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# The Containment of Educational Conflict

## Abstract

*The dissolution of the Vancouver School Board in May 1985 by the Minister of Education for British Columbia was one government's effort to maintain its traditional control over education. For those who are interested in the relations between the levels of government responsible for education, the question remains whether the dissolution of the Vancouver School Board and the appointment of an official trustee to administer the districts were predictable and necessary consequences of the conflict between provincial and local educational authorities.<sup>1</sup>*

## Introduction

In February 1982, the government of British Columbia announced a two-year restraint program for all sectors of the public economy, including education. Approximately two months later, the government of British Columbia passed the Education (Interim) Finance Act (1982) which, with the amendments passed in 1983 and 1984, gave the Minister of Education the power to set a ceiling on school board budgets, determine the percentage of each board's budget which would be paid by the provincial government, and reduce the government's grant to any board that failed to abide by the ceilings. With the passage of the Education (Interim) Finance Act (1982), the provincial government eliminated local autonomy in the budget setting

<sup>1</sup> Although both the Vancouver and Cowichan Boards were dissolved, this paper addresses the basis for the dissolution of the Vancouver Board and the legal arguments which were put forward in the court challenge to the dissolution in *Weinstein, et al. v. The Minister of Education of British Columbia and Allan Guy Stables* (1985).

process. Before the act had been proclaimed, local boards were permitted to increase their budgets above the levels set by the Ministry of Education if their budgets were approved by a two-thirds majority of all members of the local board. Funds in excess of the amount set by the Ministry of Education were raised by taxing at the local level, making the local boards accountable directly to the local electorate.

In the November 1984 municipal elections, Vancouver voters elected five members of the Committee of Progressive Electors (COPE) to the Vancouver School Board, giving them a majority on the nine member board. The COPE candidates had conducted their campaign on a platform which pledged, among other things, no further cuts to education financing, no loss of jobs, and continued support for students with special educational needs. It is clear that their platform placed the COPE trustees in direct opposition to the provincial government's policy of restraint.

On March 15, 1985, the Vancouver School Board submitted a draft budget to the Minister of Education of \$173.2 million, exceeding the Minister's fiscal framework by \$14.0 million. In a five to four decision taken six weeks later, the Vancouver trustees passed a budget by-law which provided the additional \$14 million (A by-law of the Board of School Trustees of School District 39, 30 April 1985). In the intervening period, the Minister had appointed a budget Review-Management Advisory Team to scrutinize the financial situation in Vancouver. In its report, which was dated April 12 but not released until May 6, the Budget Review team indicated that the Vancouver School Board's budget could be reduced by between \$9.8 and \$20.6 million without increasing the average class size (Semmens, Stables & Carpenter, 1985, p. 14). On the same day as the report of the budget review team was released, Alan Stables, a budget review team member, was appointed as the official trustee of Vancouver's schools by order of the Lieutenant Governor in Council, and the members of the Vancouver School Board were informed by the Minister of Education, Jack Heinrich, that they had ceased to hold office.

Amongst the varied reactions to the appointment of an official trustee and the consequent dismissal of the Vancouver and Cowichan trustees was that of the Chairman of the Greater Victoria School Board, Carol Pickup. In a letter to the editor of the *Victoria Times-Colonist*, Pickup (1985) argued that, although the Government had removed the capacity of districts to set levels of funding by passing the Education (Interim) Finance Act (1982), it continued to require local boards to pass budget by-laws ". . . at levels which they are powerless to establish;" in effect, requiring boards to ". . . vote against their consciences." Charging the Government, and especially the Minister of Education, with having consistently acted in a dictatorial, confrontational, manipulative, and undemocratic manner, Pickup observed that:

Vancouver has been chosen to teach the boards of the province a lesson. A lesson in obedience. How dare duly-elected school boards challenge the government? Well, as I understand it, real democracy allows for debate and discussion. Real democracy allows for rational thought and creative solutions. We do not have real democracy in B.C. today and a little more democracy died with the government's takeover of the Vancouver School Board.

Describing the situation as chaotic, Pickup concluded with a call to replace the Government of British Columbia through the democratic process.

