

B.C. SCHOOL TRUSTEES ASSOCIATION
REPRESENTATION
ON
THE DRAFT SCHOOL ACT
MAJOR POLICY QUESTIONS

FOR CONSIDERATION OF EPAC 1989-04-20/21

Following are comments and concerns of the B.C. School Trustees Association (BCSTA) regarding the new School Act (the Act). Additional comments and concerns of a technical nature are set out in a separate document.

1. Section 2(1)(b)--Fundamental Right and Duty--Citizenship

All children resident in a district should be eligible to attend public school. School boards should not be asked to police the Immigration Act. Moreover, the attached legal opinion outlines the implications of the citizenship and permanent residence requirements for those people who are presently considered to be entitled under the laws of Canada to attend school in Canada.

2. Sections 2, 13, 14--Right to Educate at Home

The Act does not address the problem of ensuring that some standard of education is being met through home schooling. The requirements of the Act are limited to registration. It is essential to ensure that home-schooled children have an education that meets some minimum quality or standard.

Compare to the provisions of the Alberta School Act, which also recognizes home schooling but defines it as "a structured learning environment through which an education program is offered to a student by a parent giving a home education program." The Alberta Act also contains provisions for enforcing requirements that students attend school through an Attendance Board.

3. Section 11--Examination of School Records

In addition to records kept on behalf of the school, or the school board, there are also notes prepared by and kept for the use of the teacher, principal or counsellor, usually collected during teacher-student, counsellor-student, or principal-teacher contacts. Should these notes be kept as part of a student's permanent record and be open to inspection or should they be considered the property of the author?

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be interpreted to impose a requirement that any right or benefit can only be limited (e.g. by procedures governing appeals) by limitations that "are reasonable in each circumstance."

The generality of this section lessens the likelihood that it would be applied by a court in any given situation. It would be preferable to insert a "reasonable limitations" clause in specific sections where it is deemed necessary.

PART 1--STUDENTS AND PARENTS

6. Section 2(1)(b)--Citizenship Requirements

These sections would have the effect of excluding numerous people who are lawfully within Canada from sending their children to public school. See the attached legal opinion from McCrea & Associates. This section, if proceeded with, should be given further consideration in consultation with immigration authorities.

7. Sections 9(d) and 10(5)--Composition of Parent Advisory Council

These sections appear contradictory in referring both to election to membership and a right to membership.

8. Section 11--Examination of Records

To avoid any confusion over the status of notes made and kept by teachers, counsellors, etc. for their own use, a definition of "school record" should be provided.

9. Section 15--Duty to Report

Section 15 is meaningless and unlikely to be of any educational value and should, therefore, be deleted from the draft Act.

PART 2--PUBLIC SCHOOL PERSONNEL

10. Section 18(2)--Certificate or Letter of Permission Required

"Night school" should be replaced by "continuing education program" since such courses are no longer taught exclusively at night.

that the children attend school. For example, a foreign diplomat or consular officer stationed in Vancouver would be required to send his children to school. The child would have the status of a visitor in Canada and would be entitled to a Student Authorization. To withdraw the right of free schooling for those children would probably cause great concern for Canadian diplomats living abroad as they might be subjected to retaliatory measures. Likewise, there are numerous other reasons why persons might have the status of visitor in Canada for very extended periods of time. Under the new Free Trade Agreement with the United States, U.S. citizens will be entitled to come to Canada and remain therein on visitors' visas while they live and work in Canada and it is expected that their children would attend school here. Is it really contemplated that these persons would not be entitled to free access to the public school system?

There are probably other situations in which visitors in Canada attend school without Student Authorizations. While this may be a violation of the Immigration Act, school officials may in certain circumstances wish to turn a blind eye to such violations and allow children to attend. Certainly that is the case in many outlying areas where private schooling is just not available.

2. MINISTER'S PERMITS

The Immigration Act contemplates that persons can be in Canada for short or very long periods of time who are neither permanent residents nor visitors. They are placed on a document called the Minister's Permit and may be issued Student Authorizations. An example of such persons might be a person who would otherwise be admitted as an immigrant but because they have a health problem or a criminal conviction that might make them otherwise inadmissible to Canada, the Minister has found sufficient compassionate or humanitarian reasons to allow them to remain in Canada with the intention that they would be able to work and carry on a normal life. The intended wording of the School Act would not allow free access to the public school system to those persons eventhough they may be property holders, workers and taxpayers.

3. CONVENTION REFUGEES

A person who has come into Canada and made a claim to be a convention refugee and who has been determined to be a refugee is not issued an immigrant visa immediately. It often takes up to two years or more

for that person to be issued their permanent resident visa. They may have children and they would normally be placed on Minister's Permits and should have access to the school system while they await for their permanent resident visas.

4. CONVENTION REFUGEE CLAIMANTS

These are persons who have come into Canada and are making a claim to be a convention refugee that has not yet been determined. They are not visitors, they have not been granted permanent resident visas and yet they cannot leave Canada for extended periods of time.

5. ILLEGALS

These are people that have not been admitted to Canada either as permanent residents or visitors nor have they been issued Minister's Permits. There are probably thousands of these people in Canada who have spent many years here, may be married and have children and yet they would be afraid to attend at an immigration office to legitimize their status. For the most part, they get by by saying that they are Canadian citizens or permanent residents when in fact they are not.

6. PERSONS UNDER DEPORTATION ORDER

There may be situations in which a person has been admitted to Canada for permanent resident status and has lost that status due to a criminal conviction or persons who have entered Canada illegally and been given a deportation order. In some cases, persons under deportation orders cannot be effectively removed from Canada because there is no other country which would be willing to take them. Some of these people have been in Canada for over twenty years. A proposed alteration of the School Act would eliminate these persons.

7. NATIVE INDIANS

Section 4 (3) of the Immigration Act states 'a person who is registered as a Indian pursuant to the Indian Act has, whether or not he is a Canadian citizen, the same rights and obligations under this Act as a Canadian citizen'. These persons who are not Canadian citizens but registered as Indians are not admitted as visitors. However, they have the right to come and go as they please and indeed live in Canada. If they are living here, they should not be excluded from attending schools.

In addition to those persons that might be excluded, you might wish to consider section 2(b)(ii). The phrase 'lawfully admitted to Canada for permanent residence' is not taken directly from the Immigration Act. The Immigration Act refers to a 'permanent resident'. That means a person who has been granted landing but has not yet become a Canadian citizen or ceased to be a permanent resident.

A question you might raise is whether the definition of a child as used in section 2 of the proposed School Act contemplates an adopted child as this is an issue which comes up repeatedly with respect to immigration matters.

A statutory change such as has been suggested would have serious impact upon access to education. Do we really want to prevent parents being able to send their children to friends in France and attend school there for a year and the next year have their friends in France and their children come to a school in Canada without additional cost? Such might be the effect of the proposed amendment. One wonders why the Province would be even be interested in adding a section to the School Act when the absence of such a section has not caused, to my knowledge, significant problems. However, that is a matter that you are perhaps better able to address. You might look for some guidance with respect to access to the medical services plan. A court case about three years ago held that persons who are 'residents' in British Columbia were entitled to register under the Medical Services Plan despite the fact that they were not legally admitted to Canada for permanent residence.

I hope the above comments are of some use to you and your deliberation with respect to this matter. I have taken the liberty of enclosing my account for services rendered and trust that you will find it in order.

Yours truly



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Enc.