Section 186 of the said Act is amended by adding thereto the following subsection:

Exception

(7) This section does not apply to arbitrations under section 136m.

4. Section 5 of *The Essex County French-language Secondary School Act, 1977*, being chapter 5, shall not be construed to prevent the conveyance of the School mentioned in the said Act to a Roman Catholic school board.

5. Clause 154 (4) (b) of the *Regional Municipality of Ottawa-Carleton Act*, being chapter 439 of the Revised Statutes of Ontario, 1980, is repealed at the end of the first calendar year in which The Carleton Roman Catholic Separate School Board makes an election that is approved by the Minister of Education under section 136a or 136f of the *Education Act*.

6. Subsection 121 (2) of the *Municipality of Metropolitan Toronto Act*, being chapter 314 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1984, chapter 18, section 11, is further amended,

(a) by adding “and” at the end of clause (c) and by striking out “and” at the end of clause (d); and

(b) by repealing clause (e),

at the end of the first calendar year in which the Metropolitan Separate School Board makes an election that is approved by the Minister under section 136a or 136f of the *Education Act*.

7. Sections 136r to 136x of the *Education Act*, as enacted by section 2 of this Act, are repealed on the 1st day of July, 1995. Repeal

8. This Act comes into force on the day it receives Royal Assent. Commence-
ment

9. The short title of this Act is the *Education Amendment Act, 1986*. Short title