The atmosphere surrounding the debate about the adequacy of school funding in British Columbia was contentious and the dismissal of duly elected school trustees prompted strong reaction. Whether the dismissal of the Vancouver Board was warranted or not may be better understood by examining the history of government responsibility for education in Canada, in general, and in British Columbia, in particular. The central questions are: How did ministers of education come to possess such power? and Under what circumstances was it used?

### The Historical Context

As early as 1846, Egerton Ryerson, Canada's most influential educator of the time, had argued forcibly for a strong central educational authority vested in the hands of the government:

If 'it is the Master which makes the School,' it is the Government that makes the system. What the Master is to the one, the Government is to the other – the director, the animating spirit of it . . . if it is the duty of the Government to legislate on the subject of Public Instruction, it must be its duty to see its laws executed. (Ryerson, quoted in Lawr & Gidney, 1973, p. 52)

Ryerson went on to say that Government should see that its ". . . grants are faithfully and judiciously expended according to the intentions of the legislature . . ." and that ". . . the general principles of the Law, as well as the objects of its appropriations, are in no instance contravened" (p. 53). Ryerson was worried that public monies allocated for educational purposes might be used elsewhere, regarding it as inimical to the interests of public instruction to leave:

... the application, or misapplication, of public moneys, and everything practical and essential in the administration of the law, to various localities, as so many isolated, or independent, Democracies (p. 53).

Ryerson's sentiments were a response to the fact that many school trustees of the period were illiterate and unacquainted with the society for which he was trying to prepare the inhabitants of Upper Canada. It was nevertheless the case that the sentiments expressed by Ryerson were widely shared among those responsible for the establishment of school systems in Britain, Western Europe, and North America. In virtually every venue, public schools were established together with central ministries of education to exercise control over them. According to F. Henry Johnson (1971), "... the Ryerson system of public education was transmitted from Canada west to British Columbia through the agency of British Columbia's first Provincial Superintendent of Education, John Jessop" (p. 26). Given the general attitude regarding the governance of education at the time and the close ties between Ryerson and Jessop, it was inevitable that the idea of a strong central educational authority was firmly established in British Columbia. An Act Respecting Public Schools (1872), according to Johnson (1971), "... was obviously modelled on Ryerson's school legislation of 1846 to 1871 in Ontario" (p. 29), providing an even more centralized system of education than Ontario had at the time (Stamp, 1970).

The highly centralized system of education with which British Columbia entered Confederation continued for more than a century. The Provincial government, initially through its Council for Public Instruction, and later through the Department of Education, maintained tight control over the operation of the Province's schools by determining the method and extent of financing education, the number of school boards, the methods and organization used to deliver services, the nature of curriculum, the type and extent of testing, the criteria used for teacher certification, and – until relatively recent times – the selection and appointment of administrators above the position of principal (Dunn, 1980; Fleming, 1986; Mann, 1980).

In 1960, the political scientist and educator, Frank MacKinnon, produced an appraisal of the structure of education in Canada. In it he observed that "... the state is now so involved in every phase of education that education is a political activity, and its problems are, to a large extent, problems in governmental administration" (p. 4). According to MacKinnon, the distance between schools and the authorities who manage them is insufficiently wide to afford "protection against interference in the former from the latter" (p. 13). Commenting directly upon the position of ministers of education, he observed that:

The advantages and disadvantages of political direction are clearly illustrated by the office and powers of the minister of education – the head of the public school system. In practice the legislature and the cabinet determine their policy on the recommendation of the minister and their instructions are given through him. The municipal councils and school boards, in turn, are dependent upon him for substantial direction and financial assistance. Outside the government the minister's importance is obvious everywhere, for he has much influence in the cultural processes of his province. Every educational institution, every teacher, every policy is subject to the wide power given him by legislation and orders-in-council . . . . Much therefore depends on his relations with the cabinet and the legislature which must approve his actions, with the schools which must follow his directions, and with other bodies which might require his co-operation. Like a great thunderbird on a totempole the minister of education overshadows all below. (p. 17)

The British North America Act (1867) conferred upon the Provinces the sole responsibility for education. The Provinces, in turn, created strong centralized ministries of education for the administration of schooling among the various districts within the provinces. The local school districts charged with the day-to-day conduct of education were themselves the creation of the provincial governments. Notwithstanding the possibilities for political partisanship in the exercise of the Minister's administration and interpretation of the laws affecting education, contemporary legislation continues to give recognition to the paramount position of the minister with respect to the governance of education. Thus, today's School Act (1979) includes the right of the Lieutenant Governor in Council to "... appoint an official trustee to hold office in a school district during pleasure and to exercise in that district the powers and duties vested in a board . . ." (p. 10). A subsequent section of the Act makes it clear that: "On the appointment of an official trustee to conduct the affairs of a school district, its trustees cease to hold office" (p. 29). In providing for the popular election of school trustees to preside over the local school districts, the Government established the potential for conflict between provincial and local educational authorities which Ryerson had recognized and cautioned against. Organized in this manner, it is clear that those who created the system were cognizant of the possibility for conflict between the local and provincial authorities and sought to make provision for the resolution *a priori* by making the latter's powers paramount.

Educational finance and the proper relationship between provincial and local educational authorities have been two inextricable issues since the

early years of this century in British Columbia. Virtually every major study and public commission concerned with education has had to address the issues of finance and control (Cameron, 1945; Chant, 1960; King, 1935; Putman & Weir, 1925). From the earliest times, the Vancouver School Board was a focal point for the discussion of the issues. In fact, in 1925, Putman and Weir devoted to Vancouver an entire chapter in which issues of finance and governance are prominent.

During the period between 1900 and 1930, trustees at the district level determined the quality of education through the monies they were willing to expend for schools and teachers. According to Dunn (1980), the primary objective of many trustees was to keep costs to a bare minimum. The Vancouver trustees departed from the parsimony of many of their peers, earning a commendation from Inspector G.H. Gower in 1912. It was nevertheless the case that, as the costs of education increased between 1900 and 1930, the province shifted the burden of financing education to local ratepayers. At the beginning of the century, the province contributed approximately two dollars for every dollar contributed by the local area. By 1906-07, the contribution of the local areas exceeded the province's contribution and, toward the latter part of the 1920s, the local areas were paying twice what the province was paying for education (Dunn, 1980). In 1922, the Chairman of the Vancouver School Board lamented "the repeated defeat of money by-laws since 1918 and the consequent difficulty of providing proper accomodation for our school children. . . ." (Mann, 1978, p. 36).

The financial position and governance of many school districts in British Columbia were adversely affected by the Depression. Because people whose school taxes were in arrears were ineligible for election, in small rural districts of the province it was often difficult to find three eligible people who were willing to stand for office, making it impossible to elect a school board. In such cases, the council of Public Instruction appointed an official trustee, often the inspector of schools, to administer the district's affairs. In 1929-30, of the 735 school districts in the province, 45 were operating under the auspices of an official trustee. By 1934-35, 182 of the 752 school districts had official trustees. And, by 1944-45, 204 of the province's 525 districts were administered by an official trustee (Cameron, 1945, p. 84).

When the King report recommended that the provincial government assume complete responsibility for financing education, abolish school boards, and establish large educational units which would be administered by a Director of Education, the Chairman of the Vancouver School Board, a spokesman for the sentiments in favor of retaining school boards, replied. He said that school boards should be retained "as a means whereby the parents can keep in contact with school management and the school

management know something of the parents' wishes" (Mann, 1978, p. 148).

This, then, was the historical context of the relations between provincial and local authorities in which the conflict between British Columbia provincial authorities and Vancouver trustees took place. Tensions between the two levels of government climaxed with the dismissal of the Vancouver Board by an order of the Lieutenant Governor in Council dated May 6, 1985.

### Was Dissolution Necessary?

Shortly after they were dismissed in May 1985, the five trustees elected under the banner of the Committee of Progressive Electors in 1984 filed a petition in the Supreme Court of British Columbia. The petition sought two orders from the court – one declaring the Order in Council was without force and effect and another declaring that the elected trustees had not ceased to hold office (Weinstein, et al., 1985, p. 1). The petitioners made two arguments in their petition. They argued that the Order in Council was not authorized by statute and that it was inconsistent with the Canadian Charter of Rights and Freedoms (p. 3).

In their first argument, the petitioners said that there were only two possible interpretations of the School Act. The first was that:

Section 15 (i) gives the Cabinet an unlimited, arbitrary power to dissolve a duly elected school board and to impose an official trustee to hold office for an indefinite period, without the need to rely on any particular circumstances or lawful justification. (p.3)

The second interpretation, the one which the petitioners argued was the correct one, was that:

Section 15 (i) gives the Cabinet the power to impose an official trustee on a district only under those circumstances specified in the *School Act*, in sections 78 (where boundaries have been re-drawn) and 238 (4) (where the district is effectively insolvent). That is, section 15(i) describes a power of the Cabinet; sections 78 and 238 (4) describe the circumstances where it may be exercised. (p. 3)

In other words, it was the petitioners' view that when taken as a whole, the School Act gave the Lieutenant Governor in Council the power to appoint an official trustee only when the conditions set out in sections 78 and 238

(4) had been met (p.4). Arguing that the power to appoint an official trustee was ancillary to these sections, the petitioners said that the "unfettered discretion to appoint a public trustee would be inconsistent" (p. 51) with these statutory preconditions.

In further support of their argument, the petitioners said that, *expressio unius exclusio alterius* (mention of one or more things of a particular class may be regarded as silently excluding all other members of the class), by mentioning two instances where an official trustee may be appointed, the legislature, which drafted the School Act, intended these to be the only circumstances where section 15 (i) might be used. According to the petitioners, it was not the legislature's intention to confer "a sweeping, arbitrary power to dissolve elected school boards at will – for instance, wherever there may be a political disagreement between the local board and the Cabinet" (p. 7). The petitioners granted that the board was dissolved and an official trustee appointed because the trustees had approved a budget exceeding an amount set by the Minister pursuant to section 12(1) of the Education (Interim) Finance Act. Granted that, they argued, the Education (Interim) Finance Act itself contemplates that a directive made under section 12(1) might not be followed by a school board to the satisfaction of the Minister, giving him and the Lieutenant Governor in Council the remedy of reducing the provincial grant payable to the school district to force budgetary compliance. (p. 8).

The petitioners also developed a second argument in relation to the Canadian Charter of Rights and Freedoms. In that argument, the petitioners advanced the case that:

Wherever possible, statutes should be construed in a manner that is consonant with Canadian values of freedom and representative democracy, and a manner that limits or prohibits undemocratic and arbitrary action by the Crown.  
(p. 11)

According to their view, the petitioners said that the School Act provides for democratic local governance of education by school trustees based upon popular elections and a universal, adult franchise. The trustees so elected are democratically accountable to their electors for the decisions which they make. The petitioners argued that, as a consequence, Section 15(i) "must be seen as an anomaly, an extraordinary provision, intended for use only where democratic process cannot adequately deal with such a problem as re-drawn boundaries (s. 78) or insolvency (s. 238 [4])" (p. 12-13). The Court, said the petitioners, should construe the School Act to reflect democratic principles and see "the arbitrary replacement of an elected school board with an official appointed by Order in Council..." as "... fundamentally contrary to basic Anglo-American democratic principles" (p. 13-14).



On 8 July 1985, Mr. Justice Callaghan made known his decision in the matter of *Weinstein, et al. v. The Minister of Education for British Columbia and Allan Guy Stables* and the reasons for his decision. He rejected the petitioners' argument, based on the maxim *expressio unius exclusio alterius*, that the Legislature intended that an official trustee be appointed only where boundaries had been redrawn or the school district insolvent. He also rejected the line of reasoning that the Lieutenant Governor was limited to reducing the grant in accordance with section 12(2) of the Education (Interim) Finance Act, arguing that to do so would "emasculate the very wide powers given to the Lieutenant Governor in Council to control school boards and would further exacerbate an existing problem and not resolve it" (p. 14).

Mr. Callaghan also dismissed the argument based upon the Canadian Charter of Rights and Freedoms. He remarked that:

It is trite law that a statutory body has no powers, rights or duties save those bestowed on it by the Legislature. It has no inherent or Charter guaranteed rights. That being so, members of a statutory board do not enjoy Charter guaranteed rights in their official capacity.

Mr. Callaghan entertained the possibility that he was wrong and that the petitioners might enjoy constitutional rights in the exercise of their duties as board members for the purpose of addressing the question whether their rights or freedoms had been denied. He interpreted the petitioners argument about "liberty" as meaning that "their liberty to continue to act as duly elected board members of the school district" (p. 18) had been infringed. Reasoning that, "even if the petitioners had a constitutionally protected liberty to be school trustees", they "lost it by their own unlawful acts when they failed to comply with a constitutionally valid statutory requirement" (p. 19). He also dismissed the argument that the citizens of Vancouver had been denied "equal protection and equal benefit of the law without discrimination" (p. 20). What is required, Mr. Callaghan argued, is adherence to the principle that persons "who are similarly situated be similarly treated" (p. 20). He noted that there were only two recalcitrant boards out of 75 and that both were dismissed.

### Conclusion

There is no way of knowing whether the Minister had considered the universe of alternatives available to him. It was nevertheless the case that the alternatives available to the Minister formed a gradient in terms of their severity. He could have sought legislation deeming the appropriate by-law to have been enacted, setting the amount in accordance with his directive and directing the collection of the appropriate taxes. The Minister could have

sought a *writ of mandamus* ordering the trustees to do their duty as defined by the Education (Interim) Finance Act (1982) and, failing their adherence to the writ, he could have sought to have them cited for contempt of court and penalized accordingly. A third course of action open to the Minister was to recommend to the Lieutenant Governor that the provincial grant which was payable under the Education (Interim) Finance Act (1982) be reduced in accordance with section 12(2) of that act in order to force compliance with his directive:

Where the Minister considers that the board of a school district has failed to follow a directive issued under subsection (1), the Minister may recommend to the Lieutenant Governor in Council that a grant otherwise payable under this Act be reduced, and the Lieutenant Governor in Council may reduce the grant by any amount that he considers appropriate.

The last course of action, one which would have still been open to the Minister after the previous methods had been exhausted, would have been the appointment of an official trustee and the dismissal of the previous board.

One might surmise that, in selecting the most extreme response as his first course of action in response to the actions of the Vancouver trustees, that the Minister had anticipated that anything short of the appointment of an official trustee would have enabled the board to continue to mount public opposition to the Government's restraint program. By appointing an official trustee, the Minister had deprived the Vancouver trustees from using their public positions to advocate for the restoration of funding to education. In effect, the Minister's action changed the debate from one about the adequacy of educational funding to one about the propriety of dismissing the board.

The position of the Vancouver trustees in opposition to the imposition of restraint in education was vindicated in four ways. In his decision, Mr. Justice Callaghan had implicitly acknowledged the financial situation portrayed by the Vancouver trustees when he said that restricting the Lieutenant Governor in Council to remedy the conditions provided by the Education (Interim) Finance Act would "emasculate the very wide powers given to the Lieutenant Governor in Council to control school boards and would further exacerbate an existing problem and not resolve it" (p. 14, emphasis supplied). The report, *Let's Talk About Schools* (1985), commissioned by the Minister, reported the results obtained from a Gallup Survey conducted for the study team. According to the report, "Nearly 90% of the education professionals and 60% of the public believed that school funding should be increased" (p. 30). The official trustee the Minister had

appointed to conduct the affairs of the Vancouver School district was unable to implement the cuts to the Board's budget which he, as a member of the Budget Review Management Advisory Team, had said could be imposed. Indeed, he sought and received permission from the Minister to use \$5,500,000 of the Board's non-shareable capital reserves to avoid laying off teachers and support staff. And, when the Government finally permitted an election to be held in Vancouver, COPE candidates, including the five who had been dismissed, were elected to all 9 board positions in January 1986.

As extreme as the action taken in Vancouver may seem, it would be a serious mistake to see the situation in isolation from the historical context defining the relations between the levels of government responsible for education. While there had been other significant changes taking place in British Columbia at the time which no doubt had bearing upon the climate of opinion about education, those changes have been addressed elsewhere (Gaskell & Malcomson, 1986; Ungerleider, 1987). Notwithstanding those changes or the climate of opinion prevailing at the time, the examination of the historical relations between the provincial and local authorities responsible for education has shown that the dissolution of the Board of School Trustees in Vancouver was an atypical occurrence in the democratic processes affecting the governance of education. When the Minister of Education dismissed the Vancouver Trustees and appointed an official trustee to administer the district, he was behaving in a manner inconsistent with the spirit of those responsible for designing Canada's provincial system of education and the laws they established for maintaining centralized control over local educational authorities.

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